

## **Title 11**

### **REVENUE**

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#### **Chapter 01**

### **GENERAL PROVISIONS**

#### **Sections:**

- 11.0101**    **Authority to impose special taxes.**
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#### **11.0101**      **Authority to impose special taxes.**

(a) In addition to the taxes imposed by this title, the Governor may at any time, either upon the request of the chief of any district, county, or village, or upon his own initiative, authorize and direct the chief of the district, county, or village to levy a special tax for a special purpose.

(b) The Governor may impose such restrictions on the methods for levying the tax and the purposes for which the money may be expended, as he deems appropriate.

(c) Payment of any special tax may be enforced in accordance with the provisions of chapter 04 of this title, relating to income taxes.

**History:**1965, PL 9-22.

#### **11.0102**      **Setoff against money owed government.**

The Treasurer of American Samoa may deduct from any amount, which the government owes to any person the amount of any tax, license fee or other sum, which such person owes to the government.

**History:** 1965, PL 9-22.

**11.0103 Showing of payment of taxes prior to leaving American Samoa.**

Before leaving American Samoa, any person may be required to show that all taxes due or accrued to American Samoa have been paid or guaranteed.

**History:** 1965, PL 9-22.

## Chapter 02

### FILING OF FEDERAL TAX LIENS

**Sections:**

- 11.0201 Place of filing.**
- 11.0202 Effect of certification of notices.**
- 11.0203 Duties of filing officer.**
- 11.0204 Fees.**

**Reviser's Comment:** Section 18.1005 of the Code of American Samoa, 1961 Ed., provided: "This act (this chapter) shall be so interpreted and constructed as to effectuate its general purpose to make uniform the law in those states which enact it".

**11.0201 Place of filing.**

Notices of liens on real and personal property, tangible or intangible, for taxes payable to the United States, and certificates and notices affecting the liens, shall be filed in the Office of the Territorial Registrar of American Samoa.

**History:** 1970, PL 11-105.

**11.0202 Effect of certification of notices.**

Certification by the Secretary of the Treasury of the United States, or his delegate, of notices of liens or certificates, or other notices affecting tax liens, entitles them to be filed, and no other attestation, certification, or acknowledgment is necessary.

**History:** 1970, PL 11-105.

**11.0203 Duties of filing officer.**

(a) If a notice of federal tax lien, a refiling of tax lien, or a notice of revocation of any certificate described in subsection (b) is presented to the filing officer, he shall endorse thereon his identification and the date and time of receipt and forthwith file it alphabetically or enter it in an alphabetical index, showing the name and address of the person named in the notice, the date and time of receipt, the serial number of the district director and the total unpaid balance of the assessment appearing on the notice of lien.

(b) If a certificate of release, nonattachment, discharge, or subordination of any tax lien is presented to the filing officer for filing, he shall:

(1) cause a certificate of release or non-attachment to be marked, held and indexed as if the certificate were a termination statement within the meaning of the Uniform Commercial Code, except that the notice of lien to which the certificate relates shall not be removed from the files;

(2) cause a certificate of discharge or subordination to be held, marked and indexed as if the certificate were a release of collateral within the meaning of the Uniform

Commercial Code.

(c) If a refiled notice of federal tax lien referred to in subsection (a) or any of the certificates or notices referred to in subsection (b) is presented for filing, he shall attach the refiled notice or the certificate to the original notice of lien and shall enter the refiled notice or the certificate with the date of filing in an alphabetical federal tax lien index on the line where the original notice of lien is entered.

(d) Upon request of any person, the filing officer shall issue his certificate showing whether there is on file on the date stated therein any notice of federal tax lien or certificate or notice affecting the lien filed or naming a particular person, and if a notice or certificate is on file, giving the date and hour of filing.

**History:** 1970, PL 11-105.

#### **11.0204 Fees.**

(a) The fee for filing and indexing each notice of lien or certificate or notice affecting the tax lien shall be \$3.

(b) The fee for a certificate under section 11.0203 shall be \$1.

(c) The filing officer shall bill the district directors of Internal Revenue on a monthly basis for fees for documents filed by them.

**History:** 1970, PL 11-105.

### **Chapter 03**

**(Reserved)**

### **Chapter 04**

## **INCOME TAX**

#### **Sections:**

- 11.0401 Substitution of terms.**
- 11.0402 Interpretation of chapter.**
- 11.0403 Imposition of tax-Citation.**
- 11.0404 Administration and enforcement of income tax.**
- 11.0404.1 Businesses operating under a tax exemption.**
- 11.0405 Part-year residents—Returns required—Deductions— Exemptions and credits.**
- 11.0406 Withholding exemption certificate required.**
- 11.0407 Income tax reserve account.**
- 11.0408 High Court jurisdiction.**
- 11.0409 Suits for recovery of taxes— Payment of judgments.**
- 11.0410 Execution against Governor and government personnel.**
- 11.0411 Collection actions.**
- 11.0412 Tax liens.**
- 11.0413 Criminal offenses.**
- 11.0414 Notification and assessment of Samoan income tax in the case of adjustments to United States income of corporation.**

**Reviser's Comment:** Section 5 of PL 15-52 provided that "For 1978, payments of estimated income tax by

individuals shall be made at intervals established by the Tax Office”.

#### **11.0401 Substitution of terms.**

In the application of this chapter and chapter 11.05, except where it is clearly otherwise required, the applicable provisions of the United States Internal Revenue Code of 1954 shall be read so as to substitute “American Samoa” for “United States”, “Treasurer of American Samoa” for “Secretary or his delegate”, “Treasurer of American Samoa” for “Commissioner of Internal Revenue” and “Collector of Internal Revenue”, and “High Court” for “District Court” and “Tax Court”, with other changes in nomenclature and other language, including the omission of inapplicable language, where necessary to effect the intent of this section.

**History:** 1963, PL 8-1; amd 1987, PL 20-29 § 2.

**Amendments:** 1987 Substituted “Treasurer of American Samoa” for “Governor”.

#### **Case Notes:**

Creditor who already obtained a judgment and a writ of execution and levied upon the property of judgment creditor prior to the notice of ASG’s tax lien, prevails against the ASG as a judgment lien creditor with respect to such property. 26 U.S.C. § 6323(a); A.S.C.A. § 11.0401 et seq. *Shantilal Brothers, Ltd. v. KMST Wholesale*, 15 A.S.R.2d 115 (1990).

The holder of a security interest, in the form of a chattel mortgage duly registered, prevails over the tax lien of ASG with respect to the proceeds of the sale of those items covered by its mortgage on the date the tax lien became effective. 26 U.S.C. §6323(a); A.S.C.A. § 11.0401 et seq. *Shantilal Brothers, Ltd. v. KMST Wholesale*, 15 A.S.R.2d 115 (1990).

High Court of American Samoa has exclusive and original jurisdiction over Territorial income tax proceedings, sitting as a District Court in refund cases and a Tax Court in deficiency proceedings. A.S.C.A. §§ 11.0401, 11.0408. *Klauk v. American Samoa Government*, 13 A.S.R.2d 52 (1989).

Statutory requirement that petition for redetermination of deficiency of income taxes be made within 90 days after notice of deficiency was mailed is jurisdictional. 26 U.S.C. § 6213(a); A.S.C.A. § 11.0401. *Stephens v. American Samoa Government*, 15 A.S.R.2d 87 (1990).

#### **11.0402 Interpretation of chapter.**

This chapter and chapter 11.05, the Samoan Income Tax, must be interpreted and administered in a manner to:

(1) prevent the collection of the Samoan Income Tax at the source on wages which, by virtue of section 931(i) of the United States Internal Revenue Code of 1954, are subject to the collection of the United States Income Tax at the source;

(2) suspend the assessment of interest or penalty on that amount of unpaid Samoan Income Tax, refund to which a taxpayer is entitled from the Internal Revenue Service for the same taxable period; provided, that the Samoan Income Tax is paid within 10 days of the receipt of the U.S. income tax refund, but no later than the 15th day of the 6th month following the due date of the Samoan return (determined with regard to any extension of time for filing); and provided also, that the Samoan Income Tax return is timely filed including extensions granted. In the event the Samoan tax return is not timely filed, the provisions for a 5% negligence penalty as provided in section 6653(a) of the Internal Revenue Code must apply to the total tax due American Samoa, unless delay in filing is due to fraud, in which case the fraud penalty of 50% as imposed by section 6653(b) of the Internal Revenue Code must apply;

(3) deny the relief offered in subsection (b) to taxpayers who do not avail themselves of the credit allowed by sections 33 and 901 of the United States Internal Revenue Code of 1954 against their United States Income Tax;

(4) treat a citizen or resident of the United States as a citizen or resident of American Samoa for purposes of section 152(b)(3), relating to the definition of a dependent, and section 6013(a)(1), relating to joint returns by a husband and wife, of the United States Internal Revenue Code of 1954;

(5) give appropriate and binding effect on the Governor and the High Court for action taken by the Tax Court, or any court of competent jurisdiction, of the United States.

**History:** 1965, PL 9-22; 1971, PL 12-18 § 1; amd 1980, PL 16-87 § 1; amd 1983, PL 18-2 § 1.

**Amendments:** 1983 Subsection (5) amended to eliminate the binding effect of action on specific income tax returns.

1980 Amended subsection (2) and added subsection (5).

### **11.0403 Imposition of tax—Citation.**

(a) The income tax and the income tax rules in force in the United States of America in effect on December 31, 2000, where not clearly inapplicable or incompatible with the intent of this section, are adopted by American Samoa, and shall be deemed to impose a separate Territorial income tax, payable to the government. These laws include, but are not limited to, the following provisions of the United States Internal Revenue Code of 1954: subtitle A; chapters 24 and 25 of subtitle C, with reference to the collection of income tax at source on wages; and all provisions of subtitle F which apply to the income tax, including provisions as to crimes, other offenses and forfeitures contained in chapter 75.

(b) For reference purposes, this chapter and chapter 11.05, and all provisions of the United States Internal Revenue Code of 1954 adopted by reference in subsection (a), may be cited as the “Samoan Income Tax Act

(c) In the event of a conflict between the provisions of the US Internal Revenue Code as adopted from time to time and the provisions of Title 11 Chapter 05 of the American Samoa Code Annotated, the provisions of Title 11 Chapter 05 shall take precedence.

**History:** 1963, PL 8-1; amd 1977, PL 15-52 § 1, amd 2001, PL 27-15; amd 2009, PL 31-8.

**Amendments:** 1977 Subsection (a): added reference to income tax rules and regulations, and added words “or adopted” in first sentence.

2001 Subsection (a): added words “in effect on December 31, 2000”, and deleted words “and those which may hereafter be enacted or adopted” in first sentence.

#### **Case Notes:**

Territorial Legislature has incorporated by reference the United States Internal Revenue Code, 26 U.S.C., for income taxation in American Samoa. A.S.C.A. § 11.0403. *Klauk v. American Samoa Government*, 13 A.S.R.2d 52 (1989).

American Samoa's income tax law does not conflict with or purport to supplant federal tax laws, but it merely creates an additional, Territorial tax modeled on the federal tax law. A.S.C.A. § 11.0403. *Alamoana Recipe Inc. v. American Samoa Government*, 24 A.S.R.2d 156 (1993).

### **11.0404 Administration and enforcement of income tax.**

(a) The administration and enforcement of the American Samoa Income Tax shall be the responsibility of the Treasurer of American Samoa under the general supervision of the Governor.

(b) The Treasurer shall have the same administrative and enforcement powers and remedies with regard to the American Samoa Income Tax as the Secretary of the Treasury, and other United States officials of the Executive branch, have with regard to

the United States Income Tax.

(c) Rules for enforcement of the Income Tax Act shall be prescribed by the Treasurer.

(d) The Treasurer shall have authority to issue, as needed, all or a part of the text of income tax laws in force pursuant to this chapter, but the failure to exercise such authority may not prejudice or limit the application of the laws so in force.

**History:**1963, PL 8-1; amd 1987, PL 20-29 § 3.

**Amendments** 1987 Subsection (a): changed "Treasurer" to lower case; added "general" before "supervision".

Subsection (b) substituted "Treasurer" for "Governor": capitalized "executive".

Subsection (c): Substituted "Treasurer" for "Governor" and "as needed, all or a part of" for "from time to time, in whole in part."

#### **11.0404.1 Businesses operating under a tax exemption.**

(a) All businesses having a tax exemption under 11.1601 et seq. shall claim the credits allowed by section 38 (relating to the investment tax credit), section 50A (relating to the credit for expenses of work incentive programs), and section 51 (relating to the credit for employment of certain new employees), in the year earned, without any carry over to other tax years, and shall depreciate property under the provisions of section 167 during the period of exemption, whether or not any taxable income is realized because of the tax exemption.

(b) A net operating loss sustained by a tax-exempt business during a taxable period will be allowed as an offset against income realized from other sources during the same period.

(c) If an excess of net operating loss (computed under subsection (b)), sustained during the tax exemption period exceeds the total income from the tax exempt business during the same period, the excess will be allowed as a carry-over subject to the provisions of section 172.

(d) The credit for foreign taxes under section 33 shall be allowed as a carry-back or carry-over only to the extent such credit, computed under section 901, exceeds the tax that would have been incurred except for the exemption granted under 11.1601 et seq.

**History:**1980, PL 16-87 § 3.

#### **11.0405 Part-year residents>Returns required-Deductions -Exemptions and credits.**

(a) A part-year resident, for the period that he is a resident of American Samoa, must report on his Samoan income tax return all Samoan sources of income including wages from U.S. Government agencies.

(b) A part-year resident may claim the optional standard deduction in lieu of itemized deductions; however, the amount allowable is 1/12 per month for the number of months he is a resident of American Samoa.

(c) If itemized deductions are claimed in lieu of optional standard deduction they must have been paid during the period while a part-time resident and be American Samoa source items. For example, contributions to organized charities outside American Samoa or real estate taxes on property outside American Samoa would not be deductible on the American Samoa return.

(d) A part-year resident may not use the tax table.

(e) When the tax is computed under the graduated rates (without regard to the optional tax table), the personal exemption and dependency credits are allowed for each month of

residency in American Samoa. The amount allowable for each month is based on 1/12th of the annual allowance for the number of qualified exemptions for the month. For this purpose, over ½ month will be considered a whole month.

**History:** 1970, PL 11-99; amd 1974, PL 13-50; amd 1980, PL I6-87 § 4.

**Amendments:** 1974 Subsection (h): added. 1980 Repealed subsections (f), (g), and (h).

**11.0406 Withholding exemption certificate required.**

(a) The provisions of the income tax relating to the collection of income tax at the source on wages shall apply to remuneration paid on or after the first day of the first month which begins more than 30 days after the date of enactment of this chapter.

(b) Not later than 15 days before the date on which the collection of income tax at source on wages first becomes effective under subsection (a), each employee receiving wages shall furnish his employer with the withholding exemption certificate required by section 3402 (f) (2) of the United States Internal Revenue Code of 1954 as adopted and amended by American Samoa.

(c) The provisions of chapter 3 of the Internal Revenue Code, relating to withholding of tax on nonresident aliens and foreign corporations, shall be effective after 31 December 1962.

**History:** 1963, PL 8-1.

**11.0407 Income tax reserve account.**

(a) The Treasurer of American Samoa shall establish an “Income Tax Reserve Account” promptly upon the enactment of the Samoan Income Tax Act and shall deposit in such account 25% of all corporate income taxes, as and when collected, unless at the time of collection the reserve account has a net balance of not less than \$ 1,000,000. Upon meeting the requirements of this section for the funding of the Income Tax Reserve Account, the funds thereafter collected by the Treasurer shall then be deposited in the Economic Development Fund, to be remitted to the Development Bank of American Samoa as set forth in section 28.0108.

(b) The reserve account shall constitute a trust fund out of which refunds and other adjustments shall be made in favor of any corporation subject to the Samoan Income Tax Act.

(c) The money in the reserve account shall remain in a segregated status unless the Legislature of American Samoa authorizes its use for other purposes and provides for reimbursement of the account as and when needed.

(d) The Reserve Account shall be reimbursed by continued collection and set aside of 25% of all income taxes designated in paragraph (a) above, which set aside shall continue until the net balance of the Reserve Account reaches the amount and level established in said paragraph (a).

**History:** 1965, PL 9-22; 1967, PL 10-20; amd 1987, PL 20-29 § 4; 2008, PL 30-27.

**Amendments:** 1987 Subsection (a): substituted “Treasurer of American Samoa” for “Governor”.

**Reviser’s Comments:** PL 13.53, 1974, which provided it was to take effect upon signing by the Governor (it was signed 11 September 1974) due to an emergency need to fulfill budgetary requirements for the fiscal year 1975, appropriated \$1,007,995 from the Income Tax Reserve Account, to be used for capital improvements, government operations, special programs and grant match requirements. The act also provided for the disposition of sums not obligated, at the close of the year, for the purpose for which they

were appropriated.

PL 16-37, effective 20 August 1979, appropriated \$1,000,000 from the Income Tax Reserve Fund to be used for operating and capital improvement programs for fiscal year 1979, the prior years' general fund deficit, and additional government operation expenses for fiscal year 1979. Additionally, \$353,321 of the above appropriation was reserved to offset any deficiency in the general fund at the end of fiscal year 1979, subject to the unused portion thereof, if any, reverting to the Income Tax Reserve Account.

#### **11.0408 High Court jurisdiction.**

The High Court shall have exclusive original jurisdiction over all judicial proceedings in American Samoa, both criminal and civil, irrespective of the degree of the offense or the amount involved, with respect to the American Samoa Income Tax.

**History:** 1963, PL 8-1.

#### **Case Notes:**

High Court of American Samoa has exclusive and original jurisdiction over Territorial income tax proceedings, sitting as a District Court in refund cases and a Tax Court in deficiency proceedings. A.S.C.A. §§ 11.0401, 11.0408. *Klauk v. American Samoa Government*, 13 A.S.R.2d 52 (1989).

#### **11.0409 Suits for recovery of taxes—Payment of judgments.**

(a) Suits for the recovery of any American Samoa Income Tax alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, are subject to the statutory requirements applicable to suits for the recovery of such amounts maintained against the United States in the United States District Courts with respect to the United States Income Tax.

(b) When any judgment against American Samoa under this section has become final, the Governor or his delegate shall order the payment of such judgment out of any unencumbered funds in the Treasury of American Samoa, after first resorting to funds in the income tax reserve account if the plaintiff or petitioner is a corporation.

**History:** 1963, PL 8-1.

#### **Case Notes:**

The High Court, while sitting as a Tax Court for deficiency proceedings, does not have jurisdiction to hear such a deficiency proceeding unless it was filed within the statutory deadline; while sitting as a District Court for refund cases, it lacks jurisdiction until there has been payment or collection of disputed taxes. 26 U.S.C. § 7422; A.S.C.A. § 11.0409. *Stephens v. American Samoa Government*, 15 A.S.R.2d 87 (1990).

#### **11.0410 Execution against Governor and government personnel**

(a) Execution may not issue against the Governor or any officer or employee of American Samoa on a final judgment in any proceeding against him for any acts or for the recovery of money exacted by or paid to him and subsequently paid into the Treasury of American Samoa in performing his official duties with respect to the American Samoa Income Tax if the court certifies that probable cause existed, or such officer or employee acted under the directions of the Governor or his delegate.

(b) When such execution has been issued, the Governor or his delegate shall order the payment of such judgment out of any unencumbered funds in the Treasury of American Samoa.

**History:** 1963, PL 8-1.

#### **11.0411 Collection actions.**

A civil action for the collection of the American Samoa income tax, together with any fines, penalties and forfeiture, or for the recovery of any erroneous refund of such tax, may be brought in the name of and by American Samoa in the High Court.

**History:** 1963, PL 8-1.

**Case Notes:**

In prosecution for fraudulent intent to evade tax, 3 years statute of limitations applies instead of 6 years where defendant did not “omit” income information but included it in attachment to or in other section of tax return. *Ah San v. Lutali*, 4 A.S.R.2d 177(1987) (mem).

Burden of proof on government to prove fraudulent intent to evade tax is by “clear and convincing evidence”. 26 U.S.C. 37454.

**11.0412 Tax liens.**

American Samoa shall have a lien with respect to the American Samoa Income Tax in the same manner and with the same effect, and subject to the same conditions, as the United States has a lien with respect to the United States Income Tax. Such lien shall be enforceable in the name of and by American Samoa. Where filing of a notice of lien is required, such notice shall be filed in the office of the Clerk of the High Court.

**History:** 1963, PL 8-1.

**11.0413 Criminal offenses.**

Any act or failure to act with respect to the American Samoa Income Tax which constitutes a criminal offense under chapter 75 of subtitle F of the United States Internal Revenue Code of 1954, as adopted by this chapter, is an offense against American Samoa and may be prosecuted in the name of American Samoa by the appropriate officer thereof.

**History:** 1963, PL 8-1.

**11.0414 Notification and assessment of Samoan income tax in the case of adjustments to United States income tax of corporation.**

(a) In the case of a taxpayer that is a corporation that has engaged in a trade or business in American Samoa during a taxable year, such taxpayer (or its successor) shall report to the Treasurer of American Samoa any change or correction by the gross income, deduction, credit, or allowance as reported for such taxable year (or for a taxable year of a person described in paragraph (2) that includes such taxable year) on the United States income tax return of:

(1) the taxpayer, or

(2) any person who is related (within the meaning of section 482 of the United States Internal Revenue Code) to the taxpayer, that is attributable or otherwise related to the carrying on by the taxpayer of such trade or business in American Samoa or to the purchase, sale, lease, or other transfer of goods, services, or property or other transactions between related persons and the taxpayer in carrying on its trade or business in American Samoa. For purposes of this section, the category of items of gross income, deduction, credit, or allowance of the taxpayer or a related person that are treated as otherwise related to the carrying on by the taxpayer of its trade or business in American Samoa or to do transactions between related persons and the taxpayer in carrying on its trade or business in American Samoa shall include an item that arises out of one or more transactions involving substantially comparable goods, services, or other property undertaken between related persons and the taxpayer in carrying on a trade or business

outside of American Samoa. The taxpayer shall make such report to the Treasurer of American Samoa within ninety days after the final determination of such change or correction. The taxpayer shall concede the accuracy of such determination or state wherein it is erroneous. In the event that the taxpayer or any related person files an amended United States income tax return for any taxable year with respect to any item of gross income, deduction, credit, or allowance that is attributable or otherwise related to the carrying on by the taxpayer of a trade or business in American Samoa or to the purchase, sale, lease, or other transfer of goods, services, or property or other transactions between related persons and the taxpayer in carrying on its trade or business in American Samoa, the taxpayer (or its successor) shall file within ninety days thereafter a copy of such amended United States income tax return with the Treasurer of American Samoa and shall provide such additional information as the Treasurer of American Samoa may require. The Treasurer of American Samoa is not required to accept as correct for Samoan income tax purposes any such change or correction by the Commissioner of Internal Revenue or amended United States income tax return and may conduct an independent audit or investigation with respect thereto. The Treasurer of American Samoa shall determine whether the assessment of additional Samoan income tax is appropriate under the provisions of the Samoan Income Tax Act in respect of the taxable year or years to which the report required under this subsection or the amended United States income tax return relates.

(b) Upon the making by the taxpayer of the report required under subsection (a), or the filing of the copy of the amended return as described in subsection (a), or the filing of the copy of the amended return as described in subsection (a), the Treasurer of American Samoa shall have, notwithstanding any provision of the Samoan Income Tax Act to the contrary, a period of two years following the date upon which the taxpayer makes the report required under subsection (a), or files such copy of the amended return, within which to assess upon the taxpayer such additional Samoan income tax, if any, as is appropriate under the provisions of the Samoan Income Tax Act in respect of the taxable year or years to which such report or amended return relates. The provisions of this subsection shall not affect the time within which or the amount for which an assessment otherwise may be made by the Treasurer of American Samoa.

(c) In the event that a taxpayer fails to report a change or correction by the commissioner of Internal Revenue, or fails to file the copy of the amended return, as and when required by subsection (a) hereof the assessment of additional Samoan income tax by the Treasurer of American Samoa may be made at any time, notwithstanding any provision of the Samoan Income Tax Act to the contrary.

(d) For purposes of this section:

(1) The term "report" shall include, but not be limited to, the taxpayer's name, address, and identifying number, the taxable year or years that are affected by the change or correction described in subsection (a), a listing of the names, addresses, and identifying numbers of any related persons involved in the change or correction, a description and listing of the dollar amounts of such change or correction, a copy of the final determination of such change or correction, and such other information as the Treasurer of American Samoa may prescribe.

(2) The term "final determination" shall include:

(A) the issuance of a 90-day notice of deficiency pursuant to section 6211 and 6212 (or a jeopardy assessment pursuant to section 6861) of the United States Internal Revenue Code, unless a timely petition to redetermine the deficiency is filed in the United States

Tax Court in which case the judgement of a court of last resort affirming or redetermining such deficiency is deemed to constitute the final determination;

(B) the assessment of a deficiency pursuant to a waiver filed under section 6212 of the United States Internal Revenue Code in the case where no 90-day notice of deficiency is issued;

(C) a closing agreement made under section 7121 of the United States Internal Revenue Code or similar agreement in compromise executed by the Commissioner of Internal Revenue and the taxpayer or related person; and

(D) an allowance by the Commissioner of Internal Revenue, or by a court of competent jurisdiction in a final judgement, on the United States income tax return of the taxpayer or related person or of any deficiency thereafter assessed.

(e)(1) This section 11.0414 shall apply to taxable years ending after 1980 as to which a final determination (within the meaning of this section) by the Commissioner of Internal Revenue or the filing of an amended United States income tax return with the Commissioner of Internal Revenue is made after December 31, 1989.

(2) The amendments made by this act shall be effective as if included in section 11.0414, as originally enacted, of the American Samoa Code Annotated and shall apply to taxable years ending after 1980 as to which a final determination (within the meaning of section 11.0414(a) of the American Samoa Code Annotated) by the Commissioner of Internal Revenue or the filing of an amended United States income tax return with the Commissioner of Internal Revenue is made after December 31, 1989; provided that in the case of a final determination or the filing of an amended United States income tax return that has been made during the period prior to the date of enactment of this act, the ninety-day period described in section 11.0414(a) of the American Samoa Code Annotated within which the taxpayer is to make its report to the Treasurer of American Samoa shall be treated as commencing on the date of enactment of this act and the two-year period described in section 11.0414(b) of such Code within which the Treasurer of American Samoa may assess additional Samoan income tax upon the making of such report by the taxpayer shall be treated as commencing on the date on which the taxpayer files such report during the period following the date of enactment of this act.

**History:** 1990, PL 21-37; amd 1991, 22-10.

## **Chapter 05**

### **AMENDMENTS**

#### **Sections:**

- 11.0501** Amendments to Internal Revenue Code, as adopted.
- 11.0502** Section 5 redesignated as Section 6.
- 11.0503** Section 5 added.
- 11.0504** Effective date of Section 38.
- 11.0505** Last sentence of Section 48 (d), and all of Section 48 (g) deleted.
- 11.0506** Section 63 (a) amended.
- 11.0507** Repealed.
- 11.0508** Section 876 deleted.
- 11.0509** Section 881 (a) (1) amended.
- 11.0510** Paragraph (e) added to Section 881.

- 11.0511 Paragraph (f) added to Section 881.**
- 11.0512 Section 931 deleted.**
- 11.0513 Section 932 deleted.**
- 11.0514 Paragraphs (1) and (2) of Section 933 amended.**
- 11.0515 Section 1441 (c) amended.**
- 11.0516 Section 1441 (b) amended.**
- 11.0517 Paragraph (d) added to Section 1442.**
- 11.0518 Paragraph (e) added to Section 1442.**
- 11.0519 Section 3401 amended.**
- 11.0520 Section 3402 (a) amended.**
- 11.0521 Section 3402 (c) (1) amended.**
- 11.0522 Subsection (c), (f) (6), and (j) of Section 3402 deleted.**
- 11.0523 Section 3402 (f) (1) amended.**
- 11.0524 Section 3402 (f) (2) amended.**
- 11.0525 Adds (7) to Section 3402 (f).**
- 11.0526 Section 3404 amended.**
- 11.0527 Adds (33) to Section 7701 (a).**
- 11.0528 Chapter 2 deleted.**
- 11.0529 Chapter 4 deleted.**
- 11.0530 Sections 43 and 3507 deleted.**
- 11.0531 Renumbers Section 221 to 222 and adds new Section 221.**
- 11.0532 Section 457 (d) (1) amended.**
- 11.0533 Partial recoupment of corporate taxes.**
- 11.0534 Maximum tax imposed upon corporations.**
- 11.0535 Section 876 amended.**
- 11.0536 Section 1442(c) deleted.**
- 11.0537 Section 881(b) deleted.**

**11.0501 Amendments to Internal Revenue Code, as adopted.**

The United States Internal Revenue Code of 1954, as adopted by American Samoa, is amended as set forth in this chapter.

**History:**1963, PL 8-1; 1965, PL 9-21; 1966, PL 9-52; 1969, PL 11-45; 1970, PL 1-134.

**11.0502 Section 5 redesignated as Section 6.**

Section 5, relating to cross-reference with respect to tax on individuals, is redesignated as Section 6.

**History:**1963, PL 8-1; 1965, PL 9-21; 1966, PL 9-52; 1969, PL 11-45; 1970, PL 11-134.

**11.0503 Section 5 added.**

Section 5 is added to read:

“SEC. 5. ALTERNATE MINIMUM TAX. In the case of a taxpayer other than a corporation, if an amount equal to 4% for tax year 2001 and 4% for tax years thereafter of the adjusted gross income exceeds the regular tax for the taxable year then there is imposed a tax equal to such excess. For the purpose of this section the term “regular tax” means the tax imposed by sections 1 and 3 for the taxable year reduced by the credits allowable under subpart A of Part IV of this subchapter other than that allowed by section

31. This alternate minimum tax does not apply to a handicapped taxpayer who earns \$1,000 or less, or to the first \$5,000 earned by a taxpayer age 65 or over during the taxable year. The term handicapped taxpayer means an individual with a mental disability resulting in subaverage intellectual functioning or impaired social competence, or with a physical disability, infirmity, malformation, or disfigurement which is caused by bodily injury, birth defect, or illness, including epilepsy. It shall include without limitation any degree of paralysis; amputation; lack of physical coordination; blindness or visual impediment; deafness or hearing impediment; muteness or speech impediment; or physical reliance on a guide dog for the blind, a wheelchair, or any other remedial appliance or device.

**History:**1977, PL 15-52 § 3;amd 1980, PL 16-87 § 2; PL 18-25 § amd 1985, PL 19-33 § 1;amd 2001, PL 27-13.

**Amendments:** 1980 changed section 6 to section 5 and amended section generally.  
1984 Added to Section 5 to exempt certain handicapped taxpayers from tax.  
1985 Added “or to the first \$5,000 earned by a taxpayer age 65 or over”.  
2001 Changed 2% alternate minimum tax to 4% for tax year 2001 and tax years thereafter.

#### **11.0504 Effective date of Section 38.**

Section 38, relating to investment credit, shall be effective on all property placed into service on or after 1 January 1978.

**History:**1977, PL 15-52 § 2; amd 1980, PL 16-87 § 2.

**Amendments:** 1980 Deleted last sentence.

#### **11.0505 Last sentence of Section 48 (d), and all of Section 48 (g) deleted.**

The last sentence of Section 48 (d), relating to certain leased property, and all of Section 48(g), relating to adjustment to basis of property, are deleted.

**History:**1963, PL 8-1; 1965, PL 9-21; PL 9-66, PL 9-52; 1969, PL 11-45; 1970, PL 11-134.

#### **11.0506 Section 63(a) amended.**

Section 63(a), relating to the definition of taxable income, is amended by deleting “Except as provided in subsection (b),” and by inserting in lieu thereof “Except as provided in subsections (b) and (c)”.

**History:**1963, PL 8-1; 1965, PL 9-21; 1966, PL 9-52; 1969, PL 11-45; 1970, PL 11-134.

#### **11.0507 Section 482 amended and Section 483 added. Repealed by PL 16-87 § 4.**

**History:**1963, PL 8-1; 1965, PL 9-21; 1966, PL 9-52; 1969, PL 11-45; 1970, PL 11-134.

#### **11.0508 Section 876 deleted.**

Section 876, relating to alien residents of Puerto Rico, is deleted.

**History:**1963, PL 8-1; 1965, PL 9-21; 1966, PL 9-52; 1969, PL 11-45; 1970, PL 11-134.

**11.0509 Section 881(a) (1) amended.**

Section 881 (a)(1) relating to the imposition of tax on income of foreign corporations not connected with American Samoa business is amended by inserting after the word “dividends” the following: “(other than dividends paid by a corporation organized under the laws of one of the states or territories of the United States to a corporation organized under the laws of one of the states or territories of the United States)”.

**History:**1978, PL 15-87 § 1; amd 2009, PL 31-8.

**11.0510 Paragraph (e) added to Section 881.**

Section 881 relating to the tax on income of foreign corporations not connected with American Samoa business is amended by adding after paragraph (d), the following new paragraph:

“(e) Motion picture rentals. In the case of revenues derived by foreign corporations from the rental of motion pictures to businesses in American Samoa, the tax imposed under paragraph (a) of this section shall be 15% of the amount of the revenues received.”

**History:**1979, PL 16-23 § 1.

**11.0511 Paragraph (f) added to Section 881.**

Section 881 relating to the tax on income of foreign corporations not connected with American Samoa business is amended by adding after paragraph (e), the following new paragraph:

“(f) Reinsurance Premiums—In the case or premiums derived by foreign corporations from reinsurances in respect of insurance business transacted in American Samoa, the tax imposed under paragraph (a) of this section shall be 10% of the amount of the premiums received.”

**History:**1979, PL 16-38 § 1.

**11.0512 Section 931 deleted.**

Section 931, relating to income from sources within possessions of the United States, is deleted.

**History:** 1963, PL 8-1; 1965, PL 9-21; 1966, PL 9-52; 1969, PL 11-45; 1970, PL 11-134.

**11.0513 Section 932 deleted.**

Section 932, relating to citizens of possessions of the United States, is deleted.

**History:** 1963, PL 8-1; 1965, PL 9-21; 1966, PL 9-52; 1969, PL 11-45; 1970, PL 11-134.

**11.0514 Paragraphs (1) and (2) of Section 933 amended.**

Paragraphs (1) and (2) of Section 933, relating to income from sources within Puerto Rico, are amended by deleting: “(except a-mounts received for services performed as an employee of the United States or any agency thereof).”

**History:** 1963, PL 8-1; 1965, PL 9-21; 1966, PL 9-52; 1969, PL 11-45; 1970, PL 11-134.

**11.0515 Section 1441(c) amended.**

Section 1441 (c), relating to exceptions from withholding of tax on nonresident aliens, is amended by adding the following new paragraph:

“Payments by the United States. No deduction or withholding under subsection (a) shall be required in case of amounts paid to a nonresident alien, individual who is employed by the United States or any agency thereof, other than American Samoa or any agency thereof.”

**History:** 1963, PL 8-1; 1965, PL 9-21; 1966, PL 9-52; 1969, PL 11-45; 1970, PL 11-134.

**11.0516 Section 1441(b) amended.**

Section 1441(b) relating to withholding of income tax is amended by inserting after the word “dividends” the following: “(other than dividends paid by a corporation organized under the laws of one of the states or territories of the United States to a corporation organized under the laws of one of the states or territories of the United States)”.

**History:** 1978, PL, 15-87 § 2; amd 2009, PL. 31-8.

**11.0517 Paragraph (d) added to Section 1442.**

Section 1442 relating to the withholding of tax on foreign corporations is amended by adding after paragraph (c) the following paragraph:

“(d) Motion picture rentals. In the case of revenues derived by foreign corporations from the rental of motion pictures to businesses in American Samoa, there shall be deducted and withheld at the source a tax equal to 15% thereof.

**History:** 1979, PL 16-23 § 1.

**11.0518 Paragraph (e) added to Section 1442.**

Section 1442 relating to the withholding of tax on foreign corporations is amended by adding after paragraph (d) the following new paragraph:

“(e) Reinsurance Premiums—In the case of premiums derived by foreign corporations from reinsurances in respect of insurance business transacted in American Samoa there shall be deducted and withheld at source a tax equal to 10% thereof.”

**History:** 1979, PL 16-38 § 1.

**11.0519 Section 3401 amended.**

Section 3401, relating to definitions for the collection of income tax at source on wages, is amended to read as follows:

“SEC. 3401 —DEFINITIONS.

(a) Wages. For purposes of this chapter, the term “wages” means all remuneration (other than fees paid to a public official) paid in cash for services performed by an employee for his employer; except that such term shall not include remuneration paid:

(1) For active service as a member of the Armed Forces of the United States; or

(2) For agricultural labor (as defined in section 3121 (g)); or

(3) For service not in the course of the employer’s trade or business performed in any calendar quarter by an employee, unless the cash remuneration paid for such service is \$10 or more and such service is performed by an individual who is regularly employed by such employer to perform such service. For purposes of this paragraph, an individual

shall be deemed to be regularly employed by an employer during a calendar quarter only if:

(A) On each of some 24 days during such quarter such individual performs for such employer for some portion of the day service not in the course of the employer's trade or business; or

(B) Such individual was regularly employed (as determined under subparagraph (A), by such employer in the performance, of such services during the preceding calendar quarter; or

(4) For services for a government (other than American Samoa) or any agency thereof or an international organization; or

(5) For services for American Samoa or any agency thereof performed by a citizen or resident of the United States; or

(6) For services performed by a nonresident alien individual; or

(7)(A) For services for an employer (other than American Samoa or any agency thereof) performed by a citizen of American Samoa, if, at the time of the payment of such remuneration it is reasonable to believe that such remuneration will be excluded from gross income under section 911; or

(B) For services performed in a foreign country or in a possession of the United States (other than American Samoa) by a citizen of American Samoa if, at the time of payment of such remuneration, the employer is required by the law of such foreign country or possession of the United States to withhold income tax upon such remuneration; or

(C) For services for an employer performed by a citizen or resident of American Samoa within Puerto Rico, if it is reasonable to believe that during the entire calendar year the employee will be a bona fide resident of Puerto Rico; or

(8) For services performed by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order; or

(9) To, or on behalf of, an employee or his beneficiary:

(A) From or to a trust described in section 401(e) which is exempt from tax under section 501(a) at the time of such payment unless such payment is made to an employee of the trust as remuneration for services rendered as such employee and not as a beneficiary of the trust; or

(B) Under or to an annuity plan which, at the time of such payment, meets the requirements of section 401(a)(3), (4), (5), and (6); or

(10) For services performed as a volunteer or volunteer leader within the meaning of the Peace Corps Act of the United States.

(b) Payroll period. For purposes of this chapter, the term "payroll period" means a period for which a payment of wages is ordinarily made to the employee by his employer, and the term "miscellaneous payroll period" means a payroll period other than a daily, weekly, biweekly, semimonthly, quarterly, semiannual, or annual payroll period.

(c) Employee. For purposes of this chapter, the term "employee" includes an officer, employee, or elected official of American Samoa or any agency thereof. The term "employee" also includes an officer of a corporation.

(d) Employer. For purposes of this chapter, the term "employer" means the person for whom an individual performs or performed any services, of whatever nature, as the employee of such person, except that:

(1) If the person for whom the individual performs or performed the services does not have control of the payment of the wages for such services, the term "employer" (except

for purposes of subsection (a)) means the person having control of the payment of such wages;

(2) In the case of a person paying wages on behalf of a nonresident alien individual, foreign partnership, or foreign corporation, not engaged in trade or business within American Samoa, the term “employer” (except for purpose of subsection (a)) means such person.

(e) Number of withholding exemptions claimed. For purposes of this chapter, the term “number of withholding exemptions claimed” means the number of withholding exemptions in a withholding exemption certificate in effect under section 3402(f). If no such certificate is in effect, the number of withholding exemptions claimed shall be considered to be zero, and the employer shall deduct and withhold upon any wages a tax equal to 1 8 percent of such wages.

**History:**1963, PL 8-1; 1965, PL 9-21; 1966, PL 9-52; 1969, PL 11-45; amd 1970, PL 11-134.

#### **11.0520 Section 3402(a) amended.**

Section 3402(a), relating to requirements of withholding with respect to income tax collected at the source, is amended to read as follows:

“(a) Requirement of withholding:

(1) Except as provided in paragraph (2), every employer making payment of wages shall deduct and withhold upon such wages a tax equal to 18 percent of the amount by which the wages exceed the number of withholding exemptions claimed, multiplied by the amount of one such exemption as shown in subsection (b)(1);

(2) If, based upon the information contained in an employee’s exemption certificate, it appears that such employee will be subject to the tax imposed by section 5 of chapter 1, every employer making payment of wages to such individual shall deduct and withhold upon such wages a tax equal to 2 percent of such wages.

**History:**1963, PL 8-1; 1965, PL 9-21; 1966, PL 9-52; 1969, PL 11-45; 1970, PL 11-134; amd 1980, PL 16-87 § 2.

**Amendments:** 1980 Changed withholding tax from 2 1/2 percent to 2 percent in paragraph (2).

#### **11.0521 Section 3402(c)(1) amended.**

Section 3402(c)( 1), relating to wage bracket withholding with respect to collection of income tax at source on wages, is amended to read as follows:

“(c) Wage bracket withholding:

(1)(A) In lieu of the tax required to be deducted and withheld under subsection (a)(1), the employer may elect to deduct and withhold upon the wages paid to an employee a tax determined in accordance with the tables provided in this subsection;

(B) In lieu of the tax required to be deducted and withheld under subsection (a)(a), the employer may elect to deduct and withhold upon the wages paid to an employee a tax determined as one-ninth of the tax determined in accordance with the tables provided in this subsection as if the number of withholding exemptions claimed is zero.

**History:**1963, PL 8-1; 1965, PL 9-21; 1966, PL 9-52; 1969, PL 11-45; 1970, PL 11-1 34.

#### **11.0522 Subsection (c), (f)(6), and (j) of Section 3402 deleted.**

Subsection (c), relating to included and excluded wages, subsection (f)(6) relating to

exemption of certain nonresident aliens, and subsection (j), relating to noncash remuneration to retail commission salesmen, of Section 3402, are deleted.

**History:** 1963, PL 8-1; 1965, PL 9-21; 1966, PL 9-52; 1969, PL 11-45; amd 1970, PL 11-134.

**11.0523 Section 3402(f)(1) amended.**

Section 3402(f)(1), relating to withholding exemptions, is amended by deleting “An employee receiving wages shall on any day be entitled to the following withholding exemptions:” and by inserting in lieu thereof “An employee receiving wages, with respect to which a tax is required to be deducted and withheld under subsection (a)(1), shall on any day be entitled to the following withholding exemptions”.

**History:** 1963, PL 8-1; 1965, PL 9-21; 1966, PL 9-52; 1969, PL 11-45; amd 1970, PL 11-134.

**11.0524 Section 3402(f)(2) amended.**

Section 3402(0)(2) is amended to read as follows:

“(2) Exemption certificates:

(A) On commencement of employment. On or before the date of the commencement of employment with an employer, the employee shall furnish the employer with a signed withholding exemption certificate relating to the number of withholding exemptions which he claims, which shall in no event exceed the number to which he is entitled, and stating whether it is reasonable to believe that he will be subject to the tax imposed by section 5 of chapter 1;

(B) Change of status: If, on any day during the calendar year, the number of withholding exemptions to which the employee is entitled is less than the number of withholding exemptions claimed by the employee on the withholding exemption certificate then in effect with respect to him or it is no longer reasonable to believe, notwithstanding the statement on such certificate, that he will be subject to the tax imposed by section 5 of chapter 1, the employee shall within 10 days thereafter furnish the employer with a new withholding exemption certificate relating to the number of withholding exemptions which the employee then claims, which shall in no event exceed the number to which he is entitled on such day, and stating that it is reasonable to believe that he will not be subject to the tax imposed by section 5 of chapter 1. If, on any day during the calendar year, the number of withholding exemptions to which the employee is entitled is greater than the number of withholding exemptions claimed or it is reasonable to believe, notwithstanding a prior statement to the contrary, that he will be subject to the tax imposed by section 5 of chapter 1, the employee may furnish the employer with a new withholding exemption certificate relating to the number of withholding exemptions which the employee then claims, which shall in no event exceed the number to which he is entitled on such day, and stating that it is reasonable to believe that he will be subject to the tax imposed by section 5 of chapter 1;

(C) Change of status which affects next calendar year: If, on any day during the calendar year, the number of withholding exemptions to which the employee will be, or may reasonably be expected to be, entitled at the beginning of his next taxable year under subtitle A is different from the number to which the employee is entitled on such day or it appears that the expectation may change as to the imposition of tax under section 5 of chapter 1, the employee shall, in such cases and at such times as the Governor or his delegate may by regulations prescribe, furnish the employer with a withholding exemption certificate relating to the number of withholding exemptions which he claims

with respect to such next taxable year, which shall in no event exceed the number to which he will be, or may reasonably be expected to be, so entitled, and stating whether it will be reasonable to believe that he will be subject to the tax imposed by section 5 of chapter 1.

**History:**1963, PL 8-1; 1965, PL 9-21; 1966, PL 9-52; 1969, PL 11-45; amd 1970, PL 11-134.

**11.0525 Adds (7) to Section 3402(f).**

Section 3402(f) is amended by adding the following new paragraph:

“(7) Zero withholding exemptions: An employee receiving wages, with respect to which a tax is required to be deducted and withheld under subsection (a)(2), shall not be entitled to any withholding exemptions.”

**History:**1963, PL 8-1; 1965, PL 9-21; 1966, PL 9-52; 1969, PL 11-45; amd 1970, PL 11-134.

**11.0526 Section 3404 amended.**

Section 3404, relating to return and payment by governmental employer, is amended to read as follows:

“SEC. 3404—RETURN AND PAYMENT BY GOVERNMENTAL EMPLOYER: If the employer is American Samoa, the return of the amount deducted and withheld upon any wages may be made by an officer or employee of American Samoa having control of the payment of such wages, or appropriately designated for that purpose.”

**History:**1963, PL 8-1; 1965, PL 9-21; 1966, PL 9-52; 1969, PL 11-45; amd 1970, PL 11-134.

**11.0527 Adds (33) to Section 7701(a).**

Section 7701(a), relating to definitions, is amended by adding the following new paragraph:

“(33) Citizen of American Samoa. The term citizen of American Samoa shall be considered not to include a citizen of American Samoa who is also a citizen of the United States.

**History:**1963, PL 8-1; 1965, PL 9-21; 1966, PL 9-52; 1969, PL 11-45; amd 1970, PL 11-134.

**11.0528 Chapter 2 deleted.**

Chapter 2, relating to tax on self-employment income, is deleted.

**History:**1963, PL 8-1; 1965, PL 9-21; 1966, PL 9-52; 1969, PL 11-45; amd 1970, PL 11-134.

**11.0529 Chapter 4 deleted.**

Chapter 4, relating to rules applicable to recovery of excessive profits on government contracts, is deleted.

**History:**1963, PL 8-1; 1965, PL 9-21; 1966, PL 9-52; 1969, PL 11-45; amd 1970, PL 11-134.

**11.0530 Sections 43 and 3507 deleted.**

Section 43, relating to the earned income credit, and Section 3507, relating to advance payment of the earned income credit by employers, are deleted for all tax years beginning after 31 December 1979.

**History:** 1980, PL 16-78 § 1; amd 1980, PL 16-87 § 2.

**Amendments:** 1980 Added provision relating to Section 3507.

**11.0531 Renumbers Section 221 to 222 and adds new Section 221.**

Section 221, relating to cross-references with respect to additional itemized deductions for individuals is redesignated as Section 222. New Section 221 is added to read:

**“SEC. 221. STUDENT TUITION DEDUCTION**

A taxpayer may deduct from his adjusted gross income, if he elects to itemize his deductions, all cost for tuition paid in the current taxable year for the education of a dependent who is attending either public or private elementary school, a high school, a college, university, or graduate school anywhere in the United States.

**History:** 1980, PL 16-87 § 2; and 1988, PL 20-51.

**11.0532 Section 457(d) (1) amended.**

Section 457 (d) (1) providing definitions is amended to read:

“(1) State. The term “state” means a State, a Territory or the United States, a political subdivision of a State or Territory, and an agency or instrumentality of a State, Territory or political subdivision of a State or Territory”.

**11.0533 Partial recoupment of corporate taxes.**

(a) Section 11(b), relating to the amount of tax imposed on corporations for taxable years beginning on and after July 1, 1987, is amended to read:

11(b) Amount of tax.

The amount of tax imposed by subsection (a) shall be the sum of;

- (1) 15 percent of so much of the taxable income as does not exceed \$50,000,
- (2) 25 percent of so much of the taxable income as exceeds \$50,000 but does not exceed \$75,000,
- (3) 34 percent of so much of the taxable income as exceeds \$75,000 but does not exceed \$650,000, and
- (4) 44 percent of so much of the taxable income as exceeds \$650,000.

In the case of a corporation which has taxable income in excess of \$100,000 for any taxable year, the amount of tax determined under the preceding sentence for such taxable year shall be increased by the lesser of (a) 5 percent of such excess or (b) \$11,750.

**History:** 1988, PL 20-51; amd 1989, PL 21-8.

**11.0534 Maximum tax imposed upon corporations.**

Notwithstanding the provisions of section 11.0533, the maximum amount of income tax imposed in a taxable year upon any corporation operating under a certificate of exemption issued pursuant to the tax incentives for businesses act, section 11.1601 et seq., shall not exceed the amount of income tax which would have been imposed upon such corporation in such year under the provisions of this title, as in effect on December 31, 1986 (without regards to the Tax Reform Act of 1986, U.S. Public Law No. 99-514) and as applied in accordance with the terms of the certificate of exemption issued to such corporation."

**History:** 1988, PL 20-51.

**11.0535 Section 876 amended.**

Section 876 relating to alien residents of Guam, Puerto Rico, the Northern Marianas Islands and the United States is amended to read:

(a) Alien individuals. This subpart shall not apply to any alien individual who is a bona fide resident of Puerto Rico, Guam, the Northern Mariana Islands, or the United States during the entire taxable year and such alien shall be subject to the tax imposed by section 1.

(b) Foreign corporations. Sections 881, 884 and 1442 shall not apply to corporations formed in the United States, any of the 50 states or any territory of the United States.

**History:** 2009, PL 31-8.

**11.0536 Section 1442(c) deleted.**

Section 1442(c) relating to corporations formed in Guam and other territories is deleted.

**History:** 2009, PL 31-8.

**11.0537 Section 881(b) deleted.**

Section 881(b) relating to corporations formed in Guam and other territories is deleted.

**History:** 2009, PL 31-8.

## Chapter 06

### MISCELLANEOUS TAXES

**Sections:**

- 11.0601 Definitions.**
- 11.0602 Machine and device tax imposed.**
- 11.0603 Responsibilities of owners.**
- 11.0604 Penalties.**
- 11.0605 Funds for student financial aid.**
- 11.0606 Wage Tax.**

**11.0601 Definitions.**

As used in this chapter:

(a) "Coin operated device" means any mechanical, electrical or electro-mechanical machine or device operated by insertion of a coin, coins or token or tokens, which is capable of any of the following:

(1) Returning to a person operating the device any merchandise, food item, cigarettes or other items of value intended for personal use, not including postage stamps;

(2) Providing to a person operating the device an opportunity to engage in any video amusement game including pinball machines;

(3) Use by children for rides or other amusement: or

(4) Providing to the person using the device a service such as photograph, phonograph, or other music-producing device.

(b) "Machine owner or operator" means a person, corporation, partnership or business

entity which:

- (1) owns a coin operated machine or device, or
- (2) by agreement with the owners thereof operates the equipment in the Territory.

**History:** 1988, PL 20-84.

#### **11.0602 Machine and device tax imposed.**

An annual tax is imposed for the licensing of coin operated devices as follows:

- (a) on each video amusement game, including pinball machines, fifteen dollars (\$15.00);
- (b) on each coin-activated photograph, phonograph or other music producing machine, twenty-five dollars (\$25.00);
- (c) on each coin-activated vending machine that dispenses merchandise, food items, cigarettes or other items intended for personal use, but not including postage stamps, ten dollars (\$10.00);
- (d) on each coin-activated riding machine designed for use by children, fifteen dollars (\$15.00);

**History:** 1988, PL 20-84; amd 1991, PL 22-19; 1995, PL 24-3.

#### **11.0603 Responsibilities of owners.**

(a) Within thirty days after this law goes into effect, or within thirty days after purchasing or importing into the Territory any coin operated device, the owner of a coin operated device must obtain, from the tax office, a numbered license sticker indicating that the yearly tax has been paid in full for each device which he owns or operates. The license sticker is to be applied to each device in a visible location so that tax office employees making an inspection can readily see if the tax has been paid.

(b) The tax for each year is due by the fifteenth day of January. If the tax on any machine becomes due during any month other than January, the owner or operator shall be liable for a proportional share of the full tax calculated for the months remaining in the year.

(c) Machine owners and operators must maintain records indicating when each machine is purchased or sold, the full name of the seller or buyer, and the address of the seller or buyer.

**History:** 1988, PL 20-84.

#### **11.0604 Penalties.**

(a) Violation of any of the provisions of this chapter is a class D felony.

(b) In addition to any other penalties imposed by this section, the Tax Office may fine the owner or operator of coin operated machines or devices ten percent (10%) of the annual tax for each month that the tax on a machine has not been paid.

(c) Any machine or device possessed or imported in violation of this section shall be subject to seizure and forfeiture.

(d) If the tax is more than one month overdue, the Tax Office may confiscate the machine or device and retain possession until the tax and all fines are paid in full.

**History:** 1988, PL 20-84.

**11.0605 Funds for student financial aid.**

The proceeds of taxes and fees collected under authority of this chapter shall be deposited in the general fund earmarked for student financial aid.

**11.0606 Wage tax.**

(a) All wages earned in the Territory shall be taxed at the rate of two percent (2%). This tax is in addition to American Samoa's income tax as set forth in Chapters 4 and 5 of this Title.

(b) This tax shall be paid by the wage earner and reported on the wage earner's tax return.

(c) Employers shall immediately increase the minimum withholding for all employees from 4% to 6%.

(d) This wage tax shall be effective as of January 1, 2011. Revenue generated from this wage tax shall be deposited in the general fund and shall not be subject to earmark pursuant to 11.0605.

**History:** 2011, PL 32- 2 (Sunset provision. Wage tax shall expire on January 1, 2012.)

**Chapters 07-09**

**(RESERVED)**

**Chapter 10**

**EXCISE TAX ON IMPORTS**

**Sections:**

- 11.1001 Imposition-Basis for computation-Conditional release.**
- 11.1002 Amount of tax on certain items.**
- 11.1002.1 Cigarette excise tax—Violation—Penalty.**
- 11.1003 Emergency tax power of Governor.**
- 11.1003.1 Exemption for specially-Equipped motor vehicles.**
- 11.1004 Customs regulations applicable.**
- 11.1020 Abolition of customs duties on imports.**
- 11.1021 Authority to reimpose import duties.**
- 11.1031 Repealed.**
- 11.1041 Soft drink tax-Levy-Rate.**
- 11.1042 Soft drink tax-Attachment of tax liability.**
- 11.1043 Soft drink tax-Report and payment.**
- 11.1044 Soft drink tax-Export drawback of taxes paid.**
- 11.1045 Soft drink tax-Violation-Penalty.**

**Research Guide:** For provisions on refund of duties or excise taxes, see 27.1023.

**11.1001 Imposition-Basis for computation- Conditional release.**

(a) An excise tax shall be levied and paid at the point of entry, on the items listed in 11.1002, except those items imported by the United States Government.

(b) The basis for computing the tax is the purchase price of the items, except for certain petroleum products, and shall include costs, charges, and expenses incident to placing the items in condition, packed and ready for shipment to American Samoa. The basis for computing the tax on certain petroleum products shall be gallons. Freight charges, insurance, and other shipping expenses shall not be included in the basis for computing the tax.

(c) All items released by customs officers as duty free at the time of entry shall be entered as conditionally duty free and subject to duty if within 90 days of entry it is discovered that the items should have been taxed.

**History:** 1967, PL 10-23; 1968, PL 10-60; amd 1987, PL 20-29 § 5; 1990, PL 21-40; amd 2001, PL 27-16.

**Amendments** 1987 Added “conditional release” to section title.

Subsection (a): deleted “effective 31 May 1967,”; added “and paid” after “levied”.

Subsection (b): substituted “and shall include” for “for which the basis shall be gallons”; added new sentence after “American Samoa”; substituted “shall” for “may” and added “in the basis for computing the tax”.

Subsection (c): added.

2001 Subsection (a): deleted words “government or”.

**Case Notes:**

Excise tax on imported vehicles has rational basis in desire of Fono to maintain beauty of islands and will be upheld by court. Absent adoption of USC provisions relating to exercise tax rules, chapter will be implemented in its own terms. *Letuli v. Government of American Samoa*. ASR (1976).

**11.1002 Amount of tax on certain items.**

(a) The tax on each item is:

(1) beer, malt extract, alcoholic beverage, tobacco products and smoking accessories:

(A) one hundred ninety percent of the basis of beer as defined in 27.0501(6), and malt extract, except that any person 21 years of age or over may bring into American Samoa tax free an amount of any alcoholic beverage as defined in 27.0501(1) or 27.0501(6) not to exceed 1 liter per trip if such alcoholic beverage is for his personal use and consumption and not for resale; and except further that any alcoholic beverage and tobacco products brought into American Samoa for export at the duty free shop at Pago Pago International Airport is also tax free; one hundred fifty percent (150%) of the basis of beer or malt extract shall be deposited in the general fund and shall be available for appropriation by the Legislature; and forty percent (40%) of the basis of beer or malt extract shall be deposited in the general fund in an account earmarked for and dedicated to the repayment of the government loan approved in 7.1444.5. Upon full repayment of said loan, collection of this tax shall be deposited into the general fund and shall be available for appropriation by the Legislature;

(B) alcoholic beverages as defined in 27.0501(1) shall be taxed as follows: fifteen (0.15) cents per one percent (1%) of alcohol by weight per liter, with a minimum tax of two dollars (\$2.00) per liter.

Of the revenues collected from the tax on alcoholic beverages, fifty percent (50%) shall be appropriated to fund the Feleti Barstow Public Library; twenty-five percent (25%) shall be appropriated to fund the Office of Administrative Law Judge; twelve and one-half percent (12.5%) shall be deposited in the general fund and shall be available for appropriation by the Legislature; and twelve and one-half percent (12.5%) shall be deposited in the general fund in an account earmarked for and dedicated to the repayment of the government loan approved in 7.1444.5. Upon full repayment of said loan, collection of this tax shall be deposited in the general fund and shall be available for

appropriation by the Legislature.

(C) Twelve point five cents per cigarette, per cigar, or per 10 grams of smoking tobacco, except that any person 21 years of age or over may bring into American Samoa tax free tobacco products not to exceed either 200 cigarettes or 100 cigars and or 2 kilograms of smoking tobacco per trip if such tobacco products are for his personal use and consumption and not for resale; and twenty percent (20%) shall be deposited in an account earmarked for and dedicated to the repayment of the government loan approved in 7.1444.5. Upon full repayment of said loan, collection of this tax shall be deposited in the general fund and shall be available for appropriation by the Legislature.

(2) one hundred fifty percent of the basis of firearms and firearm ammunition;

(3) motor vehicles:

(A) twenty-five percent of the basis of motor bicycles, automobiles, trucks, and vans, to be used for commercial purposes;

(B) notwithstanding the provisions of paragraph (A), the tax levied on motor bicycles automobiles, trucks, and vans, imported into American Samoa for personal or family use shall be 10 percent of the basis thereof. If a motor bicycle, automobile, truck or van, are converted to commercial use after being imported for personal or family use, it shall then be subject to the balance of the applicable tax imposed under paragraph (A).

(C) No tax exemption, including that provided by Title 11, Chapter 16, shall be granted for any motor vehicle. All other motor vehicles not taxed under this subsection shall be subjected to the tax under 11.1002(a)(7);

(4) petroleum products:

(A) thirty-five cents a gallon on fuel manufactured for use in motor vehicles, other than diesel fuels, 1.5 cents of this to be used for revenue for law enforcement costs and the driver's training control school and 10 cents of it to be placed in an earmarked revenue fund for road maintenance;

(B) three and one-half cents a gallon on fuel manufactured for use in diesel engines, other than aircraft fuels. An express exception is made for the purpose of extending a full three and one-half cent excise tax credit for fuels which, subject to verification by the Treasurer of American Samoa, were sold to any commercial fishing vessel for the purpose of refueling. For purposes of this section, "Commercial Fishing Vessels" shall be defined as all purse seiners and longliner vessels actively engaged in commercial fishing in excess of five tons dead weight, plus reefers of "Mother Ships" that are used to transship fish products, plus diesel fuel tankers that provide fuel at sea to the commercial fishing vessels;

(C) one and one-half cents a gallon on kerosene and similar petroleum products;

(D) fifteen percent of the basis of lubricating oils;

(E) one cent a gallon on jet and other aircraft fuels, to be placed in the enterprise fund for the operation of Pago Pago International Airport;

(F) three cents a pound of liquified petroleum gas such as butane and propane or mixtures; thereof, and ethane;

(G) thirty-one and one-half cents per gallon, to be collected by the petroleum supplier at the point of sale, on fuel manufactured for use in diesel engines, excluding diesel fuel used by stationary boilers or burners, stationary generators of electric power and marine vessels.

(5) forty percent of the basis of all construction materials, as defined in 26.1501 et seq., which are of a lesser quality than the standard grades established under such chapter;

(6) fifteen cents per 12 fluid ounces or fraction thereof on all soft drinks or nonalcoholic carbonated beverages, to be applied to the measure of the container in which it is offered for sale by the importer.

(7) five percent of the basis of all items not listed in subsections (a) (1) through (a)(6) of this section or exempted by this section which are imported for commercial use or resale purposes. The revenues received from the three percent excise tax shall be deposited in the general fund and shall be available for appropriation by the Legislature, except that \$500,000 is appropriated for the student financial aid provided for in 11.0605.

(b) The minimum tax shall be 25 cents.

(c) Items otherwise taxable under subsection (a)(1) and (a)(7) of this section are exempted from the taxes imposed by this section when they are brought into American Samoa for export sale for consumption outside American Samoa; provided that importation and sale of these items are made pursuant to rules promulgated by the Treasurer under the Administrative Procedures Act 4.1001 et seq., that require, among other things, separate storage of these items clearly identified for export sale and a system of delivery to the purchaser ensuring their exportation.

(d) Payment of the taxes imposed by this section on items brought into American Samoa for consumption within American Samoa may be postponed pursuant to rules promulgated by the Treasurer under the Administrative Procedures Act, 4.1001 et. seq., that require, among other things, separate storage of those items clearly identified for domestic sale and consumption and a system of delivery to the importer ensuring payment of the taxes at the time of delivery.

(e) The Treasurer shall promulgate rules under the Administrative Procedures Act, 4.1001 et seq., to ensure that the taxes imposed when the exception set forth in subsection (a)(7) of this section is inapplicable are paid.

(f) One percent (1%) of the five percent excise tax shall be earmarked for the repairs, renovations and upgrading of all public schools facilities and equipment in American Samoa beginning in the fiscal year 1995.

**History:** 1989, PL 21-26; 1990, PL 21-40, PL 21-30; 1995, PL 24-3, PL 24-8; amd 1998, PL 25-28; 1999, PL 26-9, 26-13; PL 2000, 26-28; 2001, PL 27-5 amd 2001, PL 27-9; 2001, PL 27-17; 2003, PL 28-8, 2005, PL 29-4, 2005, PL 29-13; 2007, PL 30-5.

**Reviser's Comment:** Suspension of operation of subsection (a)(4)(B). The operation of subsection (a)(4)(B), placing a 3½¢ a gallon tax on diesel fuel other than aircraft fuels, was suspended by PL 13-19, 1973, for the period from 9 April 1973 to 30 June 1974, and by PL 13-55, 1974, for the period 1 July 1974 to 30 June 1976.

By PL 15-82, 1978, 2¢ of the 3½¢ tax was suspended from the period 18 April 1978 through 17 April 1979.

By PL 16-22, 1979, 2¢ of the 3½¢ was suspended for 2 years, effective 18 April, 1979, for vessels who are registered in American Samoa or who have contract to fish for an American Samoa based cannery or operator.

Section 2 of PL 17-17 provides that, under operation of (a)(3)(A), the 25 percent excise tax on parts and accessories for all motor vehicles is suspended for 3 years commencing on August 26, 1981.

Section 1 of PL 17-40 provides that, under operation of (a)(4), 1½ cents tax is suspended for one year, effective 1 July 1982, for vessels that are registered in American Samoa or that have a contract to fish for an American Samoa based cannery or operator.

Section 1 (4)(A) of PL 27-17 provides for a 10¢ a gallon increase on fuel and to be deposited to the general fund; Section (1) adds a new paragraph (G), of which, 31-1½¢ per gallon of fuel manufactured for use in diesel engines, excludes diesel fuel used by stationary boilers or burners, stationary generators of electric power and marine vessels.

**Case Notes:**

Excise tax on imported vehicles has rational basis in desire of Fono to maintain beauty of islands and will, be upheld by court. Absent adoption of USC provisions relating to excise tax rules, chapter will be implemented in its own terms. *Letuli v. Government of American Samoa*, ASR (1976).

Meaning of “imported”, as used in this section’s tax upon motor vehicles “imported into American Samoa for a personal or a family use”, is not vague or ambiguous and covers motor vehicles the importation of which is incidental as being consequent to other primary purposes, such as a change of residence to American Samoa, *Letuli v. Government*, 4 ASR 830 (1973).

#### **11.1002.1 Cigarette excise tax—Violation—Penalty.**

A person, firm, or corporation who fails to pay the excise tax for cigarette; at the point of entry is subject to a Class A misdemeanor and/or \$1,000 fine per cigarette, per cigar or per 10 grams of smoking tobacco.

**History:** 2000, PL 26-28.

#### **11.1003 Emergency tax power of Governor.**

The Governor shall have emergency power to impose additional excise taxes on any items to the list of taxable items or to reduce excise taxes on any item, if he deems it desirable in the public interest, until the next meeting of the Legislature.

**History:**1967, PL 10-23.

#### **Case Notes:**

Excise tax on imposed vehicles has rational basis in desire of Fono to maintain beauty of the islands and will be upheld by court. Absent adoption of USC provisions relating to excise tax rules, chapter will be implemented in its own terms. *Letuli v. Government of American Samoa*, ASR (1976).

#### **11.1003.1 Exemption for specially-equipped motor vehicles.**

Any motor vehicle, which has been specially equipped and is imported by and for the personal use of a severely disabled individual, is exempt from the excise tax on the importation of a motor vehicle.

**History:**1987, PL 20-3 § 1.

#### **11.1004 Customs regulations applicable.**

The provisions of 27.1001 et seq., apply to this chapter.

**History:**1967, PL 10-23.

#### **11.1020 Abolition of customs duties on imports.**

(a) There shall be no duties levied on imports into American Samoa after 31 May 1967.

(b) This section and 11.1021 and 11.1501 shall take effect as of 1 June 1967 because of the desire of the Legislature for immediate abolition of customs duties and the advantages which will accrue to the economy of American Samoa.

**History:** 1967, PL 10-23.

#### **11.1021 Authority to reimpose import duties.**

The Governor is authorized to reimpose any import duty which existed before this section and 11.1020 and 11.1501 were enacted if he determines that the level of retail prices for the articles has not been reduced to the extent warranted by the abolition of

duties. It is the intent of this section that the benefit of the abolition of duties shall accrue to the retail purchaser, and not to the merchant.

**History:**1967, PL 10-23.

**11.1031 Hard liquor tax—Exemption—Disposition.**

Repealed by PL 18-53.

**11.1041 Soft drink tax—Levy—Rate.**

There is levied and assessed upon, and there shall be collected from every business engaged in the manufacture or production in American Samoa of any soft drink or nonalcoholic beverage or syrup for use in the making or preparation of soft drinks, in addition to all other applicable taxes, an excise tax which shall be equal in rate to the duty imposed on the importation of such items into American Samoa pursuant to 11.1020, 11.1021, and 11.1501.

**History:**1963, PL 8-1.

**11.1042 Soft drink tax—Attachment of tax liability.**

The tax levied by this chapter shall attach at the time of the completion of the process of manufacture.

**History:**1965, PL 9-15.

**11.1043 Soft drink tax—Report and payment.**

The manufacture or producer shall prepare a quarterly report and pay to the government a tax on all taxable soft drinks or syrups manufacture red during the quarter. The tax shall be due and payable not more than 30 days following the end of any particular quarter.

**History:**1965, PL 9-15.

**11.1044 Soft drink tax—Export drawback of taxes paid.**

There shall be allowed to any applicant therefor a drawback of the full amount of the tax paid under this chapter, exclusive of any penalties or interest, upon fulfillment of the following conditions:

- (1) that the taxable beverage manufactured or produced in American Samoa has been consigned and duly delivered to a point outside the Territory of American Samoa; and
- (2) that the beverage so exported was not the subject of any sale within American Samoa other than a transfer involving substantially the entire stock-in-trade, goodwill and franchise or other rights concerning the beverage upon which the tax was paid; and
- (3) that the taxes have been fully paid to the government; and
- (4) that the applicant is a duly licensed manufacturer or producer in American Samoa.

**History:**1965, PL 9-15.

**11.1045 Soft drink tax—Violation—Penalty.**

A person, firm or corporation who knowingly violates 11.1041 through 11.1045 is guilty of class B misdemeanor.

**History:**1963, PL 9-15; amd 1980, PL 16-90 § 94.

**Amendments:** 1980 Amended to conform with penalties provided for in Title 46, Criminal Justice.

## **Chapter 11**

### **SECONDHAND IMPORTED ITEMS TAX**

#### **Sections:**

- 11.1101 Definitions.**
- 11.1102 Imposition of tax-Effective date.**
- 11.1103 Rate of tax.**
- 11.1104 Collection of tax.**
- 11.1105 Exemption for items imported for personal use.**
- 11.1106 Tax on resale of exempted items.**

#### **11.1101 Definitions.**

As used in this chapter

(a) “Resale” includes a sale, conditional sale, regardless of later default, and foreclosure of a chattel mortgage.

(b) “Secondhand items” refers to any motor vehicle, piece of machinery or household appliance which has been sold at retail and actually put into use for any period of time prior to being imported into American Samoa.

**History:**1965, PL 9-8; 1967, PL 10-24.

#### **11.1102 Imposition of tax—Effective date.**

(a) There is levied and assessed, and there shall be collected, in addition to all other applicable taxes, a special tax upon all secondhand motor vehicles, machinery and household appliances imported into American Samoa for resale.

(b) The tax shall take effect on 1 June 1967.

**History:**1965, PL 9-8; 1967, PL 10-24.

#### **11.1103 Rate of tax.**

The rate of the tax shall be 30% of the price received by the importer upon resale, or 30% of the fair market value of the item, as determined by the Treasurer or his delegate, if the importer transfers the item for other than cash.

**History:**1965, PL9-8; 1967, PL 10-24.

#### **11.1104 Collection of tax.**

The tax shall be forwarded to the Treasurer or his delegate within 20 days of the transfer of the item, accompanied by a description of the goods, the date of importation and the name of the carrier.

**History:**1965, PL 9-8; 1967, PL 10-24.

**11.1105 Exemption for items imported for personal use.**

Any person making a declaration that secondhand items being imported by him are for his personal use shall have the items delivered to him without payment of the tax.

**History:**1965, PL 9-8; 1967, PL 10-24.

**11.1106 Tax on resale of exempted items.**

If any item exempted from the tax pursuant to 11.1105 shall be resold within one year of the date it is imported into American Samoa, or transferred for value received, the seller shall declare the sale to the Treasurer or his delegate and shall at that time pay to the government an amount equal to the tax provided for in 11.1103.

**History:**1965, PL 9-8; 1967, PL 10-24.

**Chapters 12—14**

**(RESERVED)**

**Chapter 15**

**EXCISE TAX ON EXPORTS**

**Sections:**

**11.1501 Export duties.**

**11.1502 Repealed.**

**11.1501 Export duties.**

During the first 10 days of any calendar year, but not thereafter during that year, the Governor may, after prior consultation and discussion with the exporters substantially affected, impose an export duty applicable for all of that calendar year on any article exported from American Samoa and destined for importation into the United States customs area. The amount of such duty may not exceed the amount which would be imposed on like articles imported into the United States from foreign countries generally. Notwithstanding the provisions of the Industrial Incentive Act or any other law, no exemption from an export duty imposed pursuant to this section may be granted unless required by a contract in effect on the date this section is enacted.

**History:**1967, PL 10-23.

**Research Guide:** For provisions regarding the Industrial Incentive Act, see 10.1501 et seq.

**11.1502 Unprocessed fish excise tax-Documentation-Funds earmarked-Violations.**

Repealed by PL 20-2 7 § 1.

**Chapter 16**

**TAX INCENTIVES FOR BUSINESSES**

**Sections:**

- 11.1601 Purpose—Grant and extent of tax exemptions.**
- 11.1602 Promotion of incentive program.**
- 11.1603 Tax exemption board— Composition.**
- 11.1604 Application for tax exemption certificate.**
- 11.1605 Powers and duties of board regarding tax exemptions.**
- 11.1606 Governor’s powers regarding tax exemptions.**
- 11.1607 General requirements for exemption.**
- 11.1608 Contents of certificate— Contract.**
- 11.1609 Amendment of certificate.**
- 11.1610 Limitation of exemption—Prior exemptions.**
- 11.1611 Transfer of certificate.**
- 11.1612 Construction to avoid double exemption.**

**11.1601 Purpose-Grant and extent of tax exemptions.**

(a) In order to establish a firm foundation for self-government and to assist the people of American Samoa in improving their living standards and prospects for employment, it is the policy of the government to promote economic development and capital investment in American Samoa by tax incentives.

(b) A temporary exemption from the payment of some or all taxes, duties, business license fees, and similar charges imposed or levied by the government may be granted for the establishment or expansion of a qualifying industrial or business enterprise as provided in this chapter.

(c) No exemption may be granted with respect to income derived from or activities carried on outside of American Samoa. No exemption from a tax, fee, duty, or levy not enumerated shall be implied. A tax exemption certificate issued to a processor of fish may exempt from some or all taxes on the owners or operators of fishing vessels, motherships, reefer transports, and supply vessels which supply the processor with fish, subject to such conditions and limitations as the Governor deems appropriate.

(d) In no event shall the original period of tax exemption exceed 10 years, and no extensions of the original period may be granted. The tax exemption may be made to terminate earlier if the cumulative amount of taxes forgiven equals 200% of noncurrent investment.

**History:** 1962, PL 7-37; 1963, PL 84.

**Case Notes**

Under provisions of Industrial Incentive Act, if Tax Exemption Board and Governor find applicant is new business, full tax exemption must be granted unless Governor makes affirmative finding that new business is not in public interest RCAS 26.0101. Bottling Corporation of Samoa v. Lee, 4 ASR 499, 938 (1967).

**11.1602 Promotion of incentive program.**

The Department of Administrative Services shall promote the industrial incentive program provided for in this chapter and shall provide such informational or other related services as may be useful for that purpose.

**History:** 1962, PL 7-37; 1963, PL 84.

**11.1603 Tax Exemption Board-Composition.**

There is established a Tax Exemption Board of 5 members, hereinafter called the "Board". The Board shall include the Treasurer of American Samoa, and 4 residents of American Samoa who shall be appointed by the Governor and serve at his pleasure.

**History:** 1962, PL 7-37; 1963, PL 8-4; amd 1979, PL 16-17 § 3.

**Amendment:** 1979 Deleted Attorney General from membership on and chairmanship of the Board, and raised from 3 to 4 the residents to be on the Board and provided that they be appointed by and serve at the pleasure of the Governor.

**Reviser's Comment:** The preamble to PL 16-17, which amended this section, stated: The Attorney General is presently a member of several Boards and Commissions by statute. This is a carry-over from an era when the number of qualified persons to perform special functions of this nature was limited, which is no longer true. The Attorney General's membership on Boards and Commissions raises potential conflicts of interest, particularly when the Board or Commission is conducting adjudicatory hearings and the Government is represented by legal counsel. Further, it curtails his role as legal advisor to these Boards and Commissions. Accordingly, this legislation is intended to eliminate these problems in the future."

#### **11.1604 Application for tax exemption certificate.**

All applications for tax exemption certificates or amendments to certificates shall be filed with the Board.

**History:** 1962, PL 7-37; 1963, PL 8-4.

#### **11.1605 Powers and duties of Board regarding tax exemptions.**

The Board, acting by vote of any 3 members, shall have the following powers and duties:

(a) The Board shall give public notice of, and conduct public hearings on, all applications for a certificate of tax exemption, and shall recommend to the Governor whether he should grant or deny an application.

(b) The Board shall recommend to the Governor that he grant a certificate of tax exemption if it is satisfied that:

(1) the industrial or business activity engaged in or expanded by the applicant will promote the public interest by furthering the economic development of American Samoa; and

(2) the establishment or expansion of the activity in American Samoa requires incentive in the form of a temporary tax exemption; and

(3) the applicant qualifies under the provisions of 11.1607.

(c) The Board shall submit to the Governor its recommendations with respect to applications for amended certificates.

(d) The Board shall recommend to the Governor that he revoke a certificate of tax exemption if it finds, after due notice and hearing, that the grantee of a tax exemption certificate:

(1) has failed to maintain substantial compliance with the conditions of the tax exemption certificate or any regulation issued under this chapter;

(2) has engaged in a business not named in the certificate without applying for a required amended certificate;

(3) has failed to carry on the business named in the certificate;

(4) has transferred a portion of his business without obtaining a required amended certificate;

(5) In the case of a corporation, has been dissolved, or has filed or is the subject of a petition in, bankruptcy which has been approved.

(e) The Board shall investigate all applications for tax exemptions and determine compliance with the provisions of this chapter or regulations issued pursuant to this chapter.

(f) In connection with any hearings or investigations required by the provisions of this chapter or of any rules and regulations issued pursuant to this chapter, the Board may subpoena witnesses, records, and books and inspect properties and facilities with respect to which a certificate of a tax exemption has been granted or is requested.

(g) The Board may request and obtain from the Department of Administrative Services such auditing and other services as it may consider necessary in connection with the performance or exercise of its powers and duties.

**History:**1962, PL 7-37; 1963, PL 8-4.

#### **11.1606 Governor's powers regarding tax exemptions.**

(a) The Governor of American Samoa shall have the following powers:

(1) After considering recommendations of the Board submitted within a reasonable time, he may deny, grant or amend a certificate of tax exemption, with such terms and conditions as he considers appropriate.

(2) He may revoke any tax exemption certificate for the reasons stated in subsection (d) of 11.1605.

(3) He may renew a tax exemption certificate, in whole or in part, if he believes that the industrial or business enterprise is contributing to the economic development of American Samoa and cannot be operated without such exemption.

(4) He may adopt such rules, regulations and reporting requirements as he deems necessary for the purposes of this chapter.

(b) All recommendations of the board relating to the qualification of applicants or the issuance, denial, revocation, modification, amendment, suspension or transfer of certificates of tax exemption shall be subject to the approval of the Governor; and no certificate, or any revocation, modification, suspension, amendment, or transfer thereof shall be deemed valid without the written approval of the Governor.

**History:**1962, PL 7-37; 1963, PL 84.

#### **11.1607 General requirements for exemption.**

In order to qualify for a certificate of tax exemption, an industrial or business enterprise must:

(1) be an enterprise owned by a person who is, or a partnership one of whose members is, a resident of American Samoa; or be a corporation created under the laws of American Samoa or a foreign corporation authorized by the laws of American Samoa to do business in American Samoa;

(2) undertake to employ, at the prevailing wage rate, or at not less than the minimum wage rate provided by law, residents of American Samoa to the extent of at least 75% of the total working force, with the concurrence of the Governor. A temporary waiver may be granted for a period not to exceed 6 months at any one time when residents with the necessary ability to perform the services required at the prevailing wage rates are not available within American Samoa and the industry or business will be greatly handicapped as a result of hiring 75% American Samoans. The Board, with the concurrence of the Governor, may revoke or modify the temporary waiver before its expiration if it determines that residents possessing the necessary ability have become

available in American Samoa and that such information has been furnished to the person, partnership or corporation. A resident means any person who has resided continuously in American Samoa for not less than 5 years immediately prior to the date of application for employment, or who was born in American Samoa and who has resided therein not less than 1 year immediately prior to the application.

**History:** 1962, PL 7-37; 1963, PL 84.

#### **11.1608 Contents of certificate—Contract.**

(a) A certificate of tax exemption shall be issued in the name of the government by the Governor. It shall specify:

- (1) the name of the grantee;
- (2) the business or industrial activity which qualifies for tax exemption;
- (3) the taxes, fees, duties, or levies from which the grantee is exempted;
- (4) the dates on which the tax exemption begins and ends;
- (5) the date by which any required financial investment shall have been completed by the grantee;
- (6) a statement that the grant of tax exemption is conditioned upon the substantial performance and observance of all requirements contained in the certificate, in this chapter, and in any regulations issued under this chapter, and that in the event of nonperformance all taxes shall be due and payable;

(7) a statement that the certificate of tax exemption either does or does not include an exemption from any new type of tax, fee, duty, or levy that may be imposed by the government in the future;

(8) such other conditions as the Governor shall deem applicable or appropriate, as are not inconsistent with the provisions of this chapter.

(b) Each certificate of tax exemption granted under the provisions of this chapter shall be regarded as a contract between the government and the grantee, and the government declares that it will not adopt any legislation or take any action that would impair or limit the obligation of such contract.

**History:** 1962, PL 737; amd 1963, PL 8-4.

#### **11.1609 Amendment of certificate.**

(a) If, after a tax exemption certificate has been issued, the grantee engages in any business in American Samoa not enumerated in the certificate, and one new business accounts for more than 5% of the gross sales receipts of the grantee in any year, the grantee shall promptly apply for appropriate amendment of the certificate.

(b) An amended certificate shall be issued, which may exclude from or extend to the new business some or all of the tax exemption initially granted. The amended certificate shall be effective as of the beginning of the year in which the new business accounted for more than 5% of the gross sales receipts.

(c) A failure to apply for an amended certificate in accordance with the provisions of this section may be deemed substantial non-performance of a condition of the tax exemption certificate.

**History:** 1962, PL 7-32; amd 1963, PL 8-4.

#### **11.1610 Limitation of exemption—Prior exemption**

(a) If at the time of application the grantee is engaged in more than one business or

industrial activity, the certificate of tax exemption may limit the tax exemption to the portion of the business which qualifies for tax exemption under the provisions of this chapter. The full amount of taxes, fees, duties, and levies now or hereafter imposed by the government shall remain payable with respect to business activities not enumerated in the certificate.

(b) Nothing in this chapter permits the granting of a tax exemption certificate to any person, partnership, or corporation with respect to any industrial or business activity that was granted a tax exemption prior to 1963.

(c) For the purpose of this chapter, no physical plant, facilities, inventory or any other item of investment, upon the basis of which tax exemption was granted prior to this amendment of the Industrial Incentive Act, shall be taken into consideration for the purpose of determining the minimum investments required for qualification under this chapter.

(d) Subsections (b) and (c) shall not apply where written commitments have been made with respect to the grant of a tax exemption but the tax exemption certificate has not been issued.

**History:** 1962, PL 7-37; 1963, PL 8-4.

#### **11.1611 Transfer of certificate.**

(a) A certificate of tax exemption granted under the provisions of this chapter may be transferred, for the unexpired portion of any tax-exempt periods provided in the certificate, to another person, partnership or corporation which qualifies under 11.1607, and which succeeds the grantee in carrying on, or in operating, substantially all of the business which originally qualified for tax exemption. Thereafter, the transferor of the certificate shall lose all tax exemption under this chapter and shall be subject to the operation of the tax laws of American Samoa.

(b) If the grantee of a certificate of tax exemption transfers to a corporation in which it owns at least 51% of the outstanding common stock and which qualifies under 11.1607, less than substantially all of the business which originally qualified for tax exemption, an amended certificate shall be issued indicating the specific tax exemptions which are transferred from one party to the other, or both will apply to both parties for the unexpired term. If such transfer is made to a person, partnership or corporation in which the transferor does not own 51% of the outstanding common stock, an amended certificate may be issued to the transferor in the discretion of the Governor, on such terms and conditions as he deems warranted, after considering the alteration or reduced volume of the transferor's business and investment. The transferee may receive a new certificate only if he applies and qualifies under the other provisions of this chapter.

**History:** 1962, PL 7-37; 1963, PL 8-4.

#### **11.1612 Construction to avoid double exemption.**

The provisions of this chapter shall be strictly construed to discourage and frustrate the use of any subterfuge, device or scheme, whether by means of sale, transfer, assignment of assets or interests, or otherwise, designed to secure a tax exemption for any person, partnership, or corporation previously granted or enjoying such exemption upon the basis of the same or substantially the same investment.

**History:** 1962, PL 7-32; 1963, PL 8-4.

## Chapter 17

### INDUSTRIAL DEVELOPMENT FINANCING

#### Sections:

**11.1701 Repealed.**

**11.1702 Repealed.**

**11.1703 Repealed.**

**11.1704 Repealed.**

**11.1705 Repealed.**

**11.1706 Repealed.**

**11.1707 Repealed.**

**11.1701 Legislative findings and purposes.**

Repealed by PL 19-69 § 2.

**11.1702 Definitions.**

Repealed by PL 19-69 § 2.

**11.1703 Establishment of American Samoa Industrial Development Commission.**

Repealed by PL 19-69 § 2.

**11.1704 Authorization to issue bonds.**

Repealed by PL 19-69 § 2.

**11.1705 Powers of the Commission.**

Repealed by PL 19-69 § 2.

**11.1706 Legal effect of this chapter.**

Repealed by PL 19-69 § 2.

**11.1707 Immediate effect.**

Repealed by PL 19-69 § 2.

## Chapter 18

### FOREIGN SALES CORPORATIONS

#### Sections:

**11.1801 Legislative findings and purposes.**

**11.1802 Definitions.**

**11.1803 Exemption of Foreign Sales Corporations from American Samoa Income Tax.**

**11.1804 Exemption of Foreign Sales Corporation shareholders.**

**11.1805 Exemption of Foreign Sales Corporations from withholding taxes.**

**11.1806 Exemption of Foreign Sales Corporations from excise taxes, customs duties, etc.**

- 11.1807 Qualifying American Samoa Foreign Sales Corporations.**
- 11.1808 Election of status as qualifying American Samoa Foreign Sales Corporation.**
- 11.1809 Ten-year exemption.**
- 11.1810 Rules and regulations.**
- 11.1811 Franchise tax on qualified American Samoa Foreign Sales Corporations.**
- 11.1812 Modification of corporation law as regards qualifying American Samoa Foreign Sales Corporations.**

**11.1801 Legislative findings and purposes.**

The Legislature Finds and declares that:

(1) The United States Congress has established, in Title VIII of the Tax Reform Act of 1984, various tax incentives to encourage foreign export trade by United States companies and has provided that tax-favored Foreign Sales Corporations may be established in possessions of the United States, including American Samoa, and that no tax shall be imposed by these possessions on foreign trade income derived before 1 January 1987;

(2) It is in the best interests of American Samoa to support export activity by United States companies and to attract United States companies which are engaged in export trade to establish Foreign Sales Corporations in American Samoa, and that special tax incentives are necessary for this purpose;

(3) There is a need to attract to American Samoa economic activity of the type which is incident to the establishment of Foreign Sales Corporations, including banking, legal, financial, and real estate services; and

(4) In order to improve the prosperity and welfare of the Territory and its inhabitants, it is desirable to broaden the tax base of the Territory by providing for a corporation franchise tax and encouraging the organization of new corporations within the Territory which are subject to such corporation franchise tax.

**History:**1984, PL 18-54 § 1.

**11.1802 Definitions.**

As used in this chapter, unless the context clearly indicates otherwise:

(a) The terms “Foreign Sales Corporations”, “FSC”, “Small FSC”, and “Foreign Trade Income” have the same meaning as are assigned those terms in Subpart C of Part III of Subchapter N of Chapter 1 of the United States Internal Revenue Code of 1954, as amended (relating to income from sources outside the United States); the term “FSC” shall include “Small FSC” unless otherwise indicated;

(c) The term “Internal Revenue Code” means the United States Internal Revenue Code of 1954 (Title 26, United States Code), as amended.

**History:**1984, PL 18-54 § 1.

**11.1803 Exemption of Foreign Sales Corporations from American Samoa Income Tax.**

A corporation which is a Qualifying American Samoa Foreign Sales Corporation (within the meaning of 11.1807) for any taxable year is exempt from the payment of corporation income taxes on its net foreign trade income for that taxable year.

**History:**1984, PL 18-54 § 1.

**11.1804 Exemption of Foreign Sales Corporation shareholders.**

No tax shall be imposed pursuant to sections 871(a)(1) and 881 of the Samoa Income Tax Act upon citizens and residents of the United States and upon corporations organized under the laws of any state of the United States with respect to items of income realized from sources within American Samoa from Qualifying American Samoa Foreign Sales Corporation (within the meaning of 11.1807) of which such citizens, residents or corporations are shareholders.

**History:**1984, PL 18-54 § 1.

**11.1805 Exemption of Foreign Sales Corporations from withholding taxes.**

A corporation which is a Qualifying American Samoa Foreign Sales Corporation (within the meaning of 11.1807) is exempt from the obligation imposed by sections 1441 and 1442 of the Samoan Income Tax Act to withhold the tax imposed by sections 871(a) and 881 of the Samoan Income Tax Act on items of income of United States citizens and residents, or corporations organized under the law of any state of the United States, which are shareholders of the FSC.

**History:**1984, PL 18-54 § 1.

**11.1806 Exemption of Foreign Sales Corporations from excise taxes, customs duties, etc.**

A corporation which is a Qualifying American Samoa Foreign Sales Corporation (within the meaning of 11.1807) is exempt from all excise taxes on imports imposed under chapter 10, Title 11, A.S.C.A., all excise taxes on exports imposed under chapter 15, Title 11, A.S.C.A., and all other customs duties on imports.

**History:** 1984, PL 18-54 § 1.

**11.1807 Qualifying American Samoa Foreign Sales Corporations.**

(a) For purposes of this title, the term of Qualifying American Samoa Foreign Sales Corporation means a corporation which satisfies the following requirements:

(1) It is a Foreign Sales Corporation within the meaning of section 992 of the Internal Revenue Code of 1954, as amended, and otherwise satisfies the requirements of Subpart C of Part III of Subchapter N of Chapter 1 of the Internal Revenue Code of 1954, as amended;

(2) It was created or organized under the laws of American Samoa;

(3) At all times during the taxable year, it maintained a bank account in American Samoa and all dividends, legal and accounting fees, and salaries of officers and members of the board of directors of the corporation disbursed during the taxable year are disbursed from the bank account; provided, however, that this requirement does not apply to a Qualifying American Samoa Foreign Sales Corporation that also qualifies as a small FSC;

(4) It has not at any time during the taxable year engaged within American Samoa in the manufacturing, production, or processing of products;

(5) It was not granted a tax exemption from the Government of American Samoa

pursuant to the provisions of chapter 16, Title II, A.S.C.A., prior to the effective date of this chapter; and

(6) It has made an election (at the time and in the manner provided in 11.1808) which is in effect for the taxable year to be treated as a Qualifying American Samoa Foreign Sales Corporation.

**History:**1984, PL 18-54 § 1.

### **11.1808 Election of status as Qualifying American Samoa Foreign Sales Corporation.**

(a) Time for Making. An election by a corporation to be treated as a Qualifying American Samoa Foreign Sales Corporation under 11.1807 shall be made by such corporation for a taxable year at any time during the period beginning 60 days immediately preceding and ending 60 days immediately succeeding the beginning of the taxable year except that the Tax Manager of American Samoa, may consent to and designate the making of an election at other times.

(b) Manner of Election. An election under subsection (a) shall be made by filing a letter electing Qualifying American Samoa Foreign Sales Corporation status with the Tax Manager of American Samoa.

(c) Effect of Election. If a corporation makes an election under subsection (a), then the provisions of this chapter apply to the corporation for the taxable year which the corporation elected and for all succeeding taxable years until the election is terminated.

(d) Termination of Election. An election under this section may be terminated by revoking the election for any taxable year of the corporation after the first taxable year in which the election is effective. A termination of election under this paragraph is effective;

(1) for the taxable year in which made, if made at any time during the first 90 days of such taxable year; or

(2) for the taxable year following the taxable year in which made, if made after the close of such 90 days, and for all succeeding years of the corporation. Termination is made by filing with the Tax Manager, Government of American Samoa, Pago Pago, American Samoa, 96799, a letter revoking the election.

**History:**1984, PL 18-55 § 1.

### **11.1809 Ten-year exemption.**

Upon application to the Tax Exemption Board, a qualifying American Samoa Foreign Sales Corporation which incorporates before 1 January 1987 may be granted an exemption from income tax, withholding taxes, excise taxes and customs duties for which provision is made in 11.1803 through 11.1806 for a period of 10 years from the date of incorporation.

**History:**1984, PL 18-54 § 1.

### **11.1 810 Rules and regulations.**

The Tax Manager of American Samoa shall promulgate such rules and regulations as are necessary for the implementation of this chapter.

**History:**1984, PL 18-54 § 1.

### **11.1811 Franchise tax on Qualified American Samoa Foreign Sales Corporations.**

(a) Effective 1 October, 1984, a franchise tax is imposed on each Qualified American Samoa Foreign Sales Corporation incorporated under the laws of American Samoa at any time during the taxable year. The franchise tax shall be referred to as the FSC Franchise Tax.

(b) The amount of the FSC Franchise Tax shall be \$2,500 per annum; provided, however, that in the case of a Qualified American Samoa Foreign Sales Corporation that qualifies as a Small FSC the tax shall be \$500 per annum.

(c) The FSC Franchise Tax for the first taxable year is payable on the date of incorporation of the Qualifying American Samoa Foreign Sales Corporation and for each taxable year thereafter is payable on the first day of the month in which the anniversary of incorporation occurs.

**History:**1984, PL 18-54 § 1.

### **11.1812 Modification of corporation law as regards Qualifying American Samoa Foreign Sales Corporations.**

(a) So long as a corporation is a Qualifying American Samoa Foreign Sales Corporation (within the meaning of 11.1807) and otherwise satisfies the requirements of this chapter, the Governor of American Samoa shall not act pursuant to 30.0102 to revoke, set aside, or alter the corporation's certificate of incorporation.

(b) The requirement of 30.0105 that a corporation must maintain its principal place of business in American Samoa shall not apply to Qualifying American Samoa Foreign Sales Corporations.

**History:**1984, PL 18-54 § 1.

## **Chapter 19**

### **ECONOMIC DEVELOPMENT FINANCING**

#### **Sections:**

- 11.1901 Legislative findings and purposes.**
- 11.1902 Definitions.**
- 11.1903 Establishment of American Samoa Economic Development Authority.**
- 11.1904 Authorization to issue bonds.**
- 11.1905 Powers of the authority.**
- 11.1906 Miscellaneous provisions.**
- 11.1907 Legal effect of this chapter.**

#### **11.1901 Legislative findings and purposes.**

(a) The Legislature finds and declares that:

(1) agriculture, shipping, tourism, fishing, maritime, economic development and related business industries, among others, are vital to the economy of the Territory and the welfare of the people, and need to be enhanced and expanded to improve the economic and fiscal position of the Territory;

(2) there is a need to enhance other economic activity in the Territory by attracting

manufacturing development, business enterprise management, and other activities conducive to economic promotion, in order to provide a stronger, more balanced, and stable economy in the Territory, while providing for the health and safety of the people;

(3) in order to improve the prosperity and welfare of the Territory and its inhabitants, to improve and expand living and working conditions, to promote the energy independence of the Territory, and to increase purchasing power and opportunities for gainful employment, it is necessary and in the public interest to facilitate the financing of capital projects provided for in this chapter.

(4) the economic stability and well-being of the people of American Samoa will be enhanced by providing affordable health care facilities for the benefit of its citizens, by providing educational facilities of every nature and kind by providing capital improvements of every kind and nature for the people of American Samoa and by providing financial assistance and capital facilities to agencies of the government;

(5) there exists severe economic instability and distress in traditional national and international markets for goods and services produced by the people of American Samoa: this instability and distress has caused serious economic distress to and among the people of American Samoa and is manifest in the extraordinarily high levels of unemployment and in the unavailability and rapidly rising costs of housing for elderly persons, disabled persons, existence of these conditions is inimical to the public health, general welfare, safety, morals and economic security of the people of American Samoa;

(6) the housing inventory in American Samoa needs immediate improvement, for there exists in American Samoa unsanitary, unsafe and overcrowded housing, blighted commercial and residential areas, as well as an acute shortage of safe, sanitary dwellings for person of low and moderate income which cannot be relieved by private enterprise alone, and the provision and financing of decent, safe and sanitary dwelling accommodations for person of low and moderate income are public purposes and a central objective of the government; the American Samoa Economic Development Authority should be vested with the necessary powers and responsibilities to facilitate the housing goals specifically stated for American Samoa in Public Law 98-454, 5 October 1984, to initiate a housing program for American Samoa and to include the Territory in existing federal housing programs.

(b) For the above reasons the Legislature further finds and declares that there exists in American Samoa urgent and severe need to provide the means and methods to provide financing and other programs to:

(1) complement the services of American Samoa's private financial institutions in a manner which will contribute to a strengthened and diversified economy of American Samoa;

(2) restore and revitalize existing apiculture, shipping, tourism, fishing, maritime, economic development and related businesses and industries for the purposes of retaining and expanding employment within American Samoa;

(3) promote and target resources of American Samoa to increase the export of its products to strengthen economic development of the Territory and to generate additional employment;

(4) eliminate the shortage of decent, safe, sanitary and affordable residential housing for elderly and disabled persons and families of low and moderate income in American Samoa;

(5) remedy unsafe and unsanitary housing conditions that are injurious to the public health, safety and welfare;

- (6) remove blighted areas;
- (7) obtain all pertinent housing and urban development assistance and financing for American Samoa;
- (8) assure the development of reliable, affordable, efficient and environmentally compatible sources of energy for all types of public and private consumption;
- (9) provide health care facilities for the benefit of the people of American Samoa;
- (10) provide capital facilities for the benefit of the people of American Samoa;
- (11) provide educational facilities for educational institutions within American Samoa;
- (12) provide for financing of facilities for agencies of the government; and
- (13) assist private enterprise to obtain loans or other financial assistance in the privatization of governmental operations.

(c) It is hereby declared to be the public policy and responsibility of American Samoa to promote the health, general welfare, safety and economic security of its people through the provision and financing of decent, safe, sanitary and affordable housing for elderly and disabled persons and persons of low and moderate income, to enlarge existing employment and alleviate unemployment in all phases of agriculture, shipping, tourism, fishing, maritime, economic development and related businesses and industries, to develop reliable, affordable, efficient and environmentally compatible sources of energy for public and private consumption, to provide health care and other capital facilities for the benefit of its people, to provide educational facilities for the benefit of education within American Samoa, to provide facilities for agencies of the government, and to assist private enterprise in financing privatization of governmental operations.

(d) The Legislature finds that the public policies and responsibilities of American Samoa as set forth in this section cannot be fully achieved or attained without the use of public financing and that such public financing can best be provided by establishing the American Samoa Economic Development Authority, vesting it with comprehensive and extensive powers herein described, and enabling said authority to issue revenue bonds and enter into other obligations to provide financing for housing projects, agricultural businesses, industrial enterprises, commercial enterprises, utilities, health care facilities, educational facilities, governmental facilities and other facilities, and to acquire real property wherever situated to promote and develop the expansion of existing employment and the establishment of new agricultural business, industrial enterprises, commercial enterprises, residential housing, health care facilities, educational facilities, facilities for agencies of the government, and any other facilities, and that all of the foregoing are public purposes and uses for which public moneys may be borrowed, expended, advanced, loaned and granted.

**History:** 1986, PL 19-69 § 1.

### **11.1902 Definitions.**

As used in this chapter, unless the context clearly indicates otherwise:

(1) “Agricultural business” means farms, ranches and other enterprises engaged in, or facilities directly or indirectly related to, the production of agricultural commodities and forest products or businesses related thereto, including, but not limited to, distribution, storage, production, transportation, treatment, packaging, canning, or marketing facilities.

(2) “Agricultural processing or storage facility” means an enterprise engaged in, or a facility directly or indirectly related to, the separation, cleaning, processing, converting, packaging, handling, storing, or other activities necessary or appropriate for the preparation and processing of crops, livestock, and other agricultural and forestry

products.

(3) “Area of operations” means American Samoa.

(4) “Authority” means the American Samoa Economic Development Authority.

(5) “Blighted area” means an area which, by reason of the presence of a substantial number of deteriorated or deteriorating structures, the predominance of defective or inadequate street or lot layout, faulty lot layout in relation to size, adequacy, accessibility or usefulness, unsanitary and unsafe conditions, deterioration of site or other improvements, diversity of ownership, the existence of conditions which endanger life or property by fire and other causes or any combination of such factors, substantially impairs or arrests the sound growth of a community, retards the provision of adequate housing accommodations or constitutes an economic or social liability and is a threat to the public health, safety, morals or welfare in its present condition and use.

(6) “Board of directors” means the Board of Directors of the Authority.

(7) “Bonds” or “bond documents” means the bonds authorized to be issued and other obligations to be entered into by the authority pursuant to this chapter. The term “bonds” also includes a single bond, a promissory note or notes and any other instrument evidencing an obligation to repay borrowed money including, but not limited to security instruments, trust indentures, loan agreements, collateral pledge agreements, guaranties, mortgages, deeds of trust, debentures, interim certificates, tax anticipation notes, revenue anticipation notes, grant anticipation notes, leases, lease-purchase agreements, certificates of participation in a lease or lease-purchase agreement, or other agreements setting forth the method or source of repayment of borrowed money.

(8) “Commercial enterprise” means an enterprise engaged in, or a facility directly or indirectly related to, the production, distribution or marketing of goods or services, including but not limited to, wholesale, retail and other mercantile activities, office buildings, hotels, motels, shopping centers, department stores, grocery stores, souvenir shops, book stores, stevedores, export or import companies, marine railways, and any other commercial activity.

(9) “Cost” means the amounts expended on or committed for or otherwise related to acquisition, construction reconstruction, improvement, or expansion of a project or facility, including the amounts expended to acquire land, rights-of-way, property rights, easements and other interests in real, personal or mixed property; the amounts expended for machinery and equipment, financing charges, interest prior to and during construction and for one year after completion of construction whether or not capitalized, necessary reserve funds, engineering, architectural, accounting, and legal services, plans and specifications, surveys, cost benefit analyses, feasibility studies, and other expenses necessary, appropriate or incident to determining the feasibility of, and acquiring, constructing, reconstructing, improving, and expanding any project or facility; administrative or management expenses deemed by, the Board of Directors to be necessary or appropriate; fees charged by the authority; charges and expenses necessary or appropriate to the financing or refinancing project, including the refunding of any outstanding obligations, mortgages, or advances issued, made or given by any person for any of these expenditures, and including, but not limited to underwriting fees, financial advisory fees, credit enhancement costs, title insurance premiums, bond insurance premiums, trustee’s fees, printing costs, rating agency fees, travel expenses and any other cost deemed necessary or appropriate by the Board of Directors of the authority to the discharge of the powers, rights, and privileges vested in it by this chapter.

(10) “Education facilities” shall mean real, personal or mixed property of any and

every kind intended by an educational institution to be utilized in furtherance of its educational program, including, but not limited to, dormitories, classrooms, laboratories, athletic fields, administrative buildings, recreational building equipment and other property for use therein.

(11) "Facilities" means any interest in real, personal or mixed property, whether tangible or intangible, including but not limited to, land or rights in land, leases, air rights, subsurface rights, water rights, geothermal rights, easements, rights-of-way, permits, licenses, depreciable assets, contract rights, or immovable and any other property, furnishing, machinery, vehicles, apparatus or equipment including, but not limited to, any and all facilities for agencies of the government, courthouses and other administrative, executive or other public offices; office buildings; jails; fire fighting and fire prevention, law enforcement and crime prevention facilities and apparatus; auditoriums, stadiums, convention centers and similar public meeting or entertainment facilities; civil defense facilities; civil defense facilities; hospitals; air and water pollution control facilities; drainage and flood control facilities; storm sewers; arts and crafts centers; museums, libraries, public parks, playgrounds or other public open space; marinas; swimming pools, tennis courts, facilities for other racquet sports, bowling greens, cricket fields, camping facilities, gymnasiums and other recreational facilities; tourist information and assistance centers; historical, cultural, natural, or folklore sites; fair and exhibition facilities; streets and street lighting, alleys, sidewalks, roads, highways, bridges, and via ducts; airports, passenger or freight terminals, ports, harbors, ferries, wharves, docks and similar marine services, slack water harbors, water resource facilities, waterfront development facilities, public water systems and related transmission and distribution facilities, storage facilities, wells, impounding reservoirs, treatment plants, lakes, dams, watercourses; sanitary sewage collection systems and treatment plants; maintenance and storage buildings and facilities; police and sheriff stations; apparatus and training facilities; telecommunications systems; data gathering and transmission systems; computer systems; incinerators; garbage and solid waste disposal, compacting and recycling facilities of every kind; and social and rehabilitative facilities.

(12) "Federal government" means any agency, department, or instrumentality of the Government of the United States of America.

(13) "Fishing industry" means an enterprise engaged in, or a facility directly or indirectly related to, any aspect of harvesting any product of the sea whether plant, fish, mammal, amphibian or some other classification, or an enterprise engaged in, or facilities directly or indirectly used in connection with the separation, cleaning, processing, converting, packaging, handling, storing or sale of such products of the sea.

(14) "Health care facilities" shall mean facilities for furnishing physical or mental health care including, but not limited to, hospitals and other facilities for the diagnosis and treatment of any physical or mental illness or malady, offices and clinics and related facilities, nursing homes and related facilities, long-term or lifecare facilities for the elderly or disabled, and shall include facilities used to furnish emergency medical health care and ambulances or vehicles specifically designed, equipped and licensed for transporting the sick or injured, emergency medical equipment and supplies; communications systems; computers and information processing systems; and training and administrative facilities.

(15) "Home buyer" means a person who has executed a contract with the authority to acquire a home, and who has not yet become a homeowner.

(16) "Housing project" means any facility, work, or undertaking to provide or assist in

providing decent, safe and sanitary dwellings, apartments, or other living accommodations for persons of low and modest income by any suitable method, including, but not limited to, rental, sale of individual units in single or multi-family structures under conventional condominium, cooperative sales contract or lease-purchase agreement, loans, or subsidizing of rentals or charges. Each facility, work or undertaking may include buildings, leasehold interests, equipment, facilities and other real, personal or mixed property deemed by the Board of Directors of the authority to be necessary, convenient or desirable, including, but not limited to, streets, sewers, water service, utilities, parks, site preparation or landscaping, and any other facility or appurtenances for administrative, community, health; recreational, welfare or other purposes. The term "housing project" or "project" also may be applied to the planning of the buildings and improvements thereto, the acquisition of the property or any interest therein, the demolition of existing structures, construction, reconstruction, rehabilitation, alteration or repair of the improvements or other property and all other work resulting therefrom or incidental thereto. The term shall also include all other real, personal or mixed property and all tangible and intangible assets held or used in connection with the housing projects.

(17) "Industrial enterprise" means an enterprise engaged in, or a facility directly or indirectly used to manufacture, produce, process, assemble, repair extract, warehouse, distribute and transport any product, including but not limited to, corporate and management offices and services provided in connection with any of the foregoing and industrial parks.

(18) "Loans" shall mean loans made for the purposes of financing any of the activities authorized within this chapter, including loans made to financial institutions for the purpose of funding loans to third parties or as security for loans made to accomplish any of the purposes of this chapter.

(19) "Members" means the members of the Board of Directors of the authority, organized pursuant to the provisions of 11.1903.

(20) "Mortgage" includes a mortgage, trust indenture, deed of trust, or other similar instrument.

(21) "Mortgage holder" includes the United States Department of Housing and Urban Development, Federal Housing Administration, United States Department of Agriculture, Farmers Home Administration, any other federal government or state agency engaged in housing activity, Administrator of Veterans Affairs, Federal Home Loan Mortgage Corporation, private mortgage lender, private mortgage insurer, and their successors, grantees and assigns.

(22) "Mortgage lender" means any bank or trust company, savings bank, national banking association, or savings and loan association maintaining an office in American Samoa, an insurance company certified to transact business in American Samoa, or any mortgage approved by the Federal Housing Administration and maintaining an office in American Samoa.

(23) "Obligations" means any notes, bonds, interim certificates, contracts, debentures, or other forms of obligation issued by the authority pursuant to this chapter.

(24) "Person" shall mean any individual, corporation, association, partnership, joint venture, joint stock company, trust, unincorporated organization, and any other legally recognized entity or government or any agency or political subdivision thereof.

(25) "Persons of low income" means persons or families as determined by the board of directors who cannot afford to pay enough to cause private enterprise in the islands to

build an adequate supply of decent, safe, and sanitary dwellings for their use.

(26) “Persons of moderate income” means persons of families as determined by the Board of Directors who cannot afford to pay enough to secure the necessary mortgages to buy a decent, safe and sanitary dwelling for their use.

(27) “Project” means any facilities deemed by the Board of Directors to be necessary or appropriate to a housing project, an agricultural business, an agricultural processing or storage facility, a commercial enterprise, educational facilities, the fishing industry, health care facilities, an industrial enterprise, a tourism facility, a warehousing or distribution facility and sports facilities, convention or trade show facilities; mass transit commuting facilities; parking facilities; sewage or solid waste disposal facilities; facilities for the furnishing of water for use by the general public, including nonresidential users; local district heating and cooling facilities; industrial parks; residential rental property; hydroelectric generating facilities; airport, dock, or wharf or storage or training facilities directly related thereto; facilities for the local furnishing of electric energy or gas; petroleum products processing or storage facilities; air and water pollution control devices or facilities; facilities of agencies of the government for administration or any other governmental purpose: one or more buildings and other structures, whether or not on the same site or sites; any rehabilitation, improvement, renovation, enlargement of, or addition to, any buildings, facilities, or structures for use in any project; sites and other rights in land whether improved or unimproved, machinery, equipment, inventory, site preparation and landscaping, and all appurtenances and facilities thereto, such as warehouses, utilities, access roads, truck docking and similar facilities; as well as any combination of the foregoing any other project which would qualify for tax exempt financing under title 26 U.S.C. 103 and 103A.

(28) “Tourism facility” means a facility used for or useful in connection with theme parks, zoological gardens, amusement parks, major historical, educational or trade museums, cultural centers, or spectator or participatory sports facilities, generally available to the public, including but not limited to, marinas, arenas, beaches, bathing facilities, golf courses, hotels, theaters, and auditoriums.

(29) “Utilities” or “utility” means any enterprise engaged in, or facility directly or indirectly used in the generation, cogeneration, conversion, production, transmission, storage, or delivery of energy, communication, gas, water, wastewater, drainage, electricity, power, solid waste disposal, telephone, data transmission or telecommunication services.

(30) “Warehousing or distribution facility” means a facility used or useful in the storage or centralized distribution of products resulting from, or used in, manufacturing, agriculture, fishing, mining, or any of the other activities specified as public purposes in this chapter, including but not limited to, warehouse, distribution centers, freight terminals, and elevators.

**History:** 1986, PL, 19-69 § 1.

### **11.1903 Establishment of American Samoa Economic Development Authority.**

(a) There is established the American Samoa Economic Development Authority to be an agency of the government, and a body corporate and politic to implement the public purposes of this chapter. The Authority may act on behalf of the government for the specific purposes prescribed in this chapter. The Authority shall constitute a public housing agency within the meaning of the United States Housing Act of 1937, as amended and a “local public agency” within the meaning of Title I of the Housing Act of

1949, as amended. The Authority shall have all the powers, rights, duties, privileges, functions and obligations prescribed and provided in this chapter. On the effective date of this legislation, the Authority shall succeed to, and assume all of the rights, property, powers, privileges, duties, contracts, actions, responsibilities and obligations of the American Samoa industrial development commission, which shall simultaneously cease to exist.

(b) The governing body of the Authority is a Board of Director. The first Board of Directors is comprised of 7 members of the Board of Directors of the American Samoa Industrial Development Commission heretofore appointed by the Governor with the advice and consent of the Legislature and 2 members of the Legislature, one from the Senate appointed by the President of the Senate and one from the House of Representatives appointed by the Speaker of the House. The first member has been duly appointed to a term of office expiring on 30 June 1986 and reappointed to a term of office expiring on 30 June 1990. The second member has been duly appointed to a term of office expiring on 30 June 1987. The third member has been duly appointed to a term of office expiring on 30 June 1988. The fourth member and fifth member have been duly appointed to terms of office expiring on 30 June 1989. All subsequent Governor's appointments shall be for 4-year terms, or for the unexpired portion of a term. The terms of the Legislative appointees shall not exceed their terms as Legislators and the first terms shall begin upon the date of their appointment.

Except for Legislative appointees, recess appointments may be made to fill vacancies caused by death, resignation, or removal for cause if the vacancy occurs while the Legislature is not in session. Except for Legislative appointees, recess appointments expire at the conclusion of the next following regular or special session of the Legislature if they are not confirmed during that session. The members shall elect from among themselves a chairman, for a term not exceeding 2 years, and such other officers as may be prescribed by duly adopted by-laws.

(c) The Authority shall continue to have the powers and rights of a corporation within the meaning of title 30, chapter 01 of the American Samoa Code Annotated, and has all of the powers provided by, and is subject to the limitations of, title 30 not inconsistent with the provisions of this chapter related to the creation, organization, administration, operation and affairs of the Authority.

(d) The chairman shall be the agent of the authority upon whom any process, notice, or demand required or permitted by law to be served upon the authority may be served. In the chairman's absence, any other member of the board of directors shall be the agent for receiving service of process, notice or demand.

(e) The Authority shall have perpetual existence.

(f) The Authority shall have the right to acquire facilities or projects by exercising the power of eminent domain in accordance with the provisions of general law. The power of eminent domain shall be exercised only when the Board of Directors deems that no other reasonable alternative is available, and compensation shall be made in accordance with law for the property rights acquired in this manner.

**History:** 1986, PL, 19-69 § 1.

#### **11.1904 Authorization to issue bonds.**

(a) The Authority may issue bonds or enter into other obligations to finance all or any portion of the cost of a project or facility or otherwise implement any project set forth and defined by this chapter.

(b) Bonds issued for each project under the provisions of this chapter do not constitute a debt of the Territory or the Government, or its political subdivisions or agencies, or a pledge of the faith and credit of any of them, but are payable solely from the revenue of such project and from any other source of funds lawfully available to the Authority, including funds received from the Federal Government to acquire, construct, finance, own, operate or lease the project. The bonds must contain a statement to the effect that neither the Territory or the Government nor any political corporate or subdivision of the Territory or the Government is obligated to pay the same or the bond interest from sources other than those specified in the bonds, and that the faith and credit and the taxing power of the Territory or the Government, or its political subdivisions, is not pledged to the payment of the principal of or the interest on these bonds. The Authority may not incur financial obligations which cannot be paid from proceeds of the bonds or from the security given for the bonds or from revenues realized from the project or realized from repayment of a loan made by the Authority to finance or refinance a project, in whole or in part, or from any other source of funds lawfully available to the Authority, including funds received from the Federal Government.

(c) The exercise of the powers granted by this chapter will be in all respects for the benefit of the people of American Samoa and will constitute the performance of essential public functions. The Authority is not required to pay any taxes on any project or any other property owned, constructed or otherwise utilized by the Authority under the provisions of this chapter, and no taxes shall be payable upon the interest or the bonds or otherwise upon the bonds issued under the provisions of this chapter or upon their transfer, and the bond income (including any profit made on the sale of the bonds), must at all times be free from taxation by the Territory or the Government and any local unit or political subdivision of the Territory or the Government.

(d) The Authority may enter into contracts, agreements and other obligations with any agency or department of the United States of America, the Government or any other person on terms and conditions deemed appropriate by the Board of Directors of the Authority and for a term which may extend to 55 years from the effective date of the agreement or contract. The Government, through its duly constituted officials, may enter into contracts, agreements and other obligations with the Authority to implement any of the provisions of this chapter upon terms and conditions deemed appropriate by the Government.

**History:**1986, PL, 19-69 § 1.

### **11.1905 Powers of the Authority**

(a) The Authority has the following specific powers with respect to any project together with all other powers incidental, necessary or appropriate for the implementation of these projects not in conflict with the provisions of this chapter:

(1) to acquire, whether by construction, devise, purchase, gift, lease, condemnation or otherwise or any one or more of such methods, and to construct, improve, maintain, equip., and furnish one or more projects other than a project involving governmental facilities, located within the Territory or within the coastal waters of the Territory;

(2) to lease or lease-purchase to a lessee or from a lessor all or any part of a project for rentals upon terms and conditions which its members consider advisable;

(3) to sell or acquire by installment payments or otherwise and convey or receive conveyance of all or any part of a project other than a project involving government

facilities, for a purchase price upon the terms and conditions which its members consider advisable;

(4) to lease for a term coterminous with the term of any bonds issued by the Authority, from the government all or any part of a project for governmental facilities provided that any lease of ten years or more submitted to the Legislature as may be required by section 37.2030 A.S.C.A.;

(5) to make secured or unsecured loans for the purposes of providing temporary or permanent financing or refinancing of all or part of the cost of a project, including the refunding of any outstanding obligations, mortgages, or advances issued, made, or given by any person for the cost of a project; and to charge and collect interest on these loans for the loan payments upon the terms and conditions which its members consider advisable;

(6) to issue bonds for the purpose of financing any project as provided in this chapter and to sell bonds at a price determined by the members or to exchange bonds for property, labor, services, material or equipment, comprising a project or incidental to the acquisition of a project, and those bonds may bear interest at any rate or rates, including variable rates, and contain other terms, provisions or conditions determined by the members to be necessary or appropriate;

(7) as security for the payment of the principal of and interest on any bonds issued and any agreements made in connection with that issuance, to mortgage and pledge all or part of these projects, whether then owned or later acquired, and to assign, mortgage, and repledge security available to the authority to secure a loan made by or to the Authority and to pledge the revenues, rentals, receipts and other payments therefrom;

(8) to enter into any contracts or agreements, in addition to the bond documents, which it deems necessary or appropriate on terms and conditions the members deem appropriate;

(9) to charge to applicants for bond financing and other services reasonable application, administration and other fees:

(10) to agree, notwithstanding anything to the contrary contained in this chapter or in any other provision of law, to any conditions attached to federal government financial assistance in the development or operation of projects; and the authority may include in any contract, made in connection with a project, stipulations requiring that the contractor and any subcontractors comply with requirements as to maximum hours of labor, and comply with any conditions which the Federal Government may have attached to its financial aid to the project:

(11) to obligate itself, as required by the Federal Government or as necessary to acquire mortgage insurance, in any contract with the Federal Government for contributions to the Authority, to transfer or convey to the federal government possession of or title to the project to which such contract relates, to the extent that the Authority has obtained possession or title to a project, upon the occurrence of a substantial default (as defined in such contract) with respect to the covenants or conditions to which the authority is subject: and such contract may further provide that in case of such transfer or conveyance, the Federal Government may complete, operate, manage, lease, convey or otherwise deal with the project and funds in accordance with the terms of such contract, provided that the contract requires that, as soon as practicable after the Federal Government is satisfied that all defaults with respect to the project have been or will be cured and that the project will thereafter be operated in accordance with the terms of the contract, the Federal Government shall transfer back, or reconvey to the Authority the

project as then constituted;

(12) to lease real property to or from private entities or the government, for such periods as are authorized by law, and to hold and manage or to sublease said property;

(13) to borrow or lend money, to issue temporary or long term evidence of indebtedness, and to repay the same;

(14) to pledge the assets and receipts of the authority as security for debts, and to acquire, sell, lease, exchange, transfer or assign, real, personal or mixed property, or any interest therein;

(15) the Authority shall have no authority to purchase or otherwise acquire communal or native land;

(16) to undertake and carry out studies and analyses of housing needs, to prepare plans to remedy housing needs, to execute the same, to operate projects and to provide for the construction, reconstruction, improvement, extension, alteration or repair of any housing project or any part thereof;

(17) with respect to any dwellings, accommodations, lands, buildings or facilities embraced within any housing project (including individual cooperative or condominium units), to lease or rent, sell, enter into lease-purchase agreements or lease with option to purchase; to establish and revise rents or required monthly payments; to make rules concerning the selection of tenants or homebuyers, including the establishment of priorities, and concerning the occupancy, rental, care and management of housing units; and to promulgate further rules as the Board of Directors may deem necessary and desirable to effectuate the powers granted by this chapter;

(18) to finance the purchase of a home by an eligible homebuyer in accordance with regulations and requirements of the Federal Government;

(19) to terminate any lease or rental agreement or lease-purchase agreement when the tenant or homebuyer has violated the terms of such agreement, or failed to meet any of its obligations thereunder, or when such termination is otherwise authorized under the provisions of such agreement; and to bring action for eviction against such tenant or homebuyer;

(20) to establish income limits for admission that insure that dwelling accommodations in a housing project shall be made available only to persons of low income or moderate income;

(21) to purchase insurance from any stock or mutual company for any property or against any risk or hazards;

(22) to invest such funds as are not required for immediate disbursement;

(23) to establish and maintain such bank accounts and other banking relationships as may be necessary or convenient;

(24) to employ an executive director, technical and maintenance personnel and such other officers and employees, permanent or temporary, as the Authority may require and to delegate to such officers and employees such powers or duties as the Board of Directors shall deem proper;

(25) to join or cooperate with any other public housing agency or agencies operating under the laws or ordinances of a state, territory or Indian tribe in the exercise, either jointly or otherwise, of any or all of the powers of the Authority and such other public housing agency or agencies for the purposes of financing, (including but not limited to the issuance of notes or other obligations and giving security therefor), planning, undertaking, owning, constructing, operating or contracting with respect to a housing project or projects of the Authority or such other public housing agency or agencies, so

joining or cooperating with the Authority, in the name of the Authority or in the name of such agency or agencies;

(26) to take such further actions as the Board of Directors may deem necessary and desirable to effectuate the purposes of the Authority.

(b) The Authority may not own or operate any industrial enterprise, commercial enterprise, or utility, other than as lessor, seller, or lender or pursuant to the requirements of any bond documents or other contract or agreement deemed appropriate by the Board of Directors of the Authority. Accordingly, the lessee, purchaser, or borrower pursuant to any lease, sale or loan agreement related to an industrial enterprise, a commercial enterprise, or utility is considered the owner of the project for the purposes of the application of any- property, sales, or use taxes or any other taxes levied or imposed by the Territory and its political subdivision. The purchase and holding by the authority of mortgages, deeds of trust, or other security interests and contracting for any servicing of them may not be construed as the operation of any such project.

(c) The Authority shall receive applications for approval of projects which must contain such information as is required by the authority. After an application is submitted which meets the requirements of the Authority, the Authority shall hold a public hearing on the application. Notice of the hearing must be published no less than 3 days nor more than 30 days prior to the hearing. All interested persons who appear at the hearing shall be given reasonable opportunity to be heard. The hearing shall be conducted by either the Board of Directors, one of its members, an employee of the Authority, or another person designated by the Board of Directors as the hearing examiner. The person conducting the hearing may administer oaths and question witnesses, and shall make a recommendation to the Board of Directors regarding the project. The Board of Directors shall then make a recommendation to the Governor regarding which projects should be approved, and may make a determination that the project is necessary and appropriate to the implementation of the purposes of this chapter. The Governor must give final approval of each project. Following approval by the Governor, and execution of bond documents by all parties, the authority may deliver its bonds. Neither the recommendations of the persons conducting the hearings nor the determination by the Board of Directors, nor actions of the Governor regarding approval, are reviewable by a court except in cases of fraud. The bonds of the authority, when delivered, shall be incontestable for any cause and shall be valid, binding and enforceable in accordance with their terms and conditions.

(d) In undertaking any project, the Authority shall adhere to the following criteria and requirements:

(1) the project, in the determination of the Authority, is appropriate for the needs and circumstances of, and makes a significant contribution to, the economic well-being of the Territory, and serves a public purpose by advancing the economic prosperity, public health, safety or general welfare of the Territory or its inhabitants;

(2) financing of a project involving an industrial enterprise, a commercial enterprise or utility may not be entered into with a person who is not financially responsible and fully capable and willing to fulfill its obligations to make payments in the amounts and at the times required, to fulfill the obligation to operate, repair and maintain any project involving an industrial enterprise, commercial enterprise or utility at its own expense, and to serve the purposes of this chapter, and other responsibilities as imposed under the bond documents. In determining financial responsibility of the party, consideration must be given to the party's ratio of current assets to current liabilities, net worth earning trends, coverage of all fixed charges, the nature of the industry or actively involved and its

inherent stability, and guarantee of the obligations by some other financially responsible corporation, firm or person, and other factors determinative of the capability of the party, financially and otherwise, to fulfill its obligations consistently with the purposes of this chapter.

(e) The Authority is authorized to issue each year the full amount of bonds available under federal law for industrial development projects, including, but not limited to, private activity bonds, as well as the full amount of bonds available under federal law for housing projects.

(f) The obligations of the Authority are declared to be issued for an essential public and governmental purpose and to be public instrumentalities, and, together with interest thereon and income therefrom, shall be exempt from taxes imposed by the Territory or the Government and any local unit or political subdivision of the Territory or the Government. The tax exemption provisions of this chapter shall be considered part of the security for the repayment of obligations and shall constitute, by virtue of this chapter and without necessity of being restated in the obligations, a contract between the Authority and the Government, and the holders of obligations and each of them, including all transferees of the obligations from time to time.

(g) Obligations of the Authority shall be issued and sold in the following manner:

(1) obligations of the Authority shall be authorized by a resolution adopted by the vote of a majority of the full Board of Directors and may be issued in one or more series;

(2) the obligations shall bear such dates, mature at such times, bear interest at such rates, be in such denominations, be in such form, either coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment and at such places, and be subject to such terms of redemption, with or without premium, as such resolution may provide;

(3) the obligations may be sold at public or private sale at no less than par.

(h) Obligations of the Authority shall be fully negotiable. In any suit, action or proceeding involving the validity or enforceability of any obligation of the Authority or the security therefor, any such obligation reciting in substance that it has been issued by the Authority to aid in financing a project pursuant to this chapter shall be conclusively deemed to have been issued for such purpose, and the project for which such obligation was issued shall be deemed to have been planned, located and carried out in accordance with the purposes and provisions of this chapter.

(i) In connection with the obligations set forth in bond documents or other contracts and obligations, the Authority, subject to the limitations in this chapter may:

(1) pledge all or any part of its gross or net rents, fees or revenues to which its rights then exist or may thereafter come into existence;

(2) provide for the powers and duties of obligees and limit their liabilities; and provide the terms and conditions on which such obligees may enforce any covenant or rights securing or relating to the obligations;

(3) covenant against pledging all or any part of its rents, fees and revenues or personal property to which it is already entitled to or may thereafter be entitled to or permitting or suffering any lien on such revenues or property;

(4) covenant with respect to limitations on its right to sell, lease or otherwise dispose of any project or any part thereof;

(5) covenant as to the obligations to be issued and as to the issuance of such obligations in escrow or otherwise, and as to the use and disposition on the proceeds thereof;

- (6) provide for the replacement of lost, destroyed or mutilated obligations;
- (7) covenant against extending the time for payment of its obligations or interest thereon;
- (8) covenant concerning the rents and fees to be charged in the operation of a project or projects, the amount to be raised each year or other period of time by rents, fees and other revenues, and as to the use and disposition to be made thereof;
- (9) create or authorize the creation of special funds for moneys held for construction or operating costs, debt service, reserves or other purposes and covenant as to the use and disposition of the moneys held in such funds;
- (10) prescribe the procedure, if any, by which the terms of any contract with holders of the obligations may be amended or abrogate;
- (11) covenant as to the use, maintenance and replacement of its real, personal or mixed property, the insurance to be carried thereon and the use and disposition of insurance moneys;
- (12) covenant as to the rights, liabilities, powers and duties arising upon the breach of any covenant, condition or obligation;
- (13) covenant and prescribe as to events of default and the terms and conditions upon which any or all of its obligations become or may be declared due for maturity, and as to the terms and conditions upon which such declaration and its consequences may be waived;
- (14) vest in any obligees or any portion of them the right to enforce the payment of the obligations or any covenants securing or relating to the obligations;
- (15) exercise all or any part or combination of the powers granted in this section;
- (16) make covenants other than and in addition to the covenants expressly authorized in this section, of like or different character;
- (17) make any covenants and do any acts and things necessary, convenient or desirable in order to secure its obligations, or in the absolute discretion of the Authority, tending to make the obligations more marketable although the covenants, acts or things are not enumerated in this section.

(i) American Samoa and all its public officers, municipal corporations, political subdivisions, and public bodies, all banks, bankers, trust companies, savings banks and institutions, including savings and loan associations, all investment companies, insurance companies, annual contributions or other financial assistance to be paid by the federal government or any agency thereof, and the obligations of the Authority and the bonds and other obligations of any such public housing authority or agency shall be authorized security for all public deposits and shall be fully negotiable in American Samoa. It is the purpose of this section to authorize any of the foregoing to use any funds owned or controlled by them, including (but not limited to) sinking, insurance, investment, retirement, compensation, pension, and trust funds and funds held on deposit, for the purchase of any such bonds or other obligations, provided that nothing contained in this section shall operate to relieve any person, firm, or corporation from liability for failure to exercise reasonable care in selecting investments or in the case of a guardian or trustee from liability for failure to exercise the judgment and care to observe the duties required of a guardian or trustee.

**History:** 1986, PL 19-69 § 1; amd 1987, PL 20-38 § 1.

**Amendments:** 1987 Subsection (a)(4); replaces provision that leases are subject to approval of the Legislature with requirement for compliance with 37.2030 A.S.C.A.

#### **11.1906 Miscellaneous provisions.**

(a) The Authority shall submit an annual report; signed by the Chairman of the Board of Directors, to the Governor and members of the Legislature showing a summary of the year's activities, the financial condition of the Authority, the condition of the properties, the number of housing units and vacancies, any significant problems and accomplishments, plans for the future, and such other information as the Authority or the Governor shall deem pertinent.

(b) During his tenure and for one year thereafter, no director, officer or employee of the Authority, or any member of the Governor's office, or any other public official who exercises any responsibilities or functions with regard to a project, shall voluntarily acquire any interest, direct or indirect, in any project or in any property included or planned to be included in any project or any contract or proposed contract relating to any project unless prior to such acquisition, he discloses his interest in writing to the Authority and such disclosure is entered upon the minutes of the Authority, and the director, officer or employee shall not participate in any action by the authority relating to the property or contract in which he has any such interests. If any director, officer or employee of the Authority involuntarily acquires any such interest, or voluntarily or involuntarily acquired any such interest prior to appointment or employment as a director, officer or employee, the director, officer or employee, in any such event, shall immediately disclose his interest in writing to the Authority; and such disclosure shall be entered upon the minutes of the Authority, and the director, officer or employee shall not participate in any action by the Authority relating to the property or contract in which he has any such interests. Any violation of the foregoing provisions of this section shall constitute misconduct in office. This section shall not be applicable to the acquisition of any interest in obligations of the Authority issued in connection with any project, or to the execution of agreements by banking institutions for the deposit or handling of funds in connection with a project or to act as trustee under any trust indenture.

(c) Each project developed or operated under a contract providing for federal government financial assistance shall be developed and operated in compliance with all requirements of such contract and applicable federal legislation, and with all regulations and requirements prescribed from time to time by the federal government in connection with such assistance.

(d) The Authority shall obtain or provide for the obtaining of an adequate fidelity bond for any person handling cash, or authorized to sign checks or certify vouchers.

(e) The Authority shall not construct or operate any project for profit.

(f) All property including funds acquired or held by the Authority pursuant to this chapter shall be exempt from levy and sale by virtue of an execution, and no execution or other judicial process shall issue against the same nor shall any judgment against the Authority be a charge or lien upon such property. However, the provisions of this section shall not apply to or limit the right of obligees to pursue any remedies for the enforcement of any pledge or lien given by the Authority on its rents, fees or revenues or the right of the Federal Government to pursue any remedies conferred upon it pursuant to the provisions of this chapter or the right of the Authority to bring eviction actions pursuant to the provisions of this chapter.

(g) The Authority shall obtain the approval of any other Federal Government department or agency, if necessary, prior to signing any financial assistance contract with the Department of Housing and Urban Development or any other Federal Government

department or agency.

(h) The Authority may borrow money or accept financial or other assistance from the Federal Government to assist in its construction, operation, or maintenance of any housing project. The Authority may do any and all things necessary or desirable to secure such assistance including obligating itself in any contract with the Federal Government for loans or contributions to convey to the Federal Government the projects to which the contract relates upon the occurrence of a substantial default thereunder.

(i) Funds shall be appropriated annually for the purpose of paying rental charges on lease contracts entered into between the Authority and the government pertaining to the lease of space by an agency or agencies of the government in an office building owned by the Authority. The rental charges shall be in an amount sufficient to pay the principal of and interest on the bonds issued by the Authority to finance the office building, after taking into account amounts received from any other sources of lawfully available funds and to maintain any reserve fund required for servicing the debt. All lease contracts entered into between the Authority and the government pertaining to the lease of space by an agency or agencies of the government in an office building owned by the Authority shall be signed by the Governor on behalf of the government and attested by the Secretary of American Samoa. All lease contracts duly executed by the Authority and by the Governor on behalf of the government shall be incontestable in any court or other forum for any reason and shall be valid and binding obligations in accordance with their terms and conditions for all purposes.

**History:** 1986, PL 19-69 § 1.

#### **11.1907          Legal effect of this chapter.**

Nothing in this chapter shall be construed to violate any provision of the Constitution of American Samoa, and all acts taken under this chapter shall conform to the Constitution, whether expressly provided or not. Where any procedure of this chapter is held by any court to violate the Constitution or any other law of the Territory, the members of the Authority shall have the power to provide by resolution an alternative procedure conforming to the Constitution or law of the Territory. If any provision of this chapter is found by a court to be invalid, that finding shall not affect the validity of any other provision of this chapter, and the Legislature hereby declares that it would have enacted the valid provisions of this chapter despite the invalidity of any other provision.

**History:** 1986, PL 19-69 § 1.

### **Chapter 30**

#### **AMERICAN SAMOA FINANCE COMMITTEE**

##### **Sections:**

- 11.3001          Scope application.**
- 11.3002          Finance committee.**
- 11.3003          Records—Administrative and clerical assistance.**
- 11.3004          Rules and regulations—Chairman.**
- 11.3005          Reports of debt management activities.**
- 11.3006          Evidences of indebtedness—Issuance—Signature.**

- 11.3007 Evidences of indebtedness—Issuance—Finance committee duties and powers.**
- 11.3008 Disposition of proceeds from sale of bonds.**
- 11.3009 Retirement fund guarantee of government refunding bonds.**
- 11.3010 Legislative authorization of refunding bonds.**
- 11.3011 Trust funds authorized.**
- 11.3012 Consent to suit.**

**11.3001 Scope of application.**

This chapter shall apply to all bonds, notes and other evidences of indebtedness of the American Samoa Government (ASG) authorized by the Legislature, unless otherwise provided in the authorizing acts. It shall not apply to indebtedness of any governmental agency or any public corporation.

**History:** 2000, PL 26-24.

**11.3002 Finance Committee.**

The Governor, the Lieutenant Governor, and the Treasurer, or their designee, shall constitute the American Samoa Finance Committee. Two members of the Committee constitute a quorum for taking action.

**History:** 2000, PL 26-24.

**11.3003 Records—Administrative and clerical assistance.**

The Finance Committee shall keep a full and complete public record of the proceedings in appropriate books of record. The Governor shall provide administrative and clerical assistance for the Finance Committee.

**History:** 2000, PL 26-24.

**11.3004 Rules and regulations—Chairman.**

The Finance Committee may make appropriate rules and regulations for the performance of its duties. The Governor, or the Governor's designee, shall act as Chairman of the Committee. The Lieutenant Governor or the Lieutenant Governor's designee, shall act as secretary.

**History:** 2000, PL 26-24.

**11.3005 Reports of debt management activities.**

The Finance Committee shall prepare written reports at least annually summarizing the debt management activities of the Finance Committee, which reports shall be sent to agencies having a direct financial interest in the issuance and sale of bonds by the Committee, and to other persons on written request.

**History:** 2000, PL 26-24.

**11.3006 Evidences of indebtedness—Issuance—Signature.**

Bonds, notes or other evidences of indebtedness of the American Samoa Government shall be issued by the Finance Committee. They may be issued at one time or in a series

from time to time. The maturity date of each series shall be determined by the Finance Committee. All evidences of indebtedness shall be signed in the name of the American Samoa Government by the Governor and the Lieutenant Governor. The facsimile signature of said officials is authorized and said evidences of indebtedness may be issued notwithstanding that any of the officials signing them or whose facsimile signature appear on such evidences of indebtedness has ceased to hold office at the time of issue or at the time of delivery to the purchaser. Except for indebtedness incurred for refunding purposes, authorized herein, no indebtedness may be incurred by the Finance Committee, or money borrowed for any reason, without the authorization by the Legislature of the amount and purpose of such indebtedness.

**History:** 2000, PL 26-24.

**11.3006.1 Evidences of indebtedness—Issuance—Finance Committee, duties and powers.**

(a) The Finance Committee shall determine by resolution the amount, date or dates, terms, conditions, covenants, denominations, interest rate or rates (which may be fixed or variable), maturity or maturities, redemption rights, manner of execution and authentication, manner and price of sale and the form of all bonds, notes or other evidences of indebtedness.

(b) Such bonds, notes or other evidences of indebtedness may be payable either to the bearer or to the registered owner. The authorizing resolution may provide for the deposit in trust with any public depository of all or any part of the proceeds of the bonds, notes or other evidences of indebtedness or money set aside for the payment thereof.

(c) The Finance Committee may issue bonds, notes or other evidences of indebtedness to refund at or prior to maturity any outstanding bonds, notes or other evidences of indebtedness or obligation of American Samoa Government, or any agency thereof. Refunding bonds may be secured in the same manner as the obligations being refunded, or in any other manner not precluded by law.

(d) The Finance Committee may obtain bond insurance, letters of credit or other credit support instruments for the purpose of guaranteeing the payment or enhancing the marketability, or both, of any Territorial bonds, notes or other evidences of indebtedness, may contract for the services of trustees, paying agents, underwriters, financial advisors and bond counsel and may authorize the execution and delivery of agreements, promissory notes, and other related instruments.

**History:** 2000, PL 26-24.

**11.3007 Disposition of proceeds from sale of bonds.**

The proceeds of the sale of any bonds shall be used solely for the purposes, including any expense incurred in connection with the issuance and sale of such bonds, specified in the general statute or special act authorizing the issuance of such bonds.

**History:** 2000, PL 26-24.

**11.3009 Retirement fund quarantine of American Samoa Government refunding bonds.**

(a) The American Samoa Government Employees Retirement Fund is authorized by A.S.C.A., Section 7.1444 to undertake, by action of its Board of Trustees, to guarantee

the payment of the principal of and interest on bonds issued by the American Samoa finance committee for the purpose of refunding outstanding obligations of American Samoa Government which refunding bonds may be issued in the amount of not to exceed \$19,000,000. The payment of amounts due, if any, under such a guarantee will be made out of any assets of the Retirement Fund and the Retirement Fund is authorized to secure its guarantee by the pledge of any of its assets. The making of any advance of funds by the Retirement Fund pursuant to such guaranty shall be deemed a loan to American Samoa Government to be repaid on such terms as shall be agreed upon between the finance committee and the Retirement Fund. The Board of Trustees may authorize the execution of, and entry by the Retirement Fund into, such agreements, conveyances, guarantees, assignments, pledges and all other documents as are necessary or useful for the making and implementation of such a guarantee.

(b) That part of any loan so made which bears the same ratio to the total amount of such loan as the ratio the refunded obligations of the American Samoa Government to the Retirement Fund bears to the original principal amount of refunding bonds shall not be counted as an "obligation issued by the Government" for purposes of the limitation imposed by A.S.C.A., Section 7.1444 (g)(3).

(c) The Finance Committee is authorized to so contract and to secure any loan so made by the Retirement Fund to American Samoa Government by the mortgage or pledge of any physical asset of American Samoa Government, including, but not limited to, its interest in the Executive Office Building.

(d) Such a guarantee, once executed and relied upon by the purchaser of such refunding bonds wholly or partially secured thereby, shall be deemed valid and enforceable under the laws of American Samoa and no part of the authorization or authority for such refunding bonds, such a guarantee or any other security therefor shall be repealed or modified in a manner detrimental to the owners of such bonds so long as such bonds remain outstanding.

**History:** 2000, PL 26-24.

### **11.3010 Legislative authorization of refunding bonds.**

(a) The American Samoa Finance Committee is authorized to issue refunding bonds in the principal amount of not to exceed \$19,000,000 for the purpose of refunding part or all of the following obligations and to pay all costs incurred in connection with such bond issuance and refunding:

(1) The lease-purchase obligation of American Samoa Government which secures the outstanding bonds of the American Samoa Economic Development Authority issued under date of May 1, 1988.

(2) The 1991 loan from the American Samoa Government Employees Retirement Fund to ASG in the original principal amount of \$5,000,000.

(3) The 1998 loan from the American Samoa Government Employees Retirement Fund to American Samoa Government in the original principal amount of \$10,000,000.

(b) Such refunding bonds shall be general obligations of American Samoa Government and the Finance Committee is authorized to pledge the full faith and credit of American Samoa Government to the full and prompt payment of the principal of and interest on such bonds as the same shall become due and payable. The principal amount of the refunding bonds may exceed the principal amount of the obligations refunded by such bonds if a savings in total principal and interest is achieved.

**History:** 2000, PL 26-24.

**11.3011 Trust funds authorized.**

(a) The Finance Committee is authorized to contract with a trustee bank or trust company for all services necessary or useful in connection with the issuance, sale, delivery and payment of such refunding bonds.

(b) All revenues from the following sources may be pledged by the finance committee to pay and secure the refunding bonds and shall be paid directly into the bond fund securing such bonds:

(1) All wharfage and related charges heretofore pledged, pursuant to A.S.C.A. Section 20.1607, to the payment of the bonds of the American Samoa Economic Development Authority issued under date of May 1, 1988.

(2) That portion of the tobacco and alcohol taxes imposed pursuant to 11.1002 heretofore pledged by American Samoa Government to pay and secure a loan from the Retirement Fund to American Samoa Government.

(c) The Finance Committee is authorized to establish a special bond fund or account for the payment of the principal of and interest on any bonds and to pay costs of administration of such bonds and to establish a separate fund or account to serve as a reserve for the payment of such principal and interest.

(d) The provisions of 20.1607(h), exclusive of the last sentence shall remain in effect to secure the payment of the refunding bonds so long as they remain outstanding, not withstanding the retirement of the 1988 bonds of the American Samoa Economic Development Authority out of the proceeds of such refunding bonds. All other taxes and other revenues pledged to pay obligations refunded by the bonds shall also remain in effect to secure the payment of the refunding bonds so long as they remain outstanding, not withstanding the retirement of such obligations.

(e) The Finance Committee is authorized to contract for a trustee bank to maintain the assets of American Samoa Government's general fund in a special account of the bank created and maintained for such purposes. The Finance Committee may contract that all or any necessary portion of taxes and other revenue of American Samoa Government's general fund shall first be deposited in such general fund account maintained with such bank. Pursuant to such contract, the bank shall, by the last business day of each month, verify that the required deposit of principal of and interest on such refunding bonds for the prior month have been made into the bond fund securing such bonds. If any such monthly deposit has not been made when such verification takes place, such bank shall make the required deposit in the bond fund or reserve account out of any moneys on hand in the general fund account.

(f) The Finance Committee may contract that the trustee bank so named may not be replaced without the consent of a majority of the holders of the bonds secured thereby if such replacement has any adverse affect on any bond owners or on the value of any bond. No authorization for the refunding bonds or the security therefore may be repealed or modified by the Legislature in any manner detrimental to the bond owners relying thereon until such bonds are no longer outstanding.

**History:** 2000, PL 26-24; amd 2006, PL 29-14 & PL 29-21,

**11.3012 Consent to suit.**

The American Samoa Government, whether acting in its governmental or proprietary capacity, is subject to suit in the territorial and federal courts for obligations created in this chapter, and shall be liable for damages and subject to the equity powers of the courts in any action brought to enforce the obligations of American Samoa Government or the rights of any participant in a transaction whereby American Samoa Government borrows money or otherwise incurs indebtedness or incurs other obligations in connection with any indebtedness, as if American Samoa Government were a private person or corporation. Venue for any litigation with respect to bonds issued pursuant to this act shall be laid in the High Court of American Samoa or the Federal District Court, District of Hawaii.

**History:** 2000, PL 26-24.

### **11.3013 Procurement.**

All decisions regarding purchasing by the Finance Committee shall be in strict accordance with the American Samoa Government's procurement laws, pursuant to Title 12, A.S.C.A.

**History:** 2007, PL, 30-26.