

EXECUTIVE ORDER NO. 85- 3

GUIDELINES FOR LICENSING FOREIGN SALES CORPORATIONS, AND TAX PROVISIONS RELATING THERETO, TO BE IMPLEMENTED BY THE DEPARTMENT OF REVENUE AND TAXATION.

WHEREAS, the FOREIGN SALES CORPORATION EXPORT Incentive Act, P.L. 17-63, as amended by P.L. 17-75, provides for licensing by the Director of Revenue and Taxation of Foreign Sales Corporations (FSCs) which may operate on Guam, and the Act establishes special tax incentives for FSCs which are licensed on Guam; and

WHEREAS, the Department of Revenue and Taxation has determined that the temporary regulations promulgated under Executive Order 84-26 shall become the final regulations relating to the licensing of FSCs, and the tax provisions applicable thereto; and

WHEREAS, the final regulations, a copy of which is attached as Exhibit A hereto, are necessary to implement the provisions of the Act;

NOW, THEREFORE, I, RICARDO J. BORDALLO, Governor of Guam, by virtue of the authority vested in me by the Organic Act of Guam and the laws of Guam, do authorize and direct the Department of Revenue and Taxation to use the regulations, a copy of which is attached hereto as Exhibit A, as guidelines in performing such functions, relating to Foreign Sales Corporation, as the Department has under the Foreign Sales Corporation Export Incentive Act.

Signed and promulgated at Agana, Guam, this 11th day of January, 1985.



RICARDO J. BORDALLO
Governor

COUNTERSIGNED:



EDWARD D. REYES
Lieutenant Governor

Attachments

REGULATIONSTITLE 3, CHAPTER 8, ADMINISTRATIVE RULES
AND REGULATIONS OF THE GOVERNMENT
OF GUAM

LICENSING OF FOREIGN SALES CORPORATIONS

Section 2700. Introduction. The following rules and regulations describe the procedures for the issuance of business licenses to Foreign Sales Corporations pursuant to the provisions of Chapter VI, Title XVII of the Government Code.

Section 2701. Definitions.

(a) A "Foreign Sales Corporation (FSC)" for the purposes of these regulations is an entity incorporated in Guam which is a FSC as such term is defined in §922(a) of the Internal Revenue Code as the same may be amended from time to time.

(b) A "small FSC" is a FSC which meets the requirements of §922(b) of the Internal Revenue Code as the same may be amended from time to time.

(c) The "Director" is the Director of the Department of Revenue and Taxation.

Section 2702. Requirement of License. Before any person or entity may operate a FSC that is incorporated in Guam, a written license issued by the Director shall be obtained. Each license so issued shall be for a term expiring December 31, 1996, subject to the condition that the licensee shall pay an annual license fee for each year or portion of a year as provided in §2706 of these regulations.

Section 2703. License Requirements. A Guam FSC license shall be issued by the Director upon the filing of an application by or on behalf of a FSC therefor which shows that the following requirements have been satisfied:

(a) The FSC is duly incorporated under the laws of Guam.

(b) There has been furnished to the Director copies of the FSC's articles of incorporation and by-laws, certified by a corporate officer or agent of the FSC.

(c) To the extent not disclosed in the FSC's articles of incorporation, there has been furnished to the Director a statement showing the amount of the FSC's paid-in, the number of its shares authorized, the number of its shares outstanding, the number of its shares subscribed but not issued, and the par value of each such share.

(d) To the extent not disclosed in the FSC's articles of incorporation, there has been furnished to the Director the names and addresses of all persons who are owners or subscribers of shares of the FSC and the number of shares owned or subscribed by each such person, and the names and addresses of all directors and officers of the FSC.

(e) There has been furnished to the Director a true copy of the FSC's most recent election filed with the Secretary of the Treasury of the United States, or his delegate, of its election to be treated as a FSC or as a small FSC under §927(f) of the Internal Revenue Code. Notwithstanding the foregoing, if the FSC has not made such an election at the time of its application, it may satisfy this requirement by furnishing to the Director a true copy of the election within ninety (90) days after the date of the election.

(f) There has been filed with the Director a statement under oath of the FSC's manager, agent or corporate officer that such manager, agent or corporate officer will, as far as the duty devolves upon such manager, agent or corporate officer, diligently and honestly administer the affairs of the FSC and will not knowingly violate or willingly permit to be violated any of the provisions of law applicable to the FSC.

(g) There has been paid to the Government at or before the time the application for license is filed with the Director the first annual license fee as provided in §2706 of these regulations.

Section 2704. Application Form. An application for a FSC license shall be submitted on such form as the Director may prescribe.

Section 2705. Effective Date of License. The effective date of a license shall be the date it is issued by the Director, or such other date as may be requested by or on behalf of the FSC and approved by the Director. If a newly formed corporation files an election to be treated as a FSC or small FSC under §927(f) of the Internal Revenue Code with the Secretary of the Treasury of the United States on or before the 90th day after the beginning of the first taxable year, the Director shall approve any request for an effective date which occurs within such 90-day period, provided the request for same is filed with the Director no later than 30 days after the expiration of such period. The preceding sentence shall not limit the discretion of the Director to approve or disapprove any request in any other situation for an effective date, whether the requested date is before, the same day as, or after the application for a license is filed. The effective date of the license shall be stated on the license.

Section 2706. License Fees. The license fee for each year or portion thereof for a Guam FSC license shall be (1) One Thousand Dollars (\$1,000) for a FSC which is not a small FSC, and Four Hundred Dollars (\$400) for a FSC which is a small FSC. The first annual license fee is payable at the time an application for a FSC license is filed with the Director. If the license is not issued, the fee shall be refunded to the applicant. In order to maintain the license in good standing, a FSC is required to pay to the Director a license fee for each or portion of a calendar year commencing after the close of the calendar year in which the Guam FSC license becomes effective. The timely payment of the initial fee shall qualify the applicant to operate a FSC in Guam for the period beginning with the effective date of the license and ending at the close of the calendar year in which the effective date occurs. Thereafter the fee is payable with respect to each calendar year or portion thereof in which the FSC is incorporated in Guam and operates as a FSC. The initial fee is due and payable at or before the time the application for license is filed with the Director. Subsequent fees are due and payable on or before January 1 of the calendar year or portion thereof to which the fee relates. If the FSC that has been licensed in Guam changes from a small FSC to a non-small FSC, or vice versa, a change in the annual license fee of such FSC shall be effective at the commencement of the calendar year immediately following the year in which the change of status occurs.

Section 2707. Exclusive License. So long as the business activities of the FSC are conducted solely for the purpose of earning foreign trade income as that term is defined in 12 GCA §2431(b), as well as investment income as defined in 12 GCA §2431(f) and carrying charges as defined in 12 GCA §2431(g) no business license other than the Guam FSC license shall be required. However, to the extent that a FSC conducts any business activities which are intended to produce or do produce any income other than foreign trade income, investment income and carrying charges the FSC shall be required to obtain such business licenses and permits as are required of any other domestic corporation incorporated in Guam and transacting business in Guam.

Section 2708. Filing Proof of the FSC Status. In order to maintain its license as a Guam FSC after the first year or portion thereof of its license, a FSC on or before each succeeding January 1 shall furnish to the Director a statement under oath of its manager, agent or corporate officer residing in Guam that the

election of the FSC under §927(f) of the Internal Revenue Code has not been revoked or otherwise terminated, and that no change in status of the FSC from a small to a non-small FSC or vice versa has occurred, or if such change has occurred, the nature of the change.

Section 2709. License Revocation or Cancellation. So long as a licensed FSC (1) pays its annual license fees, (2) files with the Director within ninety (90) days after the date of making its election, a true copy of its federal election of status as a FSC or small FSC under §927(f) of the Internal Revenue Code, and (3) files the statements under oath required by §2708 of these regulations, a Guam FSC shall be presumed to be validly licensed. In the event the Director has reasonable cause to believe any Guam FSC license may have been invalidly issued or that any Guam FSC license may be subject to revocation or cancellation because the holder is not in compliance with applicable Guam law or these regulations, then the Director shall provide a written notice to the resident manager, agent or corporate officer of the FSC, specifying the grounds for revocation or cancellation of the Guam FSC license. The FSC shall then have a period of ninety (90) days to correct any deficiencies and bring itself into compliance with Guam law and cure any grounds for revocation or cancellation, or to file with the Director a statement of such facts and arguments as the FSC may deem relevant. In the event the Director, after such ninety (90) day period, believes the FSC is still not in compliance with applicable Guam law or these regulations or otherwise has not cured the grounds for revocation or cancellation, the Director shall have the right upon not less than thirty (30) days' written notice to the FSC to schedule a hearing to be held in accordance with the provisions of Chapters I and II of Title XXV of the Government Code (the Administrative Adjudication Law) and thereafter, if cause be found, to revoke or cancel the Guam FSC license. Any cancellation or revocation order issued by the Director shall be subject to judicial review in the Superior Court of Guam in the manner provided in §24140 and §24141 of the Government Code.

REGULATIONS

TITLE 23, DIVISION I, CHAPTER 1, ADMINISTRATIVE RULES AND REGULATIONS OF THE GOVERNMENT OF GUAM

INCOME TAX REBATES FOR FOREIGN SALES CORPORATIONS

SECTION 22001. The following rules and regulations describe the exemptions or rebates of Territorial Income Tax that Foreign Sales Corporations which have been issued Guam FSC licenses are entitled to under the provisions of Article 4A, Chapter 2, Title 12, Guam Code Annotated.

Section 22001.1. Definitions.

(a) A "Foreign Sales Corporation (FSC)" for the purposes of these regulations is an entity incorporated in Guam which is a FSC as such term is defined in §922 of the Internal Revenue Code as the same may be amended from time to time.

(b) A "Guam FSC license" is a license issued to a FSC by the Director of the Department of Revenue and Taxation pursuant to the provisions of Chapter VI, Title XVII of the Government Code.

(c) A "Special Qualifying Certificate" is a certificate issued by the Guam Economic Development Authority to a FSC pursuant to the provision of Chapter VI, Title XVII of the Government Code.

(d) The "Director" is the Director of the Department of Revenue and Taxation.

(e) 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, as defined in §2431(c) of the Government Code.

(f) The term "Investment Income" means investment income as defined in §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.

(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 or (2) are effectively connected with the trade or business of the FSC which produces Foreign Trade Income.

(h) The term "Non-Guam Property" means property which is both (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.

Section 22001.2. Exemption of Foreign Trade Income, Investment Income and Carrying Charges from the Territorial Income Tax. 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 a FSC does not include any Foreign Trade Income, Investment Income or Carrying Charges of such FSC.

Section 2201.3. Provision for Rebates. To the extent any Foreign Trade Income becomes includible for the purposes of the Guam Territorial Income Tax within the gross income of a FSC which holds a Special Qualifying Certificate, the Director shall rebate the portion of corporate income tax payable to the Government of Guam that is attributable to the tax on the FSC's Foreign Trade Income, Investment Income and Carrying Charges. Such rebates shall be effected under the procedures prescribed by §22001.4 or §22001.5 of these regulations.

Section 22001.4. Rebate Procedure. A FSC holding a Special Qualifying Certificate which does not elect to follow the procedures outlined in §22001.5 of these regulations shall make such deposits of estimated territorial income tax and shall make such additional payments of tax as are required to be made at or before the due date of the FSC's income tax return, without regard to the exclusion of the FSC's Foreign Trade Income, Investment Income and Carrying Charges from its gross income. A FSC which holds a Special Qualifying Certificate may claim a rebate of the tax attributable to the Foreign Trade Income, Investment Income and Carrying Charges through the filing of its corporate tax return for the period involved accompanied by a true copy of its Special Qualifying Certificate. Upon the filing of such return, the Director immediately thereafter shall cause the return to be reviewed, and if the rebate appears to be in order shall cause the amount deposited by the FSC and attributable to its Foreign Trade Income, Investment Income and Carrying Charges, to be returned to the FSC within fifteen (15) days from the date of any deposit accompanying the return. The review and rebate made by the Director are subject to the provisions of §2433(c) of the Government Code.

Section 2201.5. Alternate Rebate Procedure. In lieu of making payments of taxes of territorial income tax attributable to Foreign Trade Income, Investment

Income and Carrying Charges as provided in §10460.4 of these regulations, a FSC which holds a Special Qualifying Certificate may elect to claim its rebate in advance by crediting the same against estimated payments of income tax and any final payment due with its income tax return. Under this procedure, the FSC may, at or before the time a payment of estimated tax is due, file with the Director a statement showing the amount of estimated tax due, and the amount thereof which qualifies for a rebate. Such amount may be deducted from the estimated tax payment. Payment for the balance of the estimated tax due, if any, shall accompany the statement. In like manner, a FSC may credit against any payment of tax due with its income tax return the amount thereof which qualifies for a rebate. A computation of such rebate credit shall accompany the return. The Director shall make such adjustments in the account maintained for a FSC as may be needed to properly reflect the tax liability and rebate credits of a FSC as reported by the FSC. Any rebate credits claimed hereunder shall be subject to review by the Director. If the Director determines that a rebate credit was improperly computed by a FSC, he shall adjust such credit and shall require payment of any additional amount due, or shall make refund of any overpayment, as the case may be. Any failure of a FSC to make an additional payment which the Director determines to be due shall be subject to such interest and penalties as may apply to underpayments of estimated tax or underpayments of tax, as the case may be, under the Territorial Income Tax law, and shall be further subject to such appeal and other procedures as may apply under the Territorial Income Tax law with respect to the same.

Section 22001.6. Requirement of Valid Guam FSC License. Pursuant to §2434 of the Government Code, it shall be a condition of the tax exemption provisions of §22001.2 of these regulations, and of the tax rebate provisions of §22001.3 to §22001.5, inclusive, of these regulations, that a FSC shall at all applicable times maintain a valid Guam FSC license in good standing pursuant to the provisions of Chapter VI of Title XVII of the Government Code of Guam.

REGULATIONS

**TITLE 23, DIVISION I, CHAPTER 2, SUBCHAPTER
A, ADMINISTRATIVE RULES AND REGULATIONS
OF THE GOVERNMENT OF GUAM**

**EXEMPTION OF FOREIGN TRADE INCOME INVESTMENT,
INCOME AND CARRYING CHARGE INCOME OF
FSCs FROM GROSS RECEIPTS TAX**

SECTION 22010.18. Exemption of Foreign Trade Income of FSCs From

Gross Receipts Tax. Pursuant to the provisions of §19543.0020 of the Government Code, all of the "Foreign Trade Income" of a Foreign Sales Corporation (FSC) as defined in 12 GCA §2431(b), Investment Income as defined in 12 GCA §2431(f), and Carrying Charges as defined in 12 GCA §2431(g) shall be exempt from the gross receipts tax for such periods of time as the FSC holds a Guam FSC license which has been issued by the Department of Revenue and Taxation pursuant to the provisions of Article 4A, Chapter 2 of Title 12 of the Guam Code Annotated and Chapter 8 of Title 3 of the Administrative Rules and Regulations of the Government of Guam. The reporting of such tax-exempt income on tax returns to the Department of Revenue and Taxation shall not be required.

REGULATIONS

TITLE 23, DIVISION I, CHAPTER 2, SUBCHAPTER C, ADMINISTRATIVE RULES AND REGULATIONS OF THE GOVERNMENT OF GUAM

EXEMPTION OF CERTAIN PROPERTY OF FOREIGN SALES CORPORATIONS FROM THE USE TAX

SECTION 22012. Pursuant to the provisions of §19605(g) of the Government Code, all property imported into Guam by a Foreign Sales Corporation (FSC) which is "non-Guam property", as defined in 12 GCA §2431(d) shall be exempt from the use tax if such property was imported into Guam at a time that the FSC held a valid Guam FSC license which was issued by the Department of Revenue and Taxation pursuant to the provisions of Chapter VI of Title XVII of the Government Code and Chapter 8 Title 3 of the Administrative Rules and Regulations of the Government of Guam. The reporting of such tax-exempt imports on tax returns to the Department of Revenue and Taxation shall not be required.