

Territory of Guam
Territorio Guam

OFFICE OF THE GOVERNOR
LESIANAN EMANGALATH
AGANA GUAM, GUM

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OFFICE OF THE SPEAKER
DATE: 3/3/94
TIME: 4:55
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MAR 03 1994

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

LEGISLATIVE COUNCIL
[Signature]

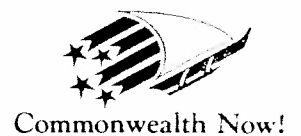
Dear Mr. Speaker:

Transmitted herewith is Bill No. 868 which I have signed into law this date as
Public Law 22-81.

Sincerely yours,

[Signature]
JOSEPH F. ADA
Governor of Guam
220556

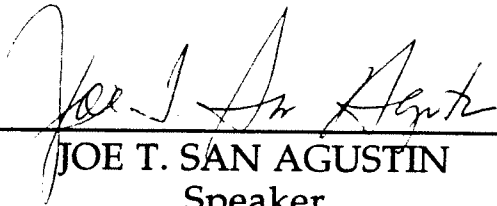
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TWENTY-SECOND GUAM LEGISLATURE
1994 (SECOND) Regular Session

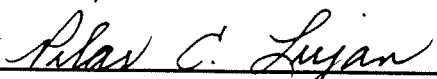
CERTIFICATION OF PASSAGE OF AN ACT TO THE GOVERNOR

This is to certify that Bill No. 868 (LS), "AN ACT TO AMEND ARTICLE 4 OF CHAPTER 2, TITLE 12, GUAM CODE ANNOTATED, TO REVISE THE TAX ABATEMENT AND REBATE PROGRAM OF THE GUAM ECONOMIC DEVELOPMENT AUTHORITY," was on the 18th day of February, 1994, duly and regularly passed.



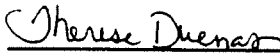
JOE T. SAN AGUSTIN
Speaker

Attested:



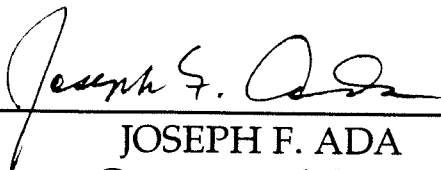
PILAR C. LUJAN
Senator and Legislative Secretary

This Act was received by the Governor this 23rd day of February,
1994, at 3:54 o'clock p.M.



Assistant Staff Officer
Governor's Office

APPROVED:



JOSEPH F. ADA
Governor of Guam

Date: March 3, 1994

Public Law No. 22-81

TWENTY-SECOND GUAM LEGISLATURE
1994 (SECOND) Regular Session

Bill No. 868 (LS)

Introduced by:

Committee on Economic,
Agricultural Development and
Insurance

V. C. Pangelinan

T. C. Ada

M. D. A. Manibusan

A. C. Blaz

H. D. Dierking

J. T. San Agustin

P. C. Lujan

F. E. Santos

F. P. Camacho

T. V. C. Tanaka

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J. P. Aguon

E. P. Arriola

M. Z. Bordallo

C. T. C. Gutierrez

D. Parkinson

E. D. Reyes

D. L. G. Shimizu

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

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

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

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

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

13 "Article 4. Qualifying Certificates

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

1	§2412.	Hearing required.
2	§2413.	Retroactive suspension.
3	§2414.	License required.
4	§2415.	Conflicts of interest.
5	§2416.	Employment of United States citizens and permanent residents.
6		
7	§2417.	Same: work force.
8	§2418.	Same: wages.
9	§2419.	Same: trainees.
10	§2420.	Participation in training programs.
11	§2421.	Qualifying Certificate: non-transferable.
12	§2422.	Application for Qualifying Certificates.
13	§2423.	Monthly reports.
14	§2424.	Publication of all applications for Qualifying Certificates.
15		
16	§2425.	Notice of hearing on applications.
17	§2426.	Recommendations.
18	§2427.	Tax abatements.
19	2427.1.	Property taxes.
20	2427.2.	Rental of land, building or equipment.
21	2427.3.	Sale of alcoholic beverages.
22	2427.4.	Sale of petroleum products.
23	2427.5.	Insurance premiums.
24	§2428.	Tax rebates.
25	2428.1.	Income tax rebate.
26	2428.2.	Variable rates.
27	2428.3.	Determination of income.
28	§2429.	Taxability of abatements and rebates: Legislative intent.
29		
30	§2430.	Income tax rebate on dividends.
31	§2431.	Income tax rebates for the shareholders of a "Subchapter S" corporation.
32		
33	§2432.	Modification of tax benefits.
34	§2433.	Extended term.
35	§2434.	Acknowledgment of benefits by Tax Commissioner.
36		
37	§2435.	Procedure to claim abated and rebated taxes.
38	§2436.	Abatement of taxes.
39	§2437.	Rebate of tax.

1	§2438.	Rebate fund.
2	§2439.	Tax redetermination.
3	§2440.	Implementation by Tax Commissioner.
4	§2441.	Limited to government of Guam taxes.
5	§2442.	Investment of abated or rebated tax in Guam.
6	§2443.	Fees.
7	§2444.	Extraordinary costs.
8	§2445.	Periodic adjustment of fees.
9	§2446.	Rule-making authority.
10		

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

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

23 Investment by foreign entrepreneurs continues to be major catalyst
24 for Guam's financial growth. The bulk of their interests, however, lies in
25 large-scale projects that mainly benefit other off-island investors,
26 transients mostly, and which also put undue pressure on the island's
27 infrastructure to expand and meet their needs, depleting rapidly Guam's
28 finite essential resources such as people, land and water. While the
29 territory acknowledges their contributions to the island's welfare in terms

1 of taxes, construction, and employment opportunities on the low end of
2 the pay scale, meaningful participation by people who live and work in
3 Guam, particularly in terms of ownership and joint ventures, has been
4 sorely lacking.

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

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

19 **§2402. Beneficiary defined.** The recipient of a Qualifying Certificate
20 shall be known as a "Beneficiary".

21 **§2403. Benefits of a Qualifying Certificate.** A Qualifying Certificate
22 shall entitle the Beneficiary to tax rebates or tax abatements or both in
23 return for meeting the conditions and requirements prescribed by the
24 Authority in this Article and in the Qualifying Certificate.

25 **§2404. Eligibility defined.** A Qualifying Certificate shall only be
26 issued to the following entities:

1 Any trust, partnership, sole proprietorship, corporation formed
2 under the laws of Guam, or "possessions" corporation as defined in
3 §2406 of this Article, engaged, or about to engage in any of the
4 following activities:

- 5 1. Agriculture;
- 6 2. Aquaculture;
- 7 3. Mariculture;
- 8 4. Manufacturing;
- 9 5. Commercial fishing;
- 10 6. Services;
- 11 7. Tourism;

12 8. Improvement of real property for purposes which are
13 specifically determined by the Authority to be beneficial,
14 desirable, and necessary for the economic development of
15 Guam;

16 9. Captive insurance business as permitted by Chapter
17 VII, Title XXXIX, Government Code;

18 10. "Export trading company" as defined in §19500.21,
19 Title XX, Government Code, if the main office of the export
20 trading company is established on Guam.

21 **§2405. Promotion of general economic improvement.** No
22 Qualifying Certificate shall be issued unless the Authority finds that the
23 proposed activities of the Beneficiary shall promote the general economic
24 development of the territory by:

25 **2405.1. Employment.** Creation of employment; plus

26 **2405.2. Replace imports.** Replacement of imports; or

1 **2405.3. Price reduction.** Reduction in consumer prices; or

2 **2405.4. Needed facilities.** Creation of vitally needed facilities; or

3 **2405.5. Economic activity.** Creation of economic activity of value to
4 the territory; or

5 **2405.6. Reinsurance.** Increasing the availability of insurance
6 including reinsurance.

7 **§2406. Qualifying Certificate: issuance of.** A Qualifying Certificate
8 may be issued by the Governor of Guam upon the recommendation of the
9 Authority to any applicant that proposes to engage in an eligible business,
10 or to any applicant stockholder of such corporation holding a Qualifying
11 Certificate, and said corporation may be either a Guam corporation or a
12 duly organized "possessions corporation" limited to doing business in
13 Guam, as such "possessions corporation" is defined under Federal income
14 tax laws and regulations.

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

23 **§2408. Same: regulations.** The Authority shall adopt regulations
24 containing standards, criteria, and measures of investments for the
25 Qualifying Certificate applicant and describing the benefits to be derived
26 by the people of Guam in the issuance of Qualifying Certificates. Such

1 regulations shall include preference to be extended to applicants which
2 have a fifty-one percent (51%) or greater proportion of local ownership by
3 **bona fide** Guam residents, U. S. citizens or permanent residents. The
4 Authority shall recognize and take into consideration any and all
5 provisions of law and regulations administered by other government
6 entities that have review or approval authority over the eligible activity.
7 All of the regulations of the Authority shall be adopted in the manner
8 prescribed by the Administrative Adjudication Law.

9 **§2409. Authority's findings on applications.** In making its
10 recommendation to the Governor the Authority shall consider and make
11 specific findings on the following:

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

14 (b) The financial risks facing the Beneficiary in undertaking the
15 proposed activities;

16 (c) The location of the proposed activities;

17 (d) The importance of the proposed activities to the economy
18 of Guam and to the official economic policies of the government of
19 Guam, if any;

20 **§2410. Conditions of benefits.** In its recommendation of specific tax
21 benefits, the Authority shall consider the following as possible terms and
22 conditions to such benefits:

23 (a) **Percentage of investment.** Limiting the tax benefits to a
24 percentage of the capital investment in Guam to be made by the
25 Beneficiary;

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

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

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

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

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

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

17 (h) **Local purchaser.** Requiring the Beneficiary to procure
18 services or products supplied by Guam-licensed vendors if the total
19 cost of the same does not exceed one hundred ten percent (110%) of
20 the cost of the same services or products available from off-island
21 vendors.

22 §2411. **Grounds for suspension, rescission or revocation.** A
23 Qualifying Certificate may be suspended, rescinded or revoked by the
24 Governor of Guam upon the recommendation of the Authority for the
25 following reasons:

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

3 (b) **Noncompliance with Certificate.** Failure to comply with
4 any condition or obligation set out in the Certificate after having
5 been notified by the Authority in writing of such failure to comply and
6 after having been given by the Authority a reasonable period of time
7 within which to correct such failure;

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

10 (d) **Dissolution or death.** A finding by the Attorney General
11 that a corporate Beneficiary has been dissolved, that a partnership
12 Beneficiary has been dissolved, or that an individual Beneficiary has
13 died;

14 (e) **Noncompliance with laws and rules.** Failure to comply
15 with any provision of this Article or with the applicable rules and
16 regulations of the Authority.

17 **§2412. Hearing required.** No recommendation for suspension,
18 rescission or revocation of a Qualifying Certificate shall be made by the
19 Authority **except** after a hearing thereon pursuant to the provisions of the
20 Administrative Adjudication Law.

21 **§2413. Retroactive suspension.** The suspension, rescission or
22 revocation of a Qualifying Certificate may be retroactive to the time of the
23 act or omission giving use to the suspension, rescission or revocation or for
24 any shorter period recommended by the Authority.

1 **§2414. License required.** A Qualifying Certificate shall not be issued
2 to any applicant who has not first obtained a license to do business in
3 Guam.

4 **§2415. Conflicts of interest.** No employee or board member of the
5 Authority or their spouses and no corporation or any other legal entity in
6 which any employee, board member or counsel of the Authority, or their
7 spouses has any financial interest is eligible to apply for a Qualifying
8 Certificate. Neither shall any of the following, during their term of office
9 and for a period of one (1) year after their resignation, termination, or
10 completion of their term of office, directly or indirectly, qualify for a
11 Qualifying Certificate:

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

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

16 (c) Employees of the Governor's Office and their spouses;

17 (d) Judges of the various courts of Guam and their spouses.

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

20 **§2416. Employment of United States citizens and permanent**
21 **residents.** Every Qualifying Certificate shall include a requirement that
22 the Beneficiary shall submit a plan for a management training program for
23 the approval of the Authority. The plan shall establish a management
24 training program through which the Beneficiary shall have as managers
25 and officers residents of Guam who are United States citizens or
26 permanent residents of the United States.

1 **§2417. Same: work force.** (a) **Minimum size.** A Beneficiary shall at
2 all times employ a total work force of not less than the minimum full-time
3 equivalent number established by the Authority and as set out in the
4 Qualifying Certificate. However, at all times, the work force of a
5 Beneficiary shall meet the following minimum requirements:

6 (1) **Initial minimum requirement.** At least seventy-five
7 (75%) of the Beneficiary's non-managerial employees shall be
8 United States citizens or permanent residents of the United
9 States; and

10 (2) **Subsequent minimum requirement.** After the
11 expiration of three-fourths (3/4ths) of the period of the
12 Qualifying Certificate or ten (10) years, whichever is sooner,
13 the Beneficiary shall satisfy the seventy-five (75%) employment
14 requirement for both management and non-management
15 employees.

16 (b) **Management and non-management employees.** The
17 Authority shall be the sole judge of whether a Beneficiary's employee
18 is management or non-management but it may seek advice from the
19 University of Guam, the Guam Community College, the
20 Department of Labor, or such other government agencies as are
21 helpful in advising on carrying out the provisions of this Section.
22 The Authority shall establish by regulation the requirements for
23 practical and equitable training programs as guidance for the
24 Beneficiary and the reasonable minimum number of persons to be
25 employed on a continuing basis for each Beneficiary in accordance
26 with the specific and normal requirements of the business involved.

1 The Authority shall annually report to the Legislature the titles and
2 compensation of all trainees, including those placed in management
3 levels, who are employed by the Beneficiaries of Qualifying
4 Certificates.

5 **§2418. Same: wages.** No resident employee of a Beneficiary shall
6 be paid at less than the prevailing wage rate nor shall such employee be
7 laid off work nor have his or her workweek reduced to less than forty (40)
8 hours in order to create employment for employees who are not Untied
9 States citizens or permanent residents of the United States. For the
10 purpose of this Section, "prevailing wage rate" shall mean such rate as is
11 established from time to time by the Department of Labor. The
12 Department of Labor is empowered to investigate any complaint filed
13 under 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 Section, or
16 of any order issued hereunder, may be cause for a Beneficiary of a
17 Qualifying Certificate to forfeit the benefits thereof.

18 **§2419. Same: trainees.** For purposes of the employee percentages
19 of §2417 of this Article, a Beneficiary may include among its employees
20 "trainees" as that term is defined by the Authority's regulations. For good
21 cause shown, the Authority may grant specific and limited exemptions to
22 the percentage employment requirements of §2417 but only if a training
23 program has been implemented by the Beneficiary as required by §2417.

24 **§2420. Participation in training programs.** Every Qualifying
25 Certificate which covers the operation of a hotel or restaurant shall
26 require its Beneficiary to participate in (i) the Hotel/Restaurant Industry

1 Apprenticeship Training Program administered by the Guam Community
2 College or other subsequent and similar programs approved by the
3 Authority and (ii) the Management and Supervisory Training Program
4 administered by the University of Guam's College of Business and Public
5 Administration or other subsequent and similar programs approved by the
6 Authority. Failure to actively participate in such training programs shall
7 be grounds to revoke or suspend the Beneficiary's Qualifying Certificate.

8 **§2421. Qualifying Certificate: non-transferable.** A Qualifying
9 Certificate or the benefits thereunder may not be transferred, assigned or
10 conveyed to another person, firm, partnership, or corporation without the
11 written permission of the Authority. For the purpose of this Section, a
12 transfer of benefits shall have occurred at any time that there is a transfer
13 of a majority of the voting stock of the Beneficiary resulting in a change in
14 the identify of the shareholders who control the Beneficiary. Similarly, a
15 transfer of benefits shall occur whenever a Beneficiary shall lease, assign,
16 or transfer a substantial part of its activities outside of the ordinary course
17 of its business.

18 **§2422. Application for Qualifying Certificates.** Applications for
19 Qualifying Certificates shall be filed on forms prescribed and furnished by
20 the Authority and shall require such disclosures as the Authority shall deem
21 appropriate.

22 **§2423. Monthly reports.** The Beneficiary of a Qualifying Certificate
23 must furnish monthly written reports to the Authority beginning thirty (30)
24 days after the date of the issuance of the Qualifying Certificate. Said
25 reports must include, but are not limited to, financial, employment and

1 payroll data. All such monthly reports shall be treated as confidential by
2 the Authority.

3 **§2424. Publication of all applications for Qualifying**
4 **Certificates.** The Authority shall cause to be published, at the applicant's
5 expense, in a Guam newspaper of general circulation, a brief resumé of an
6 application for a Qualifying Certificate, said publication to be made no
7 later than seven (7) days following submission of an application. The
8 resumé shall be in a form prescribed by the Authority, and it shall include
9 the name and address of the applicant, a brief statement of the proposed
10 investment, a brief summary of the tax rebates and abatements applied
11 for, and the names and addresses of all the owners, partners, or
12 shareholders of the Applicant. Following the filing of the application in
13 due form, payment of the prescribed fees and publication of the resumé, a
14 public hearing shall be held pursuant to the rule-making provisions of the
15 Administrative Adjudication Law.

16 **§2425. Notice of hearing on applications.** A notice of the public
17 hearing required by §2424 of this Article shall be published at the
18 applicant's expense in a Guam newspaper of general circulation in a form
19 prescribed by the Authority at least five (5) days but no more than ten (10)
20 days before the scheduled public hearing date. The Authority shall take all
21 reasonable precautions in connection with such public hearings to avoid
22 disclosure of proprietary secrets of the applicant. The Authority may
23 schedule additional public hearings as necessary. The Authority meeting
24 for approval or disapproval of a Qualifying Certificate shall **not** be held on
25 the same day as a public hearing on the same Qualifying Certificate
26 application.

1 **§2426. Recommendations.** All recommendations of the Authority for
2 issuance, modification, revocation and suspension of Qualifying Certificates
3 shall be forwarded to the Governor of Guam, together with a memorandum
4 of the Authority's findings in support of its recommendations. Any
5 recommendation of the Authority not approved by the Governor within sixty
6 (60) calendar days from his receipt thereof shall be deemed disapproved on
7 the sixty-first (61st) day following such receipt.

8 **§2427. Tax abatements.** Subject to the provisions of this Article, the
9 Governor is authorized to issue a Qualifying Certificate abating the
10 following taxes on the following terms:

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

18 **2427.2. Rental of land, building or equipment.** All taxes now levied on
19 income derived from the lease of land, buildings, machinery or equipment by
20 virtue of Article 2, Chapter 26, Title 11, Guam Code Annotated, known as
21 gross receipts taxes, shall be abated for a period up to ten (10) years, from the
22 effective date of a Qualifying Certificate therefor, and as long as said
23 Certificate is in force and effect; **provided**, that said income is derived from
24 the lease of land, building, machinery or equipment to a Beneficiary of a
25 Qualifying Certificate.

1 **2427.3. Sale of alcoholic beverages.** All taxes now levied by virtue of
2 Article 2, Chapter 26, Title 11, Guam Code Annotated, known as gross
3 receipts taxes, shall be abated for a period up to ten (10) years from the
4 effective date of a Qualifying Certificate therefor, and as long as said
5 Certificate is in force and effect; **provided**, that the gross receipts on which
6 such tax shall be abated have been derived from the sale of alcoholic
7 beverages manufactured in Guam by the manufacturer thereof and that such
8 manufacturer is the Beneficiary of a Qualifying Certificate.

9 **2427.4. Sale of petroleum products.** All taxes levied or paid by virtue of
10 Article 2, Chapter 26, Title 11, Guam Code Annotated, known as gross
11 receipts taxes, shall be abated or rebated for a period up to ten (10) years from
12 the effective date of the Qualifying Certificate therefor, for those gross
13 receipts derived from the sale of petroleum products manufactured in Guam
14 and sold to agencies or instrumentalities of the United States of America, or
15 agencies or instrumentalities of the government of Guam, by the
16 manufacturer thereof; **provided**, that a Qualifying Certificate for such a tax
17 rebate or abatement is granted pursuant to the provisions of this subsection;
18 and **provided, further**, that at any such time that a manufacturer possessing
19 such a Qualifying Certificate no longer continues to qualify for the
20 Certificate, the taxes shall no longer be abated or rebated.

21 **2427.5. Insurance premiums.** All taxes now levied by virtue of §43714,
22 Chapter VII, Title XXXIX, Government Code, shall be abated for a period of
23 up to ten (10) years from the effective date of the Qualifying Certificate
24 therefor and as long as said premiums are collected by a captive insurance
25 company licensed under said Chapter VII that has qualified and continues to
26 qualify for a Qualifying Certificate.

1 **§2428. Tax rebates.** Subject to the provisions of this Article, the
2 Governor is authorized to issue a Qualifying Certificate which establishes the
3 following tax rebate:

4 **2428.1. Income tax rebate.** A rebate of up to seventy-five percent (75%)
5 of all income tax paid to the government of Guam by a Beneficiary on income
6 received from those activities identified in the Qualifying Certificate may be
7 issued for a period not to exceed twenty (20) consecutive years from the
8 effective date of a Qualifying Certificate therefor.

9 **2428.2. Variable rates.** The percentage of rebate may be made variable
10 by the Authority so as to permit higher or lower percentages in earlier or later
11 years of the period. In determining the periods up to twenty (20) years and
12 the percentages up to seventy-five (75%) the Authority shall take into
13 consideration the financial risks involved in the undertaking as well as the
14 impact on the socio-economic development of Guam by the proposed
15 investment.

16 **2428.3. Determination of income.** For the purposes of this Section, the
17 term "income tax paid" shall mean income taxes paid on income received on
18 or after the effective date of the applicable Qualifying Certificate. The
19 Director of Revenue and Taxation of the government of Guam shall have
20 authority to determine any prorations of rebates necessary because of taxable
21 years occurring within the life of the applicable Qualifying Certificate which
22 consist of less than a full twelve (12) months.

23 **§2429. Taxability of abatements and rebates: Legislative intent.** It is
24 the intent of the Legislature that the abatement or rebate of taxes to
25 Beneficiaries pursuant to §§2427, 2428, 2429, 2430 and 2431 of this Article shall
26 be abatements or rebates on the taxes owed on the eligible activities identified

1 in the Qualifying Certificates issued therefor and that no portion of such
2 abatements or rebates shall be later subject to taxation as additional income
3 to the Beneficiary.

4 **§2430. Income tax rebate on dividends.** A rebate of up to seventy-five
5 percent (75%) of the income tax paid by the shareholders of a corporation on
6 the dividends of that corporation may be granted for a period not to exceed
7 five (5) consecutive years; **provided**, however, that the corporation paying the
8 dividends is the Beneficiary of a Qualifying Certificate and that the dividends
9 are being paid from the corporation's earnings on activities identified in the
10 Qualifying Certificate which were received, on a cash basis, during the five
11 (5) year period.

12 **§2431. Income tax rebates for the shareholders of a "Subchapter S"**
13 **corporation.** A rebate of up to seventy-five percent (75%) of all income tax
14 paid by the shareholders of a corporation which has elected to be taxed as a
15 "Subchapter S" corporation, as defined at §1361, Title 26, United States Code,
16 or any successor provision, on the income of the corporation which was
17 received from those activities identified in the Qualifying Certificate, may be
18 granted for a period not to exceed twenty (20) years following the effective
19 date of the Qualifying Certificate therefor.

20 **§2432. Modification of tax benefits.** In the event that a Beneficiary
21 proposes to substantially expand or add to its activities and desires to obtain
22 a modification of its original Qualifying Certificate to include its proposed
23 additional activities, then upon findings and recommendations of the
24 Authority, the Governor may modify the original Qualifying Certificate,
25 **subject to the following conditions:**

1 (a) **Findings.** The Authority specifically finds that the
2 additional proposed activities of the Beneficiary satisfy the
3 requirements of §§2403 and 2406 of this Article and that the Authority
4 makes recommendations required by §2409 of this Article;

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

7 (c) **Changes in benefits.** The tax benefits applicable to the
8 additional activities may be at rates or for a term different from
9 those tax benefits applicable to the activities described in the original
10 Qualifying Certificate, and the new Qualifying Certificate may
11 include terms, conditions, rebates or abatements different from those
12 in the original Qualifying Certificate.

13 **§2433. Extended term.** In lieu of the percentage of tax abatements and
14 rebates authorized in this Article, the Authority may recommend and the
15 Governor may grant fifty percent (50%) of said abatements and rebates for a
16 period of double the term authorized by this Article.

17 **§2434. Acknowledgment of benefits by Tax Commissioner.** When the
18 Authority forwards its recommendations to the Governor on the issuance of a
19 Qualifying Certificate, it shall transmit a copy of such recommendations to
20 the Tax Commissioner of Guam for his information. The Tax Commissioner
21 shall forthwith acknowledge in writing to the Governor and to the Authority
22 that the proposed tax benefits are understood and accepted by the
23 Department of Revenue and Taxation.

24 **§2435. Procedure to claim abated and rebated taxes.** The Authority
25 shall monitor the activities of the Beneficiary and its compliance with all of
26 the terms and conditions of the Qualifying Certificate, this Article and the

1 regulations of the Authority and it shall, if justified, issue annually its
2 certificate of compliance by the Beneficiary. No rebate or abatement of any
3 tax shall occur unless the Beneficiary shall have received a certificate of
4 compliance for the applicable tax year.

5 **§2436. Abatement of tax.** When the return for the abated tax is
6 accompanied by a corresponding certificate of compliance for the previous
7 year or part thereof then the actual payment of the tax in question to the
8 government of Guam shall not be required, and upon review of the tax
9 return, the Tax Commissioner of Guam shall, within one hundred twenty
10 (120) days from receipt of said tax return, furnish the taxpayer a certification
11 confirming the nature and amount of the tax abated.

12 **§2437. Rebate of tax.** In the case of an income tax rebate, where the
13 taxpayer's tax return is accompanied by a certificate of compliance, the
14 amount of a tax due prior to rebate shall be deposited with the government of
15 Guam at the time of filing the income tax return. The Tax Commissioner of
16 Guam shall immediately thereafter cause the return to be reviewed and if the
17 rebate is found in order shall cause the amount of the rebate to be withdrawn
18 from the deposit and returned to the taxpayer within one hundred eighty
19 (180) days from the date of the deposit, without interest. The balance of the
20 deposit shall be credited against the taxpayer's income tax obligation to the
21 government of Guam.

22 **§2438 Rebate fund.** Deposits for income tax made with the
23 government of Guam pursuant to this Article shall be covered and deposited
24 into a separate, special account in the Treasury of the territory of Guam, to be
25 designated the "Income Tax Rebate Fund".

1 **§2439. Tax redeterminations.** In the case of any Beneficiary that, in
2 accordance with the applicable laws of Guam, shall have applied for and
3 been granted a redetermination of tax liability or taxes payable or in the case
4 of a redetermination of tax liability made by the Department of Revenue and
5 Taxation, the amount of abated or rebated taxes determined for such
6 Beneficiary for the taxable years affected shall be accordingly adjusted by the
7 Director of Revenue and Taxation and said Beneficiary shall be required to
8 pay the balance due for said taxable years, if any, together with interest at the
9 rate currently assessed by the government of Guam per annum from the date
10 the Beneficiary realized the abatement or rebate benefit; **provided**, that said
11 balance due may be offset or credited against any tax refund due to the
12 Beneficiary.

13 **§2440. Implementation by Tax Commissioner.** The Tax Commissioner
14 of Guam is hereby authorized to issue such rules and regulations as he may
15 deem necessary to implement the procedures outlined in this Article.

16 **§2441. Limited to government of Guam taxes.** All abatements and
17 rebates herein established and authorized shall apply only to the taxes due
18 the government of Guam.

19 **§2442. Investment of abated or rebated tax in Guam.** Each Qualifying
20 Certificate shall require a Beneficiary to invest within Guam no less than fifty
21 percent (50%) of any taxes rebated or abated under §§2427 or 2428 of this
22 Article for a period of five (5) years following the rebate or abatement. A
23 Beneficiary shall report all such investments to the Authority.

24 **§2443. Fees.** On the effective date of this Article, and until modified
25 pursuant to §2445 of this Article, the following fees shall be assessed against
26 each applicant or Beneficiary of a Qualifying Certificate:

	FILING FEES:	ANNUAL SURVEILLANCE FEES:
1		
2		
3	Agriculture, aquaculture,	
4	and mariculture:	\$150,
5	Home manufacturing:	\$100,
6	Manufacturing:	\$750,
7	Commercial fishing:	\$250,
8	Services:	\$750,
9	Leasehold services:	\$750,
10	Tourism	\$1,000,
11	Captive insurance	
12	companies:	\$750,
13	Export trading companies:	\$750,
14	Motels per motel:	
15	Under construction:	\$750,
16	In operation:	\$750,
17	Hotels per hotel:	
18	Under construction:	\$1,500,
19	In operation:	\$1,500,

\$500,

\$100,

\$2,000,

\$1,000

\$2,000,

0.75% of annual lease payments,

\$3,000,

\$1,000,

\$1,000

\$2,000

\$25 per room,

\$3,000,

\$45 per room.

20 **§2444. Extraordinary costs.** In addition to the filing and surveillance
21 fee, the Authority may also assess against an applicant or Beneficiary any
22 extraordinary costs and expenses incurred to process the application or
23 monitor the Beneficiary's performance of the terms and conditions of the
24 Qualifying Certificate. Such cost and expenses shall not include the salaries
25 of any employees of the Authority but may include but are not limited to the

1 services of outside consultants, or off-island trips necessitated by the
2 application or the surveillance.

3 **§2445. Periodic adjustment of fees.** The Authority is authorized to
4 adjust the fees listed in §2443 of this Article on an annual basis, at the
5 beginning of each calendar year, upon demonstration to the Authority by the
6 Administrator that the cost of performing the services covered by the fees is
7 greater than the amount of the fees. Fee changes shall be made according to
8 the provisions of the Administrative Adjudication Law.

9 **§2446. Rule-making authority.** In accordance with the Administrative
10 Adjudication Law the Authority shall adopt rules and regulations consistent
11 with this Article which provide for, but are not limited to the following:
12 Eligibility, minimum investment levels for different industries, the
13 applications process, the terms and conditions of the various Qualifying
14 Certificates, the monitoring procedure, and the revocation of Qualifying
15 Certificates."

TWENTY-SECOND GUAM LEGISLATURE

1994 (SECOND) Regular Session

Date: 2/18/94

VOTING SHEET (AS REVISED)

Bill No. 868
 Resolution No. _____
 Question: _____

NAME	AYE	NO	NOT VOTING/ ABSTAINED	ABSENT/ OUT DURING ROLL CALL
ADA, Thomas C.	✓			
AGUON, John P.	✓			
ARRIOLA, Elizabeth P.	✓			
BAMBA, J. George	✓			
BLAZ, Anthony C.	✓			
BORDALLO, Madeleine Z.	✓			
BROOKS, Doris F.	✓			
CAMACHO, Felix P.	✓			
DIERKING, Herminia D.	✓			
GUTIERREZ, Carl T. C.	✓			
LUJAN, Pilar C.	✓			
MANIBUSAN, Marilyn D. A.	✓			
NELSON, Ted S.	✓			
PANGELINAN, Vicente C.	✓			
PARKINSON, Don	✓			
REYES, Edward D.	✓			
SAN AGUSTIN, Joe T.	✓			
SANTOS, Francis E.	✓			
SHIMIZU, David L. G.	✓			
TANAKA, Thomas V. C.	✓			
UNPINGCO, Antonio R.	✓			

TOTAL

21 _____

Office of



The People

Senator Vicente C. Pangelinan
Twenty-Second Guam Legislature

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

8 March 1994

Memorandum

To: Andrew Gayle, Legal Counsel
From: Sen. Vicente C. Pangelinan
Subject: Transmittal of Bill 868

94 MAR -9 AM 8:48

It has come to my attention that specific language in Bill 868 as introduced was omitted from the Bill that was transmitted to the Governor and subsequently signed and enacted into PL 22-81.

1. from § 2406 on page 7: *Each Qualifying Certificate shall specifically indentify on its face each activity of the Beneficiary which is entitled to the tax rebates or abatements set out in the Qualifying Certificate.*
2. from §2415 (c) on page 11 *The Governor of Guam, the Lieutenant Governor and their spouses;*
3. from last page *Section 2. Severability* clause.

To my recollection, there were no motions entertained, approved, or voted on to make any changes to Bill 868 when the full Legislature met in Session and conducted its deliberations and approval of Bill 868. I would like to request Legal Counsel's review of the two documents and ask that you also provide a copy of the minutes of the Legislative Journal concerning Bill 868. Your prompt attention and action on this request is greatly appreciated.


vicente c. pangelinan
Senator

Office of



The People

Senator Vicente C. Pangelinan
Twenty-Second Guam Legislature

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

17 February 1994

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

Dear Mr. Speaker,

The Committee on Economic-Agricultural Development and Insurance, to which was referred Bill ~~593~~⁸⁶⁸ wishes to report back to the Legislature with its recommendation **TO DO PASS** on the acceptance of its Committee Report on Bill 593 and to waive public hearing on Bill 868 as required under Sec. 2103 Title 2 GCA as the two bills are identical in substance. The voting record is as follows:

TO PASS	7
NOT TO PASS	0
ABSTAIN	0
TO PLACE IN INACTIVE FILE	0

A Copy of the Committee Report is attached. Your attention to this matter is appreciated.

Sincerely,


VICENTE C. PANGELINAN

Attachments.

Office of



The People

Senator Vicente C. Pangelinan

Twenty-Second Guam Legislature

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

COMMITTEE VOTING SHEET

SUBJECT: Committee recommendation to waive public hearing on Bill 868 and to accept Committee Report on Bill 593 as the two bills are identical in substance.

Committee Members	Initial	Not to		To Place File
		To Pass	Pass	
V.C. Pangelinan		✓	-----	-----
T.C. Ada		✓	-----	-----
A.C. Blaz	-----	-----	-----	-----
F.P. Camacho	-----	-----	-----	-----
H.D. Dierking		✓	-----	-----
P.C. Lujan		✓	-----	-----
M.D.A. Manibusan	-----	-----	-----	-----
T. Nelson	-----	-----	-----	-----
E.D. Reyes		✓	-----	-----
J.T. San Agustin		✓	-----	-----
F.E. Santos		✓	-----	-----
T.V.C. Tanaka	-----	-----	-----	-----

Office of



The People

Senator Vicente C. Pangelinan
Twenty-Second Guam Legislature

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

November 15, 1993

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

Dear Mr. Speaker,

The Committee on Economic-Agricultural Development and Insurance, to which was referred Bill 593 wishes to report back to the Legislature with its recommendation TO DO PASS as amended by the Committee. The voting record is as follows:

TO PASS	<u>12</u>
NOT TO PASS	<u>0</u>
ABSTAIN	<u>0</u>
TO PLACE IN INACTIVE FILE	<u>0</u>

Copies of the Committee Report and other pertinent documents are attached. Your attention to this matter is appreciated.

Sincerely,


VICENTE C. PANGELINAN

Attachments.

Office of



The People

Senator Vicente C. Pangelinan
Twenty-Second Guam Legislature

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

November 12, 1993

MEMORANDUM

TO: Members, Committee on
Economic-Agricultural Development & Insurance

FROM: Sen. Vicente C. Pangelinan

SUBJECT: Committee Report and Voting Sheet

Transmitted herewith for your information and action is the Committee Report concerning Bill 593. The narrative report is accompanied by the following:

1. Committee Voting Sheet
2. Written Testimony
3. Evidentiary Materials

Should you have any questions on the narrative report or the accompanying documents, I would be 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 prompt attention and cooperation in this matter is greatly appreciated.


VICENTE C. PANGELINAN
Chairman

attachments.

Office of



The People

Senator Vicente C. Pangelinan
Twenty-Second Guam Legislature

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

COMMITTEE VOTING SHEET

SUBJECT: Committee Report on Bill 593 as amended by the Committee on Economic-Agricultural Development and Insurance.

Committee Members	Initial	To Pass	Not to Pass	Abstain	To Place Inactive File
V.C. Pangelinan	<i>[Signature]</i>	✓			
T.C. Ada	<i>[Signature]</i>	✓			
A.C. Blaz	<i>[Signature]</i>	✓			
F.P. Camacho	<i>[Signature]</i>	✓			
H.D. Dierking	<i>[Signature]</i>	✓			
P.C. Lujan	<i>[Signature]</i>	✓			
M.D.A. Manibusan	<i>[Signature]</i>	✓ HUNGAN			
T. Nelson	<i>[Signature]</i>				
E.D. Reyes	<i>[Signature]</i>	✓			
J.T. San Agustin	<i>[Signature]</i>	✓			
F.E. Santos	<i>[Signature]</i>	✓			
T.V.C. Tanaka	<i>[Signature]</i>	✓			

TWENTY-SECOND GUAM LEGISLATURE
1993 (FIRST) REGULAR SESSION

Bill No. 593

Amended by the Committee on EAD&I
Introduced by:

Committee on Economic Agricultural
Development and Insurance *M. M...*

A. C. BLAZ

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

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

1 **SECTION 1.** Legislative Findings. The Qualifying Certificate Program
2 as administered by the Guam Economic Development Authority has been
3 revised a number of times since it was first established by statute. In
4 order to properly achieve economic growth and diversification, and attract
5 capitol investments to our Territory, financing institutions and programs,
6 including the Q.C. Program, must keep pace with changes in the
7 marketplace, labor supply, employee training, and investment practices.

8 It is the Legislature's intent to restructure the program to provide
9 sufficient flexibility to address changes in the economy and market
10 conditions and help stimulate the economy to achieve the Territory's
11 economic goals and objectives.

12 **SECTION 2.** §2400.1 of Article 4, Chapter 2, Title 12, Guam Code
13 Annotated is renumbered to be §2401.

1 SECTION 3. §2401 of Article 4, Chapter 2 Title 12 Guam Code
2 Annotated is renumbered to be §2402 and §2402.1 respectively and
3 amended to read:

4 "~~§2401~~ §2402 Qualifying Certificate Defined.

5 §2402.1 A Qualifying Certificate is a contract valid for a given
6 period of time, executed by the Governor upon recommendation of [~~Board~~]
7 Authority, on behalf of the Government of Guam and the Beneficiary, who
8 has qualified for certain tax rebates [~~and~~] or tax abatements in return for
9 meeting certain employment, [~~equity~~] investment, and other requirements
10 as described in this Article and in the Certificate."

11 SECTION 4. §2402 of Article 4 Chapter 2 Title 12 Guam Code
12 Annotated, is renumbered to be §2402.3 and amended to read:

13 "~~§2402~~ §2402.3 [~~Beneficiary, Defined~~] The recipient of a
14 Qualifying Certificate shall be known as a Beneficiary."

15 SECTION 5. A new §2402.2 is added to Article 4 Chapter 2 Title
16 12 Guam Code Annotated, to read:

17 "§2402.2 A Qualifying Certificate shall entitle the Beneficiary to tax
18 rebates or tax abatements in return for meeting the conditions and
19 requirements prescribed by the Authority in this Article."

20 SECTION 6. §2403 of Article 4 Chapter 2 Title 12 Guam Code
21 Annotated is renumbered to be §2405, §2406, §2406.1, §2406.2, §2406.3,
22 §2406.4, §2406.5, §2407, and §2407.1, respectively, and amended to read:

23 "~~§2403~~ §2405 Eligibility Defined. [~~The following shall be deemed~~
24 ~~to be a business eligible for consideration by the Authority for issuance of~~
25 ~~a Qualifying Certificate:] A Qualifying Certificate shall only be issued to the
26 following entities:~~

1 (a) Any trust, partnership, sole proprietorship, or corporation
2 formed under the laws of the Territory of Guam as defined in [§2405]
3 §2404, engaged, or about to engage in:

4 [(1)] 1. Agriculture [~~(not exceeding \$2,000,000 in current and fixed~~
5 ~~assets; this \$2,000,000 limit shall not apply to U.S. citizens and legal~~
6 ~~residents residing in Guam)];~~

7 2. Aquaculture;

8 3. Mariculture;

9 4. Manufacturing [~~(to include hand and machine manufacturing)~~];

10 5. Commercial fishing;

11 6. Services; [~~or~~]

12 7. Tourism;

13 8. Improvement of real property for purposes which are
14 specifically determined by the [~~Corporation~~] Authority to be beneficial,
15 desirable, and necessary for the economic development of Guam; [~~or~~

16 9. Captive insurance business as permitted by Chapter VII, Title
17 XXXIX, Government Code; [~~and (2) which activity meets (1) or more of the~~
18 ~~following criteria:]~~

19 §2406 Promotion of General Economic Improvement. No
20 Qualifying Certificate shall be issued unless the Authority finds that the
21 proposed activities of the Beneficiary shall promote the general economic
22 development of the Territory by:

23 §2406.1 [a.] The creation of new employment;

24 §2406.2 [b.] The replacement of imports;

25 §2406.3 [c.] The reduction [~~of~~] in consumer prices;

26 §2406.4 [d.] The creation of vitally needed facilities; or