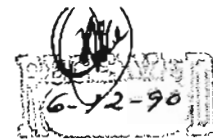




*Territory of Guam*  
*Territorion Guam*

OFFICE OF THE GOVERNOR  
L'FISINAN I MAGA'LAHI  
AGANA, GUAM 96910 U.S.A



JUN 06 1990

The Honorable Joe T. San Agustin  
Speaker, 20th Guam Legislature  
155 Hernan Cortez St.  
Agana, GU 96910

Dear Mr. Speaker:

Transmitted herewith is Bill No. 1358 (LS), which I have signed into law as Public Law 20-178.

I was very pleased to be able to sign this legislation into law and am pleased as well that you and your colleagues in the Legislature are mirroring our thinking that the QC program must be made to serve the needs of our local people.

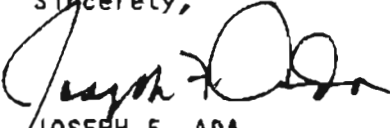
It was with this in mind that I have, over the past year and a half, instituted through Executive Order many modifications of the QC program, shifting the focus of the program from inducement of hotel investments to inducement of local entrepreneurship by such means requiring hotels desiring QC's to meet specified percentages of local hiring at all levels, including management, and the placing of a moratorium on new hotel QC's altogether.

I am also pleased that this legislation mirrors my thinking a year and a half ago when I transmitted to the Legislature a proposal to shift the QC program to emphasize encouragement of locally-owned and operated businesses and expand the program to aid as many of our local people as possible.

Mr. Speaker, our island of Guam stands at the crossroads to true economic and political self-determination for the first time in our history. Legislation such as this will do much to ensure our local people, whom we have sworn to serve, will be at the forefront of this bold new future for our island and as such, I am pleased and proud to sign Bill 1358 into law.

Thank you and Si Yu'os Ma'ase.

Sincerely,



JOSEPH F. ADA  
Governor

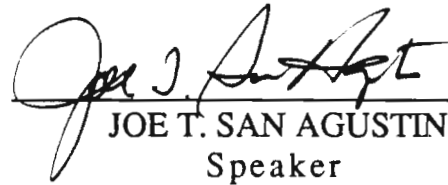


Commonwealth Now!

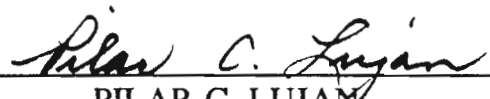
TWENTIETH GUAM LEGISLATURE  
1990 (SECOND) Regular Session

CERTIFICATION OF PASSAGE OF AN ACT TO THE GOVERNOR


This is to certify that Bill No. 1358 (LS), "AN ACT TO AMEND ARTICLE 4 OF CHAPTER 2, TITLE 12, GUAM CODE ANNOTATED, TO REVISE THE QUALIFYING CERTIFICATE PROGRAM OF THE GUAM ECONOMIC DEVELOPMENT AUTHORITY," was on the 1st day of May, 1990, duly and regularly passed.

  
JOE T. SAN AGUSTIN  
Speaker

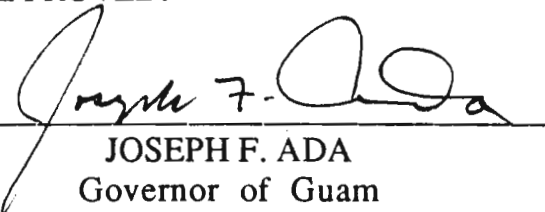
Attested:

  
PILAR C. LUJAN  
Senator and Legislative Secretary

-----  
This Act was received by the Governor this 1<sup>st</sup> day of May,  
1990, at 9:04 o'clock p.m.

  
Assistant Staff Officer  
Governor's Office

APPROVED:

  
JOSEPH F. ADA  
Governor of Guam

Date: MAY 18 1990

Public Law No. 20-178

TWENTIETH GUAM LEGISLATURE  
1990 (SECOND) Regular Session

Bill No. 1358 (LS)

Introduced by:

E. D. Reyes  
J. P. Aguon  
E. P. Arriola  
M. Z. Bordallo  
H. D. Dierking  
C. T. C. Gutierrez  
P. C. Lujan  
G. Mailloux  
T. S. Nelson  
D. Parkinson  
F. J. A. Quitugua  
J. T. San Agustin  
F. R. Santos  
J. G. Bamba  
D. F. Brooks  
E. R. Duenas  
E. M. Espaldon  
M. D. A. Manibusan  
M. C. Ruth  
T. V. C. Tanaka  
A. R. Unpingco

AN ACT TO AMEND ARTICLE 4 OF CHAPTER 2, TITLE  
12, GUAM CODE ANNOTATED, TO REVISE THE  
QUALIFYING CERTIFICATE PROGRAM OF THE GUAM  
ECONOMIC DEVELOPMENT AUTHORITY.

1 BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:  
2 Section 1. A new §2400.1 is added to Article 4, Chapter 2, Title 12,  
3 Guam Code Annotated, to read:  
4 "§2401.1. Legislative findings and intent. The Legislature  
5 recognizes that the Qualifying Certificate program of the Guam Economic  
6 Development Authority (the "Authority") was conceived as an economic

1 incentive tool to entice investors into Guam. In use for over two  
2 decades, it has had substantial positive impact upon the economic  
3 development of the territory, mainly in the tourist industry.

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

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

21 It is the Legislature's intent to restructure the Qualifying  
22 Certificate program to assist U.S. citizen and permanent resident  
23 entrepreneurs in establishing or expanding industries and services,  
24 including those supportive of hotels and their guests, to diversify the  
25 island economy, enrich its growth, and enhance the quality of life in  
26 Guam. The Legislature affirms that the program must be expanded to  
27 attract investments in order to diversify Guam's economy.

28 Section 2. A new §2400 is added to Article 4, Chapter 2, Title 12, Guam  
29 Code Annotated, to read:

30 "§2400. Short title. This Article shall be known and may be cited  
31 the "QC Reform Act of 1990".

32 Section 3. §2401 of Article 4, Chapter 2, Title 12, Guam Code Annotated,  
33 is amended to read:

1           "§2401. Qualifying Certificate, defined. A Qualifying Certificate is  
2 a contract valid for a given period of time, executed by the Governor  
3 upon recommendation of the Board, on behalf of the government of  
4 Guam and the Beneficiary, who has qualified for certain tax rebates and  
5 abatements in return for meeting certain employment, equity, and  
6 other requirements as described in this Article."

7           Section 4. §2403 of Article 4, Chapter 2, Title 12, Guam Code Annotated,  
8 is amended to read:

9           "§2403. Eligibility, defined. The following shall be deemed to be a  
10 business eligible for consideration by the Authority for issuance of a  
11 Qualifying Certificate:

12           Any trust, partnership, sole proprietorship, or corporation as  
13 defined in §2405, engaged, or about to engage in (1) agriculture (not  
14 exceeding \$2,000,000 in current and fixed assets; this \$2,000,000 limit  
15 shall not apply to U.S. citizens and legal residents residing in Guam),  
16 aquaculture, mariculture, manufacturing (to include hand and machine  
17 manufacturing), commercial fishing, services, or improvement of real  
18 property for purposes which are specifically determined by the  
19 Corporation to be beneficial, desirable, and necessary for the economic  
20 development of Guam, or captive insurance business as permitted by  
21 Chapter VI, Title XXXIX, Government Code; and (2) which activity meets  
22 one (1) or more of the following criteria:

- 23           a. Creation of new employment;
- 24           b. Replacement of imports;
- 25           c. Reduction of consumer prices;
- 26           d. Creation of vitally needed facilities;
- 27           e. Insurance providing for or facilitating the provision of  
28 health care services to the people of Guam;
- 29           f. Procurement of services or products supplied by Guam-  
30 licensed vendors, if total cost does not exceed one hundred ten  
31 percent (110%) of those same services or products available from  
32 other vendors.

33           The Board shall promulgate regulations containing standards,  
34 criteria, and measures of investments by the applicant and benefits for

1 the people of Guam in issuing Qualifying Certificates. Such regulations  
2 shall include preference to be extended to applicants which have fifty-  
3 one percent (51%) or greater portion of local investment, as controlled  
4 by bona fide Guam resident U.S. citizens or permanent residents. The  
5 Board shall recognize and take into consideration any and all provisions  
6 of law and regulations administered by other government entities that  
7 have review or approval authority over the eligible activity. Such  
8 regulations shall be adopted in the manner prescribed by the  
9 Administrative Adjudication Law."

10 Section 5. A new §2403.2 is added to Article 4, Chapter 2, Title 12,  
11 Guam Code Annotated, to read:

12 "§2403.2. Hotel/Motel eligibility. Eligibility of hotels/motels to  
13 apply for a Qualifying Certificate shall extend to a business incorporated  
14 and licensed to do business in Guam, is reputable and financially secure  
15 in standing (principals/firm), and provides evidence to the Authority of  
16 cash outlay, option to purchase, or lease or other explicit commitment to  
17 use property for a planned hotel/motel, and of its agreement to publicly  
18 offer up to ten percent (10%) of its voting stock to the residents of Guam  
19 at the original offered price."

20 Section 6. A new §2403.3 is added to Article 4, Chapter 2, Title 12,  
21 Guam Code Annotated, to read:

22 "§2403.3. Hotel QC Moratorium. The Authority shall not issue  
23 regulations imposing or lifting any moratorium on hotel eligibility to  
24 apply for, and receive, a Qualifying Certificate without the approval of  
25 the Legislature by statute."

26 Section 7. §2404 of Article 4, Chapter 2, Title 12, Guam Code Annotated,  
27 is amended to read:

28 "§2404. Nature of and benefits. A Qualifying Certificate, once  
29 issued, shall be a contract between the government of Guam and the  
30 Beneficiary, and the tax rebates and abatement enumerated in the  
31 Certificate may not be curtailed, limited or impaired by any subsequent  
32 act, except as provided herein. Once issued and unless suspended,  
33 rescinded or revoked, a Qualifying Certificate shall constitute conclusive

1 evidence of entitlement to the tax rebates and abatements stated on its  
2 face."

3 Section 8. §2405 of Article 4, Chapter 2, Title 12, Guam Code Annotated,  
4 is amended to read:

5 "§2405. Qualifying Certificate, Issuance of. A Qualifying  
6 Certificate may be issued by the Governor of Guam upon the  
7 recommendation of the Board to any applicant that proposes to engage  
8 in an eligible business, or to any applicant stockholder of such  
9 corporation holding a Qualifying Certificate, and said corporation may be  
10 either a Guam corporation or a duly organized "possessions corporation"  
11 limited to doing business in Guam, as such "possessions corporation" is  
12 defined under Federal income tax laws and regulations."

13 Section 9,. §2406 of Article 4, Chapter 2, Title 12, Guam Code  
14 Annotated, is amended to read:

15 "§2406. 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 Board for the  
18 following reasons:

19 1. Fraud or misrepresentation of any material allegation in  
20 the application for such Certificate.

21 2. Failure to comply with any conditions and obligations  
22 stated in the Certificate after having been notified by the  
23 Authority in writing of such failure to comply and after having  
24 been given by the Authority a reasonable period of time within  
25 which to correct such failure.

26 3. The filing by the Beneficiary or against the Beneficiary of  
27 a petition for adjudication of bankruptcy as to said Beneficiary  
28 wherein the petition has been granted.

29 4. A finding by the Attorney General of Guam that a  
30 corporate Beneficiary has been dissolved.

31 5. Violation of any provision of this Article.

32 No recommendation for suspension, rescission or revocation shall  
33 be made by the Board except after a hearing thereon pursuant to the  
34 provisions of the Administrative Adjudication Law."

1 Section 10. §2407 of Article 4, Chapter 2, Title 12, Guam Code  
2 Annotated, is amended to read:

3 "§2407. Disqualifications. A corporate applicant for a Qualifying  
4 Certificate shall, as a condition precedent to qualifying for the same,  
5 satisfy the Authority in writing that it shall not transfer, move, relocate  
6 or otherwise remove any of its existing business plants to Guam from  
7 the continental United States or any of its territories or possessions. A  
8 Qualifying Certificate shall not be issued to any applicant who has not  
9 first obtained a license to do business in Guam.

10 No officer or member of the Board or their spouses and no  
11 corporation or any other legal entity in which an officer or member of  
12 the Board or their spouses has any financial interest may qualify for a  
13 Qualifying Certificate.

14 Neither shall any of the following, during their term of office and  
15 for a period of one (1) year after their resignation, termination or  
16 completion of their term of office, directly or indirectly, qualify for a  
17 Qualifying Certificate:

- 18 (a) Members of the Legislature and their spouses;
- 19 (b) Employees of the Executive Branch of the government of  
20 Guam and their spouses from the level of first assistant to the  
21 department director and up;
- 22 (c) Judges of the various courts of Guam and their spouses.

23 Any Qualifying Certificate issued in violation of this Section shall  
24 be void ab initio."

25 Section 11. §2408 of Article 4, Chapter 2, Title 12, Guam Code  
26 Annotated, is amended to read:

27 "§2408. Employment of United States citizens and permanent  
28 residents. A Qualifying Certificate shall not be issued to an applicant  
29 which is investing One Million Dollars (\$1,000,000) or more unless such  
30 applicant commits itself at the time of application for such a Certificate  
31 that a management training program shall be established and a copy of  
32 that written training program shall be delivered to the Authority within  
33 the number of days prescribed in regulations by the Authority so that  
34 within a reasonable period of time residents of Guam who are United



1 States citizens or permanent residents of the United States who are  
2 otherwise qualified would replace any management personnel or other  
3 officers of an industry or business granted a Qualifying Certificate who  
4 are not United citizens or permanent residents of the United States, and  
5 that it shall at all times employ a total employment force of not less  
6 than the minimum number established by the Authority, at least  
7 seventy-five percent (75%) of which shall be United States citizens or  
8 permanent residents of the United States; provided, however, that for  
9 good cause, temporary exemptions hereto, for specific and limited  
10 periods of time, may be granted by the Authority, such temporary  
11 exemptions, to be conditioned upon a training program, approved by  
12 the Authority, designed to replace employees who are not either United  
13 States citizens or permanent residents. In addition, after the expiration  
14 of three-fourths (3/4) of the period of the Qualifying Certificate or ten  
15 (10) years, whichever is sooner, the possessor of the Qualifying  
16 Certificate must satisfy the seventy-five (75%) employment  
17 requirement at both management and non-management levels.  
18 Hotel/motel management staff shall be comprised of a minimum of fifty  
19 percent (50%) United States citizens living on Guam or permanent alien  
20 residents of Guam. The number of U.S. citizens or permanent resident  
21 employees at management level shall escalate from a minimum of ten  
22 percent (10%) of the employees by the end of the second year to a  
23 minimum of fifty percent (50%) of the employees by the end of the fifth  
24 year of operation. The Authority shall be the sole judge of what  
25 constitutes management and non-management levels of employment  
26 but it shall seek advice from the University of Guam, the Guam  
27 Community College, the Department of Labor, the Department of  
28 Education, and such other government agencies as are necessary to  
29 fulfill the intent of this Section. The Authority shall establish, by  
30 regulations adopted pursuant to the Administrative Adjudication Law,  
31 requirements for practical and equitable training programs as guidance  
32 for the applicant and the reasonable minimum number of persons to be  
33 employed on a continuing basis for each applicant in accordance with  
34 the specific and normal requirements of the business involved. Such

1 training program and minimum employment requirement shall be  
2 made a condition appearing on the face of the applicable Qualifying  
3 Certificate. The Authority shall annually report to the Legislature the  
4 titles and compensation of all trainees, including those placed in  
5 management levels, who are employed by beneficiaries of qualifying  
6 certificates. No resident employee of an industry or business granted a  
7 Qualifying Certificate shall be paid less than the prevailing wage rates  
8 nor shall he be laid off his job nor have his workweek reduced to less  
9 than forty (40) hours for the sole purpose of creating employment for  
10 non-resident workers. For the purpose of this Section, "prevailing wage  
11 rates" as determined by the Department of Labor shall be used as a  
12 guide. The Department of Labor is hereby empowered to investigate  
13 any complaint filed pursuant to this Section and to settle the same by  
14 issuance of an appropriate order after notice and hearing pursuant to  
15 the provisions of the Administrative Adjudication Law. Any willful  
16 violation of this Section, or of any order issued hereunder, may be cause  
17 for a Beneficiary of a Qualifying Certificate to forfeit the benefits  
18 thereof."

19 Section 12. §2408.1 of Article 4, Chapter 2, Title 12, Guam Code  
20 Annotated, is amended to read:

21 "§2408.1. Participation in the apprenticeship training program. A  
22 Qualifying Certificate shall not be issued to an applicant who operates a  
23 hotel or restaurant unless the applicant commits itself at the time of  
24 application for such a certificate to participate in the Hotel/Restaurant  
25 Industry Apprenticeship Program administered by the Guam  
26 Community College and to hire graduates of the apprenticeship program  
27 when vacancies exist."

28 Section 13. §2409 of Article 4, Chapter 2, Title 12, Guam Code  
29 Annotated, is amended to read:

30 "§2409. Qualifying Certificate non-transferable. A Qualifying  
31 Certificate or the benefits thereunder may not be transferred or  
32 assigned without the written permission of the Authority. For the  
33 purposes of this Section, a transfer or assignment of benefits shall have  
34 occurred at any time there is a transfer of a majority of the voting stock

1 of the Beneficiary, resulting in a change in the identity of the  
2 shareholders who control the Beneficiary."

3 Section 14. §2410 of Article 4, Chapter 2, Title 12, Guam Code  
4 Annotated is amended to read:

5 "§2410. Application for Qualifying Certificates. Applications for  
6 Qualifying Certificates shall be filed on forms prescribed and furnished  
7 by the Authority. An applicant must furnish written monthly reports  
8 beginning thirty (30) days after the date of the issuance of the  
9 Qualifying Certificate, said reports to include, but not limited to,  
10 financial data, employment data and payroll data. All such monthly  
11 reports shall be treated as confidential by the Authority."

12 Section 15. §2411 of Article 4, Chapter 2, Title 12, Guam Code  
13 Annotated is amended to read:

14 "§2411. Publications of all applications for Qualifying Certificates.  
15 The Authority shall cause to be published, at applicant's expense, in a  
16 Guam newspaper of general circulation, a brief resume of all  
17 applications for Qualifying Certificates, said publication to be made no  
18 later than seven (7) days following submission of an application. The  
19 resume shall be in a form prescribed by the Board, and it shall include  
20 only the name and address of applicant, a brief statement of the  
21 proposed investment, a brief summary of the tax rebates and  
22 abatements applied for, and the names and addresses of those who are  
23 investors at the time the application is submitted to the Board.  
24 Following the filing of the application in due form, payment of the  
25 prescribed fees and publication of the resume, the holding of a public  
26 hearing thereon is mandatory. The Board shall take all reasonable  
27 precautions in connection with such public hearing to avoid disclosure  
28 of proprietary secrets of the applicant. The Board may schedule  
29 additional public hearings as necessary. The Board meeting for  
30 approval of a Qualifying Certificate shall not be held on the same day as  
31 a public hearing on the Qualifying Certificate."

32 Section 16. §2405.1 of Article 4, Chapter 2, Title 12, Guam Code  
33 Annotated, is amended to read:

1           "§2405.1. Grace period. After the Board's recommendation to the  
2 Governor, but prior to the issuance of the certificate, the Board shall  
3 conduct a public hearing after publication of thirty (30) days notice, at  
4 which hearing members of the public may appear to comment on such  
5 issuance."

6           Section 17. §2412 of Article 4, Chapter 2, Title 12, Guam Code  
7 Annotated, is amended to read:

8           "§2412. Notice of hearings on applications. Notice of public  
9 hearings shall be published at applicants' expense in a local newspaper  
10 of general circulation not less than five (5) days prior to the scheduled  
11 hearing date."

12           Section 18. §2413 of Article 4, Chapter 2, Title 12, Guam Code  
13 Annotated, is amended to read:

14           "§2413. Recommendations. All recommendations of the Board for  
15 issuance, modification, revocation or suspension of Qualifying  
16 Certificates shall be forwarded to the Governor of Guam, together with a  
17 memorandum of the Board's findings in support of its recommendations.  
18 The Governor of Guam, within sixty (60) calendar days from his receipt  
19 thereof, shall either approve or disapprove the Board's  
20 recommendation."

21           Section 19. §2414 of Article 4, Chapter 2, Title 12, Guam Code  
22 Annotated, is amended to read:

23           "§2414. Tax abatement. The following tax abatements are hereby  
24 established and declared, for which Qualifying Certificates may be  
25 issued:

- 26           (1) All taxes now levied by virtue of Chapter 24, Title 11,  
27 Guam Code Annotated (known as the Real Property Tax Law),  
28 shall be abated for a period up to ten (10) years from date of  
29 issuance of Qualifying Certificate therefor, and as long as said  
30 certificate is in force and effect; provided, that the real property  
31 on which said tax is assessed is utilized for a tax exempt business  
32 that has qualified and continues to qualify for a Qualifying  
33 Certificate. A sum equal to the abated amounts must be invested

1 in Guam for a period of at least five (5) years. The Beneficiary  
2 shall provide evidence to the Authority of such investment.

3 (2) All taxes now levied on income derived from the lease  
4 of land, buildings, machinery or equipment by virtue of Article 2,  
5 Chapter 26, Title 11, Guam Code Annotated (known as Gross  
6 Receipts Taxes), shall be abated for a period up to ten (10) years  
7 from date of issuance of a Qualifying Certificate therefor, and as  
8 long as said certificate is in force and effect; provided, that said  
9 income has been derived from the lease of land, building,  
10 machinery or equipment to a tax exempt business that has  
11 qualified and continues to qualify for a Qualifying Certificate.

12 (3) All taxes now levied by virtue of Article 2, Chapter 26,  
13 Title 11, Guam Code Annotated (known as Gross Receipts Taxes),  
14 shall be abated for a period of up to ten (10) years from date of  
15 issuance of a Qualifying Certificate therefor, and as long as said  
16 certificate is in force and effect; provided, that the gross receipts  
17 on which such tax shall be abated have been derived from the  
18 sale of alcoholic beverages manufactured in Guam by the  
19 manufacturer thereof and that such manufacturer has qualified  
20 and continues to qualify for a Qualifying Certificate covering such  
21 manufacture.

22 (4) All taxes levied or paid by virtue of Article 2, Chapter  
23 26, Title 11, Guam Code Annotated (known as Gross Receipts  
24 Taxes), shall be abated or rebated for those gross receipts derived  
25 from the sale of petroleum produced manufactured in Guam and  
26 sold to agencies or instrumentalities of the United States of  
27 America, or agencies or instrumentalities of the government of  
28 Guam by the manufacturer thereof; provided, that a Qualifying  
29 Certificate for such a tax abatement is granted pursuant to the  
30 provisions of this subparagraph, and further provided that at any  
31 such time that a manufacturer possessing such a Qualifying  
32 Certificate no longer continues to qualify for the certificate, the  
33 taxes shall no longer be abated or rebated. A Qualifying  
34 Certificate may grant a tax abatement or rebatement for up to a

1 ten (10) year period commencing with the date of initial  
2 commercial production of petroleum products by the  
3 manufacturer.

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

11 Section 20. §2415 of Article 4, Chapter 2, Title 12, Guam Code  
12 Annotated, is amended to read:

13 "§2415. Income tax rebate. A rebate of up to seventy-five  
14 percent (75%) of all income tax payable to the government of Guam is  
15 hereby established and declared, for activities for which a Qualifying  
16 Certificate may be issued for (a) a period not exceeding a total of twenty  
17 (20) consecutive years from the effective date of a Qualifying Certificate  
18 therefor or, (b) the date of recouping of the amount of initial and  
19 subsequent capital invested, up to Thirty Million Dollars (\$30,000),  
20 whichever occurs first. The percentage of rebate may be made variable  
21 by the Board so as to permit higher or lower percentages in earlier or  
22 later years of the period. In determining the periods up to twenty (20)  
23 years and the percentages up to seventy-five percent (75%) and capital  
24 investment, the Board shall take into consideration the financial risks  
25 involved in the undertaking as well as the socio-economic development  
26 of Guam by the proposed investment. For the purposes of this Section,  
27 the term "income tax payable" shall mean income taxes applicable to  
28 subsequent to the effective date of the applicable Qualifying Certificate.  
29 The Director of Revenue and Taxation of the government of Guam shall  
30 have authority to determine any prorations of rebates necessary  
31 because of taxable years occurring within the life of the applicable  
32 Qualifying Certificate which consist of less than full twelve (12) months  
33 period. All rebated amounts must be invested in Guam for a period of

1 at least five (5) years. The Beneficiary shall provide evidence to the  
2 Authority of such investment."

3 Section 21. §2417 of Article 4, Chapter 2, Title 12, Guam Code  
4 Annotated, is amended to read:

5 "§2417. Income tax rebate on dividends. A rebate of up to  
6 seventy-five percent (75%) of all corporate income tax on dividends  
7 paid by a Corporate Beneficiary is hereby established and declared for  
8 which a Qualifying Certificate may be issued. The shareholders of a  
9 corporate Beneficiary may be granted a rebate of up to seventy-five  
10 percent (75%) of the income tax due for dividends paid by the  
11 Beneficiary from its current year's earning derived only from the  
12 activities identified in the Qualifying Certificate and only for a period of  
13 up to five (5) years.

14 In the case of a corporation that has elected to be taxed as a small  
15 business corporation commonly known as a "Subchapter S Corporation,"  
16 said income tax rebate shall be passed on to its stockholders in the same  
17 proportion as their stock interest in the tax-exempt corporation.

18 In the case of a stockholder of a Qualifying Certificate not  
19 qualifying as a small business corporation, the income tax rebate herein  
20 provided shall be applicable to the dividend income received by the  
21 stockholder from the tax-exempt corporation."

22 Section 22. §2419 of Article 4, Chapter 2, Title 12, Guam Code  
23 Annotated, is amended to read:

24 "§2419. Procedure to claim abated and rebated taxes. A certified  
25 true copy of the corresponding Qualifying Certificate and a certificate of  
26 compliance issued by the Authority should be attached to the  
27 Beneficiary's tax return when filing each return.

28 When the return for the abated tax is accompanied by a  
29 corresponding Qualifying Certificate and a certificate of compliance, the  
30 actual payment of the tax in question to the government shall not be  
31 required, and upon review of the tax return, the Tax Commissioner of  
32 the government of Guam shall, within one hundred twenty (120) days  
33 from receipt of said tax return, furnish the taxpayer a certification  
34 confirming the nature and amount of the tax abated.

1 In the case of an income tax rebate, the amount of a tax due prior  
 2 to rebate shall be deposited with the government of Guam as prescribed  
 3 by the Territorial Income Tax Law. When the return for the tax which  
 4 may be subject to rebate is accompanied by a corresponding Qualifying  
 5 Certificate and a certificate of compliance, the Tax Commissioner of the  
 6 government of Guam shall immediately thereafter cause the return to  
 7 be reviewed and audited, and if the rebate is found in order, shall cause  
 8 the amount deposited to be returned to the taxpayer within one  
 9 hundred eighty (180) days from date of filing of the income tax return."

10 Section 23. §2421 of Article 4, Chapter 2, Title 12, Guam Code  
 11 Annotated, is amended to read:

12 "§2421. Tax redeterminations. In the case of any Beneficiary  
 13 who, in accordance with the applicable laws of the territory of Guam,  
 14 shall have applied for and been granted a redetermination of tax  
 15 liability or taxes payable or in the case of a redetermination of tax  
 16 liability made by the Department of Revenue and Taxation, the amount  
 17 of abated or rebated taxes determined for such Beneficiary for the  
 18 taxable years affected shall be accordingly adjusted by the Director of  
 19 Revenue and Taxation and said Beneficiary shall be required to pay the  
 20 balance due said taxable years, if any, together with interest at the rate  
 21 currently assessed by the government of Guam per annum from the  
 22 date the Beneficiary realized the abatement or rebate benefit; provided,  
 23 that said balance due may be offset or credited against any tax refund  
 24 due to the Beneficiary."

25 Section 24. §2424 of Article 4, Chapter 2, Title 12, Guam Code  
 26 Annotated, is amended to read:

27 "§2424. Fees. Upon the effective date of this Article and until  
 28 modified pursuant to §2425 of this Article, the following fees shall be  
 29 assessed against each applicant and recipient of a Qualifying Certificate:

	<u>FILING FEE</u>	<u>ANNUAL SURVEILLANCE FEE</u>
32 Agriculture, Aquaculture, 33 and Mariculture	\$ 50	\$ 250
34 Machine Manufacturing	500	1,000



1	Home Manufacturing	-0-	-0-
2	Commercial Fishing	150	1,000
3	Services	750	1,000
4	Tourist Facilities	750	1,000
5	Motels		
6	Under construction	750	1,000
7	In operation	750	\$15 per room
8	Hotels		
9	Under construction	1,000	1,000
10	In operation	1,000	\$25 per room
11	Industrial Facilities	750	1,000."

12           Section 25. §2425 of Article 4, Chapter 2, Title 12, Guam Code  
13 Annotated, is amended to read:

14           "§2425. Periodic adjustment of fees. The Board is authorized to  
15 adjust the fees listed in §2424 of this Article on an annual basis, at the  
16 beginning of each calendar year, starting with calendar year 1991, upon  
17 demonstration to the Board by the Administrator that the cost of  
18 performing the services covered by the fees is greater than the amount  
19 of the fees. Fee changes shall be made according to the provisions of  
20 the Administrative Adjudication Law."

21

TWENTIETH GUAM LEGISLATURE  
1990 (SECOND) Regular Session

ROLL CALL SHEET

Bill No. 1358

Date: 5/1/90 early hr.  
2:00-4:00

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

QUESTION: \_\_\_\_\_

	AYE	NAY	NOT VOTING	ABSENT
J. P. Aguon				✓
E. P. Arriola	✓			
J. G. Bamba	✓			
M. Z. Bordallo	✓			
D. F. Brooks +	✓			
H. D. Dierking	✓			
E. R. Duenas	✓			
E. M. Espaldon	✓			
C. T. C. Gutierrez	✓			
P. C. Lujan	✓			
G. Mailloux	✓			
M. D. A. Manibusan	✓			
T. S. Nelson	✓			
D. Parkinson	✓			
F. J. A. Quitugua	✓			
E. D. Reyes	✓			
M. C. Ruth	✓			
J. T. San Agustin	✓			
F. R. Santos	✓			
T. V. C. Tanaka	✓			
A. R. Unpingco	✓			

20

1



# Twentieth Guam Legislature

163 Chalan Santo Papa Street  
Agana, Guam 96910

25 April 1990

SPEAKER JOE T. SAN AGUSTIN  
20th Guam Legislature  
155 Hernan Cortez Street  
Agana, GU 96910

Dear Speaker San Agustin:

The Committee on Economic Development to which was referred **BILL NO. 1358** [An Act to Amend Article 4 of Chapter 2, Title 12, Guam Code Annotated, to Revise the Qualifying Certificate Program of the Guam Economic Development Authority], wishes to report back to the Legislature with its recommendation to pass Bill No. 1358.

Copies of the Committee Report and other pertinent documents are attached.

Your attention to this matter is greatly appreciated.

Sincerely,

A handwritten signature in cursive script, appearing to read "E. Reyes".

EDWARD D. REYES

Attachments.

COMMITTEE ON ECONOMIC DEVELOPMENT

REPORT ON

BILL NO. 1358 [AN ACT TO AMEND ARTICLE 4 OF CHAPTER 2, TITLE 12, GUAM CODE ANNOTATED, TO REVISE THE QUALIFYING CERTIFICATE PROGRAM OF THE GUAM ECONOMIC DEVELOPMENT AUTHORITY]

BACKGROUND

On March 10, 1990, the 20th Guam Legislature passed Bill No. 959 (An Act to Amend Article 4 of Chapter 2, Title 12, Guam Code Annotated, to Revise the Qualifying Certificate Program of the Guam Economic Development Authority). On March 21, 1990, however, Governor Ada vetoed Bill No. 959 due, primarily, to technical flaws of the bill.

With the technical corrections requested by the Administration incorporated into the QC bill, Bill No. 1358 was introduced on March 27, 1990 by Senator Edward D. Reyes.

COMMITTEE FINDINGS & RECOMMENDATIONS

The Committee recognizes that Bill No. 1358 is substantially identical to Bill No. 959 with the exception of technical corrections. The Committee recommends that based on Rule VII, Section 4 of the 20th Guam Legislature's Standing Rules, the public hearing requirement for Bill No. 1358 be waived.

The Committee further recommends passage of Bill No. 1358.



# Twentieth Guam Legislature

163 Chalan Santo Papa Street  
Agana, Guam 96910

27 December 1989

SPEAKER JOE T. SAN AGUSTIN  
Twentieth Guam Legislature  
163 Chalan Santo Papa  
Agana, Guam 96910

Dear Mr. Speaker:

The Committee on Economic Development, to which was referred **BILL NO. 959** [An Act to Amend Article 4, 12 GCA, Chapter 2, and to Repeal §2433 and to Amend §2434, both in Article 4A, 12 GCA, Chapter 2, all Relative to the Qualifying Certificate Program of the Guam Economic Development Authority], wishes to report this Bill out of Committee. The voting record is as follows:

TO PASS	<u>4</u>
NOT TO PASS	<u>0</u>
TO REPORT OUT ONLY	<u>8</u>
TO PLACE IN INACTIVE FILE	<u>0</u>
OFF-ISLAND	<u>0</u>

Copies of the Committee Report and other pertinent documents are attached.

Your attention to this matter is greatly appreciated.

A handwritten signature in cursive script, appearing to read "E. D. Reyes".

EDWARD D. REYES

Attachments.



# Twentieth Guam Legislature

163 Chalan Santo Papa Street  
Agana, Guam 96910

21 December 1989

## MEMORANDUM

TO: Members, Committee on Economic Development  
FROM: Chairman, Committee on Economic Development  
SUBJECT: Committee Report - Bill No. 959

Transmitted herewith for your information and action is the Committee on Economic Development's Report on Bill No. 959 [An Act to Amend Article 4, 12 GCA, Chapter 2, and to Repeal §2433 and to Amend §2434, both in Article 4A, 12 GCA, Chapter 2, all Relative to the Qualifying Certificate Program of the Guam Economic Development Authority].

The narrative report is accompanied by the following:

1. Bill No. 959;
2. Committee on Economic Development Voting Sheet;
3. Written Testimony; and
4. Substitute Bill No. 959.

Should you have any questions on the narrative report or the accompanying documents, I would be most happy to answer any of them.

Please take the appropriate action on the attached voting sheet and return the documents to my office for transmittal to the other members.

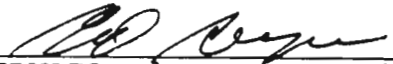
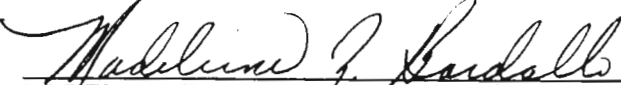
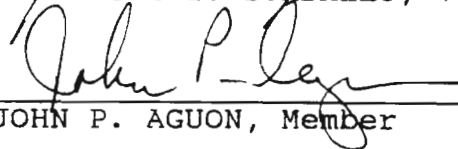

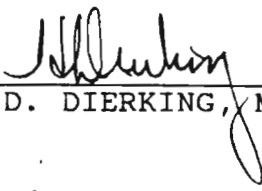
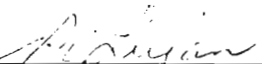
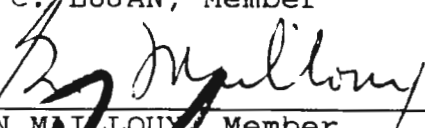
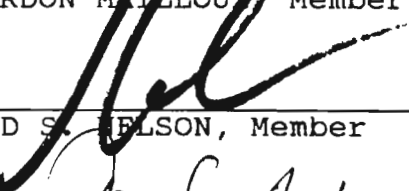


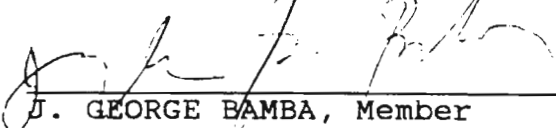

Your attention and cooperation in this matter is greatly appreciated.

  
EDWARD D. REYES

Attachments.

**COMMITTEE ON ECONOMIC DEVELOPMENT  
20th Guam Legislature**

Bill No. 959 [An Act to Amend Article 4, 12 GCA, Chapter 2, and to Repeal §2433 and to Amend §2434, both in Article 4A, 12 GCA, Chapter 2, all Relative to the Qualifying Certificate Program of the Guam Economic Development Authority]

	<u>TO</u> <u>PASS</u>	<u>NOT TO</u> <u>PASS</u>	<u>REPORT</u> <u>OUT ONLY</u>	<u>INACTIVE</u> <u>FILE</u>	<u>OFF-</u> <u>ISLAND</u>
 EDWARD D. REYES, Chairman	✓				
 MADELEINE Z. BORDALLO, Vice-Chairman			✓		
 JOHN P. AGUON, Member			✓		
 ELIZABETH P. ARRIOLA, Member	✓				
 HERMINIA D. DIERKING, Member			✓		
 PILAR C. LUJAN, Member	✓				
 GORDON MAILLOU, Member			✓		
 TED S. NELSON, Member	✓				
 JOE T. SAN AGUSTIN, Ex-Officio Member			✓		What happens to Bill 729? Bill 959 is not to
 FRANCISCO R. SANTOS, Member			✓		
 J. GEORGE BAMBA, Member			✓		
 MARILYN D. MANIBUSAN, Member			12/27/89 ✓		

# TWENTIETH GUAM LEGISLATURE

## Committees on Economic Development Report

### Bill No. 959

AN ACT TO AMEND ARTICLE 4, 12 GCA, CHAPTER 2, AND TO REPEAL §2433 AND TO AMEND §2434, BOTH IN ARTICLE 4A, 12 GCA, CHAPTER 2, ALL RELATIVE TO THE QUALIFYING CERTIFICATE PROGRAM OF THE GUAM ECONOMIC DEVELOPMENT AUTHORITY.

#### I. Introduction

- A. Bill No. 959 was introduced by Senator Edward D. Reyes in a September 1989 legislative session and referred by the Committee on Rules on September 27, 1989 to the Committee on Economic Development.
- B. The purpose of this bill is to amend certain sections of the Guam Code Annotated regarding the administration and benefits of the Qualifying Certificate program.

Specifically, the Bill would -

- ▶ Record the Legislature's findings that the QC program, as an enticement tool for financial investors, must be re-directed to offer benefits to business activities which emphasize local ownership and minimize government assistance to those segments of the business community which are growing in response to demand for their services and not necessarily as a result of the QC program's availability
- ▶ Modify the definition of eligibility
  - still eligible - agriculture, commercial fishing, services, and hotels and motels which are majority-owned by local residents
  - no longer eligible - certain hotels after December 31, 1989, captive insurance companies, and foreign sales corporations
  - new eligibles - aquaculture, mariculture, and legal entities besides corporation, i.e., sole proprietors, partnerships, and trusts
- ▶ Allow suspension or rescission of QCs
- ▶ Disqualify spouses and first assistants to government directors from, and provide that persons wait one year after serving a term in public office before, applying for a QC
- ▶ Give GEDA flexibility to define the nature of the training



program a QC beneficiary must implement to meet employment requirements

- ▶ Allow GEDA to permit a QC transfer or assignment on a change of ownership
- ▶ Give the governor sixty days to either approve or disapprove the GEDA Board's recommendation on a QC application
- ▶ Modify tax abatements for QC recipients

deleted - income of landowner from real property being leased by QC recipient, premiums collected by a captive insurance company, and gross receipts tax on sale of Guam-brewed alcoholic beverages or petroleum products sold to government of Guam

- ▶ Modify tax rebates for QC recipients

added - tax rebates will be available for sole proprietors, partnerships and trusts

added - residency period of at least five years required in order for a stockholder to be eligible for income tax rebate on dividends

- ▶ Require a certificate of compliance issued by GEDA to be filed with the QC beneficiary's tax return
- ▶ Adjust the schedule of fees to be charged against QC applicants and recipients

C. A public hearing was held on October 26, 1989 in the legislative session hall. Chairman of the Committee, Senator Reyes, called the hearing to order at 9:30 a.m. Members present included Vice-Chair M. Z. Bordallo and Senators P. C. Lujan, T. S. Nelson, F. R. Santos, and J. G. Bamba. The hearing adjourned at 11:45 a.m.

## II. Written Testimony

Mr. Joey B. Cepeda, Guam Visitors Bureau General Manager, gave testimony in the Bill's favor. He wrote, "At this juncture in tourism's development, there is a need to revamp the QC program." He called, though, for further examination of the proposal to eliminate hotels from the program. Rather than enacting legislation prohibiting tax breaks for hotels, it may be more appropriate to give GEDA and the Governor the authority to approve QCs depending upon circumstances.

Mr. Charles P. Crisostomo, Administrator of the Guam Economic Development Authority, testified in favor of the Bill, with suggestions for improvement. His points are addressed in the

Committee's findings below.

### III. Oral Testimony

In addition to their written testimonies, those people appearing at the hearing discussed particular points raised by Committee members. Mr. Frank Leon Guerrero, representing the Department of Revenue and Taxation, also gave oral testimony. See the Committee findings below for details.

### IV. Roundtable Meetings

Committee Chairman Reyes took the initiative to bring together various representatives of the business community to examine the Territory's QC program on the premise that it needed adjustment to keep up with our community's expectations for the 1990's and beyond. "Brain-storming" meetings were held on June 26th, August 1st, and September 5th.

The Committee acknowledges the input received from participants at those meetings as well as letters written to the Chairman and their comments are incorporated herein by reference. They included: Mr. James Lattin, General Manager of the Pacific Islands Club; Mr. Tony Leon Guerrero, Chairman, GEDA Board of Directors; Mr. Charles Crisostom, GEDA Administrator; Mr. John Martinez, former GEDA Administrator; Mr. Frank Leon Guerrero, Department of Revenue and Taxation; Mr. Joe Arnett, Chairman, Guam Chamber of Commerce's Taxation Committee; Mr. Manfred Pieper, President, Guam Hotel and Restaurant Association; Ms. Judith Borja, Partner, Pickens Borja & Filush, P.C.; Mr. Dave Santos, Chairman, Guam Chamber of Commerce's Small Business Committee; Mr. Felix Quan, Chairman, Northern Soil and Water Conservation District Board of Directors; and, Mr. Peter Barcinas, Director, Department of Commerce.

### V. Committee Findings/Recommendations

Throughout the series of meetings and correspondences by and between the Committee and interested persons and organizations and at the public hearing, points of discussion were:

1. Eligible Applicants - aquaculture and mariculture should be added to the list of eligibles; hotel participation in the QC program should be limited to those which are 51% locally-owned; participation of local entrepreneurs will be allowed by recognizing legal entities other than corporations; foreign sales corporations, by their nature, are tax-exempt organizations and it is redundant to include them in a program offering tax breaks such as the QC;

2. Minimum Investment Thresholds - GEDA should be given the flexibility to review Guam's current economic and social conditions and adjust investment requirements to keep pace;

3. Restriction of Government Officials - certain government employees and officials and their spouses should be prohibited from being QC recipients until one year after their term in public office or employment;

4. Employee Quotas and Training Programs - GEDA's mandate to set employee quotas for QC recipients should remain intact but it should be given flexibility to identify other forms of employee training besides the GCC Apprenticeship Program which are more suitable to the QC recipient's job requirements;

5. Transfer or Assignment of QC - GEDA's administrative discretion to review and authorize QC transfer has been mutually beneficial to government and recipient;

6. Tax Abatements - real property tax on a landowner's income from land leased to a QC recipient should not be abated, if the lessor is not the QC beneficiary; gross receipt tax on sale of goods should not be abated or rebated since this tax is price-sensitive, not investment-sensitive;

7. Residency Requirement for Beneficiary - persons who seek income tax breaks through the QC program should be residents of Guam for five continuous years prior to seeking those breaks;

8. Certificate of Compliance - a QC recipient will be required to secure this certificate from GEDA as proof of meeting its obligations under the QC program prior to filing any forms to claim tax breaks;

9. QC Fees - the current fees charged by GEDA are insufficient to recover the cost of processing applications and monitoring beneficiaries and they should be increased.

The Committee has weighed the merits of these concerns and comments and placed them into a substitute bill. Finally, the Committee recommends passage of Substitute Bill 959.

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TWENTIETH GUAM LEGISLATURE  
1989 (FIRST) Regular Session

Bill No. 779

Introduced By: E.D. Reyes

E.P. Arriola

P.C. LUSAN

*T.T. Welch*

AN ACT TO REPEAL AND REENACT ARTICLE 4, 12 GCA, CHAPTER 2, RELATIVE TO THE QUALIFYING CERTIFICATE PROGRAM OF THE GUAM ECONOMIC DEVELOPMENT AUTHORITY, AND TO REPEAL AND REENACT 12 GCA §§2105 AND 2108

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

2 SECTION 1. Article 4, 12 GCA, Chapter 2 is repealed and reenacted  
3 to read:

4 "Article 4. Qualifying Certificates.

5 §2401. Short Title.

6 §2402. Legislative Findings.

7 §2403. Qualifying Certificate, Defined.

8 §2404. Beneficiary, Defined.

9 §2405. Eligibility, Defined.

10 §2406. Issuance, Effective Date, Defined.

11 §2407. Nature and Benefits.

12 §2408. Qualifying Certificate, Issuance of.

13 §2409. Same: Grounds for Revocation.

14 §2410. Disqualifications.

15 §2411. Employment and Payroll of United States Citizens and  
16 Permanent Residents.

17 §2412. Participation in the Apprenticeship Training Program.

18 §2413. Qualifying Certificate, Non-Transferable.

19 §2414. Application for Qualifying Certificates.

- 1           §2415. Publication of All Corporate Applications for Qualifying
- 2                           Certificates.
- 3           §2416. Notice of Hearings on Corporate Applications.
- 4           §2417. Recommendations.
- 5           §2418. Tax Abatements.
- 6           §2419. Corporate Income Tax Rebate.
- 7           §2420. Taxability of Rebates: Legislative Intent.
- 8           §2421. Income Tax Rebate on Dividends.
- 9           §2422. Procedure to Claim Abated and Rebated Taxes.
- 10          §2423. Rebate Fund.
- 11          §2424. Tax Redetermination.
- 12          §2425. Implementation by Tax Commissioner.
- 13          §2426. Limited to Government of Guam Taxes.
- 14          §2427. Fees.
- 15          §2428. Periodic Adjustment of Fees.
- 16          §2429. Special Qualifying Certificates for Resident-Owned Small
- 17                           Businesses.

---

19           §2401. Short Title. This Act shall be known and may be cited  
20 as the QC Reform Act of 1989.

21           §2402. Legislative Findings. It is the finding of the  
22 Legislature that the Qualifying Certificate program of the Guam  
23 Economic Development Authority has had a substantial positive impact  
24 upon the economic development of the Territory. However, Guam's  
25 economic conditions have sufficiently changed since the inception of  
26 the program to warrant its modification and reform. It is further  
27 found that there have been many misconceptions regarding both the  
28 program itself and the law which governs it. Therefore, it is the

1 purpose of this Act to institute the reforms necessary to make the  
2 program more responsive to the needs of the Territory and its people  
3 to strengthen the provisions of the law, and to ensure that the  
4 maximum possible benefits are derived by the residents of Guam from  
5 the economic development that the program encourages.

6 The Legislature also finds that local entrepreneurs are often  
7 excluded from participating in the Qualifying Certificate program  
8 because of the size of the required investment. This Act attempts  
9 to deal with this problem by creating the Special Qualifying  
10 Certificate specifically aimed at local entrepreneurs.

11 §2403. Qualifying Certificate, Defined.

12 §2403.1. A Qualifying Certificate is a contract valid for  
13 a given period of time, issued by the Governor upon  
14 recommendation of the Board, between the government of Guam and  
15 the Beneficiary.

16 §2403.2. A Standard Qualifying Certificate is an instrument  
17 issued to a Beneficiary who has qualified for certain tax rebates  
18 and abatements in return for meeting certain employment,  
19 corporate equity, and other requirements as described in this  
20 Article.

21 §2403.3. A Special Qualifying Certificate is an instrument  
22 issued to a Beneficiary who has qualified for certain tax credits  
23 in return for meeting the requirements described in this Article.

24 §2404. Beneficiary, Defined. The Recipient of a Qualifying  
25 Certificate shall be known as a Beneficiary.

26 §2405. Eligibility, Defined. A business deemed to be eligible  
27 for consideration by the Corporation for the issuance of a Standard  
28 Qualifying Certificate or a Special Qualifying Certificate must meet

1 the following:

2 Any corporation, as defined in §2408, licensed to do business  
3 Guam, must be engaged, or about to engage in one (1) or more of the  
4 following activities:

- 5 1. Agriculture;
- 6 2. Aquaculture;
- 7 3. Mariculture;
- 8 4. Manufacturing;
- 9 5. Commercial fishing;
- 10 6. Services; or
- 11 7. Improvement of real property for purposes which are  
12 specifically determined by the Corporation to be beneficial  
13 desirable and necessary to the economic development of Guam

14 The activity must also meet all of the following criteria:

- 15 1. Creation of new employment;
- 16 2. Replacement of imports;
- 17 3. Reduction in consumer prices; and
- 18 4. Creation of vitally needed facilities.

19 In addition, the Board shall require each applicant for  
20 Standard Qualifying Certificate to pledge to reserve at least ten  
21 percent (10%) but no more than forty-nine percent (49%)  
22 corporate equity on Guam to be openly offered for sale to all  
23 qualified residents of the Territory who are U.S. citizens for a  
24 period of one (1) year commencing on the date of issuance of the  
25 Standard Qualifying Certificate, should such issuance be made. Any  
26 sale of such corporate equity to a qualified resident or qualified  
27 residents of the Territory who are U.S. citizens prior to the issuance  
28 of the Standard Qualifying Certificate shall be credited toward the

1 percentage required by the Board to be pledged. For the purposes  
 2 this Paragraph, the term "qualified residents of the Territory who a  
 3 U.S. citizens" shall mean all persons who have had the Territory  
 4 Guam as their principal place of residence continuously for the fi  
 5 (5) year period immediately prior to the issuance of the Standar  
 6 Qualifying Certificate and are U.S. citizens on the date of issuanc  
 7 of the Standard Qualifying Certificate. Such pledge must b  
 8 fulfilled, or any Standard Qualifying Certificate issued in reliance  
 9 upon it shall be void ab initio.

10 The Board shall by regulation develop such further standards an  
 11 criteria for the minimum investment levels for applicants and th  
 12 issuance of Qualifying Certificates. Such regulations shall b  
 13 promulgated in accordance with the provisions of the Administrativ  
 14 Adjudication Act.

15 In addition to the businesses deemed eligible, as provide  
 16 herein, the following are also eligible for consideration by the  
 17 Corporation for the issuance of a Standard Qualifying Certificate:

- 18 1. Any corporation holding a Traders Certificate issued  
 19 pursuant to the provisions of §16352 of the Government Code;
- 20 2. An export trading company as defined in 11 GCA, Chapter 26,  
 21 §26101(d) subject to applicable restrictions if the main  
 22 office of the export trading company is established on Guam;  
 23 or
- 24 3. Foreign Sales Corporations, as defined in 12 GCA, Chapter  
 25 2, §2431(a).

26 §2406. Issuance, Effective Date, Defined.

27 §2406.1. The Issuance Date of the Qualifying Certificate  
 28 shall be that date upon which the Governor signs the Qualifying



1 Certificate.

2 §2406.2. The Effective Date of the Qualifying Certificat  
3 shall be that date, determined by the Board, upon which th  
4 Beneficiary shall begin to receive rebates and abatements unde  
5 the conditions of the Qualifying Certificate.

6 §2407. Nature and Benefits. A Qualifying Certificate, onc  
7 issued, shall be a contract between the government of Guam and th  
8 Beneficiary, and the tax rebates enumerated in the Certificate may no  
9 be curtailed, limited or impaired by any subsequent act, except a  
10 provided herein. Once issued and unless suspended, rescin  
11 revoked, a Qualifying Certificate shall constitute conclusive evidenc  
12 of entitlement to the tax rebates or credits or abatements stated o  
13 its face.

14 §2408. Qualifying Certificate, Issuance of. A Qualifying  
15 Certificate may be issued by the Governor upon the recommendation  
16 the Board to any applicant corporation that proposes to engage in an  
17 eligible business, or to any applicant stockholder of such corporation  
18 holding a Qualifying Certificate, and said corporation may be either  
19 a Guam corporation or a duly organized "possessions corporation" as  
20 defined under the income tax laws and regulations applicable to Guam.

21 §2409. Same: Grounds for Revocation. A Qualifying Certificate  
22 may be suspended, rescinded or revoked by the Governor upon the  
23 recommendation of the Board for the following reasons:

- 24 1. Fraud or misrepresentation of any material allegation in the  
25 application for such Certificate;
- 26 2. Failure to comply with any conditions and obligations stated  
27 in the Certificate after having been notified by the  
28 Corporation in writing of such failure to comply and after

1                   having been given a reasonable period of time within which  
2                   to correct such failure;

3                   3.    The filing by the Beneficiary or against the Beneficiary of  
4                   a petition for adjudication of bankruptcy as to said  
5                   Beneficiary wherein the petition has been granted;

6                   4.    A finding by the Attorney General of the Territory that  
7                   corporate Beneficiary has been dissolved; or

8                   5.    Violation of any applicable provision of this Article.

9                   No recommendation for suspension, rescission or revocation  
10                  be made by the Board except after a hearing thereon pursuant to the  
11                  provisions of the Administrative Adjudication Act.

12                  §2410.    Disqualifications.    A corporate applicant for  
13                  Qualifying Certificate shall, as a condition precedent to qualifying  
14                  for the same, satisfy the Corporation in writing that it shall not  
15                  transfer, move, relocate or otherwise remove any of its existing  
16                  business plants to Guam from the continental United States or any of  
17                  its territories or possessions.    Neither shall a Qualifying  
18                  Certificate be issued to a corporate applicant who has not first  
19                  obtained a license to do business in Guam.

20                  No officer or member of the Board or their spouses, and no  
21                  corporation in which any officer or member of the Board or their  
22                  spouses has any financial interest may qualify for a Qualifying  
23                  Certificate.    Neither shall any of the following, during their term  
24                  of office and for a period of one (1) year after their resignation  
25                  termination or completion of their term of office, directly or  
26                  indirectly qualify for a Qualifying Certificate:

- 27                  1.    Members of the Guam Legislature and their spouses;
- 28                  2.    Employees of the Executive Branch of the government of Guam.

1 and their spouses from the level of first assistant to the  
2 director and up;

- 3 3. Employees of the Governor's Office and their spouses;
- 4 4. Judges of the various courts of the Territory and their  
5 spouses.

6 Any Qualifying Certificate issued in violation of this Section  
7 shall be void ab initio.

8 §2411. Employment and Payroll of United States Citizens and  
9 Permanent Residents. A Standard Qualifying Certificate shall not be  
10 issued unless the applicant commits itself at the time of application  
11 for such a Certificate that a management training program shall be  
12 established so that within a reasonable period of time residents of  
13 Guam who are United States citizens or permanent residents of the  
14 United States and who are otherwise qualified would replace the  
15 managers and officers of an industry or business granted a Qualifying  
16 Certificate who are not United States citizens or permanent residents  
17 of the United States, and that it shall at all times employ a local  
18 employment force of not less than the minimum full-time equivalent  
19 number established by the Corporation, with the following conditions:

- 20 1. At least seventy-five percent (75%) of such employees shall  
21 be United States citizens or permanent residents of the  
22 United States and a minimum of seventy percent (70%) of its  
23 payroll expenditures and employment benefits shall be  
24 devoted to the employment compensation of these citizens and  
25 permanent residents. Such requirement shall be in effect  
26 for the five (5) years immediately following the effective  
27 date of the Qualifying Certificate.

- 28 2. Such employment of United States citizens or permanent

1 residents of the United States shall increase to at least  
2 eighty-five percent (85%) of such employees and a minimum  
3 of eighty percent (80%) of its payroll expenditures and  
4 employment benefits shall be devoted to the employment  
5 compensation of these citizens and permanent residents from  
6 the sixth (6th) through the tenth (10th) year following the  
7 effective date of the Qualifying Certificate.

8 3. Such employment of the United States citizens or permanent  
9 residents of the United States shall increase to at least  
10 ninety percent (90%) of such employees and a minimum  
11 eighty-five percent (85%) of its payroll expenditures and  
12 employment benefits shall be devoted to the employment  
13 compensation of these citizens and permanent residents from  
14 the eleventh (11th) year following the effective date  
15 through the end of the term of the Qualifying Certificate.

16 Such "trainees" may be counted as employees when determining the  
17 percentage of United States citizens and permanent residents which  
18 comprise the employment force of the Beneficiary, provided such  
19 trainees are on the Beneficiary's payroll. The Corporation shall  
20 establish the reasonable minimum number of persons to be employed on  
21 a continuing basis for each corporate applicant in accordance with the  
22 specific and normal requirements of the business involved. The  
23 minimum employment requirement shall be made a condition appearing on  
24 the face of the applicable corporate Qualifying Certificate. No  
25 resident employee of an industry or business granted a corporate  
26 Qualifying Certificate shall be paid less than the prevailing wage  
27 rate nor shall he or she be laid off his or her job nor have his or  
28 her work week reduced to less than forty (40) hours for the primary

1 purpose of creating employment for nonresident workers. For the  
 2 purpose of this Section, the "prevailing wage rates" determined by the  
 3 Guam Department of Labor shall be used as a guide in determining the  
 4 compliance of a corporate recipient of a Qualifying Certificate with  
 5 its terms. The Guam Department of Labor is hereby empowered to  
 6 investigate any complaint filed pursuant to this Section and to settle  
 7 the same by issuance of an appropriate order after notice and hearing  
 8 pursuant to the provisions of the Administrative Adjudication Act.  
 9 Any willful violation of this Section or of any order issued hereunder  
 10 may be cause for a Beneficiary of a corporate Qualifying Certificate  
 11 to forfeit the benefits thereof.

12 For the purposes of this Section, payroll expenditures and  
 13 employment benefits shall include any salary, fees, insurance benefits,  
 14 whether health, life, medical or other insurance, housing allowance,  
 15 meals, stock options, bonuses, expense accounts, transportation  
 16 benefits, shipment of household goods, and any other benefit, whether  
 17 through monetary benefits or in kind, paid, given or awarded by the  
 18 Beneficiary to persons whom the Corporation includes as part of the  
 19 total workforce of the Beneficiary.

20 §2412. Participation in the Apprenticeship Training Program.  
 21 A Standard Qualifying Certificate shall not be issued to an applicant  
 22 which operates a restaurant unless the applicant commits itself at the  
 23 time of application for such a certificate to participate in the  
 24 Hotel/Restaurant Industry Apprenticeship Program administered by the  
 25 Guam Community College and to hire graduates of the apprenticeship  
 26 program when vacancies exist at the restaurant.

27 §2413. Qualifying Certificate, Non-Transferable. A Qualifying  
 28 Certificate or the benefits thereunder may not be transferred,

1 assigned or conveyed to another person, firm, partnership, <  
2 corporation without the written permission of the Corporation and th  
3 approval of the Governor being first obtained.

4 For the purposes of this Section, a transfer of benefits shall  
5 have occurred at any time that there is a transfer of a majority o  
6 the voting stock of the Beneficiary resulting in a change in th  
7 identity of the shareholders who control the Beneficiary.

8 §2414. Application for Qualifying Certificates. Application  
9 for Qualifying Certificates shall be filed on forms prescribed an  
10 furnished by the Corporation. Beneficiaries of Standard Quali:  
11 Certificates and Special Qualifying Certificates must agree to furnis  
12 written monthly reports beginning thirty (30) days after the date o  
13 the issuance of the Qualifying Certificate, said reports must include  
14 but are not limited to, financial data, employment data and payrol  
15 data. All such monthly reports shall be treated as confidential b  
16 the Corporation. Any violation of this Section may be cause to voi  
17 the Qualifying Certificate ab initio.

18 §2415. Publication of All Corporate Applications for Qualifyin  
19 Certificates. The Corporation shall cause to be published a  
20 applicant's expense, in a Guam newspaper of general circulation,  
21 brief resume of all applications for Qualifying Certificates, sai  
22 publication to be made at least seven (7) days but no more tha  
23 fourteen (14) days before the same is considered by the Board. Th  
24 resume shall be in a form prescribed by the Board, and it shall  
25 include only the name and address of applicant, a brief statement o  
26 the proposed investment, a brief summary of the tax rebates  
27 abatements or credits applied for, and the names and addresses of  
28 those who are investors at the time the application is submitted to

1 the Board. Following the filing of the application in due for  
2 payment of the prescribed fees and publication of the resume, a publ  
3 hearing pursuant to the provisions of the Administrative Adjudicatio  
4 Act shall be held. The Corporation shall take all reasonable  
5 precautions in connection with such public hearings to avoid  
6 disclosure of proprietary secrets of the applicant. The Board may  
7 schedule additional public hearings as necessary. The Board meeting  
8 for approval of a Qualifying Certificate shall not be held on the same  
9 day as a public hearing on the same Qualifying Certificate.

10 §2416. Notice of Hearings on Corporate Applications. Notice  
11 public hearings shall be published at applicant's expense in a local  
12 newspaper of general circulation not less than five (5) days prior to  
13 each scheduled hearing date.

14 §2417. Recommendations. All recommendations of the Board for  
15 the issuance, modification, revocation or suspension of Qualifying  
16 Certificates shall be forwarded to the Governor, together with  
17 memorandum of the Board's findings in support of its recommendations.  
18 Any recommendations of the Board not approved or disapproved by the  
19 Governor within thirty (30) calendar days from his receipt thereof  
20 shall be deemed disapproved thirty-one (31) days from the Governor's  
21 receipt thereof.

22 The Board may recommend that a firm having an existing Qualifying  
23 Certificate be issued a replacement Qualifying Certificate because of  
24 a substantial expansion of or addition to its existing facilities  
25 which independently meet the eligibility requirements of the program  
26 (excluding those regulatory requirements regarding facilities which  
27 the firm meets in its overall operations). That phase of the  
28 Beneficiary's operation already covered under the terms of the

1 original Qualifying Certificate shall be included in the replaceme  
 2 Qualifying Certificate for a period of time which when added to th  
 3 period for which the original Qualifying Certificate was in effec  
 4 completes the term of the original Qualifying Certificate, however th  
 5 other terms and conditions shall meet the requirements of GEI  
 6 statutes in existence at the time of the reissuance. In the case  
 7 a firm that has been sold, the Board may recommend the issuance of  
 8 Qualifying Certificate for a period of time which when added to th  
 9 period for which the original Qualifying Certificate was in effect  
 10 completes the term of the original Qualifying Certificate, howeve  
 11 other terms and conditions shall meet the requirements of GEI  
 12 statutes in existence at the time of reissuance. In no case shall  
 13 replacement Qualifying Certificate be issued prior to the surrende  
 14 of the firm's earlier Qualifying Certificate.

15 In general, the Board may not recommend to the Governor th  
 16 issuance of a Qualifying Certificate unless the Corporation can sho  
 17 that such issuance would have a significant positive effect upon th  
 18 economic development of the Territory.

19 §2418. Tax Abatements. The following tax abatements are hereb  
 20 established and declared for which Standard Qualifying Certificate  
 21 may be issued:

- 22 1. All taxes now levied on income derived from the lease o  
 23 land, buildings, machinery or equipment by virtue o  
 24 Subchapter B, Chapter VI, Title XX of the Government Code  
 25 shall be abated for a period up to ten (10) years from th  
 26 effective date of a Standard Qualifying Certificate  
 27 therefor, and as long as said Certificate is in force and  
 28 effect provided that said income has been derived from the



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lease of land, buildings, machinery or equipment to a tax-exempt business that has qualified and continues to qualify for a Standard Qualifying Certificate.

2. All taxes now levied by virtue of Subchapter B, Chapter VI, Title XX of the Government Code, known as the Gross Receipts Tax, shall be abated for a period up to ten (10) years from the effective date of a Standard Qualifying Certificate therefor, and as long as said Certificate is in force and effect provided that the gross receipts on which such tax shall be abated have been derived from the sale of alcoholic beverages manufactured in Guam by the manufacturer thereof and that such manufacturer has qualified and continues to qualify for a Standard Qualifying Certificate covering such manufacture.

3. All taxes levied or paid by virtue of Subchapter B, Chapter VI, Title XX of the Government Code, known as the Gross Receipts Tax, shall be abated or rebated for those gross receipts derived from the sale of petroleum products manufactured in Guam and sold to agencies or instrumentalities of the United States, or agencies or instrumentalities of the government of Guam by the manufacturer thereof, provided that a Standard Qualifying Certificate for such a tax abatement is granted pursuant to the provisions of this Subparagraph, and further provided that at any such time that a manufacturer possessing such a Standard Qualifying Certificate no longer continues to qualify for the Certificate, the taxes shall no longer be abated or rebated. A Standard Qualifying Certificate may

1 grant such a tax abatement or rebatement for up to a ten  
2 (10) year period commencing with the date of initial  
3 commercial production of petroleum products by the  
4 manufacturer.

5 §2419. Corporate Income Tax Rebate. A conditional rebate of up  
6 to seventy-five percent (75%) of all corporate income tax payable to  
7 the government of Guam is hereby established and declared, for which  
8 a Standard Qualifying Certificate may be issued for a period not  
9 exceeding a total of twenty (20) consecutive years from the effective  
10 date thereof, or up to the total capital invested, whichever is  
11 greater, and the percentage of the rebate may be made variable so as  
12 to permit higher or lower percentages in earlier or later years of the  
13 period. In determining the periods of up to twenty (20) years and the  
14 percentage of up to seventy-five percent (75%), the Board shall take  
15 into consideration the financial risks involved in the undertaking  
16 the government's officially adopted economic policies, the impact of  
17 the proposed investment upon established firms and their markets in  
18 Guam, and the proposed geographic location of the applicant's  
19 establishment, as well as the importance to the economy of the  
20 proposed investment. For the purposes of this Section, the term  
21 "income tax payable" shall mean income taxes applicable to corporate  
22 earnings derived from activities specified on the face of the Standard  
23 Qualifying Certificate occurring on and subsequent to the date of  
24 issuance of the applicable Standard Qualifying Certificate. The Board  
25 shall also consider applying a limitation to the total accumulated  
26 benefits that may be granted under any prospective Standard Qualifying  
27 Certificate in the form of tax rebates and abatements, such that no  
28 further rebates may be given to the recipient once the accumulated

1 total of all rebates and abatements granted under the Standard  
2 Qualifying Certificate, plus all management and consultant fees paid  
3 to individuals or firms that reside or have their principal place of  
4 business outside of the Territorial boundaries of Guam, equal  
5 percentage, specified by the Board but in no event more than one  
6 hundred percent (100%), of the recipient's accumulated capital  
7 investment in buildings, equipment to be operated or utilized  
8 principally by the recipient's employees, and facilities directly  
9 associated with the activities for which the Standard Qualifying  
10 Certificate is issued, as are specified upon its face, plus  
11 recipient's original working capital. The Director of the Department  
12 of Revenue and Taxation of the government of Guam shall have the  
13 authority to determine any prorations of rebates necessary because of  
14 taxable years occurring within the life of the applicable Standard  
15 Qualifying Certificate which consist of less than a full twelve (12)  
16 month period.

17 §2420. Taxability of Rebates: Legislative Intent. It is the  
18 intent of the Legislature that rebates of income taxes to qualifying  
19 entities pursuant to §§2417 and 2418 of this Article be rebates on all  
20 the taxes owed on eligible activities as defined on the face of the  
21 Qualifying Certificate and that no portion of the rebates given be  
22 later subject to income taxation.

23 §2421. Income Tax Rebate on Dividends. A rebate of up to  
24 seventy-five percent (75%) of all corporate and personal income tax  
25 on dividends paid by a Corporate Beneficiary from its current year's  
26 earnings that are derived from the activities specified on the face  
27 of its Standard Qualifying Certificate is hereby established and  
28 declared, for which a Standard Qualifying Certificate may be issued

1 for a period of up to five (5) consecutive years, which period may  
 2 any portion of the effective period authorized for the control  
 3 corporate income tax Standard Qualifying Certificate issued to  
 4 corporation declaring the dividends. The period of time during which  
 5 the Standard Qualifying Certificate issued under the authority of  
 6 Section is effective shall be determined by the Board and based on  
 7 a request made by the holder of the corporate Standard Qualifying  
 8 Certificate.

9 In the case of a corporation that has elected to be taxed as a  
 10 small business corporation organized as a "Subchapter S Corporation",  
 11 said income tax rebate shall be passed on to its stockholders in the  
 12 same proportion as their stock interest in the tax-exempt corporation.

13 In the case of a stockholder of a qualifying corporation that  
 14 qualifying as a small business corporation, the income tax rebate  
 15 herein provided shall be applicable to the dividend income received  
 16 by the stockholder from the qualifying corporation.

17 §2422. Procedure to Claim Abated and Rebated Taxes.  
 18 A certificate of compliance by this Corporation should be attached to  
 19 the Beneficiary's tax return when filing each return.

20 When the return for the abated tax is accompanied by a  
 21 certificate of compliance, the actual payment of the tax in question  
 22 to the government shall not be required, and upon audit and review of  
 23 the tax return, the Tax Commissioner of the government of Guam shall  
 24 within one hundred twenty (120) days from receipt of said tax return  
 25 furnish the taxpayer a certification confirming the nature and amount  
 26 of the tax abated.

27 In the case of an income tax rebate where the taxpayer's tax  
 28 return is accompanied by a certificate of compliance, the amount of

1 tax due prior to rebate shall be deposited with the government at  
2 time of filing the income tax return. The Tax Commissioner of  
3 government of Guam shall immediately thereafter cause the return  
4 be reviewed and audited, and if the rebate is found in order, sha  
5 cause the amount deposited to be returned to the taxpayer within o  
6 hundred eighty (180) days from date of deposit.

7 §2423. Rebate Fund. Deposits for income tax made with t  
8 government of Guam pursuant to this Article shall be covered a  
9 deposited into a separate, special account in the Treasury of  
10 Territory of Guam, herein designated as "Income Tax Rebate Fund.

11 §2424. Tax Redetermination. In the case of any Beneficiary who  
12 in accordance with the applicable laws of the Territory of Guam, sha  
13 have applied for and been granted a redetermination of tax liabilit  
14 or taxes payable, the amount of abated or rebated taxes determined fo  
15 such Beneficiary for the taxable years affected shall be accordingl  
16 adjusted by the Director of the Department of Revenue and Taxation an  
17 said Beneficiary shall be required to pay the balance due said taxabl  
18 years, if any, together with interest at the rate of twelve percent  
19 (12%) per annum from the date the Beneficiary realized the abatement  
20 or rebate benefit; provided, that said balance due may be offset o  
21 credited against any tax refund due to the Beneficiary.

22 §2425. Implementation by Tax Commissioner. The Tax Commissioner  
23 of the government of Guam is hereby authorized to issue such rules and  
24 regulations as he may deem necessary to implement the procedures  
25 outlined in this Article.

26 §2426. Limited to Government of Guam Taxes. All abatements and  
27 rebates herein established and authorized shall apply only to the  
28 taxes due the government of Guam.

1           §2427. Fees. Upon the effective date of this Act and until  
2 modified pursuant to 12 GCA §2428, the following fees shall  
3 assessed against each applicant and recipient of a Qualifying  
4 Certificate:

	<u>FILING FEE</u>	<u>ANNUAL SURVEILLANCE FEE</u>
5           Agriculture, Aquaculture, 6           Mariculture	\$ 50	\$1,000
7           Manufacturing	\$250	\$1,000
8           Commercial Fishing	\$ 50	\$1,000
9           Services	\$250	\$1,000
10          Tourist Facilities 11          (Except Hotels)	\$500	\$1,000
12          Industrial Facilities	\$500	\$1,000
13          Special Qualifying 14          Certificate	\$ 50	\$ 100

15           §2428. Periodic Adjustment of Fees. The Board is authorized to  
16 adjust the fees listed in 12 GCA §2427 on an annual basis, at the  
17 beginning of each calendar year upon demonstration to the Board by the  
18 Administrator that the cost of performing the services covered by the  
19 fees is greater than the amount of the fees. Fee changes shall be  
20 made according to the provisions of the Administrative Adjudication  
21 Act.

22           §2429. Special Qualifying Certificates for Resident-Owned Small  
23 Businesses. Any proposed new business in which the majority of  
24 ownership is held or will be held by an individual who has been a  
25 continuous resident of Guam or individuals who have been continuous  
26 residents of Guam for no less than the five (5) years immediately  
27 preceding application shall be eligible for a Special Qualifying  
28 Certificate.

1 Certificate to convey a tax credit of up to ten percent (10%) of a  
 2 wages, salaries and benefits paid to non-supervisory personnel for  
 3 period of up to five (5) years, regardless of whether the propos  
 4 business is organized as a proprietorship, a partnership or  
 5 corporation. Such tax credits may be applied to offset any t  
 6 liability of the recipient business that is payable to the Treasur  
 7 of Guam, excepting payroll withholding taxes, and may be used at a  
 8 time up to and including the date that is five (5) years after t  
 9 expiration of said Special Qualifying Certificate.

10 The benefits of the Special Qualifying Certificate issued unde  
 11 the authority of this Section shall become effective when the busines  
 12 has made an investment in physical capital of at least Ten Thousan  
 13 Dollars (\$10,000) or more, but not to exceed Two Hundred Fift  
 14 Thousand Dollars (\$250,000), and the time period for which it i  
 15 issued shall commence on that date. The Director of the Departmen  
 16 of Revenue and Taxation shall have the authority to assess or caus  
 17 to be assessed the value of the firm's investment in physical capita  
 18 for the purpose of determining compliance with this Paragraph.

19 For the purposes of this Section, the term "non-supervisor  
 20 personnel" shall mean all personnel employed by the firm that have  
 21 direct or indirect authority over fewer than three (3) other employe  
 22 of the firm; however, under no circumstances shall this include  
 23 proprietor or the general manager of the firm.

24 Application for a Special Qualifying Certificate under this  
 25 Section shall be made on a form and in a manner prescribed by the  
 26 Corporation.

27 Any Special Qualifying Certificate issued under the authority of  
 28 this Section shall apply to the business itself, and may not be

renewed or extended in the event of a change in ownership or name the business, and shall automatically terminate should residue ownership fall below the fifty-one percent (51%) level."

SECTION 2. 12 GCA §2105 is repealed and reenacted to read:

"§2105. Board of Directors. All functions and powers of the Corporation shall be vested in and be exercised by and under the direction of a Board of Directors hereinafter referred to as "the Board," composed of seven (7) members:

1. Five (5) who shall be appointed by the Governor of Guam under the guidelines of 12 GCA §2108;
2. One (1) who shall be appointed by the Governor from a list of no less than three (3) names submitted by the Board of Directors of the Guam Chamber of Commerce from among their membership who list their primary business concern as accounting, financial planning, banking or other financial consulting; and
3. One (1) who shall be appointed by the Governor from among those who derive a majority of their income from farming.

All appointments shall require the advice and consent of the Guam Legislature. Members of the Board shall serve for a term of four (4) years. The Governor shall appoint a member of the Board to serve as Chairman. The Director of the Department of Revenue and Taxation and the Director of the Department of Commerce, or their representatives shall be ex-officio, non-voting members of the Board on all matters and shall provide written position statements on each Qualifying Certificate and loan application."

SECTION 3. 12 GCA §2108 is repealed and reenacted to read:

"§2108. Qualifications for Directors. The Board members to be



1 appointed by the Governor of Guam as above stated shall be U.  
 2 citizens, selected from individuals who have resided in Guam at lea  
 3 one (1) year immediately preceding their appointments, who ha  
 4 demonstrated their ability and their attachment to public interes  
 5 and selected to provide diversified experience among Board members  
 6 Persons who possess, or who are officers or stockholders of a  
 7 corporation which possesses a loan or loan guarantee or Qualifyin  
 8 Certificate or any other benefit from GEDA shall not be eligible fo  
 9 appointment to the Board. The Administrator shall be a U.S. citize  
 10 selected from individuals who have resided in Guam at least one (1  
 11 year immediately preceding his appointment, who possesses qualities  
 12 knowledge, experience and diversified ability necessary to pursu  
 13 effectively the program of the Corporation."

14 SECTION 4. Rules and Regulations. The Guam Economic Developmen  
 15 Authority is authorized to promulgate such rules and regulations as may b  
 16 necessary to carry out the purposes of this Act in accordance with th  
 17 provisions of the Administrative Adjudication Act.

18 SECTION 5. Effective Date. With the exception of 12 GCA Chapter 2  
 19 §2429, the provisions of this Act shall become effective immediately upon  
 20 its enactment into Law; the provisions of 12 GCA Chapter 2 §2429 of thi  
 21 Act shall become effective ninety (90) days after this Act's enactment into  
 22 Law.

23 SECTION 6. Use of Tax Revenues in Lieu of Rebates and Abatements.  
 24 Any and all revenues collected by the Treasurer of Guam because of any  
 25 suspension, surrender, revocation or other early termination of a  
 26 Qualifying Certificate issued in accordance with the provisions of Chapter  
 27 2, Title 12 GCA shall be promptly deposited in the Hotel/Restaurant  
 28 Industry Apprenticeship Program Fund administered by the Guam Community

1 College.

2 SECTION 7. Appropriate renumbering of sections in the Government Co  
3 and Guam Code Annotated are hereby ordered according to the renumber  
4 sections contained in this Act.

1 community.

2 Investments by foreign entrepreneurs continue to be ma-  
3 catalysts for our island's financial growth. The bulk of the  
4 interests, however, lies in large-scale projects that benefi-  
5 other off-island investors and transients mostly and which al-  
6 puts undue pressure on our island's infrastructure to expand a-  
7 meet their needs, depleting rapidly our finite essenti-  
8 resources such as people, land and water. While the Territo-  
9 can count their contributions to our welfare in terms of taxe-  
10 construction, and employment opportunities on the low end of t-  
11 remuneration scale, meaningful participation by people who li-  
12 and work in Guam, particularly in terms of ownership and joi-  
13 ventures, is sorely lacking.

14 It is the Legislature's intent that the Qualifyin-  
15 Certificate program now concentrate on assisting loca-  
16 entrepreneurs and other industries and services, including those  
17 supportive of hotels and their guests, to diversify our island  
18 economy and enrich its growth and enhance the quality of life i-  
19 Guam. The Legislature affirms that the program must be directe-  
20 to attract investments other than hotels and resorts.

21 §2401. Qualifying Certificate, Defined. A Qualifyin  
22 Certificate is [an instrument] a contract valid for a given period o  
23 time, issued by the Governor upon recommendation of the Board  
24 between the government of Guam and the [to a] Beneficiary, who has  
25 qualified for certain tax rebates and abatements [under this  
26 Article.] in return for meeting certain employment, equity, and other  
27 requirements as described in this Article.

28 §2402. Beneficiary, Defined. The recipient of a Qualifying  
29 Certificate shall be known as a Beneficiary.

1 §2403. Eligibility, Defined. The following shall be deemed  
2 be a business eligible for consideration by the Corporation  
3 issuance of a Qualifying Certificate.

4 Any trust, partnership, sole proprietorship, or corporation  
5 defined in §2405, engaged, or about to engage in (1) agricultur  
6 aquaculture, mariculture, manufacturing, commercial fishing,  
7 services[, or improvement of real property] for purposes which a  
8 specifically determined by the Corporation to be beneficia  
9 desirable, and necessary [to] for the economic development of Guam  
10 or captive insurance business as permitted by Chapter VII, Tit  
11 XXXIX, Government Code]; and (2) which activity meets one (1) or mor  
12 of the following criteria:

- 13 a. Creation of new employment;
- 14 b. Replacement of imports;
- 15 c. Reduction of consumer prices;
- 16 d. Creation of vitally needed facilities;
- 17 e. [Insurance providing for or facilitating the provision of  
18 health care services to the people of Guam.

19 [In addition, such otherwise eligible applicants must meet the  
20 minimum financial requirements:

	<u>MINIMUM INVESTMENT</u>
22 Agriculture	\$ 15,000.00
23 Watch Manufacturing	50,000.00
24 Other Manufacturing	25,000.00
25 Commercial Fishing	25,000.00
26 Services	25,000.00
27 Hotels and Motels	1,000,000.00
28 Other Tourist Facilities	25,000.00
29 Industrial Facilities	100,000.00

Captive Insurance Companies

100,000.

1 The Board [may] shall promulgate [by] regulations [develop su  
 2 further] containing standards, [and] criteria, and measures  
 3 investments by the OC applicant and benefits for the people of Gu  
 4 [for the issuance of] in issuing Qualifying Certificates [as it dee  
 5 necessary]. The Board shall recognize and take into considerati  
 6 any and all provisions of law and regulations administered by oth  
 7 government entities that have review or approval authority over t  
 8 eligible activity. Such regulations shall be adopted [only aft  
 9 public hearing thereon] in the manner prescribed by [law,] ti  
 10 Administrative Adjudication Act, [and then transmitted to th  
 11 Governor of Guam, and upon his approval and promulgation, shall ha  
 12 the force and effect of law.]

13 §2403.1. Export Trading Company Eligibility. An export  
 14 trading company as defined in §19500.21 of Chapter VI of Title XX c  
 15 the Government Code shall be eligible for the full benefits of  
 16 qualifying certificate subject to applicable restrictions if the mai  
 17 office of the export trading company is established on Guam.

18 §2403.2. Hotel Eligibility. Any establishment that provides  
 19 lodging of at least 100 rooms, entertainment, recreational facilitie  
 20 and various other services for the public and includes the followin  
 21 minimum requirements:

- 22 1) private bathroom for each room;
- 23 2) air conditioning for each room;
- 24 3) dining room facilities;
- 25 4) banquet and/or meeting facilities;
- 26 5) convention facilities;
- 27 6) related shop facilities;
- 28 7) various recreational facilities including, but not
- 29

limited to, swimming pools and tennis courts;

8) whose owner: is incorporated and licensed to  
business, both in Guam; is reputable and financially sound  
in standing (principals/firm), and; shows evidence of  
outlay, option to purchase, or lease or other explicit  
commitment to use property for the hotel

is eligible to apply for a Qualifying Certificate.

This eligibility shall terminate on the Corporation's close  
business on the last day of calendar year 1989.

§2404. Nature of and Benefits. A Qualifying Certificate, once issued, shall be a contract between the government of Guam and the Beneficiary, and the tax rebates enumerated in the Certificate shall not be curtailed, limited or impaired by any subsequent act, except as provided herein. Once issued and unless suspended, rescinded or revoked, a Qualifying Certificate shall constitute conclusive evidence of entitlement to the tax rebates and abatements stated on its face.

§2405. Qualifying Certificate, Issuance of. A Qualifying Certificate may be issued by the Governor of Guam upon the recommendation of the Board to any applicant [corporation] that proposes to engage in an eligible business, [ , or to any applicant stockholder of such corporation holding a Qualifying Certificate, and said corporation may be either a Guam Corporation or a duly organized "possessions corporation" limited to doing business in Guam, as such "possessions corporation" is defined under Federal income tax laws and regulations].

§2406. Same: Grounds for Suspension, Rescission, or Revocation. A Qualifying Certificate may be suspended, rescinded or revoked by the Governor of Guam upon the recommendation of the Board

for the following reasons:

1. Fraud or misrepresentation of any material allegation in the application for such Certificate.
2. Failure to comply with any conditions and obligations stated in the Certificate after having been notified by the Corporation in writing of such failure to comply and after having been given by the Corporation a reasonable period of time within which to correct such failure.
3. The filing by the Beneficiary or against the Beneficiary of a petition for adjudication of bankruptcy as to said Beneficiary wherein the petition has been granted.
4. A finding by the Attorney General of the Territory that the corporate Beneficiary has been dissolved.
5. Violation of any provision of this Article.

(6.)

No recommendation for suspension, rescission or revocation shall be made by the Board except after a hearing thereon pursuant to the provisions of the Administrative Adjudication Act.

§2407. Disqualifications. A corporate applicant for a Qualifying Certificate shall, as a condition precedent to its qualifying for the same, satisfy the Corporation in writing that it shall not transfer, move, relocate or otherwise remove any of its existing business plants to Guam from the continental United States or any of its territories or possessions. Neither shall a Qualifying Certificate issue to [a corporation] any applicant who has not first obtained a license to do business in Guam.

No officer [and] or member of the Board or their spouses and no corporation or any other legal entity in which an officer or member of the Board or their spouses has any financial interest may qualify

for a Qualifying Certificate.

Neither shall any of the following, during their term of office[,] and for a period of one (1) year after their resignation, termination or completion of their term of office, directly or indirectly, qualify for a Qualifying Certificate:

- (a) Members of the Guam Legislature[;] and their spouses;
- (b) Employees of the [Executive Department of the Government Executive Branch of the government of Guam and their spouses from the level of first assistant to the department director and up;
- (c) Judges of the various courts of the Territory and their spouses.

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

§2408. Employment of United States Citizens and Permanent Residents. A [corporate] Qualifying Certificate shall not be issued unless the applicant commits itself at the time of application for such a Certificate that a management training program shall be established and a copy of that written training program shall be delivered to the Corporation within the number of days prescribed in regulations by the Corporation so that within a reasonable period of time residents of Guam who are United States citizens or permanent residents of the United States and who are otherwise qualified would replace the manager or other officers of an industry or business granted a [Corporate] Qualifying Certificate who are not United States citizens or permanent residents of the United States, and that it shall at all times employ a total employment force of not less than the minimum number established by the Corporation, at least seventy-five percent (75%) of which shall be United States citizens



or permanent residents of the United States; provided, however, that for good cause, temporary exemptions hereto, for specific and limited periods of time, may be granted by the Corporation, such temporary exemptions, to be conditioned upon a training program, approved by the Corporation, designed to replace employees who are not either United States citizens or permanent residents. In addition, after the expiration of three-fourths (3/4) of the period of the Qualifying Certificate or ten (10) years, whichever is sooner, the possessor of the Qualifying Certificate must satisfy the seventy-five percent (75%) employment requirement at both labor and management levels. The Corporation shall be the sole judge of what constitutes labor and management level employment but it shall seek advice from the University of Guam, the Guam Community College, the Guam Department of Labor, the Department of Education, the Guam Chamber of Commerce or any other organization familiar with human resource for classifications before taking final action. The Corporation shall establish, by regulations adopted pursuant to the Administrative Adjudication Act, requirements for practical and equitable training programs as guidance for the applicant and the reasonable minimum number of persons to be employed on a continuing basis for each [corporate] applicant in accordance with the specific and normal requirements of the business involved. Such training program and minimum employment requirement shall be made a condition appearing on the face of the applicable [corporate] Qualifying Certificate. No resident employee of an industry or business granted a [corporate] Qualifying Certificate shall be paid less than the prevailing wage rates nor shall he be laid off his job nor have his workweek reduced to less than forty (40) hours for the sole purpose of creating employment for non-resident workers. For the purpose of this

Section, "prevailing wage rates" as determined by the Department of Labor shall be used as a guide. The Department of Labor is hereby empowered to investigate any complaint filed pursuant to this Section and to settle the same by issuance of an appropriate order after notice and hearing pursuant to the provisions of the Administrative Adjudication Act. Any willful violation of this Section, or of an order issued hereunder, may be cause for a Beneficiary of [corporate] Qualifying Certificate to forfeit the benefits thereof.

§2408.1. Participation in the Apprenticeship Training Program. A [Corporate] Qualifying Certificate shall not be issued to an applicant which operates a hotel or restaurant unless the applicant commits itself at the time of application for such certificate to participate in the Hotel/Restaurant Industry Apprenticeship Program administered by the Guam Community College, if the course curricula are deemed appropriate by the Corporation to prepare students for the applicant's job requirements, and to hire graduates of the apprenticeship program when vacancies exist.

§2409. Qualifying Certificate Non-transferable. A Qualifying Certificate or the benefits thereunder may not be transferred or assigned [without the written permission of the Corporation].

§2410. Application for Qualifying Certificates. Applications for Qualifying Certificates shall be filed on forms prescribed and furnished by the Corporation. An [corporate] applicant must agree to furnish written monthly reports beginning thirty (30) days after the date of the issuance of the [corporate] Qualifying Certificate, said reports to include, but not limited to, financial data, employment data and payroll data. All such monthly reports shall be treated as confidential by the Corporation.

§2411. Publications of All [Corporate] Applications for Qualifying Certificates. The Corporation shall cause to be published at applicants' expense, in a Guam newspaper of general circulation a brief resume of all [corporate] applications for Qualifying Certificates, said publication to be made at least seven (7) days before the same is considered by the Board. The resume shall be on a form prescribed by the Board, and it shall include only the name and address of applicant, a brief statement of the proposed investment, brief summary of the tax rebates and abatements applicable, and the names and addresses of those who are investors at the time the application is submitted to the Board. Following the filing of the application in due form, payment of the prescribed fees and publication of the resume, the holding of a public hearing thereon is mandatory. The corporation shall take all reasonable precautions in connection with such public hearing to avoid disclosure of proprietary secrets of the applicant.

§2412. Notice of Hearings on [Corporate] Applications. Notice of public hearings shall be published at applicants' expense in a local newspaper of general circulation not less than five (5) days prior to the scheduled hearing date.

§2413. Recommendations. All recommendations of the Board for issuance, modification, revocation [and] or suspension of Qualifying Certificates shall be forwarded to the Governor of Guam, together with a memorandum of the Board's findings in support of its recommendations. [Any recommendations of the Board not approved or disapproved by t]The Governor of Guam, within sixty (60) calendar days from his receipt thereof, shall either approve or disapprove the Board's recommendation. [shall be deemed approved as of the sixty-first (61st) day from the Governor's receipt thereof.]

TWENTIETH GUAM LEGISLATURE  
1989 (First) Regular Session

Bill No. 959 LS

Introduced By: E.D. Reyes *EDR*

AN ACT TO AMEND ARTICLE 4, 12 GCA, CHAPTER 2, AND TO REPEAL §2433 AND TO AMEND §2434, BOTH IN ARTICLE 4A, 12 GCA, CHAPTER 2, ALL RELATIVE TO THE QUALIFYING CERTIFICATE PROGRAM OF THE GUAM ECONOMIC DEVELOPMENT AUTHORITY.

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

SECTION 1. Article 4, 12 GCA, Chapter 2 is amended to read:

"Article 4. Qualifying Certificate

§2400. Short Title.

§2400.1 Legislative Findings and Intent.

§2401. Qualifying Certificate, Defined.

§2402. Beneficiary, Defined.

§2403. Eligibility, Defined.

§2403.1 Export Trading Company Eligibility.

§2404. Nature of and Benefits.

§2405. Qualifying Certificate, Issuance of.

§2406. Same: Grounds for Suspension, Rescission, or Revocation

§2407. Disqualifications.

§2408. Employment of United States Citizens and Permanent Residents.

§2408.1 Participation in Apprenticeship Training Program.

§2409. Qualifying Certificate Non-transferable.

§2410. Application for Qualifying Certificates.

§2411. Publications of All [Corporate] Applications for Qualifying Certificates.

- §2412. Notice of Hearings on [Corporate] Applications.
- §2413. Recommendations.
- §2414. Tax Abatements.
- §2415. [Corporate] Income Tax Rebate.
- §2416. Taxability of Rebate: Legislative Intent.
- §2417. Income Tax Rebate on Dividends.
- §2418. Taxpayer's Option.
- §2419. Procedure to Claim Abated and Rebated Taxes.
- §2420. Rebate Fund.
- §2421. Tax Redeterminations.
- §2422. Implementation by Tax Commissioner.
- §2423. Limited to Government of Guam Taxes.
- §2424. Fees.
- §2425. Periodic Adjustment of Fees.

§2400. Short Title. This Act shall be known and may be cited as the OC Reform Act of 1989.

§2400.1. Legislative Findings and Intent. The Legislature recognizes that the Qualifying Certificate program of the Territory was conceived as an economic incentive tool to entice investors into Guam. In use for over two decades, it has had substantial positive impact upon the economic development of the Territory, mainly in the tourist industry.

The Legislature finds that, today, new hotel construction, expansion of existing ones, and development of resorts are occurring in response to demands for additional lodging due to the ever-increasing numbers of visitors to Guam and that government assistance in the form of OC benefits is no longer necessary for growth in this sector of Guam's business

§2414. Tax Abatement. The following tax abatements are hereby established and declared, for which Qualifying Certificates may be issued:

1. All taxes now levied by virtue of Chapter IV, Title XX of the Government Code of Guam, known as Real Property Tax, shall be abated for a period up to ten (10) years from date of issuance of Qualifying Certificate therefor, and as long as said Certificate is in force and effect, provided that the real property on which said tax is assessed is utilized for a tax exempt business that has qualified and continues to qualify for a Qualifying Certificate.

[2. All taxes now levied on income derived from the lease of land, buildings, machinery and equipment by virtue of Subchapter B, Title XX of the Government Code of Guam shall be abated for a period up to ten (10) years from date of issuance of a Qualifying Certificate therefor, and as long as said Certificate is in force and effect, provided that said income has been derived from the lease of land, building, machinery and equipment to a tax exempt business that has qualified and continues to qualify for a Qualifying Certificate.)

[3] 2. All taxes now levied by virtue of Subchapter B, Chapter VI, Title XX of the Government Code of Guam, known as the Gross Receipts Tax, shall be abated for a period up to ten (10) years from date of issuance of a Qualifying Certificate therefor, and as long as said Certificate is in force and effect, provided that the gross receipts on which such tax shall be abated have been derived from the sale of alcoholic beverages manufactured in Guam by the

manufacturer thereof and that such manufacturer qualified and continues to qualify for a Qualifying Certificate covering such manufacture.

[4] 3. All taxes levied or paid by virtue of Subchapter Chapter VI, Title XX of the Government Code of Guam, known as the Gross Receipts Tax, shall be abated [or rebated] for those gross receipts derived from the sale of petroleum products, manufactured in Guam and sold to agencies instrumentalities of the government of Guam by the manufacturer thereof, provided that a Qualifying Certificate for such a tax abatement is granted pursuant to the provisions of this Subparagraph, and further provided that at any such time that a manufacturer possessing such a Qualifying Certificate no longer continues to qualify for the certificate, the taxes shall no longer be abated [or rebated]. A Qualifying Certificate may grant such a tax abatement [or rebatement] for up to a ten (10) year period commencing with the date of initial commercial production of petroleum products by the manufacturer.

[5. All taxes now levied by virtue of §43714, Chapter VII Title XXXIX of the Government Code shall be abated for a period of up to ten (10) years from date of issuance of the Qualifying Certificate therefor and as long as said certificate is in force and effect, provided that said premiums are collected by a captive insurance company licensed under Chapter VII of Title XXXIX that has qualified and continues to qualify for a Qualifying Certificate.]

§2415. [Corporate] Income Tax Rebate. A rebate [of up to

seventy-five percent (75%)] of all [corporate] income tax payable to the government of Guam equal to the total capital invested is hereby established and declared, for which a Qualifying Certificate may be issued for a period not exceeding a total of twenty (20) consecutive years from date of issuance of a Qualifying Certificate therefor and the percentage of rebate may be made variable by the Board so as to permit higher or lower percentages in earlier or later years of the period. In determining the periods up to twenty (20) years [and the percentages up to seventy-five percent (75%)], the Board shall take into consideration the financial risks involved in the undertaking as well as the [importance to the economy of] impact on the social economic development of Guam by the proposed investment. For the purposes of this Section, the term "income tax payable" shall mean income taxes applicable to [corporate] earnings occurring on and subsequent to the date of issuance of the applicable Qualifying Certificate. The Director of Revenue and Taxation of the government of Guam shall have authority to determine any prorations of rebates necessary because of taxable years occurring within the life of the applicable Qualifying Certificate which consist of less than a full twelve (12) months period.

§2416. Taxability of Rebates: Legislative Intent. It is the intent of the Legislature that rebates of income taxes to qualifying entities pursuant to §§2414 and 2415 of this Article be rebates on all the taxes owed and that no portion of the rebates given be later subject to income taxation.

§2417. Income Tax Rebate on Dividends. A rebate of up to seventy-five percent (75%) of all corporate income tax on dividends paid by a Corporate Beneficiary is hereby established and declared, for which a Qualifying Certificate may be issued for a period up to



five (5) consecutive years which period may be any portion of the effective period authorized for the controlling corporate income tax. Qualifying Certificate issued to the corporation declaring the dividends.

In case of a corporation that has elected to be taxed as a small business corporation commonly known as a "Subchapter S Corporation" said income tax rebate shall be passed on to its stockholders, who have resided in Guam continuously for at least five (5) years, in the same proportion as their stock interest in the tax-exempt corporation.

In the case of a stockholder of a Qualifying Corporation not qualifying as a small business corporation, the income tax rebate herein provided shall be applicable to the dividend income received by the stockholder, who has resided in Guam continuously for at least five (5) years, from the tax-exempt corporation.

§2418. Taxpayer's Option. In lieu of the percentage of the abatements and rebates granted in this Chapter, the Beneficiary may elect to enjoy only fifty percent (50%) of said abatements and rebates for a period of double the term authorized by the Corporation as stated in taxpayer's Qualifying Certificate. This option may be exercised by a statement of the taxpayer so stating, together with the consent thereto of the corporation, filed with the corresponding tax returns.

§2419. Procedure to Claim Abated and Rebated Taxes. A certified true copy of the corresponding Qualifying Certificate certified, and a certificate of compliance issued, by this Corporation should be attached to the Beneficiary's tax return when filing each return.

When the return for the abated tax is accompanied by a

corresponding Qualifying Certificate and a certificate of compliance  
the actual payment of the tax in question to the Government shall not  
be required, and upon audit and review of the tax return, the  
Commissioner of the government of Guam shall, within one hundred  
twenty (120) days from receipt of said tax return, furnish the  
taxpayer a certification confirming the nature and amount of the tax  
abated.

In the case of an income tax rebate, where the taxpayer's tax  
return is accompanied by a corresponding Qualifying Certificate and  
a certificate of compliance, the amount of tax due prior to rebate  
shall be deposited with the Government at the time of filing the  
income tax return. The Tax Commissioner of the government of Guam  
shall immediately thereafter cause the return to be reviewed [ and  
audited], and if the rebate is found in order, shall cause the amount  
deposited to be returned to the taxpayer within one hundred eighty  
(180) days from date of [receipt] deposit.

§2420. Rebate Fund. Deposits for income tax made with the  
government of Guam pursuant to this Article shall be covered and  
deposited into a separate, special account in the Treasury of the  
territory of Guam, herein designated as "Income Tax Rebate Fund."

§2421. Tax Redeterminations. In the case of any Beneficiary  
who, in accordance with the applicable laws of the territory of Guam,  
shall have applied for and been granted a redetermination of tax  
liability or taxes payable, the amount of abated or rebated taxes  
determined for such Beneficiary for the taxable years affected shall  
be accordingly adjusted by the Director of Administration and said  
Beneficiary shall be required to pay the balance due said taxable  
years, if any, together with interest at the rate of six percent (6%)  
per annum from the date the Beneficiary realized the abatement or

rebate benefit; provided, that said balance due may be offset or credited against any tax refund due to the Beneficiary.

§2422. Implementation by Tax Commissioner. The Tax Commissioner of the government of Guam is hereby authorized to issue such rules and regulations as he may deem necessary to implement the procedures outlined in this Article.

§2423. Limited to Government of Guam Taxes. All abatements or rebates herein established and authorized shall apply only to the taxes due the government of Guam.

§2424. Fees. Upon the effective date of this Act and until modified pursuant to 12 GCA §2425, the following fees shall be assessed against corporate applicant and corporate recipient of Qualifying Certificate:

	<u>FILING FEE</u>	<u>ANNUAL SURVEILLANCE FEE</u>
Agriculture	\$ 50	\$(1,000)
Watch Manufacturing	250	1,000
Other Manufacturing	250	1,000
Commercial Fishing	50	1,000
Services	250	1,000
Hotels and Motels	500	1,000
Other Tourist Facilities	500	1,000
Industrial Facilities	500	1,000
{Captive Insurance Companies	500	1,000

§2425. Periodic Adjustment of Fees. The Board is authorized to adjust the fees listed in 12 GCA §2424 on an annual basis, at the beginning of each calendar year starting with calendar year 19[88]00, upon demonstration to the Board by the Administrator that the cost of performing the services covered by the fees is greater than the

amount of the fees. Fee changes shall be made according to provisions of the Administrative Adjudication [Law] Act."

SECTION 2. §2433 of Article 4A, 12 GCA, Chapter 2 is repealed in entirety.

SECTION 3. §2434 of Article 4A, 12 GCA, Chapter 2 is amended renumbered to read:

"[§2434] §2433. License Requirement. It shall be a condition of the tax exemptions provided for in §2432 of this Article 4A [of the special Qualifying Certificate provided for in §2433 of this Article 4A] that a FSC shall at all times maintain a valid Guam license in good standing pursuant to the provisions of Chapter VI Title XVII of the Government Code of Guam.

TWENTIETH GUAM LEGISLATURE  
1989 (First) Regular Session

Bill No. 959  
(Substitute Bill of the  
Committee on Economic Development)

Introduced By: E.D. Reyes

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AN ACT TO AMEND ARTICLE 4, 12 GCA, CHAPTER  
2, AND TO REPEAL §2433 AND TO AMEND §2434,  
BOTH IN ARTICLE 4A, 12 GCA, CHAPTER 2, ALL  
RELATIVE TO THE QUALIFYING CERTIFICATE  
PROGRAM OF THE TERRITORY OF GUAM.

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

2 SECTION 1. Article 4, 12 GCA, Chapter 2 is amended to read:

3 "Article 4. Qualifying Certificate

4 §2400. Short Title.

5 §2400.1 Legislative Findings and Intent.

6 §2401. Qualifying Certificate, Defined.

7 §2402. Beneficiary, Defined.

8 §2403. Eligibility, Defined.

9 §2403.1 Export Trading Company Eligibility.

10 §2403.2 Hotel Eligibility.

11 §2404. Nature of and Benefits.

12 §2405. Qualifying Certificate, Issuance of.

13 §2406. Same: Grounds for Suspension, Rescission, or Revocation.

14 §2407. Disqualifications.

15 §2408. Employment of United States Citizens and Permanent  
16 Residents.

17 §2408.1 Participation in Apprenticeship Training Program.

18 §2409. Qualifying Certificate Non-transferable.

19 §2410. Application for Qualifying Certificates.

- 1           §2411.       Publications of All [Corporate] Applications for Qualifyi
- 2                               Certificates.
- 3           §2412.       Notice of Hearings on [Corporate] Applications.
- 4           §2413.       Recommendations.
- 5           §2414.       Tax Abatements.
- 6           §2415.       [Corporate] Income Tax Rebate.
- 7           §2416.       Taxability of Rebate: Legislative Intent.
- 8           §2417.       Income Tax Rebate on Dividends.
- 9           §2418.       Taxpayer's Option.
- 10          §2419.       Procedure to Claim Abated and Rebated Taxes.
- 11          §2420.       Rebate Fund.
- 12          §2421.       Tax Redeterminations.
- 13          §2422.       Implementation by Tax Commissioner.
- 14          §2423.       Limited to Government of Guam Taxes.
- 15          §2424.       Fees.
- 16          §2425.       Periodic Adjustment of Fees.

17  
18                               §2400. Short Title. This Act shall be known and may be cited  
19                               as the OC Reform Act of 1989.

20                               §2400.1. Legislative Findings and Intent. The Legislature  
21                               recognizes that the Qualifying Certificate program of the  
22                               Territory was conceived as an economic incentive tool to entice  
23                               investors into Guam. In use for over two decades, it has had  
24                               substantial positive impact upon the economic development of the  
25                               Territory, mainly in the tourist industry.

26                               The Legislature finds that, today, new hotel  
27                               construction, expansion of existing ones, and development of  
28                               resorts are occurring in response to demands for additional  
29                               lodging due to the ever-increasing numbers of visitors to Guam

1 and that government assistance in the form of OC benefits is  
2 longer necessary for growth in this sector of Guam's busine  
3 community.

4 Investments by foreign entrepreneurs continue to be maj  
5 catalysts for our island's financial growth. The bulk of the  
6 interests, however, lies in large-scale projects that benef  
7 other off-island investors and transients mostly and which al  
8 puts undue pressure on our island's infrastructure to expand a  
9 meet their needs, depleting rapidly our finite essenti  
10 resources such as people, land and water. While the Territor  
11 can count their contributions to our welfare in terms of taxes  
12 construction, and employment opportunities on the low end of th  
13 remuneration scale, meaningful participation by people who liv  
14 and work in Guam, particularly in terms of ownership and join  
15 ventures, is sorely lacking.

16 It is the Legislature's intent that the Qualifyin  
17 Certificate program now concentrate on assisting loca  
18 entrepreneurs and other industries and services, including thos  
19 supportive of hotels and their guests, to diversify our islan  
20 economy and enrich its growth and enhance the quality of life i  
21 Guam. The Legislature affirms that the program must be directe  
22 to attract investments other than hotels and resorts.

23 §2401. Qualifying Certificate, Defined. A Qualifying  
24 Certificate is [an instrument] a contract valid for a given period of  
25 time, issued by the Governor upon recommendation of the Board,  
26 between the government of Guam and the [to a] Beneficiary, who has  
27 qualified for certain tax rebates and abatements [under this  
28 Article.] in return for meeting certain employment, equity, and other  
29 requirements as described in this Article.

1 §2402. Beneficiary, Defined. The recipient of a Qualifyi  
2 Certificate shall be known as a Beneficiary.

3 §2403. Eligibility, Defined. The following shall be deemed  
4 be a business eligible for consideration by the Corporation f  
5 issuance of a Qualifying Certificate.

6 Any trust, partnership, sole proprietorship, or corporation  
7 defined in §2405, engaged, or about to engage in (1) agriculture (no  
8 exceeding \$2,000,000 in current and fixed assets), aquaculture  
9 mariculture, manufacturing, commercial fishing, services, <  
10 improvement of real property for purposes which are specificall  
11 determined by the Corporation to be beneficial, desirable, ar  
12 necessary [to] for the economic development of Guam[, or captiv  
13 insurance business as permitted by Chapter VII, Title XXXIX  
14 Government Code]; and (2) which activity meets one (1) or more of th  
15 following criteria:

- 16 a. Creation of new employment;  
17 b. Replacement of imports;  
18 c. Reduction of consumer prices;  
19 d. Creation of vitally needed facilities;  
20 e. Procurement of services or products supplied by Guam-  
21 licensed vendors, if total cost does not exceed ten percent  
22 (10%) of those same services or products available from  
23 other vendors.  
24 [e. Insurance providing for or facilitating the provision of  
25 health care services to the people of Guam.]

26 [In addition, such otherwise eligible applicants must meet the  
27 minimum financial requirements:

28 MINIMUM INVESTMENT  
29 Agriculture \$ 15,000.00



1	Watch Manufacturing	50,000.
2	Other Manufacturing	25,000.
3	Commercial Fishing	25,000.
4	Services	25,000.
5	Hotels and Motels	1,000,000.
6	Other Tourist Facilities	25,000.
7	Industrial Facilities	100,000.
8	Captive Insurance Companies	100,000.

9           The Board [may] shall promulgate [by] regulations [develop su  
10 further] containing standards, [and] criteria, and measures  
11 investments by the QC applicant and benefits for the people of Gu  
12 [for the issuance of] in issuing Qualifying Certificates [as it dees  
13 necessary]. The Board shall recognize and take into considerati  
14 any and all provisions of law and regulations administered by othe  
15 government entities that have review or approval authority over th  
16 eligible activity. Such regulations shall be adopted [only afte  
17 public hearing thereon] in the manner prescribed by [law,] th  
18 Administrative Adjudication Act. [and then transmitted to th  
19 Governor of Guam, and upon his approval and promulgation, shall hav  
20 the force and effect of law.]

21           §2403.1. Export Trading Company Eligibility. An expor  
22 trading company as defined in §19500.21 of Chapter VI of Title XX o  
23 the Government Code shall be eligible for the full benefits of  
24 qualifying certificate subject to applicable restrictions if the mai  
25 office of the export trading company is established on Guam.

26           §2403.2. Hotel Eligibility. Eligibility of hotels to apply fo  
27 a Qualifying Certificate shall terminate on the Corporation's close  
28 of business on the last day of calendar year 1989. Termination o  
29 eligibility shall not apply to any hotel applicant which provides

1 evidence of at least fifty-one percent (51%) ownership by persons  
2 are United States citizens and residents of Guam for at least f  
3 (5) continuous years prior to the date of application.

4 §2404. Nature of and Benefits. A Qualifying Certificate, or  
5 issued, shall be a contract between the government of Guam and t  
6 Beneficiary, and the tax rebates enumerated in the Certificate m  
7 not be curtailed, limited or impaired by any subsequent act, exce  
8 as provided herein. Once issued and unless suspended, rescinded  
9 revoked, a Qualifying Certificate shall constitute conclusi  
10 evidence of entitlement to the tax rebates and abatements stated  
11 its face.

12 §2405. Qualifying Certificate, Issuance of. A Qualifyin  
13 Certificate may be issued by the Governor of Guam upon th  
14 recommendation of the Board to any applicant [corporation] tha  
15 proposes to engage in an eligible business, [, or to any applicar  
16 stockholder of such corporation holding a Qualifying Certificate, an  
17 said corporation may be either a Guam Corporation or a duly organize  
18 "possessions corporation" limited to doing business in Guam, as suc.  
19 "possessions corporation" is defined under Federal income tax law  
20 and regulations.]

21 §2406. Same: Grounds for Suspension, Rescission, or  
22 Revocation. A Qualifying Certificate may be suspended, rescinded or  
23 revoked by the Governor of Guam upon the recommendation of the Board  
24 for the following reasons:

- 25 1. Fraud or misrepresentation of any material allegation in  
26 the application for such Certificate.
- 27 2. Failure to comply with any conditions and obligations  
28 stated in the Certificate after having been notified by the  
29 Corporation in writing of such failure to comply and after

1 having been given by the Corporation a reasonable period  
2 time within which to correct such failure.

3 3. The filing by the Beneficiary or against the Benefici  
4 of a petition for adjudication of bankruptcy as to s  
5 Beneficiary wherein the petition has been granted.

6 4. A finding by the Attorney General of the Territory that  
7 corporate Beneficiary has been dissolved.

8 5. Violation of any provision of this Article.

9 [6.]

10 No recommendation for suspension, rescission or revocation sha  
11 be made by the Board except after a hearing thereon pursuant to t  
12 provisions of the Administrative Adjudication Act.

13 §2407. Disqualifications. A corporate applicant for  
14 Qualifying Certificate shall, as a condition precedent to [  
15 qualifying for the same, satisfy the Corporation in writing that  
16 shall not transfer, move, relocate or otherwise remove any of i  
17 existing business plants to Guam from the continental United State  
18 or any of its territories or possessions. Neither shall a Qualifyin  
19 Certificate issue to [a corporation] any applicant who has not first  
20 obtained a license to do business in Guam.

21 No officer [and] or member of the Board or their spouses and r  
22 corporation or any other legal entity in which an officer or membe  
23 of the Board or their spouses has any financial interest may qualif  
24 for a Qualifying Certificate.

25 Neither shall any of the following, during their term o  
26 office[, ] and for a period of one (1) year after their resignation  
27 termination or completion of their term of office, directly o  
28 indirectly, qualify for a Qualifying Certificate:

29 (a) Members of the Guam Legislature[;] and their spouses;

1 (b) Employees of the [Executive Department of the Governme  
2 Executive Branch of the government of Guam and th  
3 spouses from the level of first assistant to the departm  
4 director and up;

5 (c) Judges of the various courts of the Territory and th  
6 spouses.

7 Any Qualifying Certificate issued in violation of this Sect:  
8 shall be void ab initio.

9 §2408. Employment of United States Citizens and Permane  
10 Residents. A [corporate] Qualifying Certificate shall not be issu  
11 unless the applicant commits itself at the time of application f  
12 such a Certificate that a management training program shall  
13 established and a copy of that written training program shall  
14 delivered to the Corporation within the number of days prescribed  
15 regulations by the Corporation so that within a reasonable period  
16 time residents of Guam who are United States citizens or permanen  
17 residents of the United States and who are otherwise qualified woul  
18 replace the manager or other officers of an industry or busines  
19 granted a [Corporate] Qualifying Certificate who are not Unite  
20 States citizens or permanent residents of the United States, and tha  
21 it shall at all times employ a total employment force of not les  
22 than the minimum number established by the Corporation, at leas  
23 seventy-five percent (75%) of which shall be United States citizen  
24 or permanent residents of the United States; provided, however, tha  
25 for good cause, temporary exemptions hereto, for specific and limite  
26 periods of time, may be granted by the Corporation, such temporar  
27 exemptions, to be conditioned upon a training program, approved b  
28 the Corporation, designed to replace employees who are not eithe  
29 United States citizens or permanent residents. In addition, afte

1 the expiration of three-fourths (3/4) of the period of the Qualifying  
2 Certificate or ten (10) years, whichever is sooner, the possessor  
3 the Qualifying Certificate must satisfy the seventy-five percent  
4 (75%) employment requirement at both labor and management level.  
5 The Corporation shall be the sole judge of what constitutes labor  
6 management level employment but it shall seek advice from the  
7 University of Guam, the Guam Community College, the Guam Department  
8 of Labor, the Department of Education, the Guam Chamber of Commerce,  
9 the Guam Hotel and Restaurant Association or any other organization  
10 familiar with human resource job classifications before taking final  
11 action. The Corporation shall establish, by regulations adopted  
12 pursuant to the Administrative Adjudication Act, requirements for  
13 practical and equitable training programs as guidance for the  
14 applicant and the reasonable minimum number of persons to be employed  
15 on a continuing basis for each [corporate] applicant in accordance  
16 with the specific and normal requirements of the business involved.  
17 Such training program and minimum employment requirement shall be  
18 made a condition appearing on the face of the applicable [corporate]  
19 Qualifying Certificate. No resident employee of an industry or  
20 business granted a [corporate] Qualifying Certificate shall be paid  
21 less than the prevailing wage rates nor shall he be laid off his job  
22 nor have his workweek reduced to less than forty (40) hours for the  
23 sole purpose of creating employment for non-resident workers. For  
24 the purpose of this Section, "prevailing wage rates" as determined by  
25 the Department of Labor shall be used as a guide. The Department of  
26 Labor is hereby empowered to investigate any complaint filed pursuant  
27 to this Section and to settle the same by issuance of an appropriate  
28 order after notice and hearing pursuant to the provisions of the  
29 Administrative Adjudication Act. Any willful violation of this

1 Section, or of any order issued hereunder, may be cause for  
2 Beneficiary of a [corporate] Qualifying Certificate to forfeit t  
3 benefits thereof.

4 §2408.1. Participation in the Apprenticeship Training Progra  
5 A [Corporate] Qualifying Certificate shall not be issued to  
6 applicant which operates a hotel or restaurant unless th  
7 applicant commits itself at the time of application for such  
8 certificate to participate in the Hotel/Restaurant Indust  
9 Apprenticeship Program administered by the Guam Communit  
10 College, if the course curricula are deemed appropriate by th  
11 Corporation to prepare students for the applicant's jo  
12 requirements, and to hire graduates of the apprenticeshi  
13 program when vacancies exist.

14 §2409. Qualifying Certificate Non-transferable. A Qualifyin  
15 Certificate or the benefits thereunder may not be transferred c  
16 assigned without the written permission of the Corporation. For th  
17 purposes of this Section, a transfer or assignment of benefits shal  
18 have occurred at any time there is a transfer of a majority of th  
19 voting stock of the Beneficiary, resulting in a change in th  
20 identity of the shareholders who control the Beneficiary.

21 §2410. Application for Qualifying Certificates. Applications  
22 for Qualifying Certificates shall be filed on forms prescribed and  
23 furnished by the Corporation. An [corporate] applicant must [agree  
24 to] furnish written monthly reports beginning thirty (30) days after  
25 the date of the issuance of the [corporate] Qualifying Certificate,  
26 said reports to include, but not limited to, financial data,  
27 employment data and payroll data. All such monthly reports shall be  
28 treated as confidential by the Corporation.

29 §2411. Publications of All [Corporate] Applications for

1 Qualifying Certificates. The Corporation shall cause to be published  
2 at applicants' expense, in a Guam newspaper of general circulation  
3 a brief resume of all [corporate] applications for Qualifying  
4 Certificates, said publication to be made at least seven (7) days  
5 before the same is considered by the Board. The resume shall be  
6 a form prescribed by the Board, and it shall include only the name  
7 and address of applicant, a brief statement of the proposed  
8 investment, brief summary of the tax rebates and abatements applicable  
9 for, and the names and addresses of those who are investors at the  
10 time the application is submitted to the Board. Following the filing  
11 of the application in due form, payment of the prescribed fees and  
12 publication of the resume, the holding of a public hearing thereon is  
13 mandatory. The corporation shall take all reasonable precautions in  
14 connection with such public hearing to avoid disclosure of  
15 proprietary secrets of the applicant. The Board may schedule  
16 additional public hearings as necessary. The Board meeting for  
17 approval of a Qualifying Certificate shall not be held on the same  
18 day as a public hearing on the Qualifying Certificate.

19 §2412. Notice of Hearings on [Corporate] Applications. Notice  
20 of public hearings shall be published at applicants' expense in a  
21 local newspaper of general circulation not less than five (5) days  
22 prior to the scheduled hearing date.

23 §2413. Recommendations. All recommendations of the Board for  
24 issuance, modification, revocation [and] or suspension of Qualifying  
25 Certificates shall be forwarded to the Governor of Guam, together  
26 with a memorandum of the Board's findings in support of its  
27 recommendations. [Any recommendations of the Board not approved or  
28 disapproved by the] The Governor of Guam, within sixty (60) calendar  
29 days from his receipt thereof, shall either approve or disapprove the

1 Board's recommendation. [shall be deemed approved as of the s  
2 first (61st) day from the Governor's receipt thereof.]

3 §2414. Tax Abatement. The following tax abatement[s are  
4 hereby established and declared, for which Qualifying Certific  
5 may be issued:

6 1. All taxes now levied by virtue of Chapter IV, Title X  
7 the Government Code of Guam, known as Real Property  
8 shall be abated for a period up to ten (10) years from  
9 of issuance of Qualifying Certificate therefor, and as  
10 as said Certificate is in force and effect, provided t  
11 the real property on which said tax is assessed is utili  
12 for a tax exempt business that has qualified and contin  
13 to qualify for a Qualifying Certificate.

14 [2. All taxes now levied on income derived from the lease  
15 land, buildings, machinery and equipment by virtue  
16 Subchapter B, Title XX of the Government Code of Gua  
17 shall be abated for a period up to ten (10) years from da  
18 of issuance of a Qualifying Certificate therefor, and  
19 long as said Certificate is in force and effect, provid  
20 that said income has been derived from the lease of lan  
21 building, machinery and equipment to a tax exempt busine  
22 that has qualified and continues to qualify for  
23 Qualifying Certificate.]

24 [3. All taxes now levied by virtue of Subchapter B, Chapter  
25 Title XX of the Government Code of Guam, known as the Gro  
26 Receipts Tax, shall be abated for a period up to ten (1  
27 years from date of issuance of a Qualifying Certifica  
28 therefor, and as long as said Certificate is in force a  
29 effect, provided that the gross receipts on which such t



1 shall be abated have been derived from the sale  
2 alcoholic beverages manufactured in Guam by  
3 manufacturer thereof and that such manufacturer  
4 qualified and continues to qualify for a Qualifying  
5 Certificate covering such manufacture.]

6 [4. All taxes levied or paid by virtue of Subchapter B, Chap  
7 VI, Title XX of the Government Code of Guam, known as the  
8 Gross Receipts Tax, shall be abated or rebated for the  
9 gross receipts derived from the sale of petroleum products  
10 manufactured in Guam and sold to agencies  
11 instrumentalities of the government of Guam by the  
12 manufacturer thereof, provided that a Qualifying  
13 Certificate for such a tax abatement is granted pursuant to  
14 the provisions of this Subparagraph, and further provided  
15 that at any such time that a manufacturer possessing such  
16 a Qualifying Certificate no longer continues to qualify for  
17 the certificate, the taxes shall no longer be abated [or  
18 rebated]. A Qualifying Certificate may grant such a tax  
19 abatement or rebatement for up to a ten (10) year period  
20 commencing with the date of initial commercial production  
21 of petroleum products by the manufacturer.]

22 [5. All taxes now levied by virtue of §43714, Chapter VII  
23 Title XXXIX of the Government Code shall be abated for a  
24 period of up to ten (10) years from date of issuance of the  
25 Qualifying Certificate therefor and as long as said  
26 certificate is in force and effect, provided that said  
27 premiums are collected by a captive insurance company  
28 licensed under Chapter VII of Title XXXIX that has  
29 qualified and continues to qualify for a Qualifying

1 Certificate.]

2 §2415. [Corporate] Income Tax Rebate. A rebate of up  
3 seventy-five percent (75%) of all [corporate] income tax payable  
4 the government of Guam is hereby established and declared, for wh  
5 a Qualifying Certificate may be issued for a period not exceeding  
6 total of twenty (20) consecutive years from [date of issuance] ;  
7 effective date of a Qualifying Certificate therefor [and the]. Th  
8 income tax rebate shall apply to individual persons who have be  
9 residing continuously in Guam for at least five (5) years a  
10 corporations. The percentage of rebate may be made variable by t  
11 Board so as to permit higher or lower percentages in earlier or lat  
12 years of the period. In determining the periods up to twenty (2  
13 years and the percentages up to seventy-five percent (75%), the Boa  
14 shall take into consideration the financial risks involved in th  
15 undertaking as well as the [importance to the economy of] impact o  
16 the socio-economic development of Guam by the proposed investment  
17 For the purposes of this Section, the term "income tax payable" shall  
18 mean income taxes applicable to [corporate] earnings occurring on an  
19 subsequent to the [date of issuance] effective date of the applicabl  
20 Qualifying Certificate. The Director of Revenue and Taxation of th  
21 government of Guam shall have authority to determine any proration  
22 of rebates necessary because of taxable years occurring within th  
23 life of the applicable Qualifying Certificate which consist of les  
24 than a full twelve (12) months period.

25 §2416. Taxability of Rebates: Legislative Intent. It is th  
26 intent of the Legislature that rebates of income taxes to qualifyin  
27 entities pursuant to §§2414 and 2415 of this Article be rebates o  
28 all the taxes owed and that no portion of the rebates given be later  
29 subject to income taxation.

1           §2417. Income Tax Rebate on Dividends. [A rebate of up  
2 seventy-five percent (75%) of all corporate income tax on dividen  
3 paid by a Corporate Beneficiary is hereby established and declare  
4 for which a Qualifying Certificate may be issued for a period up  
5 five (5) consecutive years which period may be any portion of th  
6 effective period authorized for the controlling corporate income t  
7 Qualifying Certificate issued to the corporation declaring th  
8 dividends.] The shareholders of a corporate Beneficiary may b  
9 granted a rebate of up to seventy-five percent (75%) of the incom  
10 tax due for dividends paid by the Beneficiary from its current year'  
11 earnings derived only from the activities identified in th  
12 Qualifying Certificate and only for a period of up to five (5) year  
13 from the effective date of the Qualifying Certificate. The period o  
14 this rebate shall commence at the time recommended by the Board bu  
15 in no event prior to the effective date of the Qualifying Certificat  
16 issued to the corporation.

17           In case of a corporation that has elected to be taxed as a small  
18 business corporation commonly known as a "Subchapter S Corporation,  
19 said income tax rebate shall be passed on to its stockholders, who  
20 have resided in Guam continuously for at least five (5) years, in the  
21 same proportion as their stock interest in the tax-exempt  
22 corporation.

23           In the case of a stockholder of a Qualifying Corporation not  
24 qualifying as a small business corporation, the income tax rebate  
25 herein provided shall be applicable to the dividend income received  
26 by the stockholder, who has resided in Guam continuously for at least  
27 five (5) years, from the tax-exempt corporation.

28           §2418. Taxpayer's Option. In lieu of the percentage of tax  
29 abatements and rebates granted in this Chapter, the Beneficiary may

1 elect to enjoy only fifty percent (50%) of said abatements  
2 rebates for a period of double the term authorized by the Corporat  
3 as stated in taxpayer's Qualifying Certificate. This option may  
4 exercised by a statement of the taxpayer so stating, together w  
5 the consent thereto of the corporation, filed with the correspondi  
6 tax returns.

7 §2419. Procedure to Claim Abated and Rebated Taxes.  
8 certified true copy of the corresponding Qualifying Certificate  
9 certified, and a certificate of compliance issued, by th  
10 Corporation should be attached to the Beneficiary's tax return wh  
11 filing each return.

12 When the return for the abated tax is accompanied by  
13 corresponding Qualifying Certificate and a certificate of complianc  
14 the actual payment of the tax in question to the Government shall n  
15 be required, and upon [audit and] review of the tax return, the T  
16 Commissioner of the government of Guam shall, within one hundre  
17 twenty (120) days from receipt of said tax return, furnish th  
18 taxpayer a certification confirming the nature and amount of the ta  
19 abated.

20 In the case of an income tax rebate, where the taxpayer's ta  
21 return is accompanied by a corresponding Qualifying Certificate an  
22 a certificate of compliance, the amount of tax due prior to rebat  
23 shall be deposited with the Government at the time of filing th  
24 income tax return. The Tax Commissioner of the government of Gua  
25 shall immediately thereafter cause the return to be reviewed [an  
26 audited], and if the rebate is found in order, shall cause the amoun  
27 deposited to be returned to the taxpayer within one hundred eight  
28 (180) days from date of [receipt] deposit.

29 §2420. Rebate Fund. Deposits for income tax made with th

1 government of Guam pursuant to this Article shall be covered a  
2 deposited into a separate, special account in the Treasury of t  
3 territory of Guam, herein designated as "Income Tax Rebate Fund."

4 §2421. Tax Redeterminations. In the case of any Beneficia:  
5 who, in accordance with the applicable laws of the territory of Guar  
6 shall have applied for and been granted a redetermination of ta  
7 liability or taxes payable, the amount of abated or rebated taxe  
8 determined for such Beneficiary for the taxable years affected shall  
9 be accordingly adjusted by the Director of Administration and sai  
10 Beneficiary shall be required to pay the balance due said taxabl  
11 years, if any, together with interest at the rate [of six percen  
12 (6%)] currently assessed by the government of Guam per annum from th  
13 date the Beneficiary realized the abatement or rebate benefit  
14 provided, that said balance due may be offset or credited against an  
15 tax refund due to the Beneficiary.

16 §2422. Implementation by Tax Commissioner. The Ta  
17 Commissioner of the government of Guam is hereby authorized to issue  
18 such rules and regulations as he may deem necessary to implement th  
19 procedures outlined in this Article.

20 §2423. Limited to Government of Guam Taxes. All abatements and  
21 rebates herein established and authorized shall apply only to the  
22 taxes due the government of Guam.

23 §2424. Fees. Upon the effective date of this Act and until  
24 modified pursuant to 12 GCA §2425, the following fees shall be  
25 assessed against each [corporate] applicant and [corporate] recipient  
26 of a Qualifying Certificate:

	<u>FILING FEE</u>	<u>ANNUAL SURVEILLANCE FEE</u>
27		
28		
29	Agriculture, Aquaculture,	
30	& Mariculture	\$[1,000] <u>500</u>
31	[Watch] Manufacturing	[250] <u>500</u> 1,000

1	[Other Manufacturing	250	1,0
2	Commercial Fishing	[50] <u>150</u>	1,0
3	Services	[250] <u>750</u>	1,0
4	[Hotels and Motels	500	1,0
5	[Other] Tourist Facilities	[500] <u>750</u>	1,0
6	<u>Motels</u>		
7	<u>Under construction</u>	<u>750</u>	<u>1,0</u>
8	<u>In Operation</u>	<u>750</u>	<u>\$15 per ro</u>
9	<u>Hotels</u>		
10	<u>Under construction</u>	<u>1,000</u>	<u>1,0</u>
11	<u>In Operation</u>	<u>1,000</u>	<u>\$25 per ro</u>
12	Industrial Facilities	[500] <u>750</u>	1,00
13	[Captive Insurance Companies	500	1,00

14           §2425. Periodic Adjustment of Fees. The Board is authorized t  
15           adjust the fees listed in 12 GCA §2424 on an annual basis, at th  
16           beginning of each calendar year starting with calendar year 19[88]90  
17           upon demonstration to the Board by the Administrator that the cost c  
18           performing the services covered by the fees is greater than th  
19           amount of the fees. Fee changes shall be made according to th  
20           provisions of the Administrative Adjudication [Law] Act."

21           SECTION 2. §2433 of Article 4A, 12 GCA, Chapter 2 is repealed in it  
22           entirety.

23           SECTION 3. §2434 of Article 4A, 12 GCA, Chapter 2 is amended and  
24           renumbered to read:

25           "[\del{2434}] §2433. License Requirement. It shall be a condition  
26           of the tax exemptions provided for in §2432 of this Article 4A [and  
27           of the special Qualifying Certificate provided for in §2433 of this  
28           Article 4A] that a FSC shall at all times maintain a valid Guam FSC  
29           license in good standing pursuant to the provisions of Chapter VI of  
30           Title XVII of the Government Code of Guam."









DEPARTMENT OF

# REVENUE & TAXATION

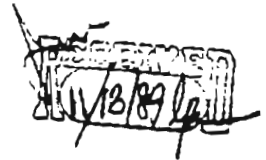
GOVERNMENT OF GUAM

JOSEPH F. AI  
Governor

FRANK F. BLAZ  
Lieutenant Governor

JOAQUIN G. BLAZ, Director - V.M. CONCEPCION, Deputy

NOV 03 1989



Honorable Edward D. Reyes  
Chairman, Committee on Economic Development  
Twentieth Guam Legislature  
163 Chalan Santo Papa Street  
Agana, Guam 96910

Dear Senator Reyes:

First of all, my apologies for the delay in submitting this testimony.

Let me comment on Bill Number 959. My testimony on Bill 779 is already a matter of record in the previous hearing of that bill.

The Deputy Tax Commissioner presented oral testimony on October 27, 1989 essentially presenting this departments objections to the bill.

This department objects to granting any rebates on Gross Receipts Taxes. We are taking the position that a reduction of the Gross Receipts would induce price reduction incentives rather than capital investment incentives. The reduction would only grant to recipients of a qualifying certificates undue advantage over a similar enterprise that does not qualify for the certificate.

Therefore, we are requesting that Sections 2414 (2), (3), (4) and (5) be removed completely.

We are also requesting that Section 2416 be removed altogether. It is not proper to make a determination on the taxability of the rebates. Section 61 of the Guam Territorial Income Tax Law provides for the taxation of income received. This should be relied upon on the question of the taxability of the rebates rather than to put an intention section of the G.E.D.A. bill.

We would also like to see the language of Section 2417 apply to Individuals, Partnerships and Trusts. There should be a residency requirement for any rebate of a noncorporate recipient. The residency requirement of 5 years would be effective in this area.

The wording of Section 2419, page 16 line 3 should be reworded to remove the requirement of an examination. It should read "and upon review of the tax return...." This deletion would allow the department to issue the rebate without having to examine the return and make the

determination of the rebate amount within the 120 day requirement. The determination whether to examine a return should be left to the merits of each return filed. If this department feels that the return does not require an audit, it should be given the authority to decide that.

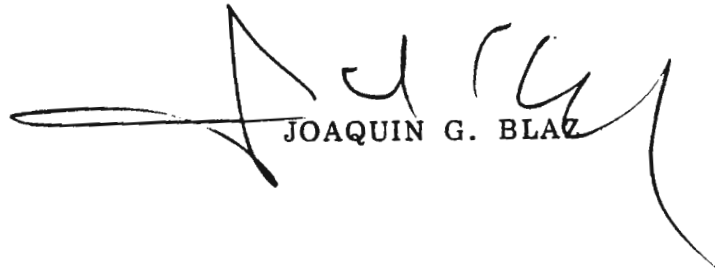
Section 2421 should be deleted. The Guam Territorial Income Tax Law deals with amended returns and offer different approaches to the amended return as well as interest rate applicable to deficiency returns. The amount of six percent used is too low and a different amount is called for in the code. We feel that there are adequate procedures within the code to deal with the amended return.

As I have mentioned earlier this testimony deals with the tax portion of the bill. We are yielding to the Guam Economic Authority Administrator to deal with the other aspect of the bill.

Please accept this as my testimony on Bill 959.

Thank you.

Sincerely,

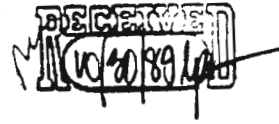


JOAQUIN G. BLAZ



## GUAM HOTEL & RESTAURANT ASSOCIATION

26 October 1989



Senator Edward D. Reyes, Chairperson  
Committee on Economic Development  
Twentieth Guam Legislature  
P.O. Box CB-1  
Agana, Guam 96910

Dear Senator Reyes,

Re: Proposed Legislative Bill #'s 779 and 959

We welcome the endeavor to have the condition of the Q.C. program of GEDA updated, however feel that this should be part of the long-overdue masterplan addressing the future long-range planning process. It is also proposed that within set guidelines and controls the GEDA Board should be given flexibility to respond to changes in economic conditions without delay.

The Association takes exception, however, with the proposal to eliminate hotels from consideration for qualifying certificates in the future. While it is true that present day economics may favor a moratorium on hotel QC's, it is uncertain how the Guam economy will emerge in future years. It may again become a good business decision for GEDA to recognize future hotels with QC considerations. We, therefore, question the need to act legislatively on an economic factor uncertain in the future.

We also offer the additional comments:

Bill #959, Section 2408:

When the corporation seeks advice of what constitutes labor and management level employment the GHRA would like to be included, being the organization most familiar with the various positions, status and responsibilities as they appertain to the hospitality industry.

Bill #779, Section 2405:

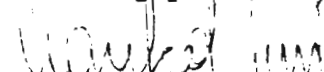
It will be impossible for the hotel industry to comply with all four criteria in regards to eligibility.

Bill #779, Section 2411:

It is doubtful based on present experience that companies in the future will meet the 85 and 90% requirements of employees to be U.S. citizens or permanent residents.

Thank you for your time and consideration.

Sincerely yours,

  
Manfred H. Pieper



**Guam Visitors Bureau**  
*Setbision Bisitan Guahan*

October 26, 1989

The Honorable Edward D. Reyes  
Senator and Chairman  
Committee on Economic Development  
Twentieth Guam Legislature  
163 Chalan Santo Papa  
Agana, Guam 96910

Dear Senator Reyes:

This is to submit written testimony on Bill No. 779 and Bill No. 959.

At this juncture in tourism's development, there is a need to revamp the Qualifying Certificate (QC) Program. Inasmuch as we believe that the intent of the proposed legislation has merit, we feel that some of the provisions should be further examined.

Upon reviewing the number of hotels under construction along with those planned or being discussed, it may seem that we are overbuilding. Further, due to projected growth in visitor arrivals, market forces may dictate that new hotels would not need tax breaks. However, by eliminating hotels totally from the QC Program our hands are tied to legislation if enacted. It may be conceivable that in the future, further down the road, there may come a time again where incentives are needed to attract new hotel developments. Rather than enacting legislation prohibiting tax breaks for hotels, it may be more appropriate to give GEDA and the Governor the authority to approve QC's depending upon the circumstances. As it stands, the Governor can issue moratoriums to disallow tax breaks for any entity, in this case, tourism development. We believe that this would be a more viable alternative to enacting legislation restricting tax breaks to specific corporate entities.

We, however, laud the provisions wherein Special Qualifying Certificates can be issued to local entrepreneurs. We thoroughly support and endorse local involvement in the visitor industry.

Barring other technical aspects of the bills, we are inclined to support minimum investment levels for each activity, addressed in Bill No. 959 but not in Bill No. 779. We hope that GEDA and the Administration can work amicably with the Legislature in the formulation of a restructured QC Program, mutually beneficial to all.

The Honorable Edward D. Reyes  
October 26, 1989  
Page 2

Thank you for this opportunity to submit testimony. Should you have a questions, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Joey R. Cepeda', with a long horizontal flourish extending to the right.

JOEY R. CEPEDA  
General Manager

An example is the Cocos Island Resort, which was having severe drinking water, sewage and solid waste infrastructure problems. The initial owners did not have the resources to correct these severe health and environmental problems and thus sought to sell their facility. The GEDA Board allowed the QC transfer to the new corporate owners who are now in the process of putting several million dollars worth of vitally needed improvements to the facility, which was on the verge of being shut down by the Guam EPA, the Department of Public Health & Social Services, and the Department of Public Works.

We suggest this Section remain intact, allowing the GEDA Board flexibility in assessing the situation, and allowing for transfers that would clearly be in the best interest of the Territory.

(4) Section 2409.2.

We further suggest that a new provision Section 2409.2 be added. For the purposes of this Section, a transfer of benefits shall have occurred at any time that there is a transfer of a majority of the voting stock of the Beneficiary resulting in a change in the identity of the shareholders who control the Beneficiary. Similarly, a transfer of benefits shall occur whenever a Beneficiary shall lease, assign, or transfer any part of its activities outside of the ordinary course of its business.

# GEDA

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(5) Section 2410:

The words "agree to" at the end of line 24, page 10, should be deleted.

(6) Section 2411:

The following two sentences should be added at the end of this Section:

"The Board may schedule additional public hearings as necessary. The Board meeting for approval of a Qualifying Certificate shall not be held on the same day as a public hearing on the same Qualifying Certificate."

(7) Section 2413. Recommendations.

We fully agree with changes recommended in this Section.

(8) Section 2414. Tax Abatement.

The Bill proposes to eliminate the tax abatement incentive to property owners who lease their properties to a corporation who holds a Qualifying Certificate. (§2414.2)

We are strongly opposed to the elimination of this provision, which we see as an incentive for property owners to lease rather than sell their properties to proposed developers.

An application currently under consideration by GEDA is the Hyatt Regency Hotel project in which Mr. Manuel Jose has chosen to lease rather than sell his Tumon property to the Hyatt. Mr. Jose would be entitled to these incentive benefits if the Hyatt QC is approved.

# GEDA

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(9) Section 2414.1:

Replace the last word in line six and the first three words in line 7 with the words "the effective date of the..."

(10) Section 2414.3:

Replace the words "from date of issuance" in line 25 with the words "the effective date".

(11) Section 2415. Income Tax Rebate.

(a) Limiting the income tax rebate from up to 75% of income tax payable to an amount equal to the total capital invested would seriously hamper the flexibility of the GEDA Board of Directors in their review of the QC application especially when trying to negotiate community related projects as a condition for the QC. Additionally, some QC applicants such as certain agriculture, aquaculture and fisheries investments which may have a low capital investment but carry a high operational cost, would not be able to regain their true capital investment thereby negating the benefits of the QC. The GEDA Board of Directors needs to have the capability to adjust the benefits on a case by case basis in respect to the overall investment and conditions placed on the investor.

We suggest that the 75% maximum limits remain intact and that the Committee consider amendment to this



# GEDA

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Section requiring the Beneficiary to re-invest rebated/abated taxes granted within the Territory.

(b) Replace the words "date of issuance" in line 5 of with the words "the effective date".

(c) Replace the words "date of issuance" in line 15 with the words "effective date".

(12) Section 2424:

After review of the current fee structure and since it only currently amounts to \$20,000 or 16.9% of the annual budget of the Management and Compliance Division (which is \$118,114 for FY1990), and which devotes 70% of its time and efforts in the administration of the Qualifying Certificate program and in order to recover other costs in the application review process, it has become necessary to recommend the following fee structure:

	<u>Filing Fee</u>	<u>Annual Surveillance Fee</u>
Agriculture, Aquaculture, Mariculture	\$ 150	\$ 500
Manufacturing	500	1,000
Commercial Fishing	150	1,000
Services	750	1,000
Tourist Facilities	750	1,000
Industrial Facilities	750	1,000
Special Qualifying Certificates	100	150

# GEDA

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	<u>Filing Fee</u>	<u>Annual Surveillance Fee</u>
Motels	\$ 750	\$1,000
Hotels:		
Under Construction		1,000
100 to 200 rooms		2,000
200 to 300 rooms		3,000
300 to 400 rooms		4,000
400 to 500 rooms		5,000
Over 500 rooms		6,000

If this fee schedule is adopted the net effect on January 1, 1990 would amount to an increase of \$24,000 or a total of \$44,000 per annum.

A provision addressing the needs of small businesses operated by local entrepreneurs needs to be included in this Bill. We recommend Bill 517, introduced at the request of the Governor in February of this year. Without this exclusive provision some local entrepreneurs, because of the interruption of the eligibility requirements, may find themselves ineligible for a QC.

On behalf of the Authority, please allow me to express our gratitude for the opportunity to provide its testimony on Bill 959. Should there be any questions regarding this testimony, I am ready to answer them at this time. Thank you.

CHARLES P. CRISOSTOMO

TESTIMONY ON BILL NO. 779  
Submitted by  
CHARLES P. CRISOSTOMO  
Administrator  
Guam Economic Development Authority  
October 26, 1989

Good Morning Mr. Chairman; Esteemed members of the Committee on Economic Development Authority; Ladies and Gentlemen:

My name is Charles P. Crisostomo, Administrator of the Guam Economic Development Authority. I am here today to provide the Authority's testimony on Bill 779, an Act to repeal and reenact Article 4, 12GCA, Chapter 2, relative to the Qualifying Certificate program and to repeal and reenact 12,GCA, Sections 2105 and 2108.

In providing the Authority's testimony on Bill 779, I wish to express my appreciation for the deliberate and comprehensive approach your Committee has taken to solicit input on this critically important issue; the Qualifying Certificate Program.

The Qualifying Certificate Program remains the only economic program for which the Territory of Guam has full autonomy and control. All other programs are tied to U.S. Federal statutory, regulatory or policy provisions to which the Territory is subject. We must work very carefully in drafting changes in the QC program that do not jeopardize this narrow area of economic independence that Guam now enjoys.

Bill 779, as introduced, seeks to repeal Article 4, 12 GCA, Chapter 2 and reenact a rewritten version. We caution the legislature that a repeal of this law may threaten the entire QC

program. The current program was created by Public Law 8-80 under the authorities granted by the Organic Act in 1965. Although more legal research is necessary on this question, we caution, that the existing Organic Act MAY NOT empower the legislature to enact such legislation today.

In review of Bill 779, as introduced, we note the following major concerns:

1. The deletion of the Tourism industry from eligibility for Qualifying Certificates
2. The deletion of the real property tax abatement benefit for QC recipients
3. The structure of the Special Qualifying Certificate program
4. The overall structure of the bill.

The development of tourism in our Territory, has centered on the development of the hotel industry. The success and growth of tourism has been and continues to be in major hotel development due in large part to the enticement of the qualifying certificate program. The domino effect of the hotel industry is evident and has brought about an expanded revenue base expansion never experienced before. Other than utility requirements, the hotel industry has had a relatively low impact on other infrastructural requirements. It is a clean pollution free business that to date has been our single most successful and thriving industry.

The effect of completely eliminating the hotels from the qualifying certificate program as we see it is threefold. First, it dissuades the local investors from investing in tourism of a

hotel, as they would be denied the benefits enjoyed by mostly foreign investors. Secondly, tourism development has concentrated only in the Tumon & Tamuning areas. What about areas such as the Agana and Agat boat marinas, which both have the potential for hotel development as well as other tourism related businesses? Areas in Southern Guam or for that matter areas outside Tumon/Tamuning, where local residents may desire to invest and reap the benefits brought about by tourism and hotel development would henceforth be denied this opportunity. And lastly, this would greatly reduce Guam's competitiveness in the whole Pacific tourism market as a preferred destination area. Without the qualifying certificate incentives, hotel development would be much more expensive than areas such as the Philippines, Malaysia and the many islands of the South Pacific. And how will other outside investors look at our island when trying to determine where in the Pacific rim to invest knowing that tax incentive benefits are on the decline? These points all have to be weighed very carefully. We at GEDA feel that the elimination of the tourism industry from the qualifying certificate program at this time would be detrimental to the tourism industry as a whole. We have initiated a study which should be completed in a few months which will be able to address the issue, of Guam's Regional Competitiveness. After a careful review of the listing of expansions and new hotel construction & its resource impact, Governor ADA directed GEDA to place a moratorium on future Hotel Qualifying Certificate's. This we feel is a far more rational approach to the situation than to legislate out all future

investments in our Tourism industry.

The wholesale elimination of the Real Property tax abatements as a benefit from the qualifying certificate program would seriously hamper the flexibility of the GEDA Board of Directors in their review of applications for agriculture, manufacturing, fisheries and tourism. For applicants whose major investment is the property itself and who can only realize an immediate benefit through the real property tax abatement the Qualifying Certificate would now provide little benefit in the initial, critical years of their business. Eliminating this provision would force, to some degree, local landowners to sell or lease their property to investors instead of considering joint venture projects. As we see it, the elimination of this provision in no way enhances the development of industries secondary to tourism and seriously restricts the flexibility of the Board.

We question the broad application of the Special QC program as described in section 2429 of this bill. We recommend bill 517, introduced at the request of the Governor in February of this year, replace the provisions in Section 2429. On the structure of Bill 779 we suggest working on a clearer format for the bill. The current law has been substantially amended since its inception. We feel there is the need to organize and structure the provisions of this bill.

The following are comments on specific Sections of the Bill:

**SECTION 1:**

Section 2405:

The existing law includes "Hotel/Motels and Other Tourist Facilities" as an activity eligible for a Qualifying Certificate. Elimination of this activity as proposed in Bill 779 we feel is not in the best interest of furthering economic development. As the islands only true industry and one that is directly responsible for the increase of the islands growing revenue base, the tourist industry should remain positioned for future growth instead to giving a message that could possibly halt all the growth of the industry.

GEDA has found that requiring the sale of corporate equity may be too costly on the part of the applicant whether it be a public or private offering pursuant to the Uniform Securities Act. Offerings are generally issued in large denominations and likely purchased by institutions rather than individuals. Also, the return on investment to those who participate would largely depend on dividends being issued an activity ASIAN CORPORATIONS rarely engage. GEDA would like this requirement to be optional and not mandatory, so that other benefits such as "a profit sharing plan" could also be considered by the GEDA Board of Directors.

Section 2407:

The inclusion of credits in addition to tax rebates and abatements may create a debt to the Government for accumulated interest due to the Qualifying Certificate recipient.

Section 2411:

The percentage rate of employees who are required to be U.S. citizens or Permanent residents of the United States should be at all employment levels within the corporation as determined by GEDA.

An exemption clause should be added to give the Qualifying Certificate recipient time to train local employees. GEDA offers the following language to be added as the first sentence to the second paragraph:

"For good cause, temporary exemptions hereto, for specific and limited periods of time, may be granted by the Corporation, such temporary exemptions, to be conditioned upon a training program, approved by the Corporation, designed to replace employees who are not either United States citizens or permanent residents."

We suggest lines 10 & 11 read as follows:

"May serve as cause for the Corporation to suspend or revoke a corporate Qualifying Certificate."

Section 2414:

The words "agree to" found in the fourth line of this section need to be deleted as beneficiary to a Qualifying Certificate must furnish written monthly reports. It is not an item for negotiation by the beneficiary.



Section 2420:

The Real Property Tax abatement as contained in the existing law should be included for reasons already stated.

Section 2420:

The Sections 2417 and 2418 referred to in this section should read sections 2418 and 2419.

**Section 2:**

Section 2105:

We recommend that the Governor's Authority to solicit Board members from the community at large or from selected professions should remain as is. Individual organization(s) should not be mandated by law to provide names, as this is not in keeping with the Governor powers under the Organic Act.

Section 2427:

Bill 779 deletes Hotel/Motels from assessments of annual surveillance fees which would affect the current surveillance fees collected from Hotels. GEDA would lose over \$13,000 in annual fees from existing Qualifying Certificate recipients.

And after review of the current fee structure and since it only currently amounts to \$20,000 or 16.9% of the annual budget of the Management & Compliance division (which is \$118,144 for FY1990), and devotes 70% of its time and efforts in the administration of the Qualifying Certificate program, it has become necessary to recommend

a fee structure that will recover a part of the cost in administering the program.

We recommend the following fee structure:

	<u>Filing Fee</u>	<u>Annual Surveillance Fee</u>
Agriculture, Aquaculture, Mariculture	\$ 150	\$ 500
Manufacturing	500	1,000
Commercial Fishing	150	1,000
Services	750	1,000
Tourist Facilities	750	1,000
Industrial Facilities	750	1,000
Special Qualifying Certificate	100	150
Motels	750	1,000
Hotels	1,000	
Under Construction		1,000
100 to 200 rooms		2,000
200 to 300 rooms		3,000
300 to 400 rooms		4,000
400 to 500 rooms		5,000
over 500 rooms		6,000

If this fee schedule is adopted the net effect on January 1, 1990 would amount to an increase of \$24,000 or a total of \$44,000 per annum (37.2% of the cost to administer the program).

In conclusion GEDA's legal counsel has reviewed Bill 779 and has prepared a somewhat restructured version of Bill 779, which intends to place like items in a more proper sequence and at the

same time include GEDA's concerns as well as the other concerns which surfaced during the Committee meetings. We offer GEDA's version of Bill 779 for the Committee's consideration.

On behalf of the Authority, please allow me to express our gratitude for the opportunity to provide its testimony on Bill 779.

Should there be any questions regarding this testimony, I am ready to answer them at this time. Thank you.

**CHARLES P. CRISOSTOMO**  
Administrator

GUAM ECONOMIC DEVELOPMENT AUTHORITY

BOARD OF DIRECTORS

RESOLUTION NO. 89-014

**RESOLUTION APPROVING THE ADOPTION OF  
A MORATORIUM ON THE RECOMMENDATION  
OF THE ISSUANCE OF HOTEL QUALIFYING  
CERTIFICATES.**

**WHEREAS**, the Governor of Guam pursuant to Title 12, Chapter 2, Guam Code Annotated, upon the recommendation of the Guam Economic Development Authority Board of Directors may issue a Qualifying Certificate granting certain tax benefits to Corporations in the development and operation of the Hotel Industry; and

**WHEREAS**, The Governor of Guam in his letter of May 23, 1989, directed the Guam Economic Development Authority to impose a moratorium on the issuance of Qualifying Certificates for hotels; and

**WHEREAS**, the Governor of Guam in his letter of August 11, 1989, transmitted to the Guam Economic Development Authority a listing of the new policy initiatives being pursued by his Administration, one of which calls for urban re-development; and

**WHEREAS**, the Chairman of the Guam Economic Development Authority Board of Directors in his letter of August 21, 1989, to the Governor of Guam agreed to the consideration by the Guam Economic Development Authority Board of Directors the imposition of a moratorium on hotel Qualifying Certificates;

**NOW, THEREFORE, BE IT RESOLVED**, that the Board of Directors of the Guam Economic Development Authority hereby adopts the imposition of a Moratorium on the issuance of Hotel Qualifying Certificates to be effective on December 31, 1989 with the following exemptions:

1. All Hotel Qualifying Certificate applications submitted to GEDA prior to December 31, 1989;

2. Hotels with at least 51% corporate ownership by U.S. citizens and residents of Guam; and
3. Redevelopment or development of economically distressed zones which will rehabilitate distressed properties or upgrade distressed areas within the Territory, as determined by the Board. Examples of this would be portions of Tamuning, Agana and Anigua.

BE IT FURTHER RESOLVED, that the Chairman of the Board of Directors affix his signature and that the Secretary attest to the adoption of this Resolution.


Dated: September 27, 1989.



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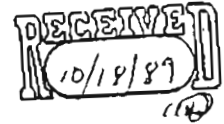
ANTHONY A. LEON GUERRERO  
Chairman  
Board of Directors

ATTESTED TO:



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CECILIA C.A. PEREZ  
Secretary  
Board of Directors



October 13, 1989

Senator Edward D. Reyes  
Chairman, Committee On Economic  
Development  
Twentieth Guam Legislature  
163 Chalan Santo Papa Street  
Agana, Guam 96910

Dear Senator Reyes:

Thank you for the thoughtfulness to send me copies of Bills 779 and 959 both relative to the Guam Economic Development Authority Qualifying Certificate program.

I have reviewed them thoroughly and believe they are totally consistent with my opinions on the future of the Q.C. program.

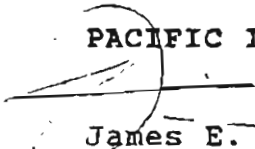
Emphasis on non-hotel development to receive Q.C. benefits is most appropriate. Future incentives should be offered and encouraged for small businesses which can offer good and meaningful services and products to our growing base of tourists.

Hotels which are proposed in the future must insure that they allow for sizeable investment, involvement and long-term benefit to U.S. citizens, particularly those with permanent commitment to Guam. Such hotels must also be formally committed to investing in necessary infrastructure improvements necessary to insure the best use of our fragile environment.

I regret my inability to attend your October 26 hearing on these bills, but hope my stated opinions will properly serve the spirit of this meeting.

Sincerely,

PACIFIC ISLANDS CLUB - GUAM



James E. Lattin  
General Manager

/cil/JL/LTRS/GEDA

pc: Rose Endo/G.E.D.A.



## SENATOR EDWARD D. REYES

Chairman, Committee On Economic Development  
20th Guam Legislature  
Ada Commercial & Professional Center  
199-A Chalan Santo Papa  
Agana, Guam 96910  
(671) 472-3405/3406

11 September 1989

ATTORNEY GENERAL ELIZABETH BARRETT-ANDERSON  
Department of Law  
7th Floor, PDN Building  
238 Archbishop Flores Street  
Agana, GU 96910

Dear Attorney General Barrett-Anderson:

I am enclosing an opinion received from the Administrator of the Guam Economic Development Authority (GEDA) regarding Bill No. 779 (An Act to Repeal and Reenact Article 4, 12 GCA, Chapter 2, Relative to the Qualifying Certificate Program of the Guam Economic Development Authority, and to Repeal and Reenact 12 GCA, §§2105 and 2108), otherwise known as the Qualifying Certificate Reform Act of 1989. This opinion, which was prepared by GEDA Counsel Duncan G. McCully, points out some potential adverse consequences should the 20th Guam Legislature elect to pass and implement Bill No. 779.

The Committee on Economic Development would like to receive the benefit of your office's opinion regarding the proposed legislation. The central issue requiring your determination is whether or not the repeal and reenactment of 12 GCA §2401 et seq., would jeopardize the legal basis for the Qualifying Certificate program's tax rebates.

Upon receiving your office's input regarding this legal question, the Committee shall proceed with the appropriate course of action with respect to the proposed measure.

Should you have any questions regarding this request, kindly contact Mr. Henry Cruz of my staff.

Sincerely,

  
EDWARD D. REYES

Enclosures.

ACKNOWLEDGED RECEIVED

Nannette Salas  
NAME (PLEASE PRINT)  
9/11/89 3:34  
DATE/TIME

# GEDA

GUAM ECONOMIC DEVELOPMENT AUTHORITY  
ITC Building - Suite 911  
590 South Marine Drive  
Tamuning, Guam 96911



## TELECOPIER COVER LETTER

DATE: 8-3-89 TIME: 11:30AM

TO: Henry Cruz  
Senator Reyes Office's

FROM: Charles T. Crisostomo  
Administrator  
GEDA

RE: Bill 779 Legal Opinion  
FYI

COMMENTS: \_\_\_\_\_  
\_\_\_\_\_  
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WE ARE TRANSMITTING 3 PAGES (INCLUDING THIS COVER LETTER)  
FROM A SHARP FO-620, FAX NO. 649-4146. IF YOU DO NOT RECEIVE ALL  
THE PAGES, PLEASE CALL BACK AS SOON AS POSSIBLE AT 649-4141-4.  
ASK FOR Joanne Cepeda.



# GEDA

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GUAM ECONOMIC DEVELOPMENT AUTHORITY  
ITC Building - Suite 911  
590 South Marine Drive  
Tamuning, Guam 96911

## TESTIMONY ON BILL NO. 959

Submitted by  
CHARLES P. CRISOSTOMO  
Administrator  
Guam Economic Development Authority

October 26, 1989

Good Morning, Mr. Chairman; esteemed Members of the Committee on Economic Development; ladies and gentlemen:

My name is Charles P. Crisostomo, Administrator of the Guam Economic Development Authority. I am here today to provide the Authority's testimony on Bill 959, an Act to amend and to repeal certain provisions of Title 12 of the Guam Code Annotated, all relative to the Qualifying Certificate program.

Basically, the Authority supports the concept of Bill 959 which as we understand is the Substitute Bill for Bill 779 which we have also testified on this morning.

# GEDA

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Bill 959, as introduced, seeks to amend Article 4, 12GCA, Chapter 2 and to repeal Section 2433 and amend Section 2424 both in Article 4A, 12GCA, Chapter 2, with the intent of addressing and incorporating the concerns raised during the meetings held by this Committee on Bill 779.

In review of Bill 959, as introduced, we note the following major concerns and suggestions for revision:

(1) Section 2403. Eligibility

In line seven (7), the Bill proposes to delete "improvement of real property". Though it is a very broad and general authority, we have viewed this provision as allowing GEDA the opportunity to establish the regulatory standards and procedures for the "Redevelopment" of specific areas within the Territory.

We suggest that this provision remain intact within GEDA's enabling authority or that new provisions be added to the statute that enable GEDA to provide tax incentives for redevelopment activities.

(2) Section 2403.2. Hotel Eligibility.

Subsections 1 through 7 of this proposed addition to GEDA's enabling statute are provisions already a part of GEDA's QC Rules and Regulations. Subsection 8 also includes provisions presently in Rules and Regulations or procedures currently practiced by GEDA in their review of Hotel QC applications.

The last sentence of this Section further proposes to completely eliminate Hotel QC applications on the last day of 1989.

Through we feel this is a better approach than the elimination of the Tourism industry proposed by Bill 779, we suggest the Committee consider the exemption criteria contained in Governor Ada's moratorium declaration. These provisions, which are contained in the attached GEDA Resolution, would continue to allow Hotel QC's for corporations which are at least 51% owned by local citizens, or for hotels which are part of a major urban redevelopment activity.

(3) Section 2409. QC Non-Transferrable.

This Section proposes to eliminate the transference of the QC or its benefits completely. Though it has been GEDA's practice to not favor the transfer of QC's, there have been instances where the transfer of a QC was seen as in the best interest of the Territory.

McCULLY, SWAVELY & LANNEN, P.C.  
ATTORNEYS AT LAW

DUNCAN G. McCULLY  
MELINDA C. SWAVELY  
THOMAS J. LANNEN  
MARK S. BEGGS  
MARGARET B. BEAN  
KEVIN J. FOWLER

SUITE 1004 PACIFIC NEWS BUILDING  
238 ARCHBISHOP FLORES STREET,  
AGANA, GUAM 96910

*GEDA 8/1/89*  
*[Signature]*

TELEPHONE:  
(671) 477-7418/7283  
TELECOPIER:  
(671) 472-1201

August 1, 1989

Mr. Charles P. Crisostomo  
Administrator  
GUAM ECONOMIC DEVELOPMENT AUTHORITY  
GITC Building, Suite 911  
590 South Marine Drive  
Tamuning, Guam 96911

RE: REPEAL OF AMENDMENT OF QUALIFYING CERTIFICATE STATUS

Dear Chuck:

You have requested my legal opinion as to whether or not the repeal and reenactment of 12 GCA §2401 et seq., the statutes which establish the Qualifying Certificate program, would jeopardize the legal basis for the program's tax rebates. In my opinion, the repeal of the sections could have drastic consequences and should be avoided.

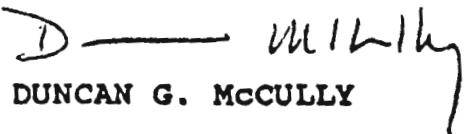
The legal authority under which the tax rebate program was established no longer exists. The original Qualifying Certificate law was passed by the Guam legislature at a time that Guam's Organic Act included a provision that unless the United States Congress acted within one year to annul laws referred to it, then those laws were deemed to have congressional approval (Guam Organic Act Section 19, Ch. 512). In 1968 Section 19 of the Organic Act was amended to eliminate the provision for implied congressional consent. Guam's rebate program was established before 1968 and the Ninth Circuit Court of Appeals in Ramsey v. Chaco, 549 F2d 1335 (1977) ruled that congress impliedly ratified any conflict between Guam's tax laws imposed by the Organic Act and the legislature's creation of the Rebate program. Because the implied ratification provision of the Organic Act has been repealed a present modification of the tax laws of Guam may require congressional action. However, by virtue of the Tax Reform Act of 1986 and subsequent agreements with the Internal Revenue Service, the Legislature of Guam will have broad power to amend its tax laws after August 1, 1991.

Letter to Charles Crisostomo  
 Re: Repeal of Amendment of QC Status  
 August 1, 1989  
 Page 2

Nonetheless, at the present time, the Legislature can amend the present Qualifying Certificate program. In the Ramsey case, supra, the Ninth Circuit specifically ruled that the legislature retained the power to make minor alterations in the rebate program previously approved by Congress. Therefore, it would appear that while the Legislature does not have the power to repeal and reenact the rebate law it does have the power to revise and limit the program by establishing new procedures for the granting of Qualifying Certificates as long as these amendments do not result in further substantive changes in Guam's tax law.

Please let me know if you have any questions.

Sincerely,

  
 DUNCAN G. McCULLY

DEPARTMENT OF

# REVENUE & TAXATION

GOVERNMENT OF GUAM



JOSEPH F. AD  
Governor

FRANK F. BLA.  
Lieutenant Governor

JOAQUIN G. BLAZ, Director - V.M. CONCEPCION, Deputy I

SEP 20 1989

Honorable Edward D. Reyes  
Chairman, Committee on Economic Development  
20th Guam Legislature  
Ada Commercial Professional Bldg.  
199-A Chalan Santo Papa  
Agana, Guam 96910

Dear Senator Reyes:

The following are comments on Bill 779 relative to reforming the Qualifying Certificate program of the Guam Economic Development Authority. The comments contained are not all-inclusive and is subject to further amendment as more time is available for my review of the bill.

In our last meeting several valid points were brought out by the attendees of that forum. Leaving the tax implication to the last, I would like to express my concurrence with the majority in including hotels in the qualifying certificate program.

Guam is still nurturing an infant tourism economy. At present the only hotels receiving qualifying certificates are located in Tumon. To exclude the hotels now would only give those hotels an unfair advantage over those being proposed.

The only change that would produce the desired effect of bringing employment to Guam is to change the present requirement from the number of rooms to number of local hires. Base the amount of rebate on the total payroll paid to local employees.

This system of using number of local employees hired will assure Guam that the benefits of giving the qualifying certificate will be shared by the local population.

Let me now look at the specifics of the bill.

Section 2405: Eligibility defined

Hotels should definitely be included with number of local hired employees as the basis for rebates.

Improvements on real estate should not be eligible for rebate. I feel that such a venture should be covered under one of the eligibles such as hotels, Agriculture, etc. To keep this would open eligibility to almost any type of venture.

Foreign Sales Corporation by their nature are tax free under the income tax laws of Guam. To include them would be redundant.

SECTION 2408:

The inclusion of "Possession Corporation" is not correct in this context. Guam can never have a possession corporation. The possession corporation concept is for the United States. In order for Guam to have a possession corporation, Guam must have Possessions.

SECTION 2411:

If the concept of granting rebates is measured by the number of local employees, then this whole section would be unnecessary.

SECTION 2418:

This section should be eliminated. The benefits of the qualifying certificate should go to those who qualify and not to entities that rent or lease to them. This would give certificate holders authority to grant tax rebates to those they choose to do business with.

Abatement of Gross Receipts Tax should not be a part of taxes rebated since the tax is price sensitive rather than investment sensitive. In addition the abatement would only make the products of the certificate holder non-competative with other businesses that were not granted the certificate.

SECTION 2419:

Rebates should be allowable for different entities rather than corporation alone. Trust, partnerships and single proprietorship should also be eligible for the certificate. This may entail revamping this whole section to accommodate the other entities.

SECTION 2420:

This section may be contrary to the present Income Tax laws of Guam. Rebates are not granted by the code and are not considered refunds to allow them tax free status. The section, however, makes known the intent of the Legislature and does not create a law exempting rebates from gross income.

SECTION 2421:

This section should be amended to restrict dividends exclusions and sub-chapter s exclusion to those individuals who have been residents of Guam for at least five years.

This would prevent taxpayers from arbitrarily calling Guam their residence just to take advantage of the certificate. A person could conceivably rent an apartment or purchase a condominium and not live there and still call Guam his residence. A five year rule would eliminate such arbitrary action.

SECTION 2422:

The only objection to this section is the requirement that a return should be audited and rebates authorized within 180 days.

It is difficult to perform an audit each time a return is filed. The time limitation of 180 days is not enough time to perform an audit. What I suggest here is to eliminate the word "and audited" leaving the sentence to read "The Tax Commissioner of the Government of Guam shall immediately thereafter cause the return to be reviewed and if the rebate is found in order, shall cause the amount deposited to be returned to the taxpayer within one hundred eighty (180) days from the date of deposit."

If the return needs auditing it could be done after the rebate is authorized.

SECTION 2429:

The mechanism to use tax credit should be eliminated and a rebate be authorized. It is not certain if the Government of Guam can grant credits on the income tax laws. To prevent this bill from becoming In Organic, I suggest that a rebate of taxes replace the credit. Use the same mechanism in use for the qualifying certificate.



Honorable Edward J. Reyes  
Page 4

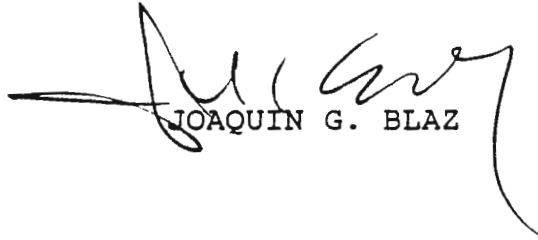
In addition, there should be a cap placed on the amounts of rebate. It is conceivable that the 10% of wages rebate would exceed the taxes due. This situation may arise in industries that are labor intensive.

To prevent this a cap of 50% of all taxes (i.e. GRT Income Tax and Real Property tax) be put in place to prevent rebates in excess of taxes paid.

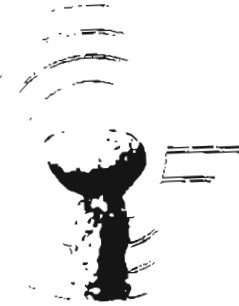
The above is my preliminary reaction to the bill. I will be reserving comments on the substitute bill that would replace Bill No. 779.

Thank you.

Sincerely,



JOAQUIN G. BLAZ



**GUAM CHAMBER OF COMMERCE  
PARTNERS IN PROGRESS**



August 1, 1989

Senator Edward D. Reyes  
Chairman  
Committee on Economic Development  
20th Guam Legislature  
109-A Chalan Santo Papa  
Agana, Guam 96910

Dear Mr. Chairman and Members of the Committee:

We thank you for the opportunity to participate in the Committee's second roundtable discussion on the CC Reform Act of 1989 (Bill 779). We would be happy to address questions the Committee may have on our enclosed comments on the bill.

Sincerely yours,

JOE ARNETT  
Chairman  
Taxation Committee

Enclosure



## **GUAM CHAMBER OF COMMERCE PARTNERS IN PROGRESS**

COMMENTS ON QC REFORM ACT OF 1989 (BILL 779)  
AUGUST 1, 1989

### I. COMMENTS/OVERALL

- From a practical standpoint, the Chamber favors the notion that the GEDA board be given reasonable administrative flexibility which will enable the Agency to respond to changes in economic conditions on a timely basis.
- QC Reform legislation should be based on a rational long-term plan on infrastructure development.

### II. COMMENTS ON CERTAIN PROVISIONS OF BILL 779

#### A. Exclusion of Hotels from QC Program

The Chamber recommends that the Committee reconsider the exclusion of hotels from the QC Program. We propose that the GEDA board be given more discretion to issue QCs to hotels based on a rate of return calculation and/or that QCs be issued to hotels which locate within a Guam hotel development zone.

#### B. Section 2405: Activity Requirements

Section 2405 of the measure proposes that eligible activities must meet all of the criteria listed in the bill (page 4, line 14). It is doubtful that the service industry or any business for that matter will be able to meet all of the requirements. We recommend that language in the current statute be retained which requires that eligible activities meet one or more of the criteria.

#### C. Section 2405: Private Placement verses Public issue of Stock

The Chamber favors equity participation by local residents in any private development here. Towards this end, we recommend pension plans, employee stock ownership plans and/or private placement as alternatives to public issues of stock for the following reasons:

1. Public stock issues are costly when you consider that each issue would involve anywhere between \$250,000 to \$450,000 in legal fees alone. These costs would affect the sale price of the stocks, thereby making them affordable to only a few;
2. Private placements with the option of offering various classes of stock would not be costly and thus result in a better distribution of wealth to island participants; and

3. Pension plans and employee stock ownership plans would encourage greater equity participation of local residents in private development.

C. Section 2410: Safeguards to Preclude Abuse (pg. 7, line 12)

The Chamber favors the inclusion of safeguards to preclude abuse of the QC Program.

D. Section 2411: Employment Requirements (pg. 8, line 8)

The employment provisions in Section 2411 require modification to insure that they are responsive to labor shortage situations such as that being experienced today. We recommend that language in the current statute be included in Section 2411 to grant QC recipients temporary exemptions tied to (1) QC holders making good faith efforts to hire U. S. citizens and permanent residents, and (2) the availability of such individuals.

E. Section 2429: Special Qualifying Certificates for Resident-Owned Small Businesses (pg. 19, line 24)

The Chamber supports the general intent of Special Qualifying Certificates for resident-owned small businesses. We note, however, that such QCs would be restricted to new businesses and does not include existing small firms which wish to expand their operations.



# GUAM HOTEL & RESTAURANT ASSOCIATION

20 July 1989



Senator Edward D. Reyes  
Chairman, Committee on Economic Development  
20th Guam Legislature  
Ada Commercial & Professional Center  
199-A Chalan Santo Papa  
Agana, Guam 96910

Dear Senator Reyes,

In a recent board meeting of the Guam Hotel & Restaurant Association, the following points were raised by its members:

## I. OVERALL COMMENTS

We welcome the endeavour to have the condition of the Q.C. program of G.E.D.A. updated, however feel that this should be part of the long overdue masterplan addressing the future long range planning process.

It is also proposed that within set guidelines and controls the G.E.D.A. board should be given flexibility to respond to changes in economic conditions without delay.

## II. COMMENTS IN REGARDS TO CERTAIN PROVISIONS

### 1. Exclusion of hotel projects

This may be discriminatory and also make it difficult in the future should the people of Guam wish to have investment placed which would allow further marketing diversification and/or in areas which are today not yet developed.

It is true, however, that extreme care should be exercised in deciding further certificates after all the new hotels have been built for which certificates have been issued or applications are presently reviewed.

### 2. Section 2405 - Activity Requirements

It is impossible for the hotel industry to observe all criteria - particularly not point 2 - replacement of imports.

### 3. Section 2411 - Employment and Payroll

It is doubtful based on present experience that companies in the future will meet the 85 and 90% requirements of employees to be U.S. citizens or permanent residents.



# GUAM HOTEL & RESTAURANT ASSOCIATION

Senator Edward D. Reyes  
20 July 1989

Page 2

Present and future labor shortages will impact wages and benefits and we therefore do not foresee the need to have payroll percentages applied.

4. Section 2412 - Participation in Apprenticeship Training Program

Reference is made to G.C.C. apprenticeship program and applicants are to commit to these programs, which is fully supported by the Association. However, the present programs are totally insufficient in quantity and quality.

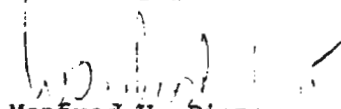
The Education Committees of the Association is working with members of G.C.C. to improve this situation. There is definitely a need for additional funds to hire professionals of the industry as teachers and also build a proper training facility, where practical skills-related training can be carried out - a small hotel with adequate restaurant and bar and kitchen facility which could be operated by students under the G.C.C. leadership as a nonprofit organization.

It is noted that no reference is made to the role of U.O.G. which should play a part in educating future and present management staff.

The committee may wish to consider that applicants are asked to commit a specific amount per employee or percentage of cash payroll to training and education of its employees.

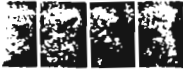
As pointed out in my letter of 18 July 1989, copies of your proposal have been sent to the full membership of our Association and any additional comments will be communicated once available.

Sincerely yours,



Manfred H. Pieper  
President

MHP/taj



# Pickens Borja & Filush, P.C.

**Certified Public Accountants**

Guam International Trade Center  
590 South Marine Drive, Suite 619  
Tamuning, Guam M.I. 96911



Telephone 671 646 6987  
Telex 721 6618  
Telecopier 671 646 6774

July 20, 1989

R

Senator Edward D. Reyes  
Chairman, Committee on Economic Development  
20th Guam Legislature  
Ada Commercial & Professional Center  
199-A Chalan Santo Papa  
Agana, Guam 96910

CONFIRMATION COPY

**VIA FACSIMILE (671) 477-4048**

Dear Senator Reyes:

As Al Pickens will be off-island on August 1, I will attend the public hearing on Bill 779. I have been working with the Chamber of Commerce as a member of the taxation committee to formulate the Chamber's position.

We commend your efforts to stimulate Guam's economy by supporting the QC program and introducing this legislation to amend the program to make it more viable. It should be noted that GEDA has already taken action administratively to control the benefits granted to hotels. With the current labor shortage, which from every indication will become more acute, we believe GEDA must be granted flexibility to grant waivers to employee quotas. Comments regarding specific sections of Bill 779 are as follows:

**§2405** - How will "service" industry meet the "activity" requirements? How will any business meet "all" requirements? Suggest we might replace "all of the following criteria" with "one or more of the following criteria."

Will a public issue of stock be required or is a private placement acceptable? A public issue may cost more than the funds to be raised. What about having two classes of stock, one of them being participating, non-voting. Alternatively, we suggest requiring pension/profit sharing plans, or employee stock ownership plans in lieu of a public offering.

**§2411** - This section should include a provision for waiving mandatory training programs where local management meets the percentage requirements without such program.

Local employees may not be available to fill the positions. GEDA should be given flexibility to address such a situation. Alternatives to be considered are a good faith effort to hire or allowing the Department of Labor to grant relief upon finding United States citizens or permanent residents are unavailable to fill these positions. This requirement might also be tied to Guam's unemployment rate.

 Pickens Borja & Filush, P.C.

Senator Edward D. Reyes  
Chairman, Committee on Economic Development  
20th Guam Legislature  
July 20, 1989  
Page 2

Shipment of household goods and transportation of new employees to and from Guam should not be included as a part of the base payroll expenditures. These are not payroll items.

§2419 - There is a conflict between the intent of this section and the outcome of the tax rebate calculation caused by the phrase "...whichever is greater,..."

§2422 - Interest should be paid to the taxpayer if Government fails to rebate appropriate amount within 180 days.

§2429 - Suggest this section be modified to cover the expansion of an existing business as well as the establishment of new business.

We appreciate the opportunity to testify on this important legislation to enhance the economic climate of our Territory. When we may be of assistance, please call me.

Very truly yours,

PICKENS BORJA & FILUSH, P.C.



Judith K. Borja, Partner

JKB:CAM

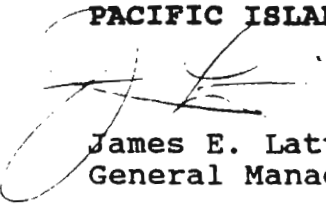


2  
Senator Edward Reyes  
July 6, 1989

Senator Reyes, I would enjoy further dialogue with you and your colleagues on the very important issue of maximizing local benefits from the Qualifying Certificate program.

Sincerely,

**PACIFIC ISLANDS CLUB - GUAM**



James E. Lattin  
General Manager

/cil  
JL/LETTERS/QCP

pc: Senator Elizabeth Arriola  
JV  
GJG  
M. Pieper



July 6, 1989

Senator Edward Reyes  
163 Chalan Santo Papa  
Agana, Guam 96910

Dear Senator Reyes:

I am very sorry our Guam Hotel & Restaurant Association did not inform me prior to July 5 of the important discussion session you invited Hotel Association members to attend on June 26 to review the important proposed legislation to revise the Guam Economic Development Authority Qualifying Certificate program.

I have thoroughly reviewed the proposed bill and find many of its elements very positive steps forward to insure that the U.S. citizens of Guam receive maximum benefit from the Qualifying Certificate program.

Key issues from my viewpoint are:

1. **Employee Quotas:** Excellent as long as consideration is given to the ever-shrinking pool of available Guam U.S. resident potential employees. This shortage of employee pool will dramatically increase with the growth of new hotels in the next three years. Qualifying Certificate holders should not be penalized if insufficient resident candidates for employment are not available.
2. **Management Training Programs:** Another excellent concept to which **Pacific Islands Club** is fully committed. I must emphasize, however, that the Apprenticeship Training Program with Guam Community College (which technically was dissolved in April 1989) requires considerable "fine-tuning" so that the type of vocational OJT training and corresponding academic work truly represent the job types available in the applicable industry. Candidly, the program as it has been applied does not truly represent the realities of the tourism industry. I have had several conversations with John Cruz and Suzanne Billings of G.C.C. on this topic and have volunteered my time to make the Apprenticeship Program more viable.

TWENTIETH GUAM LEGISLATURE  
1990 (SECOND) Regular Session

Introduced

Bill No.

1358(13)

APR 23 '90

Introduced By:

E. D. Reyes *EDR*  
J. P. Aguon *JPA*  
E. P. Arriola *EPA*  
M. Z. Bordallo  
H. D. Dierking  
C. T. C. Gutierrez  
P. C. Lujan  
G. Mailloux  
T. S. Nelson  
D. Parkinson  
F. J. A. Quitugua  
J. T. San Agustin  
F. R. Santos  
J. G. Bamba  
D. F. Brooks  
E. R. Duenas  
E. M. Espaldon  
M. D. A. Manibusan  
M. C. Ruth  
T. V. C Tanaka  
A. R. Unpingco

AN ACT TO AMEND ARTICLE 4 OF CHAPTER 2, TITLE 12, GUAM CODE ANNOTATED, TO REVISE THE QUALIFYING CERTIFICATE PROGRAM OF THE GUAM ECONOMIC DEVELOPMENT AUTHORITY.

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

2 Section 1. A new §2400.1 is added to Article 4, Chapter 2, Title 12,  
3 Guam Code Annotated to read:

4 "§2400.1. Legislative Findings and Intent. The  
5 Legislature recognizes that the Qualifying Certificate program  
6 of the Guam Economic Development Authority ("the Authority") was  
7 conceived as an economic incentive tool to entice investors into  
8 Guam. In use for over two decades, it has had substantial  
9 positive impact upon the economic development of the territory,  
10 mainly in the tourist industry.

1           The Legislature finds that, today, new hotel  
2 construction, expansion of existing ones, and development of  
3 resorts are occurring in response to demands for additional  
4 lodging due to the ever-increasing numbers of visitors to Guam  
5 and that government assistance in the form of tax rebate and  
6 abatement benefits requires periodic assessment of the growth  
7 in this section of Guam's business community.

8           Investments by foreign entrepreneurs continue to be major  
9 catalysts for Guam's financial growth. The bulk of their  
10 interests, however, lies in large-scale projects that mainly  
11 benefit other off-island investors and transients mostly and  
12 which also puts undue pressure on the island's infrastructure to  
13 expand and meet their needs, depleting rapidly Guam's finite  
14 essential resources such as people, land and water. While the  
15 territory acknowledges their contributions to the island's  
16 welfare in terms of taxes, construction, and employment  
17 opportunities on the low end of the pay scale, meaningful  
18 participation by people who live and work in Guam, particularly  
19 in terms of ownership and joint ventures, has been sorely  
20 lacking.

21           It is the Legislature's intent to restructure the  
22 Qualifying Certificate program to assist U.S. citizens and  
23 permanent resident entrepreneurs in establishing or expanding  
24 industries and services, including those supportive of hotels  
25 and their guests, to diversify the island economy, enrich its  
26 growth, and enhance the quality of life in Guam. The  
27 Legislature affirms that the program must be expanded to attract  
28 investments in order to diversify Guam's economy.

29 Section 2. A new §2400 is added to Article 4, Chapter 2, Title

1 12, Guam Code Annotated to read:

2 "§2400. Short Title. This Article shall be known and may be  
3 cited as the "QC Reform Act of 1990".

4 Section 3. §2401 of Article 4, Chapter 2, Title 12, Guam Code  
5 Annotated is amended to read:

6 "§2401. Qualifying Certificate, Defined. A Qualifying  
7 Certificate is [an instrument] a contract valid for a given period of  
8 time, [issued] executed by the Governor upon recommendation of the  
9 Board, on behalf of the government of Guam and the [to a]  
10 Beneficiary, who has qualified for certain tax rebates and abatements  
11 [under this Article.] in return for meeting certain employment,  
12 equity, and other requirements as described in this Article."

13 Section 4. §2403 of Article 4, Chapter 2, Title 12, Guam Code  
14 Annotated is amended to read:

15 "§2403. Eligibility, Defined. The following shall be deemed to  
16 be a business eligible for consideration by the [Corporation]  
17 Authority for issuance of a Qualifying Certificate.

18 Any trust, partnership, sole proprietorship, or corporation as  
19 defined in §2405, engaged, or about to engage in (1) agriculture (not  
20 exceeding \$2,000,000 in current and fixed assets; this \$2,000,000  
21 limit shall not apply to U.S. citizens and legal residents residing  
22 on Guam), aquaculture, mariculture, manufacturing (to include hand  
23 and machine manufacturing), commercial fishing, services, or  
24 improvement of real property for purposes which are specifically  
25 determined by the Corporation to be beneficial, desirable, and  
26 necessary [to] for the economic development of Guam, or captive  
27 insurance business as permitted by Chapter VII, Title XXXIX,  
28 Government Code; and (2) which activity meets one (1) or more of the  
29 following criteria:

- 1 a. Creation of new employment;
- 2 b. Replacement of imports;
- 3 c. Reduction of consumer prices;
- 4 d. Creation of vitally needed facilities;
- 5 e. Insurance providing for or facilitating the provision of
- 6 health care services to the people of Guam.
- 7 f. Procurement of services or products supplied by Guam-
- 8 licensed vendors, if total cost does not exceed one hundred
- 9 ten percent (110%) of those same services or products
- 10 available from other vendors.

11 [In addition, such otherwise eligible applicants must meet the  
12 minimum financial requirements:

	<u>MINIMUM INVESTMENT</u>
14 Agriculture	\$ 15,000.00
15 Watch Manufacturing	50,000.00
16 Other Manufacturing	25,000.00
17 Commercial Fishing	25,000.00
18 Services	25,000.00
19 Hotels and Motels	1,000,000.00
20 Other Tourist Facilities	25,000.00
21 Industrial Facilities	100,000.00
22 Captive Insurance Companies	100,000.00]

23 The Board [may] shall promulgate [by] regulations [develop such  
24 further] containing standards, [and] criteria, and measures of  
25 investments by the QC applicant and benefits for the people of Guam  
26 [for the issuance of] in issuing Qualifying Certificates [as it deems  
27 necessary]. Such regulations shall include preference to be extended  
28 to applicants which have fifty-one percent (51%) or greater portion  
29 of local investment, as controlled by bona fide Guam resident U.S.

1 citizens or permanent residents. The Board shall recognize and take  
2 into consideration any and all provisions of law and regulations  
3 administered by other government entities that have review or  
4 approval authority over the eligible activity. Such regulations  
5 shall be adopted [only after public hearing thereon] in the manner  
6 prescribed by [law,] the Administrative Adjudication Law. [and then  
7 transmitted to the Governor of Guam, and upon his approval and  
8 promulgation, shall have the force and effect of law.]"

9 Section 5. A new §2403.2 is added to Article 4, Chapter 2, Title 12,  
10 Guam Code Annotated to read:

11 "§2403.2. Hotel/Motel Eligibility. Eligibility of  
12 hotels/motels to apply for a Qualifying Certificate shall extend to  
13 a business incorporated and licensed to do business in Guam, is  
14 reputable and financially secure in standing (principals/firm), and  
15 provides evidence to the Authority of cash outlay, option to  
16 purchase, or lease or other explicit commitment to use property for  
17 a planned hotel/motel, and of its agreement to publicly offer up to  
18 ten percent (10%) of its voting stock to the residents of Guam at the  
19 original offered price."

20 Section 6. A new §2403.3 is added to Article 4, Chapter 2, Title 12,  
21 Guam Code Annotated to read:

22 "§2403.3 Hotel QC Moratorium. The Authority shall not issue  
23 rules or regulations imposing or lifting any moratorium on hotel  
24 eligibility to apply for, and receive, a Qualifying Certificate  
25 without the approval of the Legislature by statute."

26 Section 7. §2404 of Article 4, Chapter 12, Title 12, Guam Code  
27 Annotated is amended to read:

28 "§2404. Nature of and Benefits. A Qualifying Certificate, once  
29 issued, shall be a contract between the government of Guam and the

1 Beneficiary, and the tax rebates and abatements enumerated in the  
2 Certificate may not be curtailed, limited or impaired by any  
3 subsequent act, except as provided herein. Once issued and unless  
4 suspended, rescinded or revoked, a Qualifying Certificate shall  
5 constitute conclusive evidence of entitlement to the tax rebates and  
6 abatements stated on its face."

7 Section 8. §2405 of Article 4, Chapter 2, Title 12, Guam Code  
8 Annotated is amended to read:

9 "§2405. Qualifying Certificate, Issuance of. A Qualifying  
10 Certificate may be issued by the Governor of Guam upon the  
11 recommendation of the Board to any applicant [corporation] that  
12 proposes to engage in an eligible business, or to any applicant  
13 stockholder of such corporation holding a Qualifying Certificate, and  
14 said corporation may be either a Guam corporation or a duly organized  
15 "possessions corporation" limited to doing business in Guam, as such  
16 "possessions corporation" is defined under Federal income tax laws  
17 and regulations."

18 Section 9. §2406 of Article 4, Chapter 2, Title 12, Guam Code  
19 Annotated is amended to read:

20 "§2406. Same: Grounds for Suspension, Rescission, or  
21 Revocation. A Qualifying Certificate may be suspended, rescinded or  
22 revoked by the Governor of Guam upon the recommendation of the Board  
23 for the following reasons:

- 24 1. Fraud or misrepresentation of any material allegation in  
25 the application for such Certificate.
- 26 2. Failure to comply with any conditions and obligations  
27 stated in the Certificate after having been notified by the  
28 Authority in writing of such failure to comply and after  
29 having been given by the [Corporation] Authority a



1 reasonable period of time within which to correct such  
2 failure.

3 3. The filing by the Beneficiary or against the Beneficiary  
4 of a petition for adjudication of bankruptcy as to said  
5 Beneficiary wherein the petition has been granted.

6 4. A finding by the Attorney General of the Territory that a  
7 corporate Beneficiary has been dissolved.

8 5. Violation of any provision of this Article.

9 No recommendation for suspension, rescission or revocation shall  
10 be made by the Board except after a hearing thereon pursuant to the  
11 provisions of the Administrative Adjudication Law."

12 Section 10. §2407 of Article 4, Chapter 2, Title 12, Guam Code  
13 Annotated is amended to read:

14 "§2407. Disqualifications. A corporate applicant for a  
15 Qualifying Certificate shall, as a condition precedent to [a]  
16 qualifying for the same, satisfy the [Corporation] Authority in  
17 writing that it shall not transfer, move, relocate or otherwise  
18 remove any of its existing business plants to Guam from the  
19 continental United States or any of its territories or possessions.  
20 [Neither shall a] A Qualifying Certificate shall not be issued to [a  
21 corporation] any applicant who has not first obtained a license to do  
22 business in Guam.

23 No officer [and] or member of the Board or their spouses and no  
24 corporation or any other legal entity in which an officer or member  
25 of the Board or their spouses has any financial interest may qualify  
26 for a Qualifying Certificate.

27 Neither shall any of the following, during their term of  
28 office[, ] and for a period of one (1) year after their resignation,  
29 termination or completion of their term of office, directly or

1 indirectly, qualify for a Qualifying Certificate:

- 2 (a) Members of the [Guam] Legislature[;] and their spouses;  
3 (b) Employees of the [Executive Department of the Government]  
4 Executive Branch of the government of Guam and their  
5 spouses from the level of first assistant to the department  
6 director and up;  
7 (c) Judges of the various courts of Guam and their spouses.

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

10 Section 11. §2408 of Article 4, Chapter 2, Title 12, Guam Code  
11 Annotated is amended to read:

12 "§2408. Employment of United States Citizens and Permanent  
13 Residents. A [corporate] Qualifying Certificate shall not be issued  
14 [unless the] to an applicant which is investing One Million Dollars  
15 (\$1,000,000) or more unless such applicant commits itself at the time  
16 of application for such a Certificate that a management training  
17 program shall be established and a copy of that written training  
18 program shall be delivered to the Authority within the number of days  
19 prescribed in regulations by the Authority so that within a  
20 reasonable period of time residents of Guam who are United States  
21 citizens or permanent residents of the United States and who are  
22 otherwise qualified would replace [the manager] any management  
23 personnel or other officers of an industry or business granted a  
24 [Corporate] Qualifying Certificate who are not United States citizens  
25 or permanent residents of the United States, and that it shall at all  
26 times employ a total employment force of not less than the minimum  
27 number established by the [Corporation] Authority, at least seventy-  
28 five percent (75%) of which shall be United States citizens or  
29 permanent residents of the United States; provided, however, that for

1 good cause, temporary exemptions hereto, for specific and limited  
2 periods of time, may be granted by the [Corporation] Authority, such  
3 temporary exemptions, to be conditioned upon a training program,  
4 approved by the [Corporation] Authority, designed to replace  
5 employees who are not either United States citizens or permanent  
6 residents. In addition, after the expiration of three-fourths (3/4)  
7 of the period of the Qualifying Certificate or ten (10) years,  
8 whichever is sooner, the possessor of the Qualifying Certificate must  
9 satisfy the seventy-five percent (75%) employment requirement at both  
10 [labor and] management and non-management levels. Hotel/motel  
11 management staff shall be comprised of a minimum of fifty percent  
12 (50%) United States citizens living on Guam or permanent alien  
13 residents of Guam. The number of U.S. citizens or permanent resident  
14 employees at the management level shall escalate from a minimum of  
15 ten percent (10%) of the employees by the end of the second year to  
16 a minimum of fifty percent (50%) of the employees by the end of the  
17 fifth year of operation. The [Corporation] Authority shall be the  
18 sole judge of what constitutes [labor or] management and non-  
19 management levels of employment but it shall seek advice from the  
20 University of Guam, the Guam Community College, the Department of  
21 Labor, the Department of Education, and such other government  
22 agencies as are necessary to fulfill the intent of this Section. The  
23 [Corporation] Authority shall establish, by regulations adopted  
24 pursuant to the Administrative Adjudication Law, requirements for  
25 practical and equitable training programs as guidance for the  
26 applicant and the reasonable minimum number of persons to be employed  
27 on a continuing basis for each [corporate] applicant in accordance  
28 with the specific and normal requirements of the business involved.  
29 Such training program and minimum employment requirement shall be

1 made a condition appearing on the face of the applicable [corporate]  
2 Qualifying Certificate. The Authority shall annually report to the  
3 Legislature the titles and compensation of all trainees including  
4 those placed in management levels who are employed by beneficiaries  
5 of qualifying certificates. No resident employee of an industry or  
6 business granted a [corporate] Qualifying Certificate shall be paid  
7 less than the prevailing wage rates nor shall he be laid off his job  
8 nor have his workweek reduced to less than forty (40) hours for the  
9 sole purpose of creating employment for non-resident workers. For  
10 the purpose of this Section, "prevailing wage rates" as determined by  
11 the Department of Labor shall be used as a guide. The Department of  
12 Labor is hereby empowered to investigate any complaint filed pursuant  
13 to this Section and to settle the same by issuance of an appropriate  
14 order after notice and hearing pursuant to the provisions of the  
15 Administrative Adjudication Law. Any willful violation of this  
16 Section, or of any order issued hereunder, may be cause for a  
17 Beneficiary of a [corporate] Qualifying Certificate to forfeit the  
18 benefits thereof."

19 Section 12. §2408.1 of Article 4, Chapter 2, Title 12, Guam Code  
20 Annotated is amended to read:

21 "§2408.1. Participation in the Apprenticeship Training Program.  
22 A [Corporate] Qualifying Certificate shall not be issued to an  
23 applicant which operates a hotel or restaurant unless the  
24 applicant commits itself at the time of application for such a  
25 certificate to participate in the Hotel/Restaurant Industry  
26 Apprenticeship Program administered by the Guam Community  
27 College and to hire graduates of the apprenticeship program when  
28 vacancies exist."

29 Section 13. §2409 of Article 4, Chapter 2, Title 12, Guam Code

1 Annotated is amended to read:

2 "§2409. Qualifying Certificate Non-transferable. A Qualifying  
3 Certificate or the benefits thereunder may not be transferred or  
4 assigned without the written permission of the [Corporation]  
5 Authority. For the purposes of this Section, a transfer or  
6 assignment of benefits shall have occurred at any time there is a  
7 transfer of a majority of the voting stock of the Beneficiary,  
8 resulting in a change in the identity of the shareholders who control  
9 the Beneficiary."

10 Section 14. §2410 of Article 4, Chapter 2, Title 12, Guam Code  
11 Annotated is amended to read:

12 "§2410. Application for Qualifying Certificates. Applications  
13 for Qualifying Certificates shall be filed on forms prescribed and  
14 furnished by the Corporation. An [corporate] applicant must [agree  
15 to] furnish written monthly reports beginning thirty (30) days after  
16 the date of the issuance of the [corporate] Qualifying Certificate,  
17 said reports to include, but not limited to, financial data,  
18 employment data and payroll data. All such monthly reports shall be  
19 treated as confidential by the [Corporation] Authority."

20 Section 15. §2411 of Article 4, Chapter 2, Title 12, Guam Code  
21 Annotated is amended to read:

22 "§2411. Publications of All [Corporate] Applications for  
23 Qualifying Certificates. The [Corporation] Authority shall cause to  
24 be published at applicants' expense, in a Guam newspaper of general  
25 circulation, a brief resume of all [corporate] applications for  
26 Qualifying Certificates, said publication to be made [at least] no  
27 later than seven (7) days [before the same is considered by the  
28 Board] following submission of an application. The resume shall be  
29 in a form prescribed by the Board, and it shall include only the name

1 and address of applicant, a brief statement of the proposed  
2 investment, a brief summary of the tax rebates and abatements applied  
3 for, and the names and addresses of those who are investors at the  
4 time the application is submitted to the Board. Following the filing  
5 of the application in due form, payment of the prescribed fees and  
6 publication of the resume, the holding of a public hearing thereon is  
7 mandatory. The [Corporation] Board shall take all reasonable  
8 precautions in connection with such public hearing to avoid  
9 disclosure of proprietary secrets of the applicant. The Board may  
10 schedule additional public hearings as necessary. The Board meeting  
11 for approval of a Qualifying Certificate shall not be held on the  
12 same day as a public hearing on the Qualifying Certificate."

13 Section 16. Subsection 2405.1 is added to Article 4, Chapter 2,  
14 Title 12, Guam Code Annotated to read:

15 "§2405.1 Grace Period. After the Board's recommendation to the  
16 Governor, but prior to the issuance of the certificate, the Board  
17 shall conduct a public hearing after publication of thirty (30) days  
18 notice, at which hearing members of the public may appear to comment  
19 on such issuance."

20 Section 17. §2412 of Article 4, Chapter 2, Title 12, Guam Code  
21 Annotated is amended to read:

22 "§2412. Notice of Hearings on [Corporate] Applications. Notice  
23 of public hearings shall be published at applicants' expense in a  
24 local newspaper of general circulation not less than five (5) days  
25 prior to the scheduled hearing date."

26 Section 18. §2413 of Article 4, Chapter 2, Title 12, Guam Code  
27 Annotated is amended to read:

28 "§2413. Recommendations. All recommendations of the Board for  
29 issuance, modification, revocation [and] or suspension of Qualifying

1 Certificates shall be forwarded to the Governor of Guam, together  
2 with a memorandum of the Board's findings in support of its  
3 recommendations. [Any recommendations of the Board not approved or  
4 disapproved by t] The Governor of Guam, within sixty (60) calendar  
5 days from his receipt thereof, shall either approve or disapprove the  
6 Board's recommendation. [shall be deemed approved as of the sixty-  
7 first (61st) day from the Governor's receipt thereof.]"

8 Section 19. §2414 of Article 4, Chapter 2, Title 12, Guam Code  
9 Annotated is amended to read:

10 "§2414. Tax Abatement. The following tax abatements are hereby  
11 established and declared, for which Qualifying Certificates may be  
12 issued:

13 1. All taxes now levied by virtue of [Chapter IV, Title XX of  
14 the Government Code of Guam, known as Real Property Tax,]  
15 Chapter 24, Title 11, Guam Code Annotated (known as the  
16 Real Property Tax Law) shall be abated for a period up to  
17 ten (10) years from date of issuance of Qualifying  
18 Certificate therefor, and as long as said Certificate is in  
19 force and effect, provided that the real property on which  
20 said tax is assessed is utilized for a tax exempt business  
21 that has qualified and continues to qualify for a  
22 Qualifying Certificate. The sum equal to the abated  
23 amounts must be invested in Guam for a period of at least  
24 five (5) years. The Beneficiary shall provide evidence to  
25 the Authority of such investment."

26 2. All taxes now levied on income derived from the lease of  
27 land, buildings, machinery [and] or equipment by virtue of  
28 [Subchapter B, Title XX of the Government Code of Guam]  
29 Article 2, Chapter 26, Title 11, Guam Code Annotated (known

1 as Gross Receipts Taxes), shall be abated for a period up  
2 to ten (10) years from date of issuance of a Qualifying  
3 Certificate therefor, and as long as said certificate is in  
4 force and effect, provided that said income has been  
5 derived from the lease of land, building, machinery [and]  
6 or equipment to a tax exempt business that has qualified  
7 and continues to qualify for a Qualifying Certificate.

8 3. All taxes now levied by virtue of [Subchapter B, Chapter  
9 VI, Title XX of the Government Code of Guam, known as the  
10 gross receipts tax] Article 2, Chapter 26, Title 11, Guam  
11 Code Annotated (known as Gross Receipts Taxes), shall be  
12 abated for a period up to ten (10) years from date of  
13 issuance of a Qualifying Certificate therefor, and as long  
14 as said certificate is in force and effect, provided that  
15 the gross receipts on which such tax shall be abated have  
16 been derived from the sale of alcoholic beverages  
17 manufactured in Guam by the manufacturer thereof and that  
18 such manufacturer has qualified and continues to qualify  
19 for a Qualifying Certificate covering such manufacture.

20 4. All taxes levied or paid by virtue of [Subchapter B,  
21 Chapter VI, Title XX of the Government Code of Guam, known  
22 as the Gross Receipts Tax] Article 2, Chapter 26, Title 11,  
23 Guam Code Annotated (known as Gross Receipts Taxes), shall  
24 be abated or rebated for those gross receipts derived from  
25 the sale of petroleum products manufactured in Guam and  
26 sold to agencies or instrumentalities of the United States  
27 of America, or agencies or instrumentalities of the  
28 government of Guam by the manufacturer thereof, provided  
29 that a Qualifying Certificate for such a tax abatement is



1 granted pursuant to the provisions of this Subparagraph,  
2 and further provided that at any such time that a  
3 manufacturer possessing such a Qualifying Certificate no  
4 longer continues to qualify for the certificate, the taxes  
5 shall no longer be abated or rebated. A Qualifying  
6 Certificate may grant a tax abatement or rebatement for up  
7 to ten (10) years period commencing with the date of  
8 initial commercial production of petroleum products by the  
9 manufacturer.

10 5. All taxes now levied by virtue of §43714, Chapter VII,  
11 Title XXXIX of the Government Code shall be abated for a  
12 period of up to ten (10) years from the date of issuance of  
13 the Qualifying Certificate therefor and as long as said  
14 certificate is in force and effect, provided that said  
15 premiums are collected by a captive insurance company  
16 licensed under Chapter VII of Title XXXIX that has  
17 qualified and continues to qualify for a Qualifying  
18 Certificate."

19 Section 20. §2415 of Article 4, Chapter 2, Title 12, Guam Code  
20 Annotated is amended to read:

21 "§2415. [Corporate] Income Tax Rebate. A rebate of up to  
22 seventy-five percent (75%) of all [corporate] income tax payable to  
23 the government of Guam is hereby established and declared, for  
24 activities for which a Qualifying Certificate may be issued for (a),  
25 a period not exceeding a total of twenty (20) consecutive years from  
26 [date of issuance] the effective date of a Qualifying Certificate  
27 therefor [and the] or (b), the date of recouping of the amount of  
28 initial and subsequent capital invested, up to Thirty Million Dollars  
29 (\$30,000,000), whichever occurs first. The percentage of rebate may

1 be made variable by the Board so as to permit higher or lower  
2 percentages in earlier or later years of the period. In determining  
3 the periods up to twenty (20) years and the percentages up to  
4 seventy-five percent (75%) and capital investment, the Board shall  
5 take into consideration the financial risks involved in the  
6 undertaking as well as the [importance to the economy of] impact on  
7 the socio-economic development of Guam by the proposed investment.  
8 For the purposes of this Section, the term "income tax payable" shall  
9 mean income taxes applicable to [corporate] earnings occurring on and  
10 subsequent to the [date of issuance] effective date of the applicable  
11 Qualifying Certificate. The Director of Revenue and Taxation of the  
12 government of Guam shall have authority to determine any prorations  
13 of rebates necessary because of taxable years occurring within the  
14 life of the applicable Qualifying Certificate which consist of less  
15 than a full twelve (12) months period. All rebated amounts must be  
16 invested in Guam for a period of at least five (5) years. The  
17 Beneficiary shall provide evidence to the Authority of such  
18 investment."

19 Section 21. §2417 of Article 4, Chapter 2, Title 12, Guam Code  
20 Annotated is amended to read:

21 "§2417. Income Tax Rebate on Dividends. A rebate of up to  
22 seventy-five percent (75%) of all corporate income tax on dividends  
23 paid by a Corporate Beneficiary is hereby established and declared,  
24 for which a Qualifying Certificate may be issued. [for a period up to  
25 five (5) consecutive years which period may be any portion of the  
26 effective period authorized for the controlling corporate income tax  
27 Qualifying Certificate issued to the corporation declaring the  
28 dividends.] The shareholders of a corporate Beneficiary may be  
29 granted a rebate of up to seventy-five percent (75%) of the income

1 tax due for dividends paid by the Beneficiary from its current year's  
2 earnings derived only from the activities identified in the  
3 Qualifying Certificate and only for a period of up to five (5) years.

4 In case of a corporation that has elected to be taxed as a small  
5 business corporation commonly known as a "Subchapter S Corporation,"  
6 said income tax rebate shall be passed on to its stockholders in the  
7 same proportion as their stock interest in the tax-exempt  
8 corporation.

9 In the case of a stockholder of a Qualifying Corporation not  
10 qualifying as a small business corporation, the income tax rebate  
11 herein provided shall be applicable to the dividend income received  
12 by the stockholder from the tax-exempt corporation."

13 Section 22. §2419 of Article 4, Chapter 2, Title 12, Guam Code  
14 Annotated is amended to read:

15 "§2419. Procedure to Claim Abated and Rebated Taxes. A  
16 certified true copy of the corresponding Qualifying Certificate, and  
17 a certificate of compliance issued, by the [Corporation] Authority  
18 should be attached to the Beneficiary's tax return when filing each  
19 return.

20 When the return for the abated tax is accompanied by a  
21 corresponding Qualifying Certificate and a certificate of compliance,  
22 the actual payment of the tax in question to the Government shall not  
23 be required, and upon [audit and] review of the tax return, the Tax  
24 Commissioner of the government of Guam shall, within one hundred  
25 twenty (120) days from receipt of said tax return, furnish the  
26 taxpayer a certification confirming the nature and amount of the tax  
27 abated.

28 In the case of an income tax rebate, the amount of tax due prior  
29 to rebate shall be deposited with the government of Guam as

1 prescribed by the Territorial Income Tax Law. [where the taxpayer's  
2 tax return is accompanied by a corresponding Qualifying Certificate,  
3 the amount of tax due prior to rebate shall be deposited with the  
4 Government at the time of filing the income tax return.] When the  
5 return for the tax which may be subject to rebate is accompanied by  
6 a corresponding Qualifying Certificate and a certificate of  
7 compliance, [T]the Tax Commissioner of the government of Guam shall  
8 immediately thereafter cause the return to be reviewed and audited,  
9 and if the rebate is found in order, shall cause the amount deposited  
10 to be returned to the taxpayer within one hundred eighty (180) days  
11 from date of [receipt] filing of the income tax return."

12 Section 23. §2421 of Article 4, Chapter 2, Title 12, Guam Code  
13 Annotated is amended to read:

14 "§2421. Tax Redeterminations. In the case of any Beneficiary  
15 who, in accordance with the applicable laws of the territory of Guam,  
16 shall have applied for and been granted a redetermination of tax  
17 liability or taxes payable or in the case of a redetermination of tax  
18 liability made by the Department of Revenue and Taxation, the amount  
19 of abated or rebated taxes determined for such Beneficiary for the  
20 taxable years affected shall be accordingly adjusted by the Director  
21 of Administration and said Beneficiary shall be required to pay the  
22 balance due said taxable years, if any, together with interest at the  
23 rate [of six percent (6%)] currently assessed by the government of  
24 Guam per annum from the date the Beneficiary realized the abatement  
25 or rebate benefit; provided, that said balance due may be offset or  
26 credited against any tax refund due to the Beneficiary."

27 Section 24. §2424 of Article 4, Chapter 2, Title 12, Guam Code  
28 Annotated is amended to read:

29 "§2424. Fees. Upon the effective date of this Act and until

1 modified pursuant to 12 GCA §2425, the following fees shall be  
 2 assessed against each [corporate] applicant and [corporate] recipient  
 3 of a Qualifying Certificate:

4 ANNUAL SURVEILLANCE

	<u>FILING FEE</u>	<u>FEE</u>
6 Agriculture, Aquaculture, 7 and Mariculture	\$ 50	\$[1,000] <u>250</u>
8 [Watch] <u>Machine</u> Manufacturing [250]	<u>500</u>	1,000
9 [Other] <u>Home</u> Manufacturing	<u>-0-</u>	<u>-0-</u>
10 Commercial Fishing	[50] <u>150</u>	1,000
11 Services	[250] <u>750</u>	1,000
12 [Hotels and Motels	500	1,000]
13 [Other] Tourist Facilities	[500] <u>750</u>	1,000
14 <u>Motels</u>		
15 <u>Under construction</u>	<u>750</u>	<u>1,000</u>
16 <u>In operation</u>	<u>750</u>	<u>\$15 per room</u>
17 <u>Hotels</u>		
18 <u>Under construction</u>	<u>1,000</u>	<u>1,000</u>
19 <u>In operation</u>	<u>1,000</u>	<u>\$25 per room</u>
20 Industrial Facilities	[500] <u>750</u>	1,000"

21 Section 25. §2425 of Article 4, Chapter 2, Title 12, Guam Code  
 22 Annotated is amended to read:

23 "§2425. Periodic Adjustment of Fees. The Board is authorized  
 24 to adjust the fees listed in §2424 of this Article on an annual  
 25 basis, at the beginning of each calendar year starting with calendar  
 26 year 19[88]91, upon demonstration to the Board by the Administrator  
 27 that the cost of performing the services covered by the fees is  
 28 greater than the amount of the fees. Fee changes shall be made  
 29 according to the provisions of the Administrative Adjudication Law."