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CH. 60 FOREIGN SALES CORPORATION TAX INCENTIVES

CHAPTER 60
FOREIGN SALES CORPORATION TAX INCENTIVES

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§ 60100. Legislative Intent.

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

SOURCE: Added by P.L. 17-63.

§ 60101. Definitions.

For the purposes of this Chapter:

(a) The term *FSC* means a Guam domestic corporation which is:

(1) A *FSC* as defined in §922(a) of the Internal Revenue Code as the same may be amended from time to time, and

(2) the holder of a valid Guam *FSC* license duly issued pursuant to 11 GCA Chapter 78.

(b) The term *foreign trade income* means income which is both:

(1) *foreign trade income* as defined in §923(b) of the Internal Revenue Code, as the same may be amended from time to time, and

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

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

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

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

(3) for services which are related and subsidiary to

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

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

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

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

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

(1) export property as defined in §927(a) of the Internal Revenue Code as the same may be amended from time to time, and

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

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

(f) The term *investment income* means investment income as defined §927(c) of the Internal Revenue Code as the same may be amended from time to time, but only to the extent such income

(1) is derived from investment of foreign trade income or

(2) is effectively connected with the trade or business conducted by the FSC which produces the foreign trade income.

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(g) the term *carrying charges* means carrying charges as defined in §927(d)(1) of the Internal Revenue Code as the same may be amended from time to time but only to the extent such charges

(1) are related to or derived in connection with the sale or lease of non-Guam property as defined in 12 GCA § 60101(d) or

(2) are effectively connected with the trade or business of the FSC which produces foreign trade income.

SOURCE: Added by P.L. 17-63; Subsection (a)(1) amended by P.L. 17-75; Subsection (b)(1) amended by P.L. 17-75; Subsection (d)(1) amended by P.L. 17-75; Subsection (f) added by P.L. 17-75; Subsection (g) added by P.L. 17-75.

§ 60102. Tax Exemptions.

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

(b) For the purpose of the taxes imposed upon income pursuant to the Guam Territorial Income Tax (as established and defined in 48 U.S.C. §1424(i) gross income of a FSC does not include any investment income or carrying charges of such FSC.

(c) For the purposes of the taxes imposed upon income pursuant to the Guam Territorial Income Tax (as established and defined in 48 U.S.C. §1424(i)), gross income of an FSC does not include any gross income derived from sources without Guam, determined under Section 862 of the Guam Territorial Income Tax (without regard to Section 865 of the Guam Territorial Income Tax).

SOURCE: Added by P.L. 17-63, amended by P.L. 17-75. Subsection (c) added by P.L. 22-55:1(d) (12/2/93).

§ 60103. Special Qualifying Certificates.

(a) To the extent any foreign trade income, carrying charges, investment income, or gross income derived from sources without Guam as determined under Subsection (c) of § 6102 of Title 12, Guam Code Annotated, at anytime now hereafter becomes includable without the gross income of a FSC for the purposes of the Guam Territorial Income Tax, a rebate of corporation income tax payable to the government of Guam in any single taxable year is hereby established and declared for

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FSCs. Upon application by an FSC after it has been issued a Guam FSC license pursuant to 11 GCA Chapter 78, a special qualifying Certificate shall be issued for a period expiring December 31, 2026 for the rebate of all income taxes applicable to corporate earnings on foreign trade income, carrying charges and investment income as defined in this Chapter and any gross income from sources without Guam as determined under Subsection (c) of 12 GCA § 60102, occurring on and subsequent to the date of the issuance of the Special Qualifying Certificate and prior to the expiration of the Certificate.

(b) A FSC desiring to apply for a Special Qualifying Certificate shall make application by filing a certified copy of its Guam FSC license with the Corporation and furnishing the Corporation with copies of all documents which were required to be furnished to obtain the Guam FSC license pursuant of 11 GCA Chapter 78. The corporation, upon ascertaining that the material furnished by the applicant is in proper order, shall thereupon promptly forward its recommendation for issuance of the Special Qualifying Certificate to the Governor of Guam who shall approve the application.

(c) A true copy of the Special Qualifying Certificate shall be attached to each corporate tax return of the FSC and the amount of tax due prior to the rebate shall be deposited with the Government at the time of filing of each income tax return. Taxes deposited by a FSC shall not be placed in the General Fund or commingled with other funds, but shall be deposited by the Director of Revenue and Taxation in special purpose trust accounts in one or more FDIC insured banks with offices within the territory of Guam and shall be withdrawn from such accounts only for the purpose of (i) making rebates as provided herein or (ii) payment into the General Fund after a final determination, including a judicial determination if requested by the FSC taxpayer, that taxes are validly due and payable and that the FSC is not entitled to any rebate. Upon filing by a FSC of a tax return, the Director of Revenue and Taxation shall immediately thereafter cause the return to be reviewed, and, if the rebate appears to be in order shall cause the amount of tax deposited by the FSC to be returned to the FSC within fifteen (15) days from the date of deposit. If for any reason the amount to be rebated is not returned to the FSC within fifteen (15) days from the date of a deposit, the unreturned amount shall bear interest at the rate determined under § 6611 of the Guam Territorial Income Tax law from the date of

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deposit until the date of return to the FSC of the money due to it. In the event of any failure to make the rebate provided for herein within thirty (30) days from the date of deposit by a FSC of the taxes due prior to rebate, the government of Guam consents to suit and consents to a decree of specific performance being entered against it for payments found to be lawfully due. The fifteen day review by the Director of Revenue and Taxation of a tax return of a FSC shall not constitute an audit or final determination by the Director of taxes due, but the rebate provided for herein shall be made notwithstanding that an audit or final determination of taxes due has not been completed with the fifteen day period. Amounts rebated to a FSC as provided herein shall not constitute income to such FSC and shall not be included within the gross income of a FSC for tax purposes.

(d) the provisions of 12 GCA Chapter 58 shall not apply to any FSC which holds a Special Qualifying Certificate except as otherwise specifically set forth in this Subsection. 12 GCA Sections 58102, 58104, 58106 (except for item 5, thereof), 58107 (except for the first paragraph thereof), 58109, 58122 and 58123 shall apply to such FSCs. Any FSC holding a Special Qualifying Certificate issued pursuant to this Chapter shall also be entitled to obtain an ordinary Qualifying Certificate issued pursuant to 12 GCA Chapter 58 from the corporation as to any activities of the FSC which result or are intended to result in the earning by the FSC of any income other than foreign trade income, carrying charges or investment income; provided any FSC desiring a regular Qualifying Certificate shall meet such requirements as are required of any other applicant for a regular Qualifying Certificate. It is the intent of the Legislature that no portion of the rebates of income tax made under this Section shall be subject to income taxation.

SOURCE: Added by P.L. 17-63, Subsection (a) amended by P.L. 17-75; Subsection (d) amended by P.L. 17-75. Subsection (a) amended by P.L. 22-55:1(f) (12/2/93).

§ 60104. License Requirement.

It shall be a condition of the tax exemptions provided for in § 60102 of this Chapter and of the Special Qualifying Certificate provided for in § 60103 of this Chapter that a FSC shall at all times maintain a valid Guam FSC license in good standing pursuant to the provisions of 11 GCA Chapter 78.

SOURCE: Added by P.L. 17-63; amended by P.L. 17-75.

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