

## CHAPTER 5

### JOINT REGULATIONS FOR TAX ABATEMENT AND REBATES PURSUANT TO PUBLIC LAW 8-80

- §5101. Purpose.
- §5102. Establishment of Tax Abatements.
- §5103. Procedures Governing Applications for Abatement of Taxes.
- §5104. Filing of Returns.
- §5105. Issuing Qualifying Certificate.
- §5106. Limitation on Abatement of Taxes.
- §5107. Procedures Governing Claims for Abatement.
- §5108. Income Tax Rebates.
- §5109. Rebate Fund Deposit and Certification of Rebate.
- §5110. Definitions.
- §5111. Authority.

**NOTE:** Rule-making authority cited for formulation of tax abatement and rebate regulations by the Tax Commissioner of the Department of Revenue and Taxation, 12 GCA §58140

Laws covering tax abatements and rebates for which Qualifying Certificates of the Guam Economic Development Authority can be issued are found in 12 GCA §58127-§58137.

**§5101. Purpose.** The purpose of this Regulations is to prescribe rules and regulations to assist in the administration of Public Law 8-80, Eighth Guam Legislature approved August 21, 1965, relative to Business Privilege Tax abatements, income tax rebates, and for other purposes applicable thereto.

**§5102. Establishment of Tax Abatements.** Title 12, Guam Code Annotated §58128 provides that the following tax abatements are hereby established and declared, for which Qualifying Certificates may be issued:

(a) All taxes now levied by virtue of 11 GCA Chapter 26, Article 3, known as the Alcoholic Beverage 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.

(b) All taxes now levied by virtue of 11 GCA Chapter 26 Article 4, known as Liquid Fuel 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.

(c) All taxes now levied by virtue of 11 GCA Chapter 26, 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.

(d) All taxes now levied on income derived from the lease of land, building, machinery and equipment by virtue of 11 GCA Chapter 26, Article 2 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 of a tax-exempt business that has qualified and continues to qualify for a Qualifying Certificate.

**§5103. Procedure Governing Applications for Abatement of Taxes.** The procedures for claiming abatement and rebate of taxes specified under §5102 of this Regulation are prescribed in 12 GCA §58135. However, 12 GCA §58140 authorizes the Tax Commissioner of the government of Guam to issue such regulations as he may deem necessary to implement the procedures outlined in this Act.

Consistent with the provisions of 12 GCA §58140, the procedure governing applications for abatement of taxes levied in 11 GCA, Chapter 26, Articles 2, 3 and 4, Chapter 24 is hereby established as follows:

(a) Guam Business Privilege Taxes:

(1) A beneficiary, as defined in 12 GCA §58102, must file prescribed return in order to claim abatement of tax which may be due under 11 GCA Chapter 26 Articles 2, 3 or 4. Forms prescribed for use are as follows:

(A) Title 11 Guam Code Annotated Chapter 26 Article 2 use Form FCN 2-2-57(1) revised 5/62.

(B) Title 11 Guam Code Annotated Chapter 26 Article 3 use Form FCN 2-2-57(1) and attach thereto Form FCN 2-2-57(2) revised 5/62.

(C) Title 11 Guam Code Annotated Chapter 26 Article 4 use Form FCN 2-2-57(1)

and attach thereto Form FCN 2-2-57(3) revised 5/62.

(2) Any return filed for purpose of obtaining abatements authorized herein must be in duplicate and accompanied by one (1) copy of the corresponding Qualifying Certificate. The filing of said Certificate shall constitute a claim for abatement authorized, and shall be accepted in lieu of claims authorized under Business Privilege Tax Regulations No. 8.

(3) Business Privilege Tax Regulation No. 6 shall govern the preparation and filing of returns for which tax abatement is authorized. The due date for filing a return shall be in accordance with 11 GCA §26110. Except that with respect to actual payment of the tax, 12 GCA §58135 shall apply.

(4) Following the filing of a beneficiary's claim for abatement, a copy of accompanying return shall be acknowledged showing date received, the name of the office receiving claim, and returned to beneficiary, either by personal delivery or through a mail carrier.

**§5104. Filing of Returns.** Section 5103 herein requires the filing of tax returns in the manner prescribed by law for similar returns requiring payment of taxes due. While Public Law 8-80 suspends actual payment of the tax pending final approval by Tax Commissioner of abatement, it shows no express authority to defer assessment of the tax. It must, therefore, follow that any tax declared would be assessed, subject only to later adjustment upon issuance of abatement Certificate as provided in §12 GCA §58135 and §5105 of this Regulation.

A similar construction must also hold with respect to the filing of delinquent returns. It must be required, for purpose of this Regulation, that an untimely return, unless reasonable cause exists shall be assessed penalty in accordance with 11 GCA §26202 which shall be due and payable immediately upon such assessment. Penalty assessed or collected in accordance with this Regulation shall not be abated or refunded.

**§5105. Issuing Qualifying Certificate.** With respect to 11 GCA Chapter 26, Articles 2, 3, and 4, 12 GAR §58135 provides:

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

Monthly returns filed for which Qualifying Certificates have been granted will be given preliminary review and upon satisfactory showing that the tax in question necessitates no adjustment, the Tax Commissioner shall, within one hundred twenty (120) days from receipt of said tax return furnish the taxpayer a Certificate of the nature and amount of the tax abated. Where any return or application for abatement is considered incomplete or inadequate, the Tax Commissioner may defer abatement of the tax and shall cause an audit of taxpayer's return, books and pertinent records in order to determine the facts necessary to grant such relief as allowed by law.

**§5106. Limitation on Abatement of Taxes.** Abatement of the taxes authorized herein shall be limited to specific amount or amounts claimed by beneficiary and approved by the Tax Commissioner. The amount of tax abated following issuance of Certificate by the Tax Commissioner shall be final, unless reversed for cause approved by the Tax Commissioner.

**§5107. Procedures Governing Claims for Abatement.** The procedures enumerated hereunder shall govern claims for abatement of all taxes levied by 11 GCA Chapter 24, such abatement being authorized by §5102 of this Regulation:

(a) Real Property Taxes:

(1) Applications for abatement of Real Property Tax shall be filed with the office of the Tax Commissioner of the government of Guam not later than December 31 following effective date of the Qualifying Certificate obtained by any

beneficiary for Real Property Tax abatement. As application for exemption which is not received by December 1 shall not entitle such applicant to abatement of said tax for the current tax year.

(2) Form FCN 2-2-73(1), approved March 14, 1966, is hereby prescribed for and shall be used by a qualified beneficiary in filing with the Tax Commissioner claims for abatement of Real Property Tax authorized in 12 GCA §58127.

(3) All information required on the face of prescribed application form should be completely filled in by the applicant filing the claim and must be verified by the signature of the applicant if such applicant is an individual or a responsible individual when such applicant is a co-partnership, joint venture, association or any group or combination acting as a unit. An application by a corporation must be verified by the signature of the president, vice-president or other authorized officer of such corporation.

(4) The Tax Commissioner may reject acceptance of any application which in his opinion does not comply with this Regulation.

(5) No application shall be accepted for consideration of any claim unless accompanied by a certified copy of a corresponding Qualifying Certificate.

(6) Upon approval of the application filed under this Section, the Tax Commissioner shall make his endorsement thereon placing date when such application was registered with his office, together with effective date of tax abatement as approved by his office.

**§5108. Income Tax Rebates.** The regulation governing income tax rebates authorized in 12 GCA §58137 and §25138 shall be as follows:

(a) Who may claim rebate:

(1) Any recipient of a Qualifying Certificate issued under Public Law 8-80, whether an individual, firm, partnership or corporation who shall be subject to and who has paid the Guam Territorial Income Taxes.

(b) How income tax rebate may be obtained:

(1) A recipient of a Qualifying Certificate who desires to obtain tax rebate must first file income tax return in accordance with Subchapter A, Chapter 61, Title F of the Internal Revenue Code as made applicable to Guam pursuant to Section 31 of Guam's Organic Act.

(2) A certified copy of Qualifying Certificate issued under Public Law 8-80 must accompany each return and shall constitute taxpayer's claim for rebate of the corresponding tax authorized in said Certificate.

(3) A return should be filed not later than the due date prescribed by law for each class of taxpayer in order to avoid penalty. Late filing of taxes due shall be charged penalty together with interest and shall not be subject to any rebate unless such charges were erroneously or excessively collected.

(c) The following rule governs the basis in computing rebatable taxes where beneficiaries' return include income not qualified for tax rebate in accordance with Qualifying Certificate issued:

(1) Corporation:

A. The income tax liability of any corporation which has not elected to be taxed as a "Subchapter S Corporation" shall be computed in accordance with Section II, Part I, Chapter I, Subtitle A of the Internal Revenue Code.

(2) Tax rebate shall be given to extent of the tax directly attributable to the corporate income derived from activities or sources specified in Qualifying Certificate issued under Public Law 8-80.

(3) With respect to corporation declaring income from sources other than those specified in Qualifying Certificate, a tax rebate shall be apportioned to the tax paid which equals the remainder of the total tax paid decreased by the tax liability determined from income not otherwise covered from sources specified in Qualifying Certificate. Example (a): Corporation

B, a domestic corporation obtained a Qualifying Certificate which entitled it to claim tax rebate on one hundred percent (100%) of income tax paid from its tourist business. It filed corporation income tax return for calendar year 1964 showing income and deduction as follows:

## Income:

\$50,000.00	tourist business
3,000.00	dividend from qualified corp.
2,000.00	taxable interest
20,000.00	commission

## Expenses:

\$30,000.00	tourist
5,000.00	commission

## Tax Computation:

Gross Income		\$75,000.00
Deductions:		
Tourist Expenses		\$30,000.00
Commission Expenses		5,000.00
Dividend (Sec. 243-1)	2,550.00	<u>37,550.00</u>
Taxable Income		\$37,450.00
Tax Due		<u>11,725.00</u>

## Rebate Computation:

Gross Income		\$75,000.00
Deductions:		
Tourist Income	\$50,000.00	
Dividend Income	3,000.00	
Commission Expense	<u>5,000.00</u>	<u>58,000.00</u>
Income not subject to rebate		\$17,000.00
Tax Due		3,740.00
Tax Rebate		<u>7,985.00</u>
Total Tax Paid		<u>\$11,725.00</u>

(4) With respect to partnership or individual who elects and has qualified to be taxed as "Section 1361 Corporation," the tax rebate shall be given to extent of the tax directly attributable to the corporate income derived from activities or sources specified in Qualifying Certificate issued under Public Law 8-80.

(5) Dividends received from qualifying corporation shall be taxed in accordance with applicable provision of the Internal Revenue Code. The same rule applies with respect to distributive shares of stockholders to "Subchapter S Corporations." Tax rebate in this group shall be

paid with respect to the full amount of tax paid for which Qualifying Certificate has been issued under Public Law 8-80.

(6) Other beneficiaries entitled to claim income tax rebate and have obtained Qualifying Certificates under Public Law 8-80, may claim such rebates in accordance with this Regulation. The handling of claim and payment shall be governed by applicable provisions under §5108 of this Regulation.

**§5109. Rebate Fund Deposit and Certification of Rebate. (a) Rebate Fund Deposit:**

(1) Following receipt of a beneficiary's return, the Tax Commissioner shall immediately cause issuance of an official receipt showing the name of such beneficiary, the date and amount of the tax collected. In accordance with 12 GCA §58138, income tax made with the government of Guam pursuant to said law shall be covered and deposited into a separate special account in the Treasury of the territory of Guam designated as Income Tax Rebate Fund.

(b) **Certification of Rebate.** The Tax Commissioner shall, within one hundred eighty (180) days from the date of payment of the tax determine the amount of rebate allowable and upon satisfactory showing that rebate is in order, he shall certify amount approved to the Treasurer of Guam who shall cause payment as prescribed by law.

**§5110. Definitions. (a) Definitions:**

(1) *Beneficiary.* The term as used in this Regulation shall be governed by 12 GCA §58102

(2) *Qualifying Certificate.* The term as used in this Regulation shall be governed by 12 GCA §59101.

(3) *Subchapter S Corporation.* This term as used in this Regulation shall be governed by §1371, Subchapter S of Chapter 1, Internal Revenue Code.



(4) *Section 1361 Corporation.* The term as used in this Regulation shall be governed by §1361, Subchapter 12, Chapter 1, Internal Revenue Code.

**§5111. Authority.** This Regulation is made and issued pursuant to authority contained in 12 GCA §58140, and shall become effective upon approval by the Governor.