

CHAPTER 4 Issuance of Qualifying Certificates

- §4101. Purpose.
- §4102. Requirements.
- §4103. Minimum Investment.
- §4104. Restrictive Certificates.
- §4105. Fees.
- §4106. Authority.

NOTE: Rule-making authority cited for formulation of regulations for the issuance of qualifying certificates by the Board of Directors of the Guam Economic Development Authority, 12 GCA Chapter 58.

§4101. Purpose. The purpose of this part of the rules and regulations is to establish, pursuant to 12 GCA Chapter 58, further standards and criteria for the issuance of Qualifying Certificates for tax benefits, in addition to those set forth in said 12 GCA §38104, which are that any enterprise in agriculture, commerce, industry, tourism and improvements of real property may be deemed tax exempt if it is specifically determined by the corporation to be beneficial, desirable and necessary to the economic development of Guam.

§4102. Requirements. Any applicant for a Qualifying Certificate must meet the following requirements:

(a) The applicant shall be duly licensed to do business in Guam. In the case of an individual or partners in a firm, he or they must be bona fide residents of Guam; and in the case of a corporation, it must be created under the laws of the territory of Guam, or it must be a duly constituted "possession" corporation created under the laws of a state of the United States of America and limited to doing its principal business in the territory of Guam. (Amended by Executive Order 66-16, effective September 7, 1966.).

(b) Upon filing an application, the applicant shall certify in writing that it shall at all times employ at prevailing wage rates a total employment force of which at least fifty percent (50%) shall be either United States citizens or permanent residents of the United States; provided, however, that for reasons of hardship, satisfactory to the Board, temporary

exemptions hereto, for specific periods of time, may be granted by the Board:

(1) No resident employee of an industry or business granted a certificate of tax benefit under the provisions of Title LIV shall be laid off his job or have his work week reduced to less than forty (40) hours for the sole purpose of creating employment for non-resident workers.

(2) For the purpose of this part, "prevailing wage rates," as determined by the Department of Labor and Personnel, shall be used as a guide.

(3) The Department of Labor and Personnel 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 of hearing. Any willful violation of this Section, or of any order of the said Department issued hereunder, may be cause for an industry or business to forfeit the benefits extended under the provisions of said 5 GCA Chapter 70.

(c) The applicant must agree to furnish written monthly reports beginning thirty (30) days after the date of the issuance of the Qualifying Certificate, said reports to include, but not limited to, financial data, employment data and payroll data.

§4103. Minimum Investment. An applicant must undertake to invest in a new industry or business in Guam:

(a) At least Twenty-Five Thousand Dollars (\$25,000) paid-in-capital for a fishing industry, or in an industry or business, for the processing, manufacturing, creation or production of articles, goods or commodities. Any such industry or business under this Subsection shall maintain at all times such minimum investment as is stipulated.

(b) At least Fifteen Thousand Dollars (\$15,000) paid-in-capital, for agricultural enterprise under this Subsection shall maintain at all times such minimum investment of at least Fifteen Thousand Dollars (\$15,000) paid-in-capital.

(c) Sufficient investment to construct a first-class tourist hotel having at least one hundred (100) rooms, and with at least Two Hundred Fifty Thousand Dollars (\$250,000) paid-in-capital, constructed in

accordance with plans and specifications filed with and approved by the government agencies and authorities concerned. Tax benefits to be granted shall be at the discretion of the Board of Directors. A first-class hotel is defined to include the following minimum requirements:

- (1) Each room must have a private bathroom.
- (2) The hotel must have adequate:
 - (A) Dining room facilities.
 - (B) Banquet and/or meeting facilities.
 - (C) Convention facilities.
 - (D) Related shop facilities.
- (3) Adequate air conditioning systems.
- (4) Adequate recreational facilities such as swimming pools, etc. (Amended by Executive Order 68-3, effective March 1, 1968.)

(d) At least Fifty Thousand Dollars (\$50,000), paid-in-capital, in the establishment of a business engaged in the ownership of real estate or industrial plants for the use of others, and to be leased to a tax exempt business that has qualified and continues to qualify for a Qualifying Certificate. For the purpose of this Subsection, the basis for computing the investment shall be limited to amounts invested in new construction and the creation of new improvements.

(e) For the purpose of satisfying the amount of minimum paid-in-capital required in the foregoing Subsection, the appraisal value of land necessary and vital to the operation of such business or industry (as determined by the Board) and previously existing buildings (as appraised for tax purposes) may be included, but shall not exceed such percent age of the total amount of investment required as is deemed by the Board appropriate to the enterprise contemplated by the applicant.

§4104. Restrictive Certificates. In order to encourage new business investments of One Million Dollars (\$1,000,000) or more the Board of Directors may from time to time recommend the issuance of Qualifying Certificates containing restrictive clauses relative to the issuance of a

Qualifying Certificate to an additional and competing entity so long as the applicant under consideration for such restrictive certificate complies with the following minimum requirements:

(a) Applicant must propose to engage in manufacturing.

(b) Applicant's specific enterprise must be one which has not heretofore existed as a commercial operation on Guam since July 21, 1950.

(c) Applicant must demonstrate to the satisfaction of the Board its intention and ability to make a minimum investment of One Million Dollars (\$1,000,000), of which not less than ten percent (10%) shall be paid-in- capital, in the proposed enterprise, such minimum investment to be calculated on the basis of only the land, buildings, machinery and equipment, inventories and working capital, to be located or expended on Guam.

(d) Applicant must satisfy the Board as to its intention and ability to employ a minimum of one hundred (100) full-time employees at the time that full production is achieved, of whom eighty percent (80%) must be U.S. citizens or permanent residents of the United States.

(e) Applicant must agree to a time table satisfactory to the Board wherein a specific program is laid out for the organization and commencement of the enterprise up to full production and the total minimum investment of One Million Dollars (\$1,000,000), no later than twenty-four (24) months from the date of the granting of the applicable Qualifying Certificate.

(f) Applicant must agree to furnish written progress reports to the Authority monthly, beginning thirty (30) days after the date of the issuance of the Qualifying Certificate, said progress reports to contain all pertinent information relative to the progress and status of applicant's program in accordance with the time table agreed to.

(g) As evidence of good faith, applicant must deposit in a local bank of savings and loan association not less than Seventy-Five Thousand Dollars (\$75,000) of unencumbered funds, which funds must be on

deposit at the time that the application for the Qualifying Certificate is filed.

(h) Applicant must furnish a Certificate satisfactory to the Board indicating that at no time during the life of the Qualifying Certificate shall applicant engage in any business in Guam competitive to that which existed on Guam at the time of the issuance of the Qualifying Certificate.

§4105. Fees. The following fees shall be assessed to each applicant and/or recipient of a Qualifying Certificate:

| Section Under Applicant Filed | Original Filing | Annual Continuing Surveillance Fee |
|--------------------------------------|------------------------|---|
| 2 GAR §10440.2(a) | \$100.00 | \$500.00 |
| 2 GAR §10440.2(b) | \$ 25.00 | \$ 50.00 |
| 2 GAR §10440.2(c) | \$100.00 | \$500.00 |
| 2 GAR §10440.2(d) | \$100.00 | \$250.00 |

§4106. Authority. These Rules and Regulations are made pursuant to 12 GCA Chapter 50, and shall become effective upon approval and promulgation by the Governor.