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LEGAL MEMORANDUM

Ref: DRT 11-0081

TO: Director, Department of Revenue and Taxation

Attention: Acting Administrator Tax Enforcement Division

FROM: Attorney General 

SUBJECT: GRT Exemption for Base Operations Services (BOS) Subcontractor

Recently you emailed this Office inquired about the following:

If the BOS contractor doesn't meet the provisions of §58128.7, they will not be entitled to claim the GRT exemption of §26203(k). Does the subcontractor have to meet the provisions of §58128.7 to claim the exemption of §26203(k)?

The short answer to that question is "yes" the subcontractor must meet the requirements found in 12 GCA §58128.7 and receive a qualifying certificate in order to qualify for the GRT¹ exemption found in 11 GCA §26203(k).

Discussion

11 GCA §26203(k)(34) provides:

§ 26203. Exemptions.

The provisions of this Article, and the taxes levied thereunder, shall not apply to the following persons:

...

(34) Any amounts received by businesses participating in the Performance of BOS Activities, defined in 12 GCA § 58128.7, as a BOS Contractor, or Subcontractors of the BOS Contractor, provided that such business is a "Guam-

¹ The Gross Receipts Tax (GRT) has been renamed as the "Business Privilege Tax". See P.L. 29-002:VI:28 (May 18, 2007). For ease of reverence the tax will be referred to as "GRT".

based Contractor or Guam-based Subcontractor” for purposes of 12 GCA § 58128.7.

Thus, under 11 GCA §26203(k)(34), a “Guam-based Subcontractor” will be exempt from the GRT on amounts received for the performance of BOS Activities, provided he is a Guam-based Subcontractor for the purposes of 12 GCA §58128.7.

The purpose of 12 GCA Chapter 58 is to provide Qualifying Certificates to entities that meet certain requirements. Specifically, 12 GCA §58128.7(d) grants an income tax rebate to “Guam-based Contractors” or “Guam-based Subcontractors” as follows:

(d) Rebate on Income Received. A rebate of up to one hundred percent (100%) of all income tax paid to the government of Guam by a beneficiary on income received exclusively from BOS contract operations, as a Guam-based BOS Contractor on a military base in Guam or a “Guam-based Subcontractor” to a BOS Contractor, may be issued for the period covered under the BOS Contract, or such independent contract as the entity may have, and may be extended for an aggregate period not to exceed twenty (20) consecutive years from the effective date of a Qualifying Certificate therefore, if beneficiary’s operations are duly extended accordingly.

(emphasis added). Thus, a rebate of income tax paid by a beneficiary on income received as a “Guam-based Subcontractor” may be granted for 20 years from the effective date of a Qualifying Certificate. In order to receive the income tax rebate, the Guam-based Subcontractor must be a beneficiary of a Qualifying Certificate. *See § 58102. Beneficiary Defined.* (“The recipient of a Qualifying Certificate shall be known as a *Beneficiary*.”). That is, it must apply for, undergo review, and be granted a qualifying certificate by the Guam Economic Development Authority (GEDA).

In order for GEDA to grant a qualifying certificate to a “Guam-based Subcontractor”, it first must verify that the applicant is in fact a “Guam-based Subcontractor” as defined in 12 GCA §58128.7(a)(10). That section provides:

(10) Guam-based Contractor or Subcontractor. “*Guam-based Contractor or Subcontractor*” means:

(i) If in existence three (3) or more years, any Contractor or Subcontractor licensed to transact business within Guam whose income reported on its Guam Territorial income tax return for each of the three (3) immediately preceding years was at least forty percent (40%) of the aggregate of the income required to be reported by such person and any of its affiliates on any United States or Guam Territorial income tax return for such taxable years;

(ii) If in existence less than three (3) years, stockholders who together hold a majority of shares or hold a majority interest in any Contractor or Subcontractor licensed to transact business within Guam, each of whose income reported on

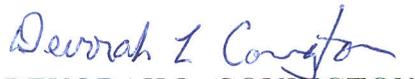
their Guam Territorial income tax return for each of the three (3) immediately preceding taxable years was at least forty percent (40%) of the aggregate of the income required to be reported by such stockholder on any United States or Guam Territorial income tax return for such taxable years.

Therefore, if the applicant falls within this definition, and meets other requirements outlined in 12 GCA Chapter 58, it may be granted a qualifying certificate and will be entitled to a rebate on income tax received under the contracts performed on military bases.

In order to qualify for the GRT exemption under 11 GCA §26203(k)(34), the Guam-based Subcontractor must also receive a Qualifying Certificate; that is, the GRT exemption is not automatically granted to any subcontractor who provides contractual services on a military base. This requirement is because of the phrase in 11 GCA §26203(k)(34) that states “provided that such business is a ‘Guam-based Contractor or Guam-based subcontractor’ for purposes of 12 GCA § 58128.7.” (emphasis added). The purpose of 12 GCA §58128.7 is to provide the beneficiaries of a Qualifying Certificate with income tax rebates. *See* 12 GCA §58128.7(d). Thus, in order to fit within the tax exemption provision found in 11 GCA §26203(k)(34), the subcontractor must be the recipient of a Qualifying Certificate under 12 GCA §58128.7.

Conclusion

In order for a subcontractor to be exempt from the GRT under 11 GCA §26203(k)(34), the subcontractor must first receive a Qualifying Certificate under 12 GCA §58128.7. GEDA will make the determination of whether the subcontractor meets the requirements of a “Guam-based subcontractor.”


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