

AN ACT

To add a new chapter to Title 4, Division 2 of the Commonwealth Code to promote economic development in the Commonwealth by offering tax abatement and/or rebate incentives in exchange for the development of desirable facilities or activities.

**BE IT ENACTED BY THE TWELFTH NORTHERN MARIANAS
COMMONWEALTH LEGISLATURE:**

Section 1. Short Title. This Act shall be known as the “Investment Incentive Act of 2000.”

Section 2. Findings and Purpose. The Legislature finds that it is desirable and necessary to promote the continued economic development of the Commonwealth. The Legislature encourages the development of additional and expansion businesses by offering developers tax incentives to build, expand and operate projects. Providing investment incentives is declared to be a public purpose.

Section 3. Investment Incentive Act. A new section is hereby added to Title 4, Division 2 of the Commonwealth Code to be titled “Chapter 3 - Investment Incentive Act.” The text of the act is as follows:

CHAPTER 3.

The Investment Incentive Act.

§3301	Definitions
§3302	Eligibility
§3303	Minimum Investment
§3304	Tax Abatements and Tax Rebates
§3305	Submission to Governor

- §3306 Requirements
- §3307 Application Filing Fees
- §3308 Review
- §3309 Nature of Tax Benefits
- §3310 Commonwealth Development Authority Board's Findings on Applications
- §3311 Conditions of Benefits
- §3312 Grounds for Suspension or Revocation
- §3313 Procedure for Suspension, Revocation or Failure to Issue a Certificate of Compliance
- §3314 Retroactive Suspension or Revocation
- §3315 Business License Required
- §3316 Conflicts of Interest
- §3317 Recommendations
- §3318 Transmission to the Director of Revenue and Taxation
- §3319 Certificate of Compliance
- §3320 Abatement of Tax for other than NMTIT Tax Obligations
- §3321 Rebate of Tax
- §3322 Tax Redetermination
- §3323 Implementation by the Director of Revenue and Taxation and the Commonwealth Development Authority Board

§3301 **Definitions.** Where they appear in this Act the following terms have the following meanings:

(a) "Qualifying Certificate". A "Qualifying Certificate" is a contract valid for a given period of time, executed by the Governor upon recommendation of the Commonwealth Development Authority Board, between the Government of the Northern Mariana Islands and the Beneficiary, which has qualified for certain tax rebates or tax abatements or for both in

return for development or expansion of a desirable business activity as described in this Chapter.

(b) “Beneficiary”. The recipient of a Qualifying Certificate shall be known as a “Beneficiary”.

(c) “Certificate of Compliance”. A certificate issued by the Commonwealth Development Authority that a Beneficiary has complied with the terms and conditions of the Qualifying Certificate for the previous year.

§3302 **Eligibility.** Any business which is either a trust, a partnership, a sole proprietorship, a corporation, a limited liability corporation or a limited liability partnership which is engaged in or about to engage in the Commonwealth in desirable businesses that are determined by the Commonwealth Development Authority Board to be beneficial to the development of the Commonwealth’s economy may be qualified to become a holder of a Qualifying Certificate in the following areas:

- a. Franchise restaurants;
- b. Water parks;
- c. Aquariums;
- d. Cultural centers;
- e. Theme parks;
- f. Resort Hotels and condominiums;
- g. Golf courses;
- h. Convention centers;
- i. Dinner theaters;
- j. Special Events such as conventions and sporting events;
- k. CNMI based airlines and other aviation related activities;
- l. Manufacturing or Processing of High Technology Products;
- m. Internet related businesses and/or businesses engaged in internet commerce; or,

- n. Any development or project beneficial to the economic development of the Commonwealth not listed above.

§3303 **Minimum Investment.** A minimum capital investment, including public benefit contributions, in a new business or expansion of an existing business of a Qualifying Certificate applicant is as follows:

	New	Expansion
a. Franchise restaurant	\$ 1,000,000	500,000
b. Water park	\$ 1,000,000	500,000
c. Aquarium	\$ 1,000,000	500,000
d. Cultural center	\$ 1,000,000	500,000
e. Theme park	\$ 10,000,000	5,000,000
f. Resort hotels or condominium	\$ 5,000,000	2,500,000
g. Golf course	\$ 10,000,000	5,000,000
h. Convention center	\$ 1,000,000	500,000
i. Dinner theater	\$ 1,000,000	500,000
j. Special event	\$ 500,000	250,000
k. CNMI based airlines and other aviation related activity	\$ 1,000,000	500,000
l. Manufacturing or processing of high technology product	\$ 1,000,000	500,000
m. Internet related businesses and/or businesses engaged in internet commerce	\$ 100,000	50,000
n. Any development or project approved by joint legislative resolution and beneficial to the economic development of the Commonwealth not listed above;	\$ 500,000	250,000

Provided that for the islands of Rota and Tinian, the minimum capital investment, including public benefit contributions, shall be sixty percent (60%) of the corresponding figures listed above.

§3304 **Tax Abatements and Tax Rebates.** Subject to the provisions of this Chapter, the Governor is authorized to issue a Qualifying Certificate abating the following taxes or establishing a higher tax rebate level on the following terms:

(a) Abatement or permitting a rebate of up to one hundred percent (100%) of all taxes of any nature paid or to be paid to the Government of the Commonwealth by a Beneficiary and if it is in the economic interest of the Commonwealth, its owners or the development and operation of activities covered by the Qualifying Certificate. The rebate or abatement may be issued for a period up to twenty-five (25) consecutive years from the effective date of the Qualifying Certificate.

(b) In lieu of the percentage of tax abatements and rebates authorized in subsection (a), the Commonwealth Development Authority Board may, in consultation with the Division of Revenue and Taxation, recommend and the Governor may grant up to fifty percent (50%) of said abatements and rebates for a period of up to fifty years.

§3305 **Submission to Governor.** If the Commonwealth Development Authority Board recommends issuance of the Qualifying Certificate to the Governor, the draft Qualifying Certificate and supporting documentation, together with the memorandum of the Commonwealth Development Authority's findings in support of its recommendations, shall then be submitted to the Governor. Any recommendation of the Commonwealth Development Authority Board not approved by the Governor within forty-five (45) calendar days shall be deemed disapproved on the forty-sixth (46th) day following such receipt.

§3306 **Requirements.** Each applicant for a Qualifying Certificate must submit the following to the Commonwealth Development Authority:

1. A completed Qualifying Certificate application together with the applicable filing fee;
2. Financial plan for financing the project, if appropriate;
3. Certified copies of articles of incorporation, partnership agreement, or trust agreement as filed with the Government of the CNMI;
4. Names of owners, to include addresses, percentages of ownership, and the amount invested or to be invested;
5. Business plan;
6. Description of the land on which Applicant's project is to be located, Applicant's title thereto, and any recorded maps thereof; and
7. A Certificate of Tax Compliance from Division of Revenue and Taxation.

§3307 **Application Filing Fees.** The applicable non-refundable filing fees are as follows:

<i>Activity</i>	<i>Filing fee:</i>
a. Franchise restaurant	\$5,000
b. Water park	\$5,000
c. Aquarium	\$5,000
d. Cultural center	\$5,000
e. Theme park	\$10,000
f. Resort hotel and condominium	\$10,000
g. Golf course	\$10,000
h. Convention center	\$5,000
i. Dinner theater	\$5,000
j. Special events	\$2,500
k. CNMI based airlines and other aviation related activity	\$5,000

l.	Manufacturing processing of High Technology Products	\$10,000
m.	Internet related businesses and/or businesses engaged in internet commerce	\$ 2,500
n.	Any development or project beneficial to the economic development of the Commonwealth not listed above;	\$ 2,500

Provided that for the islands of Rota and Tinian, the applicable non-refundable filing fees shall be sixty percent (60%) of the corresponding figures listed above.

If an applicant's proposed development combines two or more of the activities listed above, and the development is in one contiguous location, the Applicant shall pay only one filing fee, for whichever activity has the highest fee.

§3308 **Review.** The application shall be reviewed and analyzed in detail by the Commonwealth Development Authority and such outside consultants as may be necessary. When necessary, the Commonwealth Development Authority will meet with the Applicant to clarify or amplify representations made in the application. Upon completion of the review, the Commonwealth Development Authority Board may either recommend the issuance of a Qualifying Certificate to the Governor or disapprove the application. If within ninety (90) days of receipt of all items required by Section 3306, the Commonwealth Development Authority Board fails to either disapprove the application or recommend that the application be granted, then the application shall be forwarded directly to the Governor for his consideration.

§3309 **Nature of Tax Benefits.** A Qualifying Certificate, once issued, shall be a contract between the Government of the Northern Mariana Islands and the Beneficiary, and the tax rebates or abatements or both set out in the Qualifying Certificate may not be curtailed, limited or impaired without the consent of both parties by any subsequent act, except as provided herein. Once issued and unless

suspended or revoked, a Qualifying Certificate shall constitute conclusive evidence of entitlement to the tax rebates or abatements or both set out on its face.

§3310 Commonwealth Development Authority Board's Findings on Applications. In making its recommendation to the Governor, the Commonwealth Development Authority Board shall consider and make specific findings on the following:

- (a) The impact of the applicant's proposed activities upon the tourism market in the Commonwealth;
- (b) The financial risks facing the applicant in undertaking the proposed activities and the likelihood of success of the project;
- (c) The location of the proposed activities;
- (d) The creation of new employment;
- (e) The replacement of imports; and
- (f) The reduction of consumer prices.

§3311 Conditions of Benefits. In its recommendation of specific tax benefits, the Commonwealth Development Authority in consultation with the Division of Revenue and Taxation shall consider the following as possible terms and conditions to such benefits:

- (a) Cap on amount. Capping the tax benefits to a fixed dollar amount;
- (b) Public Benefits and Contributions. (i) Conditioning the tax benefits on the Beneficiary's investing in or creating public improvements separate from its proposed activities, (ii) establishing in-house training programs, or (iii) making a contribution to an independent training program or scholarship fund; and
- (c) Local Purchaser. Requiring the Beneficiary to procure services or products from CNMI-licensed vendors if the cost does not exceed one hundred five percent (105%) of the cost of the same services or products available from off-island vendors.

§3312 **Grounds for Suspension or Revocation.** A Qualifying Certificate may be suspended or revoked by the Governor of the Commonwealth upon the recommendation of the Commonwealth Development Authority Board for any of the following reasons:

(a) Fraud. Fraud or misrepresentation of any material allegation in the application for such Qualifying Certificate or any material allegation made in support of the issuance of a Certificate of Compliance;

(b) Bankruptcy. The filing by or against Beneficiary of a petition for bankruptcy;

(c) Dissolution. A finding by the Attorney General that a corporate Beneficiary has been dissolved, or that a corporate, partnership or trust Beneficiary has been dissolved.

§3313 **Procedure for Suspension, Revocation or Failure to Issue a Certificate of Compliance.** No recommendation for suspension or revocation of a Qualifying Certificate or failure to issue a Certificate of Compliance shall be made by the Commonwealth Development Authority Board without a notice to the Beneficiary and a hearing in accordance with the provisions of the Administrative Procedures Act, 1 CMC § 9101 et seq. For the purposes of the Administrative Procedures Act, a Qualifying Certificate shall be deemed a “license” and the recommendation of the Board shall be deemed an “agency action” subject to direct judicial review pursuant to 1 CMC Section 9112.

§3314 **Retroactive Suspension or Revocation.** The suspension or revocation of a Qualifying Certificate may be retroactive to the time of the act or omission giving rise to the suspension or revocation, or for any shorter period recommended by the Commonwealth Development Authority Board.

§3315 **Business License Required.** A Qualifying Certificate shall not be issued to any applicant who has not first obtained a license to do business in the Commonwealth of the Northern Mariana Islands.

§3316 **Conflicts of Interest.** No employee, consultant employed for review of an application, or board member of the Commonwealth Development Authority or his immediate family and no corporation or any other legal entity, in which any employee or counsel of the Commonwealth Development Authority or his immediate family has any financial interest, is eligible to apply for a Qualifying Certificate.

Neither shall any of the following, during their term of office and for a period of one (1) year after their resignation, termination, or completion of their term of office, directly or indirectly, qualify for a Qualifying Certificate:

- (a) Members of the Legislature and their immediate family;
- (b) Employees of the Executive Branch of the Government of the CNMI and their immediate family members, from the level of agency head and up;
- (c) Employees and special consultants of the Governor's Office and their immediate family; and
- (d) Judges of the various courts of the Commonwealth and their immediate family.

Any Qualifying Certificate issued in violation of this Section may be grounds for termination of any or all benefits under the Qualifying Certificate. For purposes of this section, "immediate family" shall mean: A spouse, mother, father, stepfather, stepmother, brothers, sisters, natural and adopted children.

§3317 **Recommendations.** All recommendations of the Commonwealth Development Authority Board for modification, revocation or suspension of Qualifying Certificates shall be forwarded to the Governor of the Commonwealth, together with a memorandum of the Commonwealth Development Authority's findings in support of its recommendations. Any recommendation of the Commonwealth Development Authority Board not approved by the Governor within forty-five (45) calendar days shall be deemed disapproved on the forty-sixth (46th) day following such receipt.

§3318 **Transmission to the Director of Revenue and Taxation.** When the Commonwealth Development Authority Board forwards its recommendations to the Governor regarding a Qualifying Certificate, it shall transmit a copy of such recommendations to the Director of Revenue and Taxation of the Commonwealth for his/her information.

§3319 **Certificate of Compliance.** The Commonwealth Development Authority shall monitor the activities of the Beneficiary and its compliance with all of the terms and conditions of the Qualifying Certificate and this Chapter. The Beneficiary shall accommodate and cooperate with the Commonwealth Development Authority in its compliance inspection. The Commonwealth Development Authority shall, unless unjustified, issue annually, and not later than January 31st of each year, a certificate of compliance for the Beneficiary. Benefits for rebated taxes may be revoked retroactive to the date of the Beneficiary's failure to comply with the terms and conditions of its Qualifying Certificate. No rebate or abatement of any tax shall occur unless the Beneficiary has received a Certificate of Compliance for the applicable tax year.

§3320 **Abatement of Tax for other than NMTIT Tax Obligations.** When the return for the abated tax is accompanied by a corresponding Certificate of Compliance for the applicable tax period, then the actual payment of the tax in question to the Government of the Commonwealth shall not be required, and upon review of the tax return, the Director of Revenue and Taxation of the Commonwealth shall, within one hundred eighty (180) days from date of filing of said tax return, furnish the taxpayer a certification confirming the nature and amount of the tax abated.

§3321 **Rebate of Tax.** In the case of tax rebate, when the return for the rebatable tax is accompanied by a corresponding Certificate of Compliance for the applicable tax period, then the Beneficiary shall pay the tax in question to the Government of the Commonwealth, and upon review of the tax return, the Director of

Revenue and Taxation of the Commonwealth shall, within the normal rebate period required by Commonwealth law, rebate to the Beneficiary the amount of the tax to be rebated.

§3322 **Tax Redetermination.** In the case of any Beneficiary that, in accordance with the applicable laws of the Commonwealth, shall have applied for and been granted a redetermination of tax liability or taxes payable or in the case of a redetermination of tax liability made by the Division of Revenue and Taxation, the amount of abated or rebated taxes determined for such Beneficiary for the taxable years affected shall be accordingly adjusted by the Director of Revenue and Taxation and said Beneficiary shall be required to pay the balance due for said taxable years, if any, together with interest at the rate currently assessed by the government of the Commonwealth per annum from the date the Beneficiary realized the abatement or rebate benefit; provided, that said balance due may be offset, or credited against any tax refund due to the Beneficiary.

§3323 **Implementation by the Director of Revenue and Taxation and Commonwealth Development Authority Board.** The Director of Revenue and Taxation and Commonwealth Development Authority Board are hereby authorized to issue such rules and regulations as they may deem necessary to implement the procedures outlined in this Chapter.

Section 4. Severability. If any provision of this Act or the application of any such provision to any person or circumstance should be held invalid by a court of competent jurisdiction, the remainder of this Act or the application of its provisions to persons, entities or circumstances other than those to which it is held invalid shall not be affected thereby.

Section 5. Savings Clause. This Act and any repealer contained herein shall not be construed as affecting any existing right acquired under contract or acquired under statutes repealed or under any rule, regulation or order adopted under the statutes. Repealers contained in this Act shall not affect any proceeding instituted under or pursuant to prior law.

The enactment of this Act shall not have the effect of terminating, or in any way modifying, any liability, civil or criminal, which shall already be in existence on the date this Act becomes effective.

Section 6. Effective Date. This Act shall take effect upon its approval by the Governor or upon its becoming law without such approval.

CERTIFIED BY:

ATTESTED TO BY:

/s/ Benigno R. Fitial
BENIGNO R. FITIAL
SPEAKER OF THE HOUSE

/s/ Evelyn C. Fleming
EVELYN C. FLEMING
HOUSE CLERK

Approved this 1st day of December, 2000

/s/ Pedro P. Tenorio
PEDRO P. TENORIO
GOVERNOR
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS