

TITLE 25: COMMONWEALTH DEVELOPMENT AUTHORITY

**CHAPTER 25-30 QUALIFYING CERTIFICATE PROGRAM RULES
AND REGULATIONS**

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Chapter History: Amdts Adopted 26 Com. Reg. 23092 (Nov. 30, 2004); Amdts Proposed 25 Com. Reg. 20790 (Aug. 22, 2003); Amdts Adopted 25 Com. Reg. 20231 (May 29, 2003); Amdts Proposed 25 Com. Reg. 20056 (Feb. 28, 2003); Amdts Adopted 24 Com. Reg. 19622 (Oct. 30, 2002); Amdts Proposed 24 Com. Reg. 19383 (July 29, 2002); Adopted 23 Com. Reg. 18254 (Aug. 16, 2001); Proposed 23 Com. Reg. 17906 (June 19, 2001).

Commission Comment: For the history of the Commonwealth Development Authority in the Commonwealth, see the general comment to NMIAC chapter 25-10.

PL 12-32 (effective Dec. 1, 2000) the “Investment Incentive Act of 2000,” codified as amended at 4 CMC §§ 50201-50224, offers tax incentives in exchange for the development of desirable facilities or activities in the Commonwealth. The Commonwealth Development Authority is empowered to recommend to the Governor the issuance of a qualifying certificate for the incentives provided in the act or to disapprove applications for such certificates. See 4 CMC § 50208. 4 CMC § 50223, authorizes the Director of Revenue and Taxation and the Commonwealth Development Authority Board to issue rules and regulations necessary to implement the act.

PL 12-32 § 3 stated: “A new section is hereby added to Title 4, Division 2 of the Commonwealth Code to be titled Chapter 3 - Investment Incentive Act.” The act designated the new provisions of the Investment Incentive Act of 2000 as 4 CMC §§ 3301-3323. The Commonwealth Code, however, already contained provisions numbered 4 CMC §§ 3311-3326. The Commission, therefore, codified PL 12-32, as amended by PL 12-50 and PL 12-80, at 4 CMC §§ 50201-50224. The Commission changed the citations in this chapter accordingly.

Part 001 - General Provisions

§ 25-30-001 Authority

The rules and regulations in this chapter are issued pursuant to 4 CMC § 50223 and in accordance with the Administrative Procedure Act (1 CMC §§ 9101, et seq.).

Modified, 1 CMC § 3806(d), (g).

History: Adopted 23 Com. Reg. 18254 (Aug. 16, 2001); Proposed 23 Com. Reg. 17906 (June 19, 2001).

Commission Comment: PL 12-32 § 3 stated: “A new section is hereby added to Title 4, Division 2 of the Commonwealth Code to be titled Chapter 3 - Investment Incentive Act.” The act designated the new provisions of the Investment Incentive Act of 2000 as 4 CMC §§ 3301-3323. The Commonwealth Code, however, already contained provisions numbered 4 CMC §§ 3311-3326. The Commission, therefore, codified PL 12-32 as amended by PL 12-50 and PL 12-80, at 4 CMC §§ 50201-50224. The Commission changed the citations in this section accordingly.

The Commission changed “Procedures” to “Procedure” to correct a manifest error.

§ 25-30-005 Definitions

For purposes of the rules and regulations in this chapter and the interpretation of the Investment Incentive Act of 2000 (4 CMC §§ 50201, et seq.):

(a) “Administrator” shall mean the Executive Director of the Commonwealth Development Authority.

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- (b) “Aquarium” shall mean a place for the public exhibition of aquatic animals and plants capable of accommodating at least 200 people.
- (c) “CDA” shall mean the Commonwealth Development Authority.
- (d) “CDA Board or Board” shall mean the Board of Directors of the Commonwealth Development Authority.
- (e) “CNMI based airlines” shall mean commercial airlines whose primary hub is in the Commonwealth of the Northern Mariana Islands, including the location of its repair and maintenance facilities, administrative offices and plane storage or hangar.
- (f) “Condominium” means a system of separate ownership of individual units in multiple-unit buildings used for dwelling.
- (g) “Convention center” shall mean a building facility capable of accommodating a group of at least 200 people.
- (h) “Cultural center” shall mean a place capable of accommodating an average daily crowd of at least 200 for the public exhibition of the social, artistic, and cultural expression peculiar to an island society.
- (i) “Dinner theater” shall mean a restaurant that presents a show during or after dinner and is capable of accommodating seating for at least 200 people.
- (j) “Economically beneficial development or project” shall mean a development or project that results in a substantial increase in CNMI revenues, employment, products and services.
- (k) “Franchise restaurant” shall mean a restaurant that has been endowed or granted authority by a restaurant chain to use its name, trademarks, service marks and to distribute or sell its products.
- (l) “Golf course” shall mean a professionally designed course consisting of at least eighteen holes, a driving range, a pro shop, clubhouse, and practice putting green.
- (m) “High technology products” shall mean computer, bio-medical equipment, and electronic related goods.
- (n) “Immediate family” shall mean a spouse, mother, father, stepfather, stepmother, brother, sister, natural and adopted child.
- (o) “Internet related businesses and/or businesses engaged in internet commerce” shall mean businesses engaged in internet commerce that promote and sell products and services online.

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(p) “Resort hotel” shall mean an establishment that provides transient lodging and includes: a private bathroom for each room; adequate air conditioning for each room; dining room/restaurant facility(ies); multi-use facility(ies) to serve as a banquet/meeting room or rooms; related shop facilities; and various recreational facilities such as swimming pools, tennis courts; etc.

(q) “Special events” shall mean events that attract wide international participation such as concerts, sporting events, conventions, and expositions.

(r) “Theme park” shall mean a commercially operated enterprise that offers fides, games, and other forms of family entertainment.

(s) “Water park” shall mean a recreational park or facility in which the primary functions are entertainment and activities using water.

Modified, 1 CMC § 3806(c), (d), (e), (f).

History: Amdts Adopted 24 Com. Reg. 19622 (Oct. 30, 2002); Amdts Proposed 24 Com. Reg. 19383 (July 29, 2002); Adopted 23 Com. Reg. 18254 (Aug. 16, 2001); Proposed 23 Com. Reg. 17906 (June 19, 2001).

Commission Comment: The notice of adoption for the 2001 regulations changed the proposed language of subsections (b), (h), (i), (j) and (p). The 2002 amendments deleted former subsections (f), (k), (q) and (r), and added new subsection (j). The Commission redesignated the subsections accordingly. See also the commission comment to § 25-30-001.

Part 100 - Administration of the Qualifying Certificate Program

§ 25-30-101 Introduction

The qualifying certificate program shall be administered by the Executive Director of CDA who shall for purposes herein be known as the Administrator.

Modified, 1 CMC § 3806(f).

History: Adopted 23 Com. Reg. 18254 (Aug. 16, 2001); Proposed 23 Com. Reg. 17906 (June 19, 2001).

Commission Comment: This section was originally an introduction to chapter II, codified at part 100. See 23 Com. Reg. at 17917 (June 19, 2001). The Commission created the section title.

§ 25-30-105 Duties and Responsibilities of the Administrator

Under the direction of the CDA Board, the Administrator shall have the following duties and responsibilities:

(a) To accept applications for qualifying certificates and to complete initial review of such applications to check for compliance with the law and the submission requirements contained herein;

(b) To reject applications that do not comply with the law or any requirements;

(c) To organize, arrange, and conduct the necessary public hearings as required by law or regulation; and

(d) To do any other acts or take any other action deemed necessary by the CDA Board.

Modified, 1 CMC § 3806(f).

History: Adopted 23 Com. Reg. 18254 (Aug. 16, 2001); Proposed 23 Com. Reg. 17906 (June 19, 2001).

Commission Comment: The Commission inserted a comma after the word “arrange” in subsection (c) pursuant to 1 CMC § 3806(g).

§ 25-30-110 Additional Duties and Responsibilities of the Administrator

In addition to his or her responsibility for the acceptance and review of applications, the Administrator shall also be responsible for the management and administration of the qualifying certificate compliance program and for the issuance of all certificates of compliance. The Administrator may delegate any of his or her primary or additional duties or responsibilities, including inspections, monitoring and reporting, to other CDA employees.

Modified, 1 CMC § 3806(f).

History: Adopted 23 Com. Reg. 18254 (Aug. 16, 2001); Proposed 23 Com. Reg. 17906 (June 19, 2001).

Commission Comment: The notice of adoption for the 2001 regulations changed the proposed language of this section.

Part 200 - Additional Submission Requirements

§ 25-30-201 Additional Submission Requirements

In addition to the submission requirements contained in the Act, each applicant shall complete and submit to the Administrator the following:

- (a) Current balance sheets of stockholders/corporation;
- (b) Any necessary business documents indicating: organization is in accordance with the laws of the CNMI; current business ownership information, percentages, investments and addresses; and acceptance and certification of the business organization by the appropriate agencies of the CNMI government;
- (c) A CNMI business license;
- (d) A business plan, including: marketing analysis; direct/indirect impact to industry and community; project description; company portfolio with goals and objectives;

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number of employees; employee benefits package; multiyear financial plan for the years benefits to be received, including: income, balance, and cash flow statements and financial forecast and assumptions;

(e) Certified maps showing project location and lot description; certified land documents that establish the applicant's ownership interest in the land on which the applicant's project is or is to be located; if requested, a current title report indicating that such ownership interest has not been transferred or limited in a manner that would prevent the project from proceeding or succeeding; and a lease agreement, if property is being leased;

(f) An economic impact study showing the importance of the proposed activities to the economy of the CNMI;

(g) Notarized affidavit of qualifying certificate applicant;

(h) Release of information authorization;

(i) If the application is submitted under PL 12-80 § 2(h) (§ 3324), to be codified at 4 CMC § 50224, verifiable evidence showing that the applicant's business primarily serves the tourism industry (i.e., at least fifty-one percent of its business must be from tourists). The ultimate determination of such will be made by the CDA Board;

(j) If the application is submitted under PL 12-80 § 2(h) (§ 3324), to be codified at 4 CMC § 50224, and is for an existing business which primarily serves the tourism industry in the senatorial district of Saipan, verifiable evidence showing that the applicant made the required capital investment between December 1, 1997 and December 1, 2000;

(k) If the application is submitted under PL 12-80 § 2(h) (§ 3324), to be codified at 4 CMC § 50224, and is for an existing business which primarily serves the tourism industry in the senatorial district of Rota or Tinian, verifiable evidence showing that the applicant made the required capital investment by December 1, 2000;

(l) And such other information as required by the Administrator or the CDA Board.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 25 Com. Reg. 20231 (May 29, 2003); Amdts Proposed 25 Com. Reg. 20056 (Feb. 28, 2003); Amdts Adopted 24 Com. Reg. 19622 (Oct. 30, 2002); Amdts Proposed 24 Com. Reg. 19383 (July 29, 2002); Adopted 23 Com. Reg. 18254 (Aug. 16, 2001); Proposed 23 Com. Reg. 17906 (June 19, 2001).

Commission Comment: The 2002 amendments amended subsections (d) and (f), added new subsections (i) and (j) and redesignated former subsection (i) as subsection (k). The 2003 amendments amended subsection (j) and added a new subsection (k). The Commission redesignated former subsection (k) as subsection (l). See also the commission comment to § 25-30-001. The Commission changed the comma after the word "including" in subsection (d) to a colon pursuant to 1 CMC § 3806(g).

Part 300 - Review of the Application

§ 25-30-301 Review of the Application

Upon the submission of a complete application:

- (a) The Administrator shall review the application for compliance.
- (b) The applicant shall cause to be published in a CNMI newspaper of general circulation, at the applicant's expense, a brief resume of the application.
- (c) CDA shall publish a notice of public hearing on the applicant's request for a qualifying certificate.
- (d) The Administrator shall conduct a public hearing and may hire any consultants and experts deemed necessary.
- (e) The CDA Board shall evaluate the application.
- (f) The CDA Board shall make its final recommendation to the Governor in the form of a resolution memorandum containing its specific findings, including the case analysis and proposed qualifying certificate.
- (g) The CDA Board shall, at the same time as it makes its final recommendations to the Governor, also forward a copy of the recommendations to the Director of Revenue and Taxation and to the applicant, for their information.
- (h) Upon issuance by the Governor of a qualifying certificate, the applicant shall cause to be published in a CNMI newspaper of general circulation a notice of the Governor's approval and issuance of the qualifying certificate.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 31 Com. Reg. 29200 (Feb. 25, 2009); Amdts Proposed 30 Com. Reg. 28907 (Dec. 1, 2008); Amdts Adopted 25 Com. Reg. 20231 (May 29, 2003); Amdts Proposed 25 Com. Reg. 20056 (Feb. 28, 2003); Amdts Adopted 24 Com. Reg. 19622 (Oct. 30, 2002); Amdts Proposed 24 Com. Reg. 19383 (July 29, 2002); Adopted 23 Com. Reg. 18254 (Aug. 16, 2001); Proposed 23 Com. Reg. 17906 (June 19, 2001).

Commission Comment: The 2002 amendments amended subsection (f). The 2003 amendments moved this part from former chapter IX to chapter IV, codified at part 300, and re-designated the remaining parts accordingly. The 2009 amendments inserted subsection (g) and re-designated the former subsection (g) as subsection (h).

Part 400 - Notice of Application, Public Hearing and Issuance

§ 25-30-401 Notice of Application

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Following submission of an application, the applicant shall cause to be published in a CNMI newspaper of general circulation, at the applicant's expense, a brief resume of the application in a form prescribed and approved by CDA.

History: Adopted 23 Com. Reg. 18254 (Aug. 16, 2001); Proposed 23 Com. Reg. 17906 (June 19, 2001).

§ 25-30-405 Notice of Public Hearing

Prior to the scheduled hearing date, CDA shall cause to be published in a CNMI newspaper of general circulation a notice of public hearing on the applicant's request for a qualifying certificate.

Modified, 1 CMC § 3806(f).

History: Adopted 23 Com. Reg. 18254 (Aug. 16, 2001); Proposed 23 Com. Reg. 17906 (June 19, 2001).

§ 25-30-410 Notice of Issuance

Upon issuance by the Governor of a qualifying certificate, the beneficiary shall cause to be published in a CNMI newspaper of general circulation a notice of the Governor's approval and issuance of the qualifying certificate. The notice must be pre-approved by CDA and shall be published within ten days of issuance or receipt from the Governor, once a week for two consecutive weeks.

Modified, 1 CMC § 3806(e), (f).

History: Amdts Adopted 25 Com. Reg. 20231 (May 29, 2003); Amdts Proposed 25 Com. Reg. 20056 (Feb. 28, 2003); Amdts Adopted 24 Com. Reg. 19622 (Oct. 30, 2002); Amdts Proposed 24 Com. Reg. 19383 (July 29, 2002); Adopted 23 Com. Reg. 18254 (Aug. 16, 2001); Proposed 23 Com. Reg. 17906 (June 19, 2001).

Part 500 - CDA Board Meeting on Application

§ 25-30-501 Director of the Division of Revenue and Taxation

The Director of Revenue and Taxation or his or her designee may be present at all meetings where an application for a qualifying certificate is formally discussed.

History: Amdts Adopted 25 Com. Reg. 20231 (May 29, 2003); Amdts Proposed 25 Com. Reg. 20056 (Feb. 28, 2003); Adopted 23 Com. Reg. 18254 (Aug. 16, 2001); Proposed 23 Com. Reg. 17906 (June 19, 2001).

Commission Comment: The notice of adoption for the 2001 regulations changed the proposed language of this section. The 2003 amendments moved this part from chapter X to chapter VI, codified at part 500, and re-designated the remaining parts accordingly.

§ 25-30-505 Appearance before the Administrator or the CDA Board

When deemed necessary by the Administrator or the CDA Board, the applicant may be required to appear before the Administrator or the CDA Board for the purpose of clarifying or amplifying representations made in the submitted application. Any failure of

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the applicant to comply with a request for an appearance is sufficient justification for the rejection of an application.

History: Amdts Adopted 25 Com. Reg. 20231 (May 29, 2003); Amdts Proposed 25 Com. Reg. 20056 (Feb. 28, 2003); Adopted 23 Com. Reg. 18254 (Aug. 16, 2001); Proposed 23 Com. Reg. 17906 (June 19, 2001).

Part 600 - Requirements of the Beneficiary

§ 25-30-601 Acceptance to the Qualifying Certificate

The beneficiary shall, in writing, accept or reject the qualifying certificate, in its entirety, within sixty days after its effective date. CDA may, for compelling reasons, grant an extension of this deadline for not more than thirty days. This requirement does not change the effective date of the qualifying certificate. Should the beneficiary fail to respond (i.e., accept or reject) within the prescribed time period, then such failure to respond shall be deemed a rejection of the qualifying certificate in its entirety by the beneficiary.

Modified, 1 CMC § 3806(e), (f).

History: Amdts Adopted 26 Com. Reg. 23092 (Nov. 30, 2004); Amdts Proposed 25 Com. Reg. 20790 (Aug. 22, 2003).

Commission Comment: The 2004 amendments added this new section and redesignated the remaining sections in this part accordingly. The November 2004 notice of adoption changed the proposed language of this section.

§ 25-30-605 Reports

(a) **Reports Prior to Commencement of Operations.** No later than fifteen days after the end of each month after the effective date of the qualifying certificate, the beneficiary shall submit to the Administrator the following reports:

(1) A report on the status of construction, including whether construction has been delayed, and if so, the length of delay and reason for such delay;

(2) A report on the status of employee hiring and training, including the current number of employees; and

(3) A report on purchases outside of the CNMI during the preceding month. The report shall set forth the price of goods or merchandise obtained, and a verifiable price of comparable goods or merchandise available for sale in the CNMI. If the goods or merchandise are not available in the CNMI, the beneficiary shall provide such a statement in the report and shall include the date and vendor(s) surveyed for such goods or merchandise. When determining the price of goods and merchandise bought outside the CNMI, the beneficiary shall include in the actual cost of the goods or merchandise all costs associated in bringing the goods or merchandise into the CNMI such as, freight and handling, insurance, excise taxes (as computed even if not paid) etc.

(4) A report on the status of any necessary equipment acquisition, and whether such acquisition, if delayed, will delay commencement of operation, and if so, the length of delay and the reason for such delay.

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(5) A report on start-up costs and capital investment containing a detail of actual money invested from the date of issuance of the qualifying certificate to the start of operations for purposes of showing full compliance with capital investment requirements prior to the commencement of any operations.

(b) Reports After Commencement of Operations.

(1) No later than the last day of the month following the end of the quarter, the beneficiary shall submit to the Administrator the following reports:

(i) A report on the number of employees and total gross payroll broken down by managerial and non-managerial positions, with rates of pay, with identification of all employees not residents of the CNMI for the preceding quarter;

(ii) A report on all purchases outside of the CNMI during the preceding quarter; and

(iii) A report on employee training programs offered during the preceding quarter.

(2) No later than forty-five days after the end of the year, the beneficiary shall submit to the Administrator the following reports:

(i) A report on public/community benefits provided during the preceding year;

(ii) Non-audited financial statements for the preceding year; and

(iii) A report on the overall benefits to the CNMI economy during the preceding year.

(3) No later than ninety days after the end of the year, beneficiaries must submit to the Administrator audited financial statements for the preceding year.

(c) Reports After Acceptance of Qualifying Certificate. Notwithstanding any of the foregoing reporting requirements, no reports are required to be filed until after the beneficiary has formally accepted a qualifying certificate in accordance with § 25-30-601. Upon acceptance of the qualifying certificate, however, the beneficiary shall submit on or before the next reporting deadline all reports that would have been submitted between the effective date of the qualifying certificate and the date of formal acceptance by the beneficiary. For example, if a qualifying certificate has an effective date of March 7 and the beneficiary does not formally accept the qualifying certificate until May 5, the reports due under subsection (a) for the months of March and April would not be required to be submitted until May 15, the first reporting deadline after the formal acceptance; and the first and second quarter reports would not be required to be filed until July 31.

(d) Other Reports. The beneficiary shall submit other reports as required by the Administrator.

Modified, 1 CMC § 3806(c), (e), (f).

History: Amdts Adopted 26 Com. Reg. 23092 (Nov. 30, 2004); Amdts Proposed 25 Com. Reg. 20790 (Aug. 22, 2003); Amdts Adopted 24 Com. Reg. 19622 (Oct. 30, 2002); Amdts Proposed 24 Com. Reg. 19383 (July 29, 2002); Adopted 23 Com. Reg. 18254 (Aug. 16, 2001); Proposed 23 Com. Reg. 17906 (June 19, 2001).

Commission Comment: The 2002 amendments amended subsection (a), added subsections (a)(3) and (a)(5), redesignated former subsection (a)(3) as (a)(4) and moved subsection (b)(4) to new subsection (c). The 2004 amendments amended subsection (a), added subsection (c) and redesignated subsection (d). The November 2004 notice of adoption changed the proposed language of this section.

§ 25-30-610 Public Benefits Contributions

Every beneficiary is required to make a public benefit contribution. The public benefit contribution may be accepted in whole or in part by the CDA Board as part of the minimum capital investment requirement. Recommendations as to the type of public benefit contribution may come from the CDA Board, the applicant, or both.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 24 Com. Reg. 19622 (Oct. 30, 2002); Amdts Proposed 24 Com. Reg. 19383 (July 29, 2002).

§ 25-30-615 Goods Required to Be Purchased Locally

Every beneficiary is required to procure services and products from CNMI licensed vendors and to submit reports of the same in accordance with the rules and regulations in this chapter.

Modified, 1 CMC § 3806(c), (d), (f).

History: Amdts Adopted 24 Com. Reg. 19622 (Oct. 30, 2002); Amdts Proposed 24 Com. Reg. 19383 (July 29, 2002); Adopted 23 Com. Reg. 18254 (Aug. 16, 2001); Proposed 23 Com. Reg. 17906 (June 19, 2001).

Commission Comment: The 2002 amendments deleted former subsections (a) and (b) and replaced them with this section.

§ 25-30-620 Compliance with Applicable Laws

Every beneficiary is required to comply with all applicable U.S. and CNMI laws.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 24 Com. Reg. 19622 (Oct. 30, 2002); Amdts Proposed 24 Com. Reg. 19383 (July 29, 2002).

§ 25-30-625 Inspections

Beneficiaries must adhere to the following inspection requirements:

- (a) Beneficiaries shall permit CDA to conduct on-site inspections as needed during the term of the qualifying certificate.
- (b) During the course of all inspections, the beneficiary shall provide, for review, copies of all records and documents requested in order to determine:
 - (1) Adherence to the rules and regulations in this chapter and to the Investment Incentive Act of 2000; and
 - (2) Adherence to the terms and conditions of the qualifying certificate.

Modified, 1 CMC § 3806(f).

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History: Amdts Adopted 24 Com. Reg. 19622 (Oct. 30, 2002); Amdts Proposed 24 Com. Reg. 19383 (July 29, 2002); Adopted 23 Com. Reg. 18254 (Aug. 16, 2001); Proposed 23 Com. Reg. 17906 (June 19, 2001).

Commission Comment: The 2002 amendments added two new sections in this part and redesignated this section accordingly.

Part 700 - Tax Compliance by the Beneficiary

§ 25-30-701 General Requirements

Except as provided within the Investment Incentive Act of 2000 and this chapter, every beneficiary is required to comply with all the tax laws of the government of the Northern Mariana Islands.

Modified, 1 CMC § 3806(d), (f).

History: Adopted 23 Com. Reg. 18254 (Aug. 16, 2001); Proposed 23 Com. Reg. 17906 (June 19, 2001).

§ 25-30-705 Filing of Tax Returns

(a) Every beneficiary is required to file a tax return and shall file a return in accordance with the form prescribed by the Division of Revenue and Taxation; and

(b) Tax returns are required to be filed on or before the due date as provided by CNMI tax laws.

Modified, 1 CMC § 3806(f).

History: Adopted 23 Com. Reg. 18254 (Aug. 16, 2001); Proposed 23 Com. Reg. 17906 (June 19, 2001).

§ 25-30-710 Payment of Taxes

Taxes shown as due on a tax return which are required to be paid shall be paid within the time period prescribed by CNMI tax laws unless otherwise provided by the qualifying certificate or this chapter.

(a) Tax Abatement.

(1) In the case of a tax abatement granted to the beneficiary pursuant to a qualifying certificate, the tax subject to abatement is not required to be paid on the return but should be allowed as a provisional tax abatement. When the beneficiary is issued a certificate of compliance by CDA and furnishes that certificate to the Director of Revenue and Taxation, and upon review of the tax return, the provisional tax abatement shall be made official and recorded by the Director of Revenue and Taxation and a certificate confirming the nature and amount of tax abated shall be issued to the beneficiary within 180 days from the date of the filing of the tax return and receipt of a certificate of compliance.

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(2) Any remaining tax not subject to the provisional tax abatement application of subsection (a)(1) of this section shall be paid in full within the time prescribed for filing and payment of taxes. Any tax required to be paid, and not paid within the prescribed time shall be subject to all penalty and interest charges.

(3) Computation of Provisional Tax Abatement and Payment of Taxes.

(i) Provisional tax abatement means the portion of the computed tax liability that is to be abated pursuant to a contract entered into between the beneficiary of a qualifying certificate and the CNMI government. The provisional tax abatement is computed by calculating the tax, and then multiplying the tax by the percentage of tax abatement specified within the qualifying certificate.

(ii) For purposes of subsection (a)(2), the remaining tax that is not subject to abatement shall be paid in full within the time prescribed for payment of tax. For example, a beneficiary receives a qualifying certificate abating 80% of gross revenue tax. The gross revenue earned for the first quarter is \$1,000,000. The normal tax on this gross revenue is \$50,000. Pursuant to subsection (c)(3)(i) of this section, the taxpayer is allowed to take a provisional tax abatement of \$40,000 (80% x \$50,000). Thus, the remaining \$10,000 (\$50,000 - \$40,000) must be paid in accordance with this subsection. In the case of 1st quarter return, such tax shall be paid no later than the last day of the month following the end of the quarter (most instances April 30).

(4) Excise Tax Abatement. In the case of an excise tax abatement granted to the beneficiary pursuant to a qualifying certificate, the abatement on such tax shall only be made after a certificate of compliance has been issued by CDA setting forth that the beneficiary is entitled to the abatement of such excise taxes. However, the beneficiary shall be allowed to claim a provisional abatement on such tax pending a certificate of compliance from CDA, provided that the beneficiary furnishes the Director of Customs a copy of the qualifying certificate and a statement certifying that such goods being imported are covered under the tax abatement benefit of the beneficiary's qualifying certificate.

(5) Developer's Tax Abatement. In the case of a developer's tax abatement granted to the beneficiary pursuant to a qualifying certificate, the abatement on such tax shall only be made after CDA certifies that the beneficiary's project has been completed and sets forth that the beneficiary is entitled to the abatement of the developer's tax. However, the beneficiary shall be allowed to claim a provisional abatement of tax pending a certification from CDA, provided that the beneficiary furnishes the Secretary of Finance a copy of the qualifying certificate and a statement certifying that the development is covered under the tax abatement benefit of the beneficiary's qualifying certificate.

(b) Tax Rebate.

(1) In the case of a tax rebate granted to the beneficiary pursuant to a qualifying certificate, the tax subject to rebate is required to be paid on the return within the time period provided by CNMI laws. When the beneficiary is issued a certificate of compliance by CDA and furnishes that certificate to the Director of Revenue and Taxation, and upon review of the tax return, the Director of Revenue and Taxation shall, within the normal rebate period, rebate to the beneficiary the amount of tax paid pursuant to the qualifying certificate. For purposes of this subsection, the normal rebate period is

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180 days after the Division of Revenue and Taxation's receipt of the certificate of compliance from the beneficiary.

(2) **Excise Tax Rebate.** In the case of any excise tax rebate granted to the beneficiary pursuant to a qualifying certificate, the rebate on such tax shall only be paid after a certificate of compliance has been issued by CDA setting forth that the beneficiary is entitled to the rebate of such excise taxes pursuant to the qualifying certificate. In the case of excise tax paid during the development period of the beneficiary's activity, such taxes shall not be rebated until the completion of the development has been certified by CDA.

(3) **Developer's Tax Rebate.** In the case of a developer's tax rebate granted to the beneficiary pursuant to a qualifying certificate, the beneficiary is first required to pay such tax and the rebate on such tax shall only be made after CDA certifies that the beneficiary's project has been completed and sets forth that the beneficiary is entitled to the rebate of the developer's tax pursuant to the qualifying certificate.

(4) Any remaining tax not subject to application of subsections (b)(1) through (b)(3) of this section shall not be rebated.

(c) **Penalty and Other Late Charges.** Any tax required to be paid, and not paid within the prescribed time shall be subject to all penalty and interest charges.

Modified, 1 CMC § 3806(c), (d), (f).

History: Adopted 23 Com. Reg. 18254 (Aug. 16, 2001); Proposed 23 Com. Reg. 17906 (June 19, 2001).

§ 25-30-715 Rebate of NMTIT on Income from Sources Within the CNMI

(a) In the case of a tax rebate granted to the beneficiary pursuant to a qualifying certificate, the tax subject to rebate is required to be paid on the return within the time period provided by CNMI laws. When the beneficiary is issued a certificate of compliance by CDA and furnishes that certificate of compliance to the Director of Revenue and Taxation, and upon review of the tax return, the Director of Revenue and Taxation shall within the normal period required by CNMI law, rebate to the beneficiary the amount of tax to be rebated. The rebate to the beneficiary shall be the higher of the rebate granted in the qualifying certificate or the rebate provided under the NMTIT.

(b) Any remaining tax not subject to application of subsection (a) of this section shall not be rebated, nor shall estimated tax penalty, as defined under the NMTIT, be rebated.

Modified, 1 CMC § 3806(c), (f).

History: Adopted 23 Com. Reg. 18254 (Aug. 16, 2001); Proposed 23 Com. Reg. 17906 (June 19, 2001).

§ 25-30-720 Cap on Tax Incentives

The cap on tax benefit shall be the amount and/or term of tax benefit specified within the qualifying certificate issued to the beneficiary.

Modified, 1 CMC § 3806(f).

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History: Adopted 23 Com. Reg. 18254 (Aug. 16, 2001); Proposed 23 Com. Reg. 17906 (June 19, 2001).

§ 25-30-725 Effect of Revocation, Suspension, or Voluntary Suspension of Tax Incentive Benefit

(a) When a qualifying certificate has been suspended or revoked, the tax benefits afforded to the beneficiary pursuant to the qualifying certificate shall cease, and all CNMI tax requirements shall then apply to the beneficiary as if it was not eligible for the qualifying certificate.

(b) Any provisional tax abatement previously allowed a beneficiary during the revoked or suspended period shall be disallowed and the tax, if any, shall become due and payable to the CNMI government within 30 days from the date of the revocation or suspension. Any tax not paid within the 30-day period shall be assessed all applicable late charges retroactive to the date when such tax payment was first required as if the beneficiary was not eligible for a qualifying certificate. Any rebate granted under a qualifying certificate shall be disallowed and any rebate previously paid to the beneficiary shall be due the CNMI government and paid within 30 days from the date of revocation.

Modified, 1 CMC § 3806(f).

History: Adopted 23 Com. Reg. 18254 (Aug. 16, 2001); Proposed 23 Com. Reg. 17906 (June 19, 2001).

Part 800 - Certificate of Compliance

§ 25-30-801 Issuance

When it has been determined by CDA that the terms and conditions stipulated on the qualifying certificate have been fulfilled by the beneficiary, the Administrator shall issue a certificate of compliance to the beneficiary. The Administrator shall issue each certificate of compliance on or before the 15th of March of each year.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 25 Com. Reg. 20231 (May 29, 2003); Amdts Proposed 25 Com. Reg. 20056 (Feb. 28, 2003); Adopted 23 Com. Reg. 18254 (Aug. 16, 2001); Proposed 23 Com. Reg. 17906 (June 19, 2001).

§ 25-30-805 Compliance Fees

(a) Annual compliance fees shall be paid by the beneficiary within thirty days of issuance of the qualifying certificate for the first year and then on or before the 15th of March of each subsequent year.

(b) Compliance fees for the coming year must be paid before a certificate of compliance is issued for the past year.

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(c) Information on the required compliance fees shall be available at CDA offices and may be reviewed and revised by the CDA Board as deemed necessary.

Modified, 1 CMC § 3806(e), (f).

History: Amdts Adopted 25 Com. Reg. 20231 (May 29, 2003); Amdts Proposed 25 Com. Reg. 20056 (Feb. 28, 2003); Amdts Adopted 24 Com. Reg. 19622 (Oct. 30, 2002); Amdts Proposed 24 Com. Reg. 19383 (July 29, 2002).

Commission Comment: The 2003 amendments amended subsection (a). The amendments did not address subsections (b) and (c) and, therefore, the Commission retained those provisions.

§ 25-30-810 Non-compliance

(a) When there is a determination of non-compliance, CDA shall provide the beneficiary a notice of intent not to issue a certificate of compliance and provide the beneficiary the opportunity for a hearing in accordance with the provisions of the Administrative Procedure Act [1 CMC §§ 9101, et seq.]. Any request for a hearing must be made by the beneficiary within fifteen days of receipt of the notice.

(b) In the event the beneficiary is required to temporarily discontinue operations due to extenuating circumstances which are acceptable to the CDA Board, then the CDA Board may recommend to the Governor a “voluntary suspension” of the qualifying certificate for a period not to exceed one year. If after the suspension period the beneficiary is still unable to continue operations, the CDA Board may recommend revocation to the Governor or may accept a “voluntary surrender” of the qualifying certificate.

Modified, 1 CMC § 3806(e), (f), (g).

History: Adopted 23 Com. Reg. 18254 (Aug. 16, 2001); Proposed 23 Com. Reg. 17906 (June 19, 2001).

Commission Comment: In subsection (a), the Commission changed “Procedures” to “Procedure” to correct a manifest error.

Part 900 - Modification, Suspension, and Revocation

§ 25-30-901 Grounds for Modification, Suspension, or Revocation

The CDA Board may recommend the modification, suspension, or revocation of a qualifying certificate:

(a) For a beneficiary, if in compliance, where the request by the beneficiary to modify its qualifying certificate is made in writing to the CDA Board within ninety (90) days of the effective days of the Beneficiary’s Qualifying Certificate. Modification hereunder is only available, and this provision (§ 25-30-901(a)) only applies, to timely modification requests made on or after October 1, 2008.

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(b) For failure of the beneficiary to comply with any of the terms or conditions contained therein or within the rules and regulations in this chapter or the Investment Incentive Act of 2000.

In other instances of non-compliance, the CDA Board may also recommend the suspension or revocation of a QC.

Modified, 1 CMC § 3806(d), (f).

History: Adopted 31 Com. Reg. 29200 (Feb. 25, 2009); Proposed 30 Com. Reg. 28907 (Dec. 1, 2008); Adopted 23 Com. Reg. 18254 (Aug. 16, 2001); Proposed 23 Com. Reg. 17906 (June 19, 2001).

Commission Comment: The Commission changed “this provision (X.A.1.a)” to “this provision (§ 25-30-901(a))” pursuant to 1 CMC § 3806(d).

§ 25-30-905 Modification Procedure when Beneficiary is in Compliance

(a) Upon receiving a request for modification by the beneficiary, within forty-five (45) days of that request, the CDA Board may either disapprove the request or recommend that the Governor modify the qualifying certificate.

(b) If within forty-five (45) days of the written request for modification, the CDA Board fails to either disapprove the request or recommend that the request be granted, in whole or in part, the request shall be forwarded directly to the Governor for his consideration.

(c) All recommendations for modification shall be made only after consultation with the Division of Revenue and Taxation.

(d) Any recommendation for modification submitted to the Governor shall be accompanied by a written memorandum containing the findings, conclusions, conditions, and recommendations of the CDA Board.

(e) Any recommendation forwarded to the Governor for modification not approved by the Governor within forty-five (45) calendar days shall be deemed disapproved on the forty-sixth (46th) day following such receipt.

(f) The CDA Board shall, at the same time as it forwards the recommendations to the Governor, also forward a copy of its recommendations for modification to the Director of Revenue and Taxation and to the Beneficiary for their information.

(g) Upon modification of a Qualifying Certificate, CDA shall cause to be published in a CNMI newspaper of general circulation a notice of such modification.

History: Adopted 31 Com. Reg. 29200 (Feb. 25, 2009); Proposed 30 Com. Reg. 28907 (Dec. 1, 2008).

Commission Comment: The former § 25-30-905 was re-designated as § 25-30-910 in 2009.

§ 25-30-910 Modification, Suspension or Revocation Procedure

Upon initial determination by the CDA Board that there may be grounds for modification, suspension or revocation of a qualifying certificate for non-compliance, the Administrator shall give the beneficiary fifteen (15) days written notice of the opportunity for a hearing conducted in accordance with the provisions of the Administrative Procedure Act, 1 CMC §§ 9101, et seq. The purpose of the hearing shall be to determine if there are sufficient grounds to modify, suspend or revoke the beneficiary's qualifying certificate.

Modified, 1 CMC § 3806(a).

History: History: Adopted 31 Com. Reg. 29200 (Feb. 25, 2009); Proposed 30 Com. Reg. 28907 (Dec. 1, 2008); Adopted 23 Com. Reg. 18254 (Aug. 16, 2001); Proposed 23 Com. Reg. 17906 (June 19, 2001).

Commission Comment: This provision was amended in 2008.

Part 1000 - Miscellaneous Provisions

§ 25-30-1001 Confidentiality

No member of the CDA Board or employee of CDA who becomes privy to any confidential information, data figures, projections, estimates, customer lists, tax records, personnel history, accounting procedures, promotions or information otherwise privileged as a result of his or her official position with CDA shall reveal such information to any person, firm, corporation, or other entity outside the course of his or her official duties except on the direct authorization of the CDA Board, or its designee. For the purposes of this section, all applications, supporting financials, work product and memorandum shall be deemed confidential and privileged.

Modified, 1 CMC § 3806(d).

History: Amdts Adopted 24 Com. Reg. 19622 (Oct. 30, 2002); Amdts Proposed 24 Com. Reg. 19383 (July 29, 2002); Adopted 23 Com. Reg. 18254 (Aug. 16, 2001); Proposed 23 Com. Reg. 17906 (June 19, 2001).

§ 25-30-1005 Amendments

The rules and regulations in this chapter may be amended from time to time upon approval of the CDA Board and the Director of Revenue and Taxation.

Modified, 1 CMC § 3806(d), (f).

History: Adopted 23 Com. Reg. 18254 (Aug. 16, 2001); Proposed 23 Com. Reg. 17906 (June 19, 2001).

§ 25-30-1010 Effective Date

The rules and regulations in this chapter shall be effective upon adoption and in accordance with 1 CMC § 9105 (b).

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Modified, 1 CMC § 3806(d), (f).

History: Adopted 23 Com. Reg. 18254 (Aug. 16, 2001); Proposed 23 Com. Reg. 17906 (June 19, 2001).