

CHAPTER 78
FOREIGN SALES CORPORATION LICENSES

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§ 78101. Foreign Sales Corporation Defined.

(a) A *Foreign Sales Corporation* or *FSC* for the purposes of this Chapter is an entity incorporated in Guam which is a FSC as 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 is also a small FSC as defined in §922(b) of the Internal Revenue Code as the same may be amended from time to time.

SOURCE: GC §16500 added by P.L. 17-63; amended by P.L. 17-75:4.

§ 78102. FSC License Requirements.

Before any person or entity may operate a FSC in Guam, a written license issued by the Director of Revenue and Taxation shall be obtained. A Guam FSC license shall be issued provided the applicant meets the following requirements:

- (1) It is duly incorporated under the laws of the Territory of Guam.
- (2) It has filed with the Director of the Department of Revenue and Taxation a certified copy of its articles of incorporation and its bylaws and a copy of an application for a Guam FSC license in such form as the Director may specify.
- (3) It has furnished to the Director such proof of its paid-in capital, capital stock ownership and management as the Director may reasonably require.
- (4) It has filed with the Director a true copy of its most recent election, made under §922(a)(2) of the Internal Revenue Code to be treated as a FSC and, if applicable, under §922(b)(1) of the Internal Revenue Code to be a small FSC; or if it has not yet made such

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election(s) within ninety (90) days after the making of such election(s).

(5) It has complied with all applicable requirements of the Civil Code relating to domestic corporations, except matters otherwise specified for in 18 GCA §2116 (Laws not Applicable to FSC).

(6) Its manager or agent or corporate officer residing in this Territory has taken an oath that such manager or agent or corporate officer will, as far as the duty devolves upon such manager or 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, and the oath, subscribed by the manager or agent or corporate officer taking it, has been transmitted to the Director and filed in the Director's office.

SOURCE: GC §16501 added by P.L. 17-63: subsection (4) amended by P.L. 17-75:5; subsection (6) amended by P.L. 17-75:6.

§ 78103. FSC License Term.

The Director shall issue a Guam FSC license to the applicant provided the applicant fulfills the requirements set forth in § 78102 of this Chapter. The license issued shall be for a term expiring December 31, 2026, subject to the condition that the licensee shall pay an annual license fee each year in the amount provided in 11 GCA § 78106. The first annual license fee shall be payable at the time an application for license is filed with the Director. If the license is not issued, the fee shall be refunded to the applicant. The license provided for herein shall not be revoked or cancelled except for cause and in the manner provided in 11 GCA §76105; provided any licensed FSC may elect at the end of any year during the term of its license not to pay the annual license fee and request, in writing, cancellation of its Guam FSC.

SOURCE: GC §16502 added by P.L. 17-63: amended by P.L. 17-75:7; and by P.L. 22-55.

§ 78104. FSC: One License Only Required.

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), no business license other than the Guam FSC license shall be required with respect to earning such foreign trade income as well as investment income as that term is defined in 12 GCA §2431(f)

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and carrying charges as that term is defined in 12 GCA §2431(g). However to the extent 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. Foreign trade income, investment income and carrying charges of a FSC duly licensed hereunder shall qualify for the special tax incentives provided in as amended from time to time. All income of a FSC other than foreign trade income, carrying charges and investment income shall be taxed in the same manner as income of any other domestic corporation incorporated in Guam.

SOURCE: GC §16503 added by P.L. 17-63; amended by P.L. 17-75:8.

§ 78105. FSC License Revocation or Cancellation.

So long as a licensed FSC (i) pays its annual license fee and (ii) 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 FSC and small FSC under §§922(a)(2) and 922(b)(1) of the Internal Revenue Code, a Guam FSC shall be presumed to validly licensed. In the event the Director has any cause to believe any Guam FSC license was invalidly issued or that any Guam FSC license is subject to revocation or cancellation because the holder is not in compliance with applicable Guam law, then the Director shall provide written notice to 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. In the event the Director, after such ninety (90) day period, believes the FSC is still not in compliance with applicable Guam law or otherwise has not cured the grounds for revocation or cancellation, the Director shall have the right upon not less than thirty (30) day's written notice to the FSC to conduct a hearing 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.

SOURCE: GC §16504 added by P.L. 17-63.

§ 78106. FSC License Fees.

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The license fee for each year or portion thereof for a Guam FSC license shall be:

(a) For a FSC which is not a small FSC:

(1) One Thousand Dollars (\$1,000) from January 1, 1997 to December 31, 2006;

(2) One Thousand Five Hundred Dollars (\$1,500) from January 1, 2007 to December 31, 2016;

(3) Two Thousand Two Hundred and Fifty Dollars (\$2,250) from January 1, 2017 to December 31, 2026; and

(b) For an FSC which is a small FSC:

(1) Four Hundred Dollars (\$400) from January 1, 1997 to December 31, 2006;

(2) Six Hundred Dollars (\$600) from January 1, 2007 to December 31, 2016;

(3) Nine Hundred Dollars (\$900) from January 1, 2017 to December 31, 2026.

SOURCE: GC §16505 added by P.L. 17-75; amended by P.L. 22-55:1(e).

NOTE: P.L. 22-55:1(a) enacted the following as its Legislative Intent:

Background and Legislative Intent. The Foreign Sales Corporation program, enacted into law pursuant to Public Law 17-63 as amended by Public Law 17-75, has been in effect since August, 1984. This program has resulted in several hundred Foreign Sales Corporations registering on Guam each year, and at present there are 215 active corporations registered. There is no infrastructure requirement for these businesses, yet there is a mutual benefit to the businesses and the territory. This program is also in effect in the Virgin Islands and Barbados.

When first enacted, a ten (10) year time period was inserted into the law because the effects of the program were unknown. Additionally, costs of licensing may increase over a longer term. Some businesses would perhaps license as Foreign Sales Corporations on Guam if the term of licensing was extended. For some types of businesses, a ten (10) year term is too short for their business purposes. In order to accommodate continuing interest by the companies presently licensed on Guam and to encourage interest by companies not yet taking advantage of the Guam program, it is desirable to extend the deadline for thirty (30) years, with increasing of licensing fee requirements every ten (10) years.
