

VIRGIN ISLANDS CODE ANNOTATED
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*** Statutes current through Act 6820 of the 2005 Regular Session ***

*** Annotations current through October 13, 2006 ***

TITLE TWENTY-NINE Public Planning and Development
Chapter 12. Industrial Development Program

NOTES:

HISTORY

Codification.

This chapter, formerly relating to "The Virgin Islands Investment Incentive Program", consisting of sections 701 to 748, was derived from Act July 17, 1972, No. 3263, § 1, as amended by Act Aug. 11, 1972, No. 3293 and Dec. 12, 1973, No. 3504, § 1, and was amended generally by instituting a comprehensive revision of the program into "The Virgin Islands Industrial Development Program" by Act Sept. 23, 1975, No. 3748, § 1, Sess. L. 1975, p. 140, as set out below.

Industrial Development Commission certificates-Application of 1986 amendments.

Act Dec. 8, 1986, No. 5224, § 9(a), Sess. L. 1986, p. 364, provided that:

"The provisions of sections 1, 2, 8 and 9 of this act shall apply to all beneficiaries of Title 29, chapter 12, Virgin Islands Code, who receive certificates from the Industrial Development Commission after December 31, 1986."

Rights of beneficiaries of previously issued certificates generally.

Act Dec. 8, 1986, No. 5224, § 9(b), Sess. L. 1986, p. 364, provided:

"Any beneficiary entitled to benefits with respect to a certificate issued by the Industrial Development Commission prior to January 1, 1987 shall be entitled to continue receiving benefits in accordance with the terms and conditions of the certificate as issued. However, such a beneficiary may agree to amend said certificate in order to participate in the benefits as provided by this act, except that such a beneficiary shall not be entitled to receive any income tax exemption in exchange for an income tax subsidy prior to January 1, 1991. However, any beneficiary electing to amend said certificate shall be bound by each of the requirements and statutory changes specified in this act other than the income tax exemption for income tax subsidy exchange."

Transfer of benefits under previously issued certificates.

Act Dec. 8, 1986, No. 5224, § 9(c), Sess. L. 1986, p. 364, provided:

- 1) This subsection applies to any corporation which received a certificate of benefits under Title 29, chapter 12, Virgin Islands Code, prior to January 1, 1987.
- 2) Notwithstanding *Title 29, section 719, Virgin Islands Code*, any person who, after January 1, 1987, forms a corporation which:
 - a. is incorporated in a state of the United States (or the District of Columbia);
 - b. is the successor in interest of all of the assets and liabilities of a beneficiary corporation;
 - c. applies to the Executive Director of the Industrial Development Commission for a transfer of the certificate for the unexpired portion of the term of the certificate; and
 - d. is otherwise qualified to receive the benefits of the certificate; then such corporation shall be entitled to the transfer of benefits, if the Executive then such corporation shall be entitled to the transfer of benefits, if the Executive Director, without a hearing, determines that the applicant will carry on the operation of the industry or business for which the certificate was granted. However, such a transferee of benefits shall not be entitled to receive an income tax exemption prior to January 1, 1991."

Grounds for denial of new certificates to certain organizations.

Act Dec. 8, 1986, No. 5224, § 9(d), Sess. L. 1986, p. 365, provided:

"After January 1, 1987, and until December 31, 1990, the Industrial Development Commission shall refuse to grant a certificate to an applicant for benefits if the Commission finds that:

- 1) the applicant's business or industry will be the same or substantially the same enterprise under the same or substantially the same ownership as another beneficiary whose benefit period has not expired; and
- 2) the applicant is applying for a new certificate for the purpose of receiving income tax exemptions in lieu of income tax subsidies prior to January 1, 1991."

Businesses required to provide employee pay deduction accountings on paychecks.

Act June 18, 1996, No. 6105, § 4, Sess. L. 1996, p. 43, provided:

"Notwithstanding any other law, all businesses in the Virgin Islands that receive benefits pursuant to Act No. 4740 (Bill No. 14- 0411) enacted September 20, 1982 [which amended section 304 of Title 27 and sections 42, 43, and 681 of Title 33 and added section 525 of Title 33], as amended, or granted tax benefits pursuant to the Industrial Development Program, established pursuant to Title 29, Chapter 12, Virgin Islands Code, shall provide a detailed accounting of all deductions from the pay of an employee on the check or check stub of employees that are paid regular weekly or bi-weekly wages."

Businesses required to provide employees training prior to job-related examinations.

Act September 18, 2002, No. 6570, § 31, Sess. L. 2002, p. 537, provided:

"After the effective date of this Act, to qualify and remain eligible for benefits under the Industrial Development Program established in title 29, chapter 12, Virgin Islands Code, or under any other tax

incentive benefits program offered by the Government of the Virgin Islands, a beneficiary employer shall be prohibited from taking disciplinary action, including termination of an existing employee of the beneficiary who fails to achieve a passing score on under job-related examination administered by the beneficiary without the beneficiary's first providing the employee an opportunity for instruction in the subject matter of the examination."

CROSS REFERENCES

Industrial Park Development, see § 801 et seq. of this title.

ANNOTATIONS

1. Generally.

1. Generally.

Enforcement of forum selection clause of construction contract, which designated Maryland as the forum for litigation arising out of the contract, was not against the policy of this chapter. *General Eng'g Corp. v. Martin Marietta Alumina, Inc.*, 783 F.2d 352, 1986 U.S. App. LEXIS 22212 (3d Cir. 1986).

HIERARCHY NOTES:

Tit. 29 Note

§ 701. Declaration of policy-Purpose-Contractual nature

The basic purposes and objectives of this chapter are declared to be the promotion of the growth, development and diversification of and diversification of the economy of the United States Virgin Islands; to benefit the people of the United States Virgin Islands by discovering and developing to the fullest possible extent the human and economic resources available therein; the establishment and preservation of opportunities of gainful employment for residents of the United States Virgin Islands; the promotion of capital formation for the industrial development of the United States Virgin Islands; the contribution of beneficiaries to the development of the educational system of the Territory; and the preservation of the environment, beauty and natural resources of the United States Virgin Islands; all of which purposes and objectives are declared to be in the public interest.

- a) To this end it is the policy and determination of the Government of the United States Virgin Islands that certain industrial development benefits should be made available for development and expansion of such industrial or business activities as are determined, pursuant to this chapter, to be in the public interest by advancing the growth, development and/or diversification of the economy of the Territory of the United States Virgin Islands.
- b) It is further the policy and determination of the Government of the United States Virgin Islands that the Commission established herein shall endeavor to encourage and assist in the creation, development and expansion of locally owned businesses and industries originating in the United States Virgin Islands.
- c) In order to establish the incentives offered hereunder on a firm, realistic and sure basis, the Government of the United States Virgin Islands further declares that it considers each certificate granting industrial development benefits that may be issued under the provisions of this chapter as being in the nature of a contract between such government and the beneficiary, and that the

government shall not adopt any legislation impairing or limiting the obligation of such contract; provided, however, that this provision shall not affect the operation of section 722 of this chapter.

- d) It is further the policy of the Government of the United States Virgin Islands that the Commission established herein shall endeavor to encourage and assist in the development of affordable housing in the United States Virgin Islands and the expansion of the local construction industry in the United States Virgin Islands by providing tax incentives for the production of affordable housing.

HISTORY: -Added July 17, 1972, No. 3263, § 1, Sess. L. 1972, p. 196; amended Sept. 23, 1975, No. 3478, § 1, Sess. L. 1975, p. 140; Dec. 8, 1986, No. 5224, § 1(1), Sess. L. 1986, p. 342; Mar. 19, 1990, No. 5523, § 11, Sess. L. 1990, p. 63.

NOTES:

HISTORY

Revision note

-1998.

Substituted "United States Virgin Islands" for "Virgin Islands" throughout the section; substituted "Government of the United States Virgin Islands" for "Government of the Virgin Islands" in subsections (a) - (c); substituted "Territory of the United States Virgin Islands" for "Territory of the Virgin Islands" in subsection (a) and in subsection (c), substituted "United States" for "U.S." for purposes of clarity pursuant to section 14 of Title 14.

Effective date.

Act Sept. 23, 1975, No. 3748, § 6(a), Sess. L. 1975, p. 161, provided:

"The provisions of this Act [this chapter] shall become effective 30 days after it shall become law [approved Sept. 23, 1975]. Applications for industrial development benefits under previously existing law, pending upon such date, shall be considered under the provisions of this Act [this chapter]."

Act July 17, 1972, § 5(a), provided:

- a) The provisions of this Act [adding section 701-748 of this title and repealing chapter 201 of Title 33] shall become effective July 1, 1972. Applications for investment incentive benefits under previously existing law, pending upon such date, shall be considered under the provisions of this Act [chapter]."

Amendments

-1990.

Subsection (d): Added.

-1986.

Inserted "the contribution of beneficiaries to the development of the educational system of the Territory" preceding "and the preservation of the environment" in the introductory paragraph.

-1975.

Amended generally to provide for certain industrial development benefits.

Effective date of amendments**-1986.**

Act Dec. 8, 1986, No. 5224, § 10(a), Sess. L. 1986, p. 365, provided that the section of the act which amended this section shall take effect January 1, 1987, provided, however, that the exchange of tax subsidies for tax exemptions or reductions shall not take effect until October 1, 1987.

Severability of enactment.

See Act July 17, 1972, § 6, Act March 19, 1990, No. 5523, § 14, Sess. L. 1990, p. 66, and *1 V.I.C. § 51*.

Inconsistent laws.

Act July 17, 1972, § 4, provided:

"Title 33, chapter 201, Virgin Islands Code, and any other laws in conflict with the provisions of this Act [sections 701-748 of this title], are hereby repealed."

Investment incentive benefits.

Section 2 of Act July 17, 1972, provided:

"Nothing contained in this Act [adding sections 701-748 of this title and repealing chapter 201 of Title 33] shall be construed to affect in any manner any investment incentive benefits heretofore granted under pre-existing law, or the granting of any such benefits upon applications approved prior to the effective date of this Act [July 1, 1972], however, when the benefits granted under pre-existing law expire, all applications for continuation of benefits shall be made, and the qualifications of the applicant shall be determined, under the provisions of this Act [this chapter]."

Transfer of funds, property and personnel to Investment Incentive Commission.

See Act July 17, 1972, § 3.

Tax exemption or subsidy benefits granted under former chapter 12.

See Act Sept. 23, 1975, No. 3748, § 3, Sess. L. 1975, p. 160.

CROSS REFERENCES

Government Development Bank, see § 901 et seq. of this title.

Annotations Under Prior Law

1. Purpose. 2. Legislative Policy. 3. Generally. 4. Refusal to grant exemption or subsidies. 5. Enforceable contract. 6. Vested rights. 7. Transfer of benefits. 8. Particular activities generally. 9. Description. 10. Hearing. 11. Post-repeal exemptions.

1. Purpose.

Purpose of tax exemptions and subsidies for certain types of business, as expressed in statutory declarations of policy, is to attract new capital to the Virgin Islands, to encourage establishment of new industry, to promote and stabilize the economy, and to make investment capital available to new and existing businesses. *4 V.I.Op.A.G. 28*. (Decided under prior law.)

2. Legislative Policy.

The legislative policy with respect to the granting of tax benefits is set forth in this section, which shows the Legislature's mandatory intention for the granting of the benefits and allows discretion as to

whom shall receive the benefits. *Virgo Corp. v. Paiewonsky*, 5 V.I. 417, 259 F. Supp. 26, 1966 U.S. Dist. LEXIS 9578 (D.C.V.I. 1966), rev'd on other grounds, 6 V.I. 256, 384 F.2d 569, 1967 U.S. App. LEXIS 4996 (3d Cir. 1967), cert. denied, *Virgo Corp. v. Paiewonsky*, 390 U.S. 1041, 88 S. Ct. 1634, 20 L. Ed. 2d 303, 1968 U.S. LEXIS 1840, (1968), rehearing denied, *Virgo Corp. v. Paiewonsky*, 392 U.S. 917, 88 S. Ct. 2053, 20 L. Ed. 2d 1379, 1968 U.S. LEXIS 1467 (1968). (Decided under prior law.)

3. Generally.

Tax benefits under the Industrial Incentive Program are available to companies that require the benefits to stimulate their establishment or expansion in the Virgin Islands. *Virgo Corp. v. Paiewonsky*, 5 V.I. 417, 259 F. Supp. 26, 1966 U.S. Dist. LEXIS 9578 (D.C.V.I. 1966), rev'd on other grounds, 6 V.I. 256, 384 F.2d 569, 1967 U.S. App. LEXIS 4996 (3d Cir. 1967), cert. denied, *Virgo Corp. v. Paiewonsky*, 390 U.S. 1041, 88 S. Ct. 1634, 20 L. Ed. 2d 303, 1968 U.S. LEXIS 1840, (1968), rehearing denied, *Virgo Corp. v. Paiewonsky*, 392 U.S. 917, 88 S. Ct. 2053, 20 L. Ed. 2d 1379, 1968 U.S. LEXIS 1467 (1968). (Decided under prior law.)

The Legislature intended that the prospective business would determine if it would be stimulated to establish in the Virgin Islands because of the tax benefits under the Industrial Incentive Program rather than that someone else would determine if the business would or would not be so stimulated. *Virgo Corp. v. Paiewonsky*, 5 V.I. 417, 259 F. Supp. 26, 1966 U.S. Dist. LEXIS 9578 (D.C.V.I. 1966), rev'd on other grounds, 6 V.I. 256, 384 F.2d 569, 1967 U.S. App. LEXIS 4996 (3d Cir. 1967), cert. denied, *Virgo Corp. v. Paiewonsky*, 390 U.S. 1041, 88 S. Ct. 1634, 20 L. Ed. 2d 303, 1968 U.S. LEXIS 1840, (1968), rehearing denied, *Virgo Corp. v. Paiewonsky*, 392 U.S. 917, 88 S. Ct. 2053, 20 L. Ed. 2d 1379, 1968 U.S. LEXIS 1467 (1968). (Decided under prior law.)

Under the industrial incentive program granting tax exemption and subsidy benefits to newly established enterprises in the Virgin Islands it must appear that the applicant has fully met the objective criteria required of applicants and also that the applicant's business or industry will promote the public interest by economic development of the Virgin Islands and that its establishment or expansion will require the stimulus of the assistance authorized. *Virgo Corp. v. Paiewonsky*, 6 V.I. 256, 384 F.2d 569, 1967 U.S. App. LEXIS 4996 (3d Cir. 1967), cert. denied, 390 U.S. 1041, 88 S. Ct. 1634, 20 L. Ed. 2d 303, 1968 U.S. LEXIS 1840, (1968), rehearing denied, 392 U.S. 917, 88 S. Ct. 2053, 20 L. Ed. 2d 1379, 1968 U.S. LEXIS 1467 (1968). (Decided under prior law.)

Since the basic purpose of the industrial incentive program was to advance the economic development of the Virgin Islands, grants of public funds or property to private persons to assist in the establishment of an enterprise must be to the advantage of the public. *Virgo Corp. v. Paiewonsky*, 6 V.I. 256, 384 F.2d 569, 1967 U.S. App. LEXIS 4996 (3d Cir. 1967), cert. denied, 390 U.S. 1041, 88 S. Ct. 1634, 20 L. Ed. 2d 303, 1968 U.S. LEXIS 1840, (1968), rehearing denied, 392 U.S. 917, 88 S. Ct. 2053, 20 L. Ed. 2d 1379, 1968 U.S. LEXIS 1467 (1968). (Decided under prior law.)

It is only if and when the Governor, upon considering the Board's recommendations, finds that both sets of criteria have been met and issues a certificate granting benefits under the program that a contractual obligation arises. *Virgo Corp. v. Paiewonsky*, 6 V.I. 256, 384 F.2d 569, 1967 U.S. App. LEXIS 4996 (3d Cir. 1967), cert. denied, 390 U.S. 1041, 88 S. Ct. 1634, 20 L. Ed. 2d 303, 1968 U.S. LEXIS 1840, (1968), rehearing denied, 392 U.S. 917, 88 S. Ct. 2053, 20 L. Ed. 2d 1379, 1968 U.S. LEXIS 1467 (1968). (Decided under prior law.)

Watchmaker's application for tax exemption and subsidy benefits under industrial incentive program did not give rise to a contractual obligation on the part of the Virgin Islands to grant the exemption benefits. *Virgo Corp. v. Paiewonsky*, 6 V.I. 256, 384 F.2d 569, 1967 U.S. App. LEXIS 4996 (3d Cir. 1967), cert. denied, 390 U.S. 1041, 88 S. Ct. 1634, 20 L. Ed. 2d 303, 1968 U.S. LEXIS 1840, (1968), rehearing denied, 392 U.S. 917, 88 S. Ct. 2053, 20 L. Ed. 2d 1379, 1968 U.S. LEXIS 1467 (1968). (Decided under prior law.)

Government of the Virgin Islands is not bound to grant benefits under the industrial inventive program to all who apply for such benefits merely because it had earlier encouraged the establishment of other similar industries by granting such benefits to them. *Virgo Corp. v. Paiewonsky*, 6 V.I. 256, 384 F.2d 569, 1967 U.S. App. LEXIS 4996 (3d Cir. 1967), cert. denied, 390 U.S. 1041, 88 S. Ct. 1634, 20 L. Ed. 2d 303, 1968 U.S. LEXIS 1840, (1968), rehearing denied, 392 U.S. 917, 88 S. Ct. 2053, 20 L. Ed. 2d 1379, 1968 U.S. LEXIS 1467 (1968). (Decided under prior law.)

Under industrial incentive program, the board and the governor are entitled to consider each applicant for tax exemption on his individual merits in the light of the extent to which his business or industry will promote the public interest by economic development of the Virgin Islands. *Virgo Corp. v. Paiewonsky*, 6 V.I. 256, 384 F.2d 569, 1967 U.S. App. LEXIS 4996 (3d Cir. 1967), cert. denied, 390 U.S. 1041, 88 S. Ct. 1634, 20 L. Ed. 2d 303, 1968 U.S. LEXIS 1840, (1968), rehearing denied, 392 U.S. 917, 88 S. Ct. 2053, 20 L. Ed. 2d 1379, 1968 U.S. LEXIS 1467 (1968). (Decided under prior law.)

After January 1, 1962, the acting governor had no power to grant requests for tax exemption and subsidy not authorized by appropriate legislation. *Maisonette Apts., Inc. v. Government of the Virgin Islands*, 7 V.I. 5, 407 F.2d 236, 1969 U.S. App. LEXIS 8850 (3d Cir. 1969). (Decided under prior law.)

Contention that industrial incentive tax exemption and subsidy statute provided that it must be found that the establishment of the business required the stimulus of such government assistance drew upon that section of the statute which merely outlined the purposes of the program, and the question of such government stimulus was one for the discretion of the Industrial Incentive Board and the Governor when making a decision regarding an application for an exemption from taxes and/or a subsidy, not an absolute requirement for a grant. 6 V.I.Op.A.G. 311. (Decided under prior law.)

Draft of grant of tax exemption was not in order for Governor's required signature where three of the four undertakings mentioned in the draft were not within the purview of tax exemptions statute and where the stimulus of government assistance was required and could not exist in the present case because the undertaking was fully completed. 6 V.I.Op.A.G. 164. (Decided under prior law.)

Analysis of tax exemption statute showed that it was legislature's intent that grants of subsidies for import duties paid should be in an amount equal to that paid by the grantees, less the cost of collection paid to U.S. Customs. 6 V.I.Op.A.G. 157. (Decided under prior law.)

4. Refusal to grant exemption or subsidies.

Refusal to grant tax exemption and subsidy benefits under the incentive program to one watchmaker even though such benefits had been bestowed upon similar situated competitors was not a denial of equal protection of the law. *Virgo Corp. v. Paiewonsky*, 6 V.I. 256, 384 F.2d 569, 1967 U.S. App. LEXIS 4996 (3d Cir. 1967), cert. denied, 390 U.S. 1041, 88 S. Ct. 1634, 20 L. Ed. 2d 303, 1968 U.S. LEXIS 1840, (1968), rehearing denied, 392 U.S. 917, 88 S. Ct. 2053, 20 L. Ed. 2d 1379, 1968 U.S. LEXIS 1467 (1968). (Decided under prior law.)

5. Enforceable contract.

Purported grant of tax exemption and subsidies by Acting Governor to plaintiff did not create an enforceable contract between Government and plaintiff under subsection (b) of this section as amended, the statute in force when it was made, but was void and of no effect and plaintiff was, therefore, not entitled thereunder, to subsidies for taxable year ended May 31, 1966. *Maisonette Apts., Inc. v. Government of the Virgin Islands*, 6 V.I. 76, 284 F. Supp. 772, 1968 U.S. Dist. LEXIS 11759 (D.C.V.I. 1968). (Decided under prior law.)

6. Vested rights.

The mere filing of an application for tax exemption and subsidy while Act of July 5, 1957, No. 224, was still in force and not acted upon prior to the effective date of the superceding or repealing Act of

November 3, 1961, No. 798, did not confer upon the applicant any vested right. *Maisonette Apts., Inc. v. Government of the Virgin Islands*, 7 V.I. 5, 407 F.2d 236, 1969 U.S. App. LEXIS 8850 (3d Cir. 1969). (Decided under prior law.)

7. Transfer of benefits.

The statutes governing tax exemptions and subsidies for certain types of businesses contain no express prohibition against transfer of such rights after vesting thereof, except those sections providing for revocation, modification or rescission for non-compliance with terms of original award. 4 *V.I.Op.A.G.* 28. (Decided under prior law.)

In view of purpose of legislation authorizing tax exemptions and subsidies for certain types of business, such exemptions and subsidies attach to the business and not to the ownership and continues for the period of the award, subject to matters such as are contemplated in such legislation. 4 *V.I.Op.A.G.* 28. (Decided under prior law.)

8. Particular activities generally.

Where all operations of jewelry manufacturing company were under cognizances of the Board of Tax Review, the economy of the Virgin Islands was augmented, the employment of many qualified persons resulted, and the products manufactured were within capacity of plant, products manufactured came within scope of subsidy grant. 4 *V.I.Op.A.G.* 98. (Decided under prior law.)

9. Description.

Under Industrial Incentive Program administration, it was not necessary to describe in a formal administrative document each specific item manufactured in order to qualify for tax exemption or subsidies. 4 *V.I.Op.A.G.* 98. (Decided under prior law.)

10. Hearing.

Where no application was submitted and no public hearing held, the Industrial Incentive Board was not authorized to recommend, nor the Governor to approve, request for expansion of Certificate of Tax Exemption and Subsidy. 6 *V.I.Op.A.G.* 241. (Decided under prior law.)

11. Post-repeal exemptions.

Grant of tax exemption and subsidy after repeal of act under which they had been allowed was of not force and effect; and that application for the exemption and subsidy was made while the repealed act was in effect gave applicant no vested right under repealing act's savings clause providing that "nothing contained in this act shall be construed to affect in any manner any tax exemption or subsidies heretofore granted under laws existing prior to the effective date hereof". 7 *V.I.Op.A.G.* 9. (Decided under prior law.)

HIERARCHY NOTES:

Tit. 29 Note

Tit. 29, Ch. 12 Note

Subchapter I. Declaration of Policy-Short Title-Definitions

§ 702. Short title

This chapter shall be known and may be cited as "The Virgin Islands Industrial Development Program".

HISTORY: -Added July 17, 1972, No. 3263, § 1, Sess. L. 1972, p. 197; amended Sept. 23, 1975, No. 3748, § 1, Sess. L. 1975, p. 141.

NOTES:

HISTORY

Effective date.

For effective date of this section, see note set out under section 701 of this title.

Amendments

-1975.

Chapter name change to "The Virgin Islands Industrial Development Program".

HIERARCHY NOTES:

Tit. 29 Note

Tit. 29, Ch. 12 Note

§ 703. Definitions

As used in this chapter, unless the context otherwise requires:

- 1) "Commission" means the Virgin Islands Economic Development Commission created under this chapter.
- 2) "Director" means the Executive Director of Industrial Development appointed pursuant to the provisions of this chapter.
- 3) "Industrial development benefits" or "benefits" means the various tax exemptions and tax subsidies for which beneficiaries may qualify under this chapter.
- 4) "Beneficiary" means any person, member of a partnership, partnership or corporation granted industrial development benefits pursuant to the provisions of this chapter.
- 5) "Resident of the Virgin Islands" means
 - a. any United States citizen currently domiciled in the Virgin Islands for one (1) year or more;
 - b. a person who has attended a school in the Virgin Islands for at least six (6) years or is a high school or University of the Virgin Islands graduate and who is registered to vote in the Virgin Islands; or

- c. the holder of an alien registration receipt card (United States Department of Justice Form No. 1-151) domiciled in the Virgin Islands for one (1) year or more. A person shall demonstrate that he has been a resident for one (1) year or more for the purposes of this chapter using the date of issuance information from a W-2 form, a voter registration card, a permanent resident card, or a Virgin Islands driver's license.
- 6) "Small business" means a Virgin Islands business which:
- a. is engaged in the business of rum production, milk/dairy production, watch and jewelry manufacturing and assembly, product assembly, manufacturing other than jewelry and watch manufacturing and assembly, agriculture/food processing, Mari culture/food processing, marine industry, raw materials processing, hotels/guesthouses, transportation, telecommunications, service businesses, including, investment managers and advisors, research and development, business and management consulting, software development, e-commerce, call centers, high tech businesses, international public relations, international trading and distribution, businesses serving clients located outside the Virgin Islands, regulated utilities, banking, health care facilities, recreation facilities, and such other businesses or industries as the Commission may designate; and
 - b. is certified by the Small Business Development Agency (SBDA) as meeting the statutory criteria for being awarded a SBDA loan.
- 7) "Designated service business" means a business which provides one (1) or more of the following services to customers located outside the Virgin Islands:
- a. International Commercial Distribution and Trading Services.
 - b. International Public Relations Services.
 - c. Publicity Firms.
 - d. Economic, Scientific or Management Consulting Services.
 - e. Public Auditing.
 - f. Processing, Editing and Dubbing of Cinematographic Films.
 - g. Commercial and Graphic Art Services.
 - h. News Syndicates.
 - i. Mail Order Firms.
 - j. Assembly, Bottling and/or Export Packing Operations.
 - k. Computer Service Centers.
 - l. Maritime Vessels and Aircraft Repair and Maintenance Services.
 - m. Machinery and Heavy Equipment Repair Services, including but not limited to agricultural, industrial, construction, mining and transportation equipment and machinery.
 - n. Electrical and Electronic Equipment and Watch Repair Services.
 - o. The production of engineering and architectural blueprints and plans to be used in the construction of projects to be located outside of the Virgin Islands.
 - p. Photographic laboratories, including film processing.
 - q. Dental laboratories.

- r. Optical and Ophthalmological laboratories.
 - s. Prefabricated houses of any type of material. However, a designated service business may not provide any of the listed services to customers located within the Virgin Islands. In addition, a designated service business may not provide any services to a business management or consulting firm for foreign sales corporations or an exempt company as defined in *Title 13, section 851, Virgin Islands Code*.
- 8) "Eligible local supplier" means a supplier certified by the Director as meeting the following criteria:
 - a. As of the date of certification, the supplier has been licensed to do business in the Virgin Islands for at least one (1) year and has actually conducted business in the Virgin Islands for at least one (1) year.
 - b. The supplier physically maintains its principal place of business within the Virgin Islands and maintains an inventory in the Virgin Islands appropriate to the size of its business.
 - c. In the case of an individual, the supplier must be a resident of the Virgin Islands.
 - 9) In the case of a firm or partnership, each member of firm or partnership must be a resident of the Virgin Islands (if such member is an individual) or the member must meet the requirements of paragraph (C) of this subsection (if such member is a corporation).
 - 10) In the case of a corporation, over 50% of the voting stock must be owned by natural persons who are residents of the Virgin Islands.
 - 11) For the purposes of this chapter, "corporation" shall include a limited liability company and "partnership" shall include a limited liability partnership if such limited liability company or limited liability partnership otherwise meets all of the requirements for industrial development benefits.

HISTORY: -Added July 17, 1972, No. 3263, § 1, Sess. L. 1972, p. 197; amended Sept. 23, 1975, No. 3748, § 1, Sess. L. 1975, p. 141; Oct. 27, 1980, No. 4502, § 1(a), Sess. L. 1980, p. 237; Dec. 8, 1986, No. 5224, § 1(2)-(4), Sess. L. 1986, p. 342; Feb. 12, 1998, No. 6204, § 6(a), Sess. L. 1998, p. 99; Oct. 31, 1998, No. 6269, § 49, Sess. L. 1998, p. 468; Feb. 1, 2001, No. 6390, §§ 12, 15, Sess. L. 2000, pp. 408, 409; May 2, 2001, No. 6396, § 1, Sess. L. 2001, p. 10.

NOTES:

HISTORY

Revision notes.

In subsec. (e)(1), substituted "at" for "a" preceding "least six years" to correct typographical error and made stylistic changes in that subsection and in subsec. (e)(2) to conform to V.I.C. style pursuant to section 14 of Title 1.

In subsec. (h)(3)(B), substituted "paragraph (C) of this subsection" for "paragraph (C) hereof" to conform reference to V.I.C. style pursuant to section 14 of Title 1.

Amendments

-2001.

Act 6396, in subsection (f), substituted "business" for "manufacturer" in the introductory language, substituted the present language of subdivision (1) for the former which read "is engaged in the manufacture of," deleted subparagraphs (A) and (B), and made nonsubstantive changes.

-2000.

Subsection (a): Substituted "Economic Development Commission" for "Industrial Development Commission."

Subsection (e)(2): Inserted "or University of the Virgin Islands" following "high school."

-1998.

Subsection (e): Act No. 6269 added new par. (2) and redesignated former par. (2) as par. (3).

Subsection (i): Added by Act No. 6204.

-1986.

Subsection (b): Substituted "Executive Director" for "Director" preceding "of Industrial Development".

Subsection (e): Amended generally.

Subsection (f): Added.

Subsection (g): Added.

Subsection (h): Added.

-1980.

Subsection (d): Inserted "member of a partnership, partnership" after "person."

-1975.

Amended section generally.

Effective date.

For effective date of this section, see note set out under section 701 of this title.

Effective date of amendments

-1986.

Act Dec. 8, 1986, No. 5224, § 10(a), Sess. L. 1986, p. 365, provided that the section of the act which amended this section shall take effect January 1, 1987, provided, however, that the exchange of tax subsidies for tax exemptions or reductions shall not take effect until October 1, 1987.

Legislative intent of 1980 amendment.

See Act Oct. 27, 1980, No. 4502, § 2, Sess. L. 1980, p. 239.

HIERARCHY NOTES:

Tit. 29 Note

Tit. 29, Ch. 12 Note

§ 703a. Additional definitions

In order to effectuate the policy and purpose of the Low and Moderate Income Affordable Housing Act of 1990, the following terms shall have the meaning ascribed to them herein:

- a) "Act" means the Low and Moderate Income Affordable Housing Act of 1990.
- b) "Affordable housing" means, with respect to living accommodations, a dwelling unit for which a household pays, with regard to a unit for sale, not more than the "applicable percentage" (determined by the Department) of gross income for mortgage payments, property taxes, insurance and homeowners association fee, if any, and, with regard to a rental unit, not more than the "applicable percentage" of gross income for all shelter costs including utilities. The "applicable percentage" for purposes of this definition may be established by the Department in a manner consistent with the various Federal housing programs designed to assist low and moderate income households.
- c) "Affordable Housing Development Agreement" means one or more agreements executed between and among an applicant for a development permit for affordable housing, the Department and the Zoning Administrator providing for development of affordable housing units in accordance with an Affordable Housing Development Plan.
- d) "Affordable Housing Development Plan" means a plan submitted to the Department, Authority, the Legislature and the Zoning Administrator in connection with a request for a development permit for affordable housing.
- e) "Affordable Housing Program" or "Program" means the Government's Program adopted pursuant to the Low and Moderate Income Affordable Housing Act of 1990, as from time to time amended, to facilitate development of affordable housing in the United States Virgin Islands.
- f) "Department" means the Department of Housing, Parks and Recreation, established within the executive department of the Government of the United States Virgin Islands."
- g) "VIHFA" means the Virgin Islands Housing Finance Authority established pursuant to Title 21, chapter 2, section 103, Virgin Islands Code.

HISTORY: -Added Mar. 19, 1990, No. 5523, § 12, Sess. L. 1990, p. 63; amended May 3, 1994, No. 5978, § 3(f), Sess. L. 1994, p. 67.

NOTES:

HISTORY

References in text.

The Low and Moderate Income Affordable Housing Act of 1990, referred to in this section, is classified principally to 29 V.I.C. § 930 et seq.

Amendments

-1994.

Subsection (b): Substituted "VIHFA" for "Department" following "determined by the" in the first sentence and inserted "in conjunction with VIHFA" following "Department" in the second sentence.

Subsection (c): Inserted "or the VIHFA" following "Department".

Subsection (d): Inserted "or the VIHFA" following "Department".

Subsection (g): Added.

Severability of enactment.

See Act March 19, 1990, No. 5523, § 14, Sess. L. 1990, p. 66 and *1 V.I.C. § 51*.

HIERARCHY NOTES:

Tit. 29 Note

Tit. 29, Ch. 12 Note

Subchapter II. Commission Created

§ 704. Virgin Islands Economic Development Commission

- a) There is created a Virgin Islands Economic Development Commission. Such Commission shall be within, and shall constitute a subsidiary entity wholly administered and operated by the Economic Development Authority established in chapter 21 of title 29, Virgin Islands Code.
- b) The Commission shall be composed of the members of the Economic Development Authority established in chapter 21 of title 29, Virgin Islands Code.
- c) The Commission members shall meet, as soon as practicable, and organize, electing a Chairman, Vice Chairman and such other officers as may be deemed appropriate from among its members at the beginning of each calendar year.
- d) Persons appointed to fill vacancies on the Commission shall serve only the remainder of the term of the member replaced, which remainder shall not be considered a full term for the purpose of this subchapter.
- e) The Director, appointed pursuant to section 706 of this subchapter, shall serve, ex-officio, as Executive Secretary of the Commission.
- f) Appointive members of the Commission shall receive compensation of \$50.00 per day while attending Commission meetings, plus necessary travel expenses incurred thereby.
- g) The Commission shall meet as required at the discretion and call of the Chairman on his own motion, or at the request of the Director with the concurrence of the Chairman or two appointive Commission members.
- h) A quorum for the transaction of Commission business shall be four (4) members, not more than three (3) of whom shall be from the same district.

HISTORY: -Added July 17, 1972, No. 3263, § 1, Sess. L. 1972, p. 197; amended Sept. 23, 1975, No. 3748, § 1, Sess. L. 1975, p. 142; Jan. 14, 1981, No. 4519, § 1(a), Sess. L. 1980, p. 255; Apr. 7, 1983, No. 4797, § 2, Sess. L. 1983, p. 27; Dec. 8, 1986, No. 5224, § 1(5), (6), Sess. L. 1986, p. 344; Sept. 28, 1990, No. 5636, § 1(*l*), Sess. L. 1990, p. 347; Dec. 28, 1990, No. 5666, § 5(b), Sess. L. 1990, p. 471; Dec. 28, 1995, No. 6090, § 12, Sess. L. 1995, p. 255; Mar. 20, 2000, No. 6344, § 8, Sess. L. 2000, p. 14; Feb. 1, 2001, No. 6390, §§ 7, 15, 18, 21, Sess. L. 2000, pp. 407-409, 420, 421.

NOTES:

HISTORY

Revision notes.

The internal references in subsections (a) and (b) to the code section establishing the Economic Development Authority were changed to reflect the correct citation for that enactment: chapter 21 of title 29.

-1987.

Substituted "Commissioner of Economic Development and Agriculture" for "Commissioner of Commerce" in subsec. (b)(1) in light of Act June 24, 1987, No. 5265, § 601(c), Sess. L. 1987, p. 63, pursuant to section 14 of Title 1.

Amendments**-2000.**

Rewrote subsections (a) through (c) and substituted "Economic" for "Industrial" in the section heading.

-1995.

Subsection (a): Substituted "Government Development Bank" for "Department of Economic Development and Agriculture for administrative purposes only" at the end of the second sentence.

-1990.

Subsection (f): Act No. 5636 substituted "\$50.00" for "\$30.00" following "compensation of".

Act No. 5666 purported to substitute "\$50.00" for "\$30.00"; however, the change had been made previously by Act No. 5636.

-1986.

Subsection (a): Inserted "for administrative purposes only" following "Commerce" at the end of the second sentence.

Subsection (b): Rewrote the second sentence and substituted "three (3)" for "two (2)" preceding "successive" in the third sentence.

-1983.

Subsection (b)(2): Inserted "local or federal" preceding "Government" in the first sentence.

-1980.

Subsection (b)(1): Substituted "Director of the Virgin Islands Bureau of Internal Revenue" for "Commissioner of Finance".

-1975.

Amended generally to provide for the creation of a Virgin Islands Industrial Development Commission.

Effective date.

For effective date of this section, see note set out under section 701 of this title.

Effective date of amendments**-1986.**

Act Dec. 8, 1986, No. 5224, 10(a), Sess. L. 1986, p. 365, provided that the section of the act which amended this section would take effect January 1, 1987, provided, however, that the exchange of tax subsidies for tax exemptions or reductions would not take effect until October 1, 1987.

Composition of Commission.

Act Dec. 8, 1986, No. 5224, § 8(a), Sess. L. 1986, p. 363, provided:

"In order to reduce the membership of the Industrial Development Commission, as provided by section 1 of this act, no appointive members may be appointed by the Governor until there remain two (2) or fewer appointive members in office."

Quorum for transaction of business.

Act Dec. 8, 1986, No. 5224, § 8(b), Sess. L. 1986, p. 364, provided:

"Notwithstanding Title 29, section 704, subsection (h), Virgin Islands Code, as amended by section 1 of this act, a quorum for the transaction of business by the Industrial Development Commission shall be equal to one-half (1/2) the number of Commission members holding office at that time plus one."

HIERARCHY NOTES:

Tit. 29 Note

Tit. 29, Ch. 12 Note

§ 705. Powers and duties of Commission

The Commission shall have the following powers and duties:

- a) Based upon the investigation and recommendation of the Director, review all applications for industrial development benefits, hold public hearings thereon as provided in section 717 of this chapter, and (1) subject to the Governor's approval, grant certificates for same, or (2) deny such certificate, which denial shall not be subject to review by the Governor.
- b) Based upon the investigation and recommendation of the Director, determine compliance of the beneficiary with the provisions of this chapter and all regulations promulgated hereunder. The expenses of any investigation or any proceeding by the Commission to determine compliance by any beneficiary shall be borne by the beneficiary. If notified by the Commissioner of Labor that a beneficiary has violated the resident employment requirements of this chapter, the Commission shall hold a hearing at which the beneficiary must show cause why its certificate should not be revoked, suspended, or modified.
- c) Subject to the Governor's approval, revoke, suspend or modify industrial development certificates in accordance with the provisions of section 722 of this chapter.
- d) In connection with any hearings or investigations required by the provisions of this chapter or any rules and regulations issued hereunder, to subpoena witnesses, records, and books, administer oaths and inspect properties and facilities with respect to which industrial development certificates have been granted or applied for.
- e) Request and obtain from the Commissioner of Finance and the Director of the Bureau of Audit and Control such auditing services as it deems necessary to the proper administration of this chapter.
- f) Prepare and promulgate, in accordance with the provisions of Title 3, Chapter 35 of the Code, such rules and regulations as may be necessary to implement the provisions of this chapter.
- g) Prepare and submit annual reports, including a summary of the proceedings of the Commission, to the Governor and each member of the Legislature containing data regarding all industrial development benefits outstanding, and the beneficiaries of same.
- h) In addition to the Application Fee and Annual Compliance Fees, the Commission may also assess against an applicant or Beneficiary any extraordinary costs and expenses incurred to process the application or monitor the Beneficiary's performance of the terms and conditions of

its Certificate. The cost and expenses may include but are not limited to the services of outside consultants necessitated by the Application or the Compliance Investigation.

- i) Notify the Office of the Lieutenant Governor of any corporation, joint venture, limited liability partnership, limited partnership or any other organization which has been approved for industrial development benefits, within sixty (60) days of such approval; as well as prepare and submit an annual listing of all entities which are approved for benefits regardless of whether they are currently operational or not.
- j) Perform such other acts and functions within its area of responsibility as it may deem necessary in furtherance of the purposes of this chapter.

HISTORY: -Added July 17, 1972, No. 3263, § 1, Sess. L. 1972, p. 198; amended Sept. 23, 1975, No. 3748, § 1, Sess. L. 1975, p. 143; Dec. 8, 1986, No. 5224, § 1(7)-(9), Sess. L. 1986, p. 344; Feb. 12, 1998, No. 6204, § 6(b), Sess. L. 1998, p. 100; Feb. 1, 2001, No. 6390, § 5, Sess. L. 2000, p. 13.

NOTES:

HISTORY

Editor's note.

Act No. 6033, § 2(b), Sess. L. 1994, p. 254, provided for the amendment of this section by substituting "Administrator" for "Commissioner of Labor". However, the context in which the reference was to be revised related to Worker's Compensation Administration. Therefore, in view of the subject matter of this section in relation to the reference to the commissioner of labor, the amendment to this section by Act. No. 6033, § 2(b) was not implemented.

Amendments

-2000.

Added the second sentence in subsection (b) and added new subsection (h) and redesignated former subsection (h) as subsection (i) and former subsection (i) as subsection (j).

-1998.

Added new subsec. (h), and redesignated former subsec. (h) as present subsec. (i).

-1986.

Subsection (b): Added the second sentence.

Subsection (e): Substituted "and the Director of the Bureau of Audit and Control" for "all" following "Commissioner of Finance".

Subsection (g): Amended generally.

-1975.

Provided for the powers and duties of the Commission.

Effective date.

For effective date of this section, see note set out under section 701 of this title.

Effective date of amendments

-1986.

Act Dec. 8, 1986, No. 5224, § 10(a), Sess. L. 1986, p. 365, provided that the section of the act which amended this section shall take effect January 1, 1987, provided, however, that the exchange of tax subsidies for tax exemptions or reductions shall not take effect until October 1, 1987.

HIERARCHY NOTES:

Tit. 29 Note

Tit. 29, Ch. 12 Note

§ 706. Appointment of Director; salary, supporting personnel

- a) The Governor may appoint an Assistant Chief Executive Officer of the V.I. Economic Development Authority for Industrial Development, which Assistant Chief Executive Officer shall assist the Chief Executive Officer in overseeing the operations of the Industrial Development Program established by this chapter. The Assistant Chief Executive Officer shall perform such services as directed by the Chief Executive Officer and shall receive such salary as may be recommended by the Commission and approved by the Governor.
- b) The Assistant Chief Executive Officer shall perform such duties with respect to the Industrial Development Program or Industrial Park Development as assigned by the Chief Executive Officer.

HISTORY: -Added July 17, 1972, No. 3263, § 1, Sess. L. 1972, p. 198; amended Sept. 23, 1975, No. 3748, § 1, Sess. L. 1975, p. 144; April 7, 1983, No. 4797, § 5, Sess. L. 1983, p. 28; Jan. 19, 1984, No. 4888, Sess. L. 1984, p. 3; Feb. 1, 2001, No. 6390, § 22, Sess. L. 2000, p. 421.

NOTES:

HISTORY

Effective date.

For effective date of this section, see note set out under section 701 of this title.

Amendments

-2000.

Rewrote subsections (a) and (b).

-1984.

Subsection (a): Deleted the former second and third sentences.

-1983.

Subsection (a): Added the third sentence.

-1975.

Provided for the appointment of a program director.

HIERARCHY NOTES:

Tit. 29 Note

Tit. 29, Ch. 12 Note

§ 707. Powers and duties of Director

The Chief Executive Officer or at his direction, the Assistant Chief Executive Officer shall have the following powers and duties:

- a) Conduct preliminary investigations with regard to all applications for industrial development benefits.
- b) Submit his recommendations with regard to industrial development benefits applications to the Commission as required under this chapter.
- c) Advise the Commission regarding compliance by beneficiaries with the terms and conditions of their certificates and with the general requirements of this chapter, and aid in the enforcement of all such conditions and requirements.
- d) Promote the industrial development program by initiating contact and communication with prospective investors and, to the extent that funds are available therefor, cause to be produced and distributed such promotional literature, brochures and pamphlets, and place advertisements in such trade, industrial or other publications, as will adequately inform and familiarize prospective investors of investment opportunities, advantages and benefits in the United States Virgin Islands.
- e) Coordinate and expedite the prompt processing and payment of subsidy claims.
- f) Aid the Commission in the preparation of its annual budget proposed for consideration and approval by the Governor.
- g) Attend all meetings of the Commission and conduct such research and submit such reports as may be requested by the Commission.
- h) Actively and aggressively promote the industrial development program, and, in so doing, undertake and carry out studies, research and investigations with respect to the establishment and expansion of industrial or business enterprises in the United States Virgin Islands.
- i) Hire and remove employees of the Commission and Corporation subject to the approval of the Board of Directors of the Economic Development Authority;
- j) Be responsible for the general administration of the Commission and Corporation; and
- k) Collect and assemble, or cause to be collected and assembled, information pertinent to carrying out the purposes of the Corporation in providing industrial plants, equipment and facilities for the encouragement of new trade, industry and commerce and the expansion of existing trade, industry and commerce within the Territory.

HISTORY: -Added July 17, 1972, No. 3263, § 1, Sess. L. 1972, p. 200; amended Sept. 23, 1975, No. 3748, § 1, Sess. L. 1975, p. 144; Feb. 1, 2001, No. 6390, § 23, Sess. L. 2000, p. 422.

NOTES:

HISTORY

Revision note**-1998.**

Substituted "United States Virgin Islands" for "Virgin Islands" in subsections (d) and (h) for purposes of clarity pursuant to section 14 of Title 1.

Effective date.

For effective date of this section, see note set out under section 701 of this title.

Amendments**-2000.**

Substituted "Chief Executive Officer or at his direction, the Assistant Chief Executive Officer" for "Director" in the introductory paragraph and added subsections (i) through (k).

-1975.

Provided for the powers and duties of the Director.

HIERARCHY NOTES:

Tit. 29 Note

Tit. 29, Ch. 12 Note

Subchapter III. Beneficiary Qualifications**NOTES:****HISTORY****Industrial Development Commission certificates-Application of 1986 amendments.**

Act Dec. 8, 1986, No. 5224, § 9(a), Sess. L. 1986, p. 364, provided that:

"The provisions of sections 1, 2, 8 and 9 of this act shall apply to all beneficiaries of Title 29, chapter 12, Virgin Islands Code, who receive certificates from the Industrial Development Commission after December 31, 1986."

Transfer of benefits under previously issued certificates.

Act Dec. 8, 1986, No. 5224, § 9(c), Sess. L. 1986, p. 364, provided:

- 1) This subsection applies to any corporation which received a certificate of benefits under Title 29, chapter 12, Virgin Islands Code, prior to January 1, 1987.
- 2) Notwithstanding *Title 29, section 719, Virgin Islands Code*, any person who after January 1, 1987, forms a corporation which:
 - a. Is incorporated in a State of the United States (or the District of Columbia);
 - b. Is the successor in interest of all of the assets and liabilities of a beneficiary corporation;
 - c. Applies to the Executive Director of the Industrial Development Commission for a transfer of the certificate for the unexpired portion of the term of the certificate; and

- d. is otherwise qualified to receive the benefits of the certificate; then such corporation shall be entitled to the transfer of benefits, if the Executive Director, without a hearing, determines that the applicant will carry on the operation of the industry or business for which the certificate was granted. However, such a transferee of benefits shall not be entitled to receive an income tax exemption prior to January 1, 1991."

Grounds for denial of new certificates to certain organizations.

Act Dec. 8, 1986, No. 5224, § 9(d), Sess. L. 1986, p. 365, provided:

"After January 1, 1987, and until December 31, 1990, the Industrial Development Commission shall refuse to grant a certificate to an applicant for benefits if the Commission finds that:

- 1) the applicant's business or industry will be the same or substantially the same enterprise under the same or substantially the same ownership as another beneficiary whose benefit period has not expired; and
- 2) the applicant is applying for a new certificate for the purpose of receiving income tax exemptions in lieu of income tax subsidies prior to January 1, 1991."

Rights of beneficiaries of previously issued certificates.

Act Dec. 8, 1986, No. 5224, § 9(b), Sess. L. 1986, p. 364, provided:

"Any beneficiary entitled to benefits with respect to a certificate issued by the Industrial Development Commission prior to January 1, 1987 shall be entitled to continue receiving benefits in accordance with the terms and conditions of the certificate as issued. However, such a beneficiary may agree to amend said certificate in order to participate in the benefits as provided by this act, except that such a beneficiary shall not be entitled to receive any income tax exemption in exchange for an income tax subsidy prior to January 1, 1991. However, any beneficiary electing to amend said certificate shall be bound by each of the requirements and statutory changes specified in this act other than the income tax exemption for income tax subsidy exchange."

HIERARCHY NOTES:

Tit. 29 Note

Tit. 29, Ch. 12 Note

§ 708. Specific requirements for granting of benefits

In order to qualify and remain eligible for benefits provided under this chapter, an applicant specified in subchapter IV of this chapter must fulfill the following specific qualifications and requirements. The Commission may not require an applicant to meet qualifications or requirements in excess of those representations made by the applicant to the Commission during the application process as a condition of granting an initial certificate.

- a) Invest at least \$100,000, exclusive of inventory, in an approved industry or business that the Commission has determined to advance the economic well-being of the Virgin Islands and its people. The approved industries or businesses and their established categories shall be: Category I - Rum Production, Milk/Dairy Production, Watch and Jewelry Manufacturing and Assembly; Category II - Product Assembly, Manufacturing (other than Jewelry and Watch Manufacturing and Assembly), Agriculture/Food Processing, Mari culture/Food Processing, Marine Industry, Raw Materials Processing, Hotels/Guesthouses, Transportation and Telecommunications;

Category IIA - Service Businesses, not limited to but including, Investment Managers and Advisors, Research and Development, Business and Management Consultants, Software Developers, E-Commerce Businesses, Call Centers, High Tech Businesses, International Public Relations Firms, International Trading and Distribution, and any other businesses serving clients located outside the Virgin Islands. Category III - Utilities, Health Care Facilities, Recreation Facilities, Retirement Residences Development, and such other industries or businesses as may be deemed appropriate by the Commission. However, any application that qualifies in two categories, under the provisions of this subsection, shall be considered in the highest payment fee and term category for the purposes of this chapter and an applicant may apply in more than one approved industry or business. Such industry or business shall not, except as provided in section 715 of this chapter, be the same or substantially the same enterprise as one previously granted industrial development benefits under the same or substantially the same ownership, disguised, in whatever manner, for the purpose of qualifying for benefits under this chapter. The fair market value of all equipment leased for a term of at least five years shall be included in determining compliance with the investment requirement. In determining the amount of the investment undertaken by the applicant for purposes of this subsection, the assessed value of land and previously existing buildings (as assessed for tax purposes) used in the industry or business shall be included only to the extent that it does not exceed twenty (20%) percent of the investment undertaken; however, this provision shall not apply to an industry or business of a nature in which investment in land and alteration and/or improvement thereof represents its primary investment factor. The minimum investment required by this section may be reduced, if the Commission finds that the proposed industry or business will provide sufficient employment to justify the lower investment.

- b) In the case of a natural person, be a bona fide resident of the Virgin Islands with his principal place of business in the Virgin Islands and a citizen or legal resident of the United States; in the case of a partnership, limited liability company, trust or similar entity, be a partnership, limited liability company, trust or similar entity within the meaning of that term under the laws of the Virgin Islands with its principal place of business in the Virgin Islands; in the case of a corporation, be either incorporated under the laws of the Virgin Islands with its principal place of business in the Virgin Islands or under the laws of the United States, a state, territory, or commonwealth thereof, or a foreign country, and be duly registered to conduct business in the Virgin Islands.
- c) (1) In the case of a Virgin Islands corporation, receive income that is covered by *section 934 of the Internal Revenue Code of 1986*, as amended, as applicable in the Virgin Islands, and meet the requirements of any other applicable federal or local law, any implementation agreement, as amended from time to time, required under federal law, the provisions of this chapter, and any rules or regulations promulgated under such laws of this chapter.
- d) (2) In the case of a partnership, limited liability company, trust or similar entity, meet the requirements of any applicable federal or local law, the provisions of this chapter and any rules or regulations promulgated under such laws or under this chapter.
- e) Be the actual investor in the enterprise for which industrial development benefits are sought and not a contractor, subcontractor or other person or corporation acting as an agent or in a similar capacity to the investor; provided, that corporate affiliates who are actual investors may also qualify for individual benefits.
- f) Meet such standards of ecological compatibility as may be established by federal and/or local law.

- g) Employ at least ten (10) persons on a full time basis in such enterprise; and all employees in such enterprise shall, subject to the exceptions contained in section 711 of this subchapter, be residents of the United States Virgin Islands (as defined in section 703(e) of this chapter); provided, however, that the applicant may employ fewer than ten such persons upon demonstrating to the Commission that the employment of this number of persons in his particular enterprise would not be economically feasible or practical, and upon a further finding by the Commission that the desirability of the proposed enterprise outweighs the fact that it is not labor intensive.
- h) Comply with all federal and local laws, including anti-discrimination laws.
- i) Agree in writing to employ or contract, and to require all contractors retained by him to employ or subcontract, for services and to purchase goods, materials and supplies with and from those persons, firms and corporations who are residents of the Virgin Islands, or incorporated under the laws of the Virgin Islands, and who are duly licensed to do business in the Virgin Islands and have been so duly licensed for one year or more prior to the initial date of any such employment, contract, subcontract, or purchase. Each applicant shall agree in writing to invite competitive bidding, and require all contractors retained by it to invite competitive bidding for all such services, goods and materials pursuant to the publication requirements of title 31, section 236, of this Code, and to notify each bidder in writing of the name of the successful bidder and amount of its bid. Each applicant shall advise the Economic Development Commission, in writing with a copy to the Commissioner of Licensing and Consumer Affairs when goods and materials are not available under the above-defined Virgin Islands sources and demonstrate in writing of efforts to obtain such services, goods and materials, and to require contractors or subcontractors retained by the applicant to likewise comply with this requirement.
- j) For any applicant who proposes to do business on land adjoining any beach or shoreline of the United States Virgin Islands, agree to grant to the Government of the United States Virgin Islands a perpetual easement upon and across such land to the beach or shoreline to provide free and unrestricted access thereto to the public, which easement shall be duly recorded in the Recorder of Deeds upon the granting of a certificate of industrial development benefits. This provision shall not be construed as requiring free use of private facilities, but only as requiring free access to the beach or shoreline to the general public as a condition precedent to the granting of industrial development benefits.
- k) Meet any time restraints or deadlines imposed by the Commission with respect to the initiation of operations or construction activity; provided, that the Commission may extend any such time restraints or deadlines upon good cause shown by the beneficiary.
- l) Agree in writing to notify the Virgin Islands Employment Service as to the availability of employment by him or his subcontractors, the number of employees required, the occupational classification of such workers, and the applicable wage rate.
- m) In the case of an applicant whose investment, pursuant to subsection (a) of this section, is in excess of \$500,000.00, agree in writing to employ at least two individuals from the Welfare to Work Program, administered by the Labor and Human Services Department.
- n) Provide educational assistance to residents of the Virgin Islands in an amount and form which is acceptable to the Commission or provide a financial contribution to a fund established by the Commission, except that fifty percent of any such financial contribution must be designated for public school programs and initiatives. As used in this subsection, educational assistance included all types of educational assistance including but not limited to vocational and other job training programs.

- o) Agree in writing to submit plans for a management-training program for approval by the Commission. The plan shall establish a program through which the Beneficiary shall have as managers and officers, residents of the Virgin Islands, as defined in section 703(e) of this chapter. The Commission shall use the Beneficiary's organizational chart and job descriptions as the sole guide as to whether a Beneficiary's employee is management or non-management. The Commission shall establish, by regulation, the requirements for management training programs as guidance for all Beneficiaries and the reasonable number of Virgin Islands residents to be employed by each Beneficiary in accordance with the specific normal requirements of the business cycle involved. The Commission shall report annually to the Governor the titles and compensation of all trainees who are placed in management positions by Beneficiaries.
- p) The Commission is authorized to impose a monetary penalty for delinquent reports as required by the rules and regulations or by law. Any monetary penalties imposed by the Commission pursuant to this section shall be deposited into the Territorial Scholarship Fund, established pursuant to *Title 17, section 171, Virgin Islands Code*.
- q) Provide their employees additional leave from work, other than time applied to their annual leave, to participate and represent the Virgin Islands in athletic and sporting events.
- r) Establish and maintain an employee pension benefit plan, as provided under the Employee Retirement Income Security Act, 29, *U.S.C. 1001* et seq., and an employee welfare benefits plan that includes medical insurance, vacation and sick leave or paid time off in amounts that are determined by the Board and reported as required by the Employee Retirement Income Security Act, 29, *U.S.C. 1001* et seq.; however, the provisions of this subsection shall not apply to beneficiaries that qualify under section 708b, of this chapter.
- s) (1) Except as provided in paragraph (2) of this subsection, agree in writing and require all contractors retained by him to purchase all insurance from resident insurance companies, agents, or brokers licensed to operate in the Virgin Islands.
- t) (2) If a particular type of insurance is not available in the Virgin Islands, the applicant shall submit to the Commission written certification from the Office of Banking and Insurance that the insurance is unavailable.

HISTORY: -Added Sept. 23, 1975, No. 3748, § 1, Sess. L. 1975, p. 145; amended Oct. 27, 1980, No. 4502, § 1(b)-(d), Sess. L. 1980, p. 237; Dec. 19, 1984, No. 5031, § 1(a), (b), Sess. L. 1984, p. 412; Dec. 8, 1986, No. 5224, § 1(10)-(14), Sess. L. 1986, p. 345; Dec. 29, 1986, No. 5227, § 4, Sess. L. 1986, p. 383; May 5, 1998, No. 6228, § 21, Sess. L. 1998, p. 321; May 29, 1998, No. 6232, § 18, Sess. L. 1998, p. 332; Oct. 31, 1998, No. 6269, § 47, Sess. L. 1998, p. 468; Feb. 1, 2001, No. 6390, §§ 1, 4, 11, Sess. L. 2000, p. 402, 404, 407; June 5, 2001, No. 6412, § 2, Sess. L. 2001, p. 37; June 17, 2002, No. 6508, § 1, Sess. L. 2002, p. 292; Dec. 23, 2003, No. 6634, § 57, Sess. L. 2003, p. 159; Sept. 1, 2006, No. 6748, §§ 1(a)(1), (2), 6, 8, 9, Sess. L. 2005, p. -.

NOTES:

HISTORY

Revision note

-1998.

Substituted "United States Virgin Islands" for "Virgin Islands" throughout the section and substituted "Government of the United States Virgin Islands" for "Government of the Virgin Islands" in subsection (i) for purposes of clarity pursuant to section 14 of Title 1.

Substituted "subsection (a) of this section" for "subsection (a)" in subsec. (l) to conform reference to V.I.C. style pursuant to section 14 of Title 1.

Redesignated subsecs. (l) and (m), as added by Act No. 6269, as subsecs. (m) and (n) to avoid conflict with existing subsec. (l) as added by Act No. 6228 pursuant to section 14 of Title 1.

Subsection (n) was enacted without section number, which was supplied by the publisher.

Editor's note.

This section is reproduced to correct an error in subsection (h).

References in text.

Sections 934 and 936 of the Internal Revenue Code, referred to in subsec. (c)(1), are classified to 26 U.S.C. §§ 934 and 936.

Section 713(b)(1) of Title 29, Virgin Islands Code, referred to in subsec. (c)(2), was deleted pursuant to Act Dec. 8, 1986, No. 5224, § 1(21), Sess. L. 1986, p. 348.

Amendments

-2005.

Act 6748, § 1, in subsection (b) inserted "with his principal place of business in the Virgin Islands" following the first instance of "Virgin Islands" and "with its principal place of business in the Virgin Islands" following the second and third instances of "Virgin Islands."

Act 6748, § 6, inserted "or paid time off" following "sick leave" in subsection (q).

Act 6748, § 8, added subsection (r).

Act 6748, § 9, inserted "Retirement Residences Development" following "Recreation Facilities" in subsection (a), Category III.

-2003.

Act 6634, § 57 added "except that fifty percent of any such financial contribution must be designated for public school programs and initiatives" at the end of the first sentence in subsection (m).

-2002.

Act 6508, § 1, added subsection (q).

-2001.

Act 6412 added subsection (p).

-2000.

Subsection (a): Substituted the present first four sentences for the former first sentence.

Rewrote subsections (b), (c)(1), (c)(2) and (h).

Added new subsection (n) and redesignated former subsection (n) as subsection (o).

-1998.

Subsection (a): Act No. 6232 inserted "the marine industry" following "mariculture" in the first sentence.

Subsection (l): Added by Act 6228 and 6269.

Subsection (m): Added by Act 6269.

-1986.

Act No. 5224 added the second sentence in the introductory paragraph.

Subsection (a): Act No. 5224 substituted "\$50,000" for "\$20,000" following "invest at least" and inserted "designated service businesses" following "recreation" in the first sentence and added the fifth sentence.

Subsection (c)(1): Amended generally by Act No. 5224.

Subsection (f): Act No. 5224 substituted "ten (10)" for "two" following "employ at least" at the beginning of the subsection.

Subsection (j): Added by Act No. 5224.

Subsection (k): Added by Act No. 5227.

-1984.

Subsection (a): Substituted "\$20,000" for "\$50,000.00" in the first sentence.

Subsection (f): Substituted "two" for "ten" following "least".

-1980.

Deleted the words "all of" after "fulfill" in the introductory paragraph.

Subsection (b): Added "in the case of a partnership, be a partnership within the meaning of that term under the laws of the Virgin Islands" following "United States."

Subsection (c): Amended generally.

Effective date.

For effective date of this section, see note set out under section 701 of this title.

Effective date of amendments

-1986.

Act Dec. 8, 1986, No. 5224, § 10(a), Sess. L. 1986, p. 365, provided that the section of the act which amended this section shall take effect January 1, 1987, provided, however, that the exchange of tax subsidies for tax exemptions or reductions shall not take effect until October 1, 1987.

Rules and regulations.

Act Dec. 8, 1986, No. 5224, § 11, Sess. L. 1986, p. 365, provided that: "The Industrial Development Commission may promulgate rules and regulations concerning Title 29, section 708, subsection (h), as amended by this act. However, those rules and regulations in effect on the effective date of this act with respect to local procurement (Rules and Regulations of the IDC, § 708-701 through § 708-718) shall be effective after the effective date of this act to the extent that they are not in conflict with this act." The act became effective Dec. 8, 1986.

Legislative intent of 1980 amendment.

See Act Oct. 27, 1980, No. 4502, § 2, Sess. L. 1980, p. 239.

Banking requirements for contractors and beneficiaries.

Act Feb. 10, 1992, No. 5768, § 8, Sess. L. 1992, p. 10, provided:

"Notwithstanding any provision of law, all contractors and sub-contractors performing services for the Virgin Islands Government and all beneficiaries of Industrial Development Commission benefits as set forth in Title 29, Chapter 12, Virgin Islands Code, shall maintain payroll accounts, from which local employees are paid, in a bank licensed and conducting business in the Virgin Islands."

Annotations Under Prior Law

1. Generally. 2. Power of District Court. 3. Foreign corporations. 4. Cumulated investments. 5. Services and facilities. 6. New industry. 7. Benefits under temporary certificate. 8. Economic benefit. 9. Landlords. 10. Vested rights. 11. Ownership of property involved. 12. Revocation. 13. Condominiums. 14. Printers and publishers. 15. Investment.

1. Generally.

Benefits under the Industrial Incentive Program are limited to entities which made the required capital investment in a housing project, as distinguished from entities which merely performed the actual work of construction, so that a construction company which built a public housing project but did not make the capital investment which financed it was ineligible for benefits under the program. *Port Constr. Co. v. Government of Virgin Islands*, 237 F. Supp. 486, 1964 U.S. Dist. LEXIS 8794 (D.C.V.I. 1964), aff'd, 5 V.I. 549, 359 F.2d 663, 1966 U.S. App. LEXIS 6317 (3d Cir. 1966). (Decided under prior law.)

2. Power of District Court.

The District Court for the Virgin Islands exceeded its power by ordering the Government of the Virgin Islands to grant a corporate taxpayer tax exemption and subsidy benefits which had been denied by the Governor. *King Christian Enterprises, Inc. v. Government of the Virgin Islands*, 5 V.I. 170, 345 F.2d 633, 1965 U.S. App. LEXIS 6138 (3d Cir. 1965). (Decided under prior law.)

3. Foreign corporations.

A Florida corporation is not eligible to receive benefits under the Industrial Incentive Program. *Port Constr. Co. v. Government of Virgin Islands*, 237 F. Supp. 486, 1964 U.S. Dist. LEXIS 8794 (D.C.V.I. 1964), aff'd, 5 V.I. 549, 359 F.2d 663, 1966 U.S. App. LEXIS 6317 (3d Cir. 1966). (Decided under prior law.)

Puerto Rican corporations were not entitled to tax subsidy on their Virgin Islands income where they were not, as required by this section, corporations "created under the laws of the Virgin Islands". 6 V.I.Op.A.G. 330. (Decided under prior law.)

4. Cumulated investments.

Former provisions of this section were construed to require the showing of an investment of \$100,000 with respect to any one of the four types of enterprise described therein and an applicant's investment in two or more of those types of enterprise could not be cumulated to make up the investment of \$100,000 required. *King Christian Enterprises, Inc. v. Government of the Virgin Islands*, 5 V.I. 170, 345 F.2d 633, 1965 U.S. App. LEXIS 6138 (3d Cir. 1965). (Decided under prior law.)

5. Services and facilities.

Hotels could not operate separate businesses such as barber shops, hairdressing shops, and stores, whether under the same roof as the hotel or not, and secure tax exemption with respect to these businesses under the argument that they constituted services and facilities in connection with the operation of the hotel. 2 V.I.Op.A.G. 134. (Decided under prior law.)

6. New industry.

Tax exemption benefits for "new industries" did not extend to a company organized for the purpose of discounting notes and making loans. 2 V.I.Op.A.G. 155. (Decided under prior law.)

Under the 1949 Tax Exemption Ordinance, a new industry or hotel became eligible for tax exemption after it had met the requirements relating to capital investment whether or not the actual operating or manufacturing stage had been reached. 2 V.I.Op.A.G. 128. (Decided under prior law.)

The business of buying land for the purpose of construction of dwellings for sale, and the erection of a fifteen-room guesthouse, would not qualify for benefits under the 1949 Act granting tax exemption subsidies to persons engaged in new industry. *2 V.I.Op.A.G. 77.* (Decided under prior law.)

7. Benefits under temporary certificate.

In the event of expiration of the tax exemption ordinance, full tax exemption would be extended to all who qualified before the expiration date, so that a holder of a temporary certificate of tax exemption would be eligible for benefits if he qualified within the time limit set in the certificate. *2 V.I.Op.A.G. 341.* (Decided under prior law.)

8. Economic benefit.

In giving the Governor discretion as to qualification for benefits under the Industrial Incentive Program the Legislature intended the Governor to use his discretion only to determine if the business will promote the public interest by economic development in the Virgin Islands. *Virgo Corp. v. Paiewonsky, 5 V.I. 417, 259 F. Supp. 26, 1966 U.S. Dist. LEXIS 9578 (D.C.V.I. 1966)*, rev'd on other grounds, *6 V.I. 256, 384 F.2d 569, 1967 U.S. App. LEXIS 4996 (3d Cir. 1967)*, cert. denied, *Virgo Corp. v. Paiewonsky, 390 U.S. 1041, 88 S. Ct. 1634, 20 L. Ed. 2d 303, 1968 U.S. LEXIS 1840*, (1968), rehearing denied, *Virgo Corp. v. Paiewonsky, 392 U.S. 917, 88 S. Ct. 2053, 20 L. Ed. 2d 1379, 1968 U.S. LEXIS 1467 (1968)*. (Decided under prior law.)

If an industry is of economic benefit to the Virgin Islands, then the individuals or companies which make up that industry must of necessity benefit the Virgin Islands' economy. *Virgo Corp. v. Paiewonsky, 5 V.I. 359, 254 F. Supp. 405, 1966 U.S. Dist. LEXIS 9682 (D.C.V.I. 1966)*. (Decided under prior law.)

Grants under the industrial incentive program are closely articulated with the purposes of the program in advancing the economic development of the Virgin Islands and are not intended as mere gratuities or bounties. *Virgo Corp. v. Paiewonsky, 6 V.I. 256, 384 F.2d 569, 1967 U.S. App. LEXIS 4996 (3d Cir. 1967)*, cert. denied, *390 U.S. 1041, 88 S. Ct. 1634, 20 L. Ed. 2d 303, 1968 U.S. LEXIS 1840*, (1968), rehearing denied, *392 U.S. 917, 88 S. Ct. 2053, 20 L. Ed. 2d 1379, 1968 U.S. LEXIS 1467 (1968)*. (Decided under prior law.)

Governor's denial of watchmakers application for tax exemption and subsidy benefits under Virgin Islands incentive program was within his discretionary power. *Virgo Corp. v. Paiewonsky, 6 V.I. 256, 384 F.2d 569, 1967 U.S. App. LEXIS 4996 (3d Cir. 1967)*, cert. denied, *390 U.S. 1041, 88 S. Ct. 1634, 20 L. Ed. 2d 303, 1968 U.S. LEXIS 1840*, (1968), rehearing denied, *392 U.S. 917, 88 S. Ct. 2053, 20 L. Ed. 2d 1379, 1968 U.S. LEXIS 1467 (1968)*. (Decided under prior law.)

Watchmaker's application for tax exemption and subsidy benefits was not improperly denied by the Governor where Governor stated in writing reasons for his action which supported it. *Virgo Corp. v. Paiewonsky, 6 V.I. 256, 384 F.2d 569, 1967 U.S. App. LEXIS 4996 (3d Cir. 1967)*, cert. denied, *390 U.S. 1041, 88 S. Ct. 1634, 20 L. Ed. 2d 303, 1968 U.S. LEXIS 1840*, (1968), rehearing denied, *392 U.S. 917, 88 S. Ct. 2053, 20 L. Ed. 2d 1379, 1968 U.S. LEXIS 1467 (1968)*. (Decided under prior law.)

9. Landlords.

Corporation which merely acted as a real estate holding or investment company and whose operations were confined to collection of rents, payment of taxes and other functions which fall to a landlord was not an operation contemplated by former provisions of this section and would not qualify the corporation for benefits. *Dorem Corp. v. Government of the Virgin Islands, 5 V.I. 503, 358 F.2d 693, 1966 U.S. App. LEXIS 6569 (3d Cir. 1966)*. (Decided under prior law.)

10. Vested rights.

Approval, by Industrial Incentive Board and Governor, of tax exemption, did not bind the government by contract or estoppel, and grant was of no legal effect and conferred no rights where it was not authorized by statute. *Tracy Leigh Development Corp. v. Government of the Virgin Islands*, 9 V.I. 527, 1973 U.S. Dist. LEXIS 5193 (D.C.V.I. 1973). (Decided under prior law.)

The mere filing of an application while Act granting tax exemption and subsidies was still in force gave plaintiff no vested rights to receive benefits which Legislature could not take away. *Maisonette Apts., Inc. v. Government of the Virgin Islands*, 6 V.I. 76, 284 F. Supp. 772, 1968 U.S. Dist. LEXIS 11759 (D.C.V.I. 1968). (Decided under prior law.)

An applicant for a grant of tax exemption and subsidies does not acquire any forceable right to them until his application has been approved by Governor acting under valid and existing statutory authority and a certificate granting the exemption and subsidies has been issued to him. *Maisonette Apts., Inc. v. Government of the Virgin Islands*, 6 V.I. 76, 284 F. Supp. 772, 1968 U.S. Dist. LEXIS 11759 (D.C.V.I. 1968). (Decided under prior law.)

Where under former statute persons engaged in the construction and operation of commercial buildings were qualified for benefits, such persons did not acquire any vested rights thereto by merely applying for such benefits. *The Pentheny, Ltd. v. Government of the Virgin Islands*, 5 V.I. 575, 360 F.2d 786, 1966 U.S. App. LEXIS 6072 (3d Cir. 1966). (Decided under prior law.)

Amendment of subdivision (a)(3) of this section by Act No. 2815, § 2, Sept. 4, 1970, Sess. L. 1970, p. 303, withdrew condominiums, factories for rent to others, industrial plants, commercial warehouses and industrial parks from special tax treatment under the Industrial Incentive Act; and it is of no consequence that applications were received prior to the amendment date. *6 V.I.Op.A.G. 305*. (Decided under prior law.)

11. Ownership of property involved.

Ownership of cottages by subleasing corporation was not required for subsidy purposes, and income derived from operating such cottages was properly covered. *4 V.I.Op.A.G. 251*. (Decided under prior law.)

All income derived by subleasing corporation from the leasing of private cottages in the absence of the owner was derived from hotel operation and could properly be included in computing the basis for subsidy. *4 V.I.Op.A.G. 251*. (Decided under prior law.)

12. Revocation.

Where government refused to honor condominium construction business incentive subsidy and tax exemption grant as being ultra vires the statute it was granted under, grantee could not successfully argue estoppel where it had purchased the land before the grant was made and it was subject to principles that contracts with agents of the government must be in strict conformity with the statutory authority conferred and the government is not estopped by acts of its officers or agents in entering into an arrangement or agreement to do or cause to be done what the law does not sanction or permit. *Tracy Leigh Development Corp. v. Government of the Virgin Islands*, 11 V.I. 244, 501 F.2d 439, 1974 U.S. App. LEXIS 7956 (3d Cir. 1974). (Decided under prior law.)

13. Condominiums.

Regardless of whether or not the operator of a hotel may be eligible for certain tax benefits pertaining to the operation of condominium as hotel units, in no event could the owner of each condominium unit be entitled to benefits under the Industrial Incentive Act by obvious failure to meet the requirements of this section. *6 V.I.Op.A.G. 100*. (Decided under prior law.)

The word "condominium" was placed as a separate entity in this section for the purpose of negating the requirements, for tax exemption and subsidy benefits, that sales of individual units of the condominiums must be to residents of the Virgin Islands. *6 V.I.Op.A.G. 63.* (Decided under prior law.)

Since the word "condominium" does not appear in the wording "including the actual construction of such housing projects, factories, industrial plants, commercial warehouses, industrial parks, when such construction is engaged in by the owner", added to this section, it would appear that the Legislature intended to omit condominiums from the privilege of tax exemption in the area of the construction of the same, however, the history of the Industrial Incentive Act and the wording of all the acts amending such Act indicates a contrary intent of the Legislature. *6 V.I.Op.A.G. 63.* (Decided under prior law.)

14. Printers and publishers.

To be entitled to tax exemption a printer or publisher should show in detail its operations and further show that the article, goods or commodity that he publishes has intrinsic value above that of the unprinted sheet in terms of an article of merchandise. *6 V.I.Op.A.G. 93.* (Decided under prior law.)

The Tax Incentive Board, in the absence of specific legislative intent regarding printing, should conservatively, as opposed to liberally, make determinations as to whether any printer or publisher is entitled to the tax exemption by reference to the article, goods or commodity produced. *6 V.I.Op.A.G. 93.* (Decided under prior law.)

15. Investment.

Applicant for tax benefits qualified for consideration for a permanent certificate for the duration of 16 years where it showed, in addition to meeting other requirements, an investment in the establishment of a hotel of not less than 100 bedrooms of more than \$1,000,000. *6 V.I.Op.A.G. 16.* (Decided under prior law.)

HIERARCHY NOTES:

Tit. 29 Note

Tit. 29, Ch. 12 Note

Tit. 29, Ch. 12, Subch. III Note

§ 708a. Fees; application, compliance

The following fees shall be assessed against each applicant or beneficiary other than a Participant in the Small Business Program, for applications submitted beginning February 1, 2001.

	Application Fee	Activation Fee	Annual Compliance Fee
Category I	\$1,500	\$1,000	\$1,500
Category II	\$3,500	\$1,500	\$3,000
Category IIA	\$5,000	\$2,500	\$7,500
Category III	\$5,000	\$3,500	\$5,000

All Application fees and Annual Compliance Fees collected pursuant to the provisions of this Act shall be deposited into the Industrial Promotion Fund, established pursuant to section 726 of this chapter. Any fee

adjustments may be made by the Commission on an annual basis, with the approval of the Governor, and such fee adjustments shall not exceed the Consumer Price Index for that year.

HISTORY: -Added Feb. 1, 2001, No. 6390, § 14, Sess. L. 2000, p. 409; amended Dec. 23, 2003, No. 6634, § 59, Sess. L. 2003, p. 160; Sept. 1, 2005, No. 6748, § 7(1), Sess. L. 2005, p. -.

NOTES:

HISTORY

Former § 708a.

Former § 708a, which was derived from Act Mar. 7, 1984, No. 4900, § 2, Sess. L. 1984, p. 48, and amended by Act July 2, 1984, No. 4969, § 11, Sess. L. 1984, p. 206, and Dec. 8, 1986, No. 5224, § 1(15), Sess. L. 1986, p. 346, and repealed Oct. 13, 1993, No. 5891, § 3, Sess. L. 1993, p. 234, related to exemptions granted to beneficiaries of the industrial development program.

Amendments

-2005.

Act 6748, § 7, inserted "other than a Participant in the Small Business Program" following "beneficiary" in the first paragraph.

-2003.

Act 6634, § 59 substituted the current fee table for the former fee table.

HIERARCHY NOTES:

Tit. 29 Note

Tit. 29, Ch. 12 Note

Tit. 29, Ch. 12, Subch. III Note

§ 708b. Small Business Program

- 1) The Commission may with respect to a small business:
 - a. reduce the minimum investment requirement of section 708(a) of this chapter to not less than \$20,000; and
 - b. reduce the minimum employment requirement of section 708(f) of this chapter to not less than two (2) employees.
- 2) Notwithstanding section 713a(b) of this chapter, the term for a participant in the Small Business Program is fifty percent of the otherwise applicable term that would apply to a participant in the Economic Development Program other than a participation in the Small Business Program. However, at the conclusion of the initial term, a participant in the Small Business Program may apply for an extension in accordance with section 715 of this chapter.
- 3) Notwithstanding the definition of "employer" set forth in title 24, chapter 3, section 62, of this Code, as amended, all participants in the Small Business Program established under this section are subject to the provisions of title 24, chapter 3, section 76, of this Code (1997 ed., 2000 supp.) relating to grounds for discharge of employees.

HISTORY: -Added Dec. 8, 1986, No. 5224, § 1(16), Sess. L. 1986, p. 346; amended May 2, 2001, No. 6396, § 2, Sess. L. 2001, p. 10; Sept. 1, 2005, No. 6748, § 7(2), Sess. L. 2005, p. -.

NOTES:

HISTORY

Revision note

-1986.

Substituted "section 708(a) of this chapter" for "§ 708(a)" following "requirement of" in subsec. (a)(1), "section 708(f) of this chapter" for "§ 708(f)" following "requirement of" in subsec. (b)(1) and "section 713a(b) of this chapter" for "§ 713a, subsection (b) of this chapter" following "notwithstanding" in the first sentence of subsec. (b) for purposes of conformity with V.I.C. style pursuant to section 14 of Title 1.

Amendments

-2005.

Act 6748, § 7, rewrote subsection (b).

-2001.

Act 6396 substituted "business" for "manufacturer" and "manufacturers" throughout and added subsection (c).

Effective date.

Act Dec. 8, 1986, No. 5224, § 10(a), Sess. L. 1986, p. 365, provided that the section of the act which added this section shall take effect January 1, 1987, provided, however, that the exchange of tax subsidies for tax exemptions or reductions shall not take effect until October 1, 1987.

HIERARCHY NOTES:

Tit. 29 Note

Tit. 29, Ch. 12 Note

Tit. 29, Ch. 12, Subch. III Note

§ 709. General guidelines to be applied by Commission

In addition to the specific requirements and qualifications of beneficiaries enumerated in section 708 of this subchapter, the anticipated pollution potential of an applicant's proposed industry and the applicant's needs for resources, utilities and social services shall be closely evaluated and considered by the Commission as a factor in determining whether an industrial development certificate should be granted. Applicant's proposed enterprise should be one which would utilize human resources, which are available in the United States Virgin Islands at the time of application and meet the requirements of section 703(e), to the maximum while minimizing demands for public utilities services and social and other government services. Applicant's proposed business or industry should be compatible with existing businesses and industries in the United States Virgin Islands and should be of a nature that will utilize to the maximum degree local skills and intellectual capabilities while avoiding imbalances in the social and economic structure of the United States Virgin Islands community. The provisions of this section shall not be construed as being specific

requirements, but shall serve only as general guidelines to be applied in determining whether industrial development benefits should be granted.

HISTORY: -Added Sept. 23, 1975, No. 3748, § 1, Sess. L. 1975, p. 147.

NOTES:

HISTORY

Revision note

-1998.

Substituted "United States Virgin Islands" for "Virgin Islands" in the section for purposes of clarity pursuant to section 14 of Title 1.

Effective date.

For effective date of this section, see note set out under section 701 of this title.

ANNOTATIONS

1. Purpose. 2. Revocation of permit.

1. Purpose.

The purpose of provisions in prior Tax Exemption Ordinance relating to employment of residents of the Virgin Islands was to promote and compel the employment of natives to the extent set forth in such Ordinance. *2 V.I.Op.A.G. 134.* (Decided under prior law.)

2. Revocation of permit.

Industrial Incentive Board could not recommend revocation of tax exemption certificate without providing a hearing thereon after notice, even if sufficient resident labor had become available. *2 V.I.Op.A.G. 134.* (Decided under prior law.)

HIERARCHY NOTES:

Tit. 29 Note

Tit. 29, Ch. 12 Note

Tit. 29, Ch. 12, Subch. III Note

§ 709a. Discrimination; hearing; certificate revocation

If after notice and hearing the Commissioner of Labor finds that the beneficiary or any contractor or any other agent of the beneficiary has wilfully practiced discrimination in employment based on sex, race or religion or to deny employment in serving or dispensing food or beverages solely by reason of sex, he shall certify his finding to the Commission, which shall revoke the beneficiary's certificate without need for further proceedings under section 722 of this chapter.

HISTORY: -Added Sept. 23, 1975, No. 3748, § 1, Sess. L. 1975, p. 148.

NOTES:

HISTORY

Editor's note.

Act No. 6033, § 2(b), Sess. L. 1994, p. 254, provided for the amendment of this section by substituting "Administrator" for "Commissioner of Labor". However, the context in which the reference was to be revised related to Worker's Compensation Administration. Therefore, in view of the subject matter of this section in relation to the reference to the commissioner of labor, the amendment of this section by Act No. 6033, § 2(1b) was not implemented.

HIERARCHY NOTES:

Tit. 29 Note

Tit. 29, Ch. 12 Note

Tit. 29, Ch. 12, Subch. III Note

§ 710. Employment of residents-Temporary permits

(a) Eighty percent of all persons employed by beneficiaries under this chapter shall be residents of the United States Virgin Islands; provided that, after the third year of operation, a beneficiary shall be required to have at least 20% of its management, supervisory and/or technical positions filled by residents of the United States Virgin Islands unless granted a waiver by the Commission.

A waiver shall be granted only when-

(1) the Commissioner of Labor has certified that:

(A) he has not been able to recruit individuals to fill the positions;

(B) he has not been able to train individuals to fill the positions; or

(C) the beneficiary has demonstrated to the Commissioner of Labor that the beneficiary's training program has failed to provide individuals capable of filling the positions and that the beneficiary has made a public effort to recruit personnel for the positions; or

(2) when the Economic Development Commission has made a finding that the economic position of the beneficiary is such that the beneficiary cannot comply with the requirement without further erosion of its financial position or that the beneficiary cannot comply for such other practical reasons that the Commission has established by its rules and regulations.

(b) Each applicant employing nonresidents shall agree to either establish and conduct training classes for residents to fill the positions held by nonresidents or agree to subsidize the cost of training pre-selected resident employee applicants in a school or other facility not conducted by the applicant, which training procedures are further described under section 712 of this subchapter. However, an applicant may elect to meet the training requirements of this subsection by annually transferring \$2,500 to the Territorial Scholarship Fund (established under *Title 17, section 171, Virgin Islands Code*) for each nonresident employed by the applicant.

(c) When a nonresident employee is to be replaced by a resident employee pursuant to the requirements of this section, the employer shall give the nonresident employee 14 days notice of such fact prior to his termination.

(d) No resident employee of a beneficiary shall be laid off or have his work week reduced to provide employment for a nonresident.

(e) Any beneficiary who hires nonresidents shall bear the full responsibility for bonding and other procedures required by law for the employment of nonresidents.

(f) Wilful violation of this section by a beneficiary shall be cause for suspension, modification or revocation of his certificate pursuant to section 722 of this chapter.

HISTORY: -Added July 17, 1972, No. 3263, § 1, Sess. L. 1972, p. 200; amended Sept. 23, 1975, No. 3748, § 1, Sess. L. 1975, p. 148; Dec. 8, 1986, No. 5224, § 1(17), Sess. L. 1986, p. 346; Sept. 11, 1992, No. 5809, § 1, Sess. L. 1992, p. 116; Feb. 1, 2001, No. 6390, § 15, Sess. L. 2000, p. 409.

NOTES:

HISTORY

Revision note

-1998.

Substituted "United States Virgin Islands" for "Virgin Islands" in subsection (a) for purposes of clarity pursuant to section 14 of Title 1.

Editor's note.

Act No. 6033, § 2(b), Sess. L. 1994, p. 254, provided for the amendment of this section by substituting "Administrator" for "Commissioner of Labor". However, the context in which the reference was to be revised related to Workers' Compensation Administration. Therefore, in view of the subject matter of this section in relation to the reference to the commissioner of labor, the amendment to this section by Act No. 6033, § 2(b) was not implemented.

Effective date.

For effective date of this section, see note set out under section 701 of this title.

Amendments

-2000.

Subsection (a)(2): Substituted "Economic Development Commission" for "Industrial Development Commission."

-1992.

Subsection (a): Amended generally.

-1986.

Subsection (a): Amended generally.

Subsection (b): Rewrote the first sentence and added the second sentence.

-1975.

Provided for the employment of residents and temporary permits, for nonrenewable periods, for nonresident employees.

Effective date of amendments

-1986.

Act Dec. 8, 1986, No. 5224, § 10(a), Sess. L. 1986, p. 365, provided that the section of the act which amended this section shall take effect January 1, 1987, provided, however, that the exchange of tax subsidies for tax exemptions or reductions shall not take effect until October 1, 1987.

HIERARCHY NOTES:

Tit. 29 Note

Tit. 29, Ch. 12 Note

Tit. 29, Ch. 12, Subch. III Note

§ 711. Powers and duties of Commissioner of Labor

- 1) The Commissioner of Labor shall appoint a qualified and responsible employee of the Department of Labor to administer, supervise and enforce, or cause to be enforced the provisions of sections 710 and 712 of this subchapter, and in this connection may promulgate necessary rules and regulations, conduct such investigations and institute such remedial actions as may be required.
- 2) Any beneficiary applying for permission to hire nonresidents in accordance with subsection (c), paragraph (2) of this section, shall submit a specification of the number of nonresident workers required and their occupational classifications and wage rates, to the Commissioner of Labor for review prior to any grant of permission to hire said nonresidents. Upon receiving said information and material, the Commissioner shall:
 - a. promptly supply same to all labor unions operating in the United States Virgin Islands;
 - b. at the expense of the beneficiary, to give public notice of such employment opportunity; and
 - c. assist beneficiaries in the recruitment of residents.
- 3) It shall be the responsibility of the Commissioner of Labor to provide an evaluation of those residents available in the labor market with necessary skills suitable for employment by the beneficiary. All beneficiaries employing nonresidents shall annually prepare, and file with the Commissioner of Labor, a complete roster of all nonresidents and a detailed description of the positions held by such nonresidents. The Commissioner of Labor shall promulgate specific rules and regulations governing compliance with these requirements.
- 4) A beneficiary may not employ a person who is not a resident of the United States Virgin Islands unless:
 - a. after hiring the nonresident, at least eighty percent (80%) of the beneficiary's employees are residents of the Virgin Islands; or
 - b. the Department of Labor has certified that:
 - i. the beneficiary requested the Department's assistance in filling the vacancy; and
 - ii. the Department was unable, within ten (10) working days after the beneficiary's request, to refer any qualified applicants to the beneficiary for employment.
- 5) The Commissioner of Labor shall report all violations of the resident employment provisions of this subchapter to the Commission.

HISTORY: -Added July 17, 1972, No. 3263, § 1, Sess. L. 1972, p. 202; amended Sept. 23, 1975, No. 3748, § 1, Sess. L. 1975, p. 149; Dec. 8, 1986, No. 5224, § 1(18), Sess. L. 1986, p. 347.

NOTES:**HISTORY****Revision note****-1998.**

Substituted "United States Virgin Islands" for "Virgin Islands" in subdivisions (b)(1) and (c)(1) for purposes of clarity pursuant to section 14 of Title 1.

-1986.

Substituted "sections 710 and 712 of this subchapter" for "sections 710 and 712" following "the provisions of" in subsec. (a) for purposes of conformity with V.I.C. style pursuant to section 14 of Title 1.

Redesignated subsecs. (e) and (f) as subsecs. (c) and (d), respectively, in view of the omission of subsecs. (c) and (d).

Substituted "subsection (c), paragraph (2) of this section" for "subsection (e), paragraph (2) of this section" in the first sentence of subsec. (b) for purposes of conformity with the redesignation of subsec. (e).

Editor's note.

Act No. 6033, § 2(b), Sess. L. 1994, p. 254, provided for the amendment of this section by substituting "Administrator" for "Commissioner of Labor". However, the context in which the reference was to be revised related to Workers' Compensation Administration. Therefore, in view of the subject matter of this section in relation to the reference to the commissioner of labor, the amendment to this section by Act No. 6033, § 2(b) was not implemented.

Effective date.

For effective date of this section, see note set out under section 701 of this title.

Amendments**-1986.**

Amended section generally.

-1975.

Provided for the powers and duties of the Commissioner of Labor and the promulgation of rules and regulations.

Effective date of amendments**-1986.**

Act Dec. 8, 1986, No. 5224, § 10(a), Sess. L. 1986, p. 365, provided that the section of the act which amended this section shall take effect January 1, 1987, provided, however, that the exchange of tax subsidies for tax exemptions or reductions shall not take effect until October 1, 1987.

HIERARCHY NOTES:

Tit. 29 Note

Tit. 29, Ch. 12 Note

Tit. 29, Ch. 12, Subch. III Note

§ 712. Training of employees

- 1) Any applicant for industrial development benefits proposing to employ persons who are not residents of the United States Virgin Islands shall, at the time of filing his application for benefits, submit to the Commissioner of Labor a comprehensive plan for the establishment and conduct of an occupational training program for the purpose of adequately training resident employees in the skills necessary for their employment by the applicant. The training program shall be approved and monitored pursuant to rules and regulations promulgated by the Commissioner of Labor.
- 2) An employee who is engaged in training pursuant to this chapter shall receive at least the minimum wage prescribed by law for trainees or apprentices.
- 3) Any beneficiary who employs one (1) or more persons who are not residents of the United States Virgin Islands, other than a beneficiary who contributes to the Territorial Scholarship Fund in accordance with section 710, subsection (b) of this subchapter, shall establish or subsidize a training program in conformity with the comprehensive plan required under subsection (a) of this section, and shall maintain said program so long as any person who is not a resident of the United States Virgin Islands is employed by the beneficiary.

HISTORY: -Added July 17, 1972, No. 3263, § 1, Sess. L. 1972, p. 202; amended Sept. 23, 1975, No. 3748, § 1, Sess. L. 1975, p. 150; Dec. 8, 1986, No. 5224, § 1(19), (20), Sess. L. 1986, p. 348.

NOTES:

HISTORY

Revision note

-1998.

Substituted "United States Virgin Islands" for "Virgin Islands" in subsections (a) and (c) for purposes of clarity pursuant to section 14 of Title 1.

-1986.

Substituted "section 710, subsection (b) of this subchapter" for "section 710, subsection (b)" preceding "shall establish", and "subsection (a) of this section" for "subsection (a)" preceding "and shall maintain" in subsection (c) for purposes of conformity with V.I.C. style pursuant to section 14 of Title 1.

Editor's note.

Act No. 6033, § 2(b), Sess. L. 1994, p. 254, provided for the amendment of this section by substituting "Administrator" for "Commissioner of Labor". However, the context in which the reference was to be revised related to Workers' Compensation Administration. Therefore, in view of the subject matter of this section in relation to the reference to the commissioner of labor, the amendment to this section by Act No. 6033, § 2(b) was not implemented.

Effective date.

For effective date of this section, see note set out under section 701 of this title.

Amendments

-1986.

Subsection (a): Deleted "pursuant to section 710 of this subchapter, and who falls within the three million dollar investment provision of section 710(b) of this subchapter" preceding "shall, at the time of filing" in the first sentence.

Subsection (c): Added.

-1975.

Provided for the establishment of a comprehensive plan for an occupational training program for resident employees.

Effective date of amendments

-1986.

Act Dec. 8, 1986, No. 5224, § 10(a), Sess. L. 1986, p. 365, provided that the section of the act which amended this section shall take effect January 1, 1987, provided, however, that the exchange of tax subsidies for tax exemptions or reductions shall not take effect until October 1, 1987.

HIERARCHY NOTES:

Tit. 29 Note

Tit. 29, Ch. 12 Note

Tit. 29, Ch. 12, Subch. III Note

Subchapter IV. Industrial Development Benefits

NOTES:

HISTORY

Industrial Development Commission certificates-Application of 1986 amendments.

Act Dec. 8, 1986, No. 5224, § 9(a), Sess. L. 1986, p. 364, provided:

"The provisions of section 1, 2, 8 and 9 of this act shall apply to all beneficiaries of Title 29, chapter 12, Virgin Islands Code, who receive certificates from the Industrial Development Commission after December 31, 1986."

Rights of beneficiaries of previously issued certificates generally.

Act Dec. 8, 1986, No. 5224, § 9(b), Sess. L. 1986, p. 364, provided:

"Any beneficiary entitled to benefits with respect to a certificate issued by the Industrial Development Commission prior to January 1, 1987 shall be entitled to continue receiving benefits in accordance with the terms and conditions of the certificate as issued. However, such a beneficiary may agree to amend said certificate in order to participate in the benefits as provided by this act, exemption in exchange for an income tax subsidy prior to January 1, 1991. However, any beneficiary electing to amend said certificate shall be bound by each of the requirements and statutory changes specified in this act other than the income tax exemption for income tax subsidy exchange."

Transfer of benefits under previously issued certificates.

Act Dec. 8, 1986, No. 5224, § 9(c), Sess. L. 1986, p. 364, provided:

- 1) This subsection applies to any corporation which received a certificate of benefits under Title 29, chapter 12, Virgin Islands Code, prior to January 1, 1987.
- 2) Notwithstanding *Title 29, section 719, Virgin Islands Code*, any person who, after January 1, 1987, forms a corporation which:
 - a. is incorporated in a State of the United States (or the District of Columbia);
 - b. is the successor in interest of all of the assets and liabilities of a beneficiary corporation;
 - c. applies to the Executive Director of the Industrial Development Commission for a transfer of the certificate for the unexpired portion of the term of the certificate; and
 - d. is otherwise qualified to receive the benefits of the certificate; then such corporation shall be entitled to the transfer of benefits, if the Executive Director, without a hearing, determines that the applicant will carry on the operation of the industry or business for which the certificate was granted. However, such a transferee of benefits shall not be entitled to receive an income tax exemption prior to January 1, 1991."

Grounds for denial of new certificates to certain organizations.

Act Dec. 8, 1986, No. 5224, § 9(d), Sess. L. 1986, p. 365, provided:

"After January 1, 1987, and until December 31, 1990, the Industrial Development Commission shall refuse to grant a certificate to an applicant for benefits if the Commission finds that:

- 1) the applicant's business or industry will be the same or substantially the same enterprise under the same or substantially the same ownership as another beneficiary whose benefit period has not expired; and
- 2) the applicant is applying for a new certificate for the purpose of receiving income tax exemptions in lieu of income tax subsidies prior to January 1, 1991."

HIERARCHY NOTES:

Tit. 29 Note

Tit. 29, Ch. 12 Note

§ 713. [Renumbered.]

NOTES:

HISTORY

Former section 713.

Former section 713 was renumbered as section 713a by Act Jan. 8, 1982, No. 4665, § 12, Sess. L. 1981, p. 294.

HIERARCHY NOTES:

Tit. 29 Note

Tit. 29, Ch. 12 Note

Tit. 29, Ch. 12, Subch. IV Note

§ 713a. Tax exemptions; tax subsidies; benefit options

- 1) Each applicant granted an industrial development certificate as hereunder provided shall be exempted from the payment of the following taxes:
 - a. Taxes on real property to the extent that same is utilized in the business or industry for which an industrial development certificate has been granted.
 - b. Gross receipts taxes, except that this exemption shall not apply to the gross receipts of businesses operated by a concession or rental agreement on the premises of beneficiaries, including hotels, for which businesses separate licenses are required or which, as determined by the Commission, are not ordinarily related to, or do not constitute an essential part of, the operation of the beneficiary, and which businesses are not otherwise eligible for industrial development benefits as a distinct enterprise.
 - c. All excise taxes on building materials, tools, pipes, pumps, conveyor belts or other appliances, materials and supplies necessary for use in the construction, alteration, reconstruction or extension of the physical plant or facilities of the applicant.
- 2) Each approved applicant eligible for benefits provided under this section shall be granted benefits as follows and in accordance with Schedule A in this subsection:
 - a. Category I approved applicants shall be granted 100% benefits for a period of 10 years if they remain in compliance with all the requirements of this chapter. Category I approved applicants may receive a renewal of benefits for 10 years provided that they remain in compliance with all the requirements of this chapter during their initial benefit period.
 - b. Category II and IIA approved applicants shall be granted 100% benefits for a period of 10 years if they remain in compliance with all the requirements of this chapter. Category II and IIA approved applicants may receive a renewal of benefits for 10 years provided that they remain in compliance with all the requirements of this chapter during their initial benefit period.
 - c. Category III approved applicants shall be granted 100% benefits for a period of 10 years if they remain in compliance with all the requirements of this chapter. Category III approved applicants may receive a renewal of benefits for 10 years provided that they remain in compliance with all the requirements of this chapter during their initial benefit renewal period.

SCHEDULE A

	CATEGORY I CATEGORY III	CATEGORY II	CATEGORY IIA	
Initial Benefits	100%	100%	100%	100%
Renewal 10 YRS	10 YRS	10 YRS	10 YRS	

3) Tax exemptions and benefits shall be granted under this section only if the applicant granted an industrial development certificate can provide certification from the Internal Revenue Bureau and Department of Finance that the applicant has filed and paid all taxes, penalties and interest and from the

Office of the Lieutenant Governor that the applicant has filed its required annual report or has satisfactorily made agreement to pay the taxes or file the required reports.

4) Any existing beneficiary presently participating in the Economic Development Commission on the effective date of this section may apply for an extension of benefits under the new Category structure of the Economic Development Commission established in this section, after public hearing and with the Governor's approval, to receive the total number of years that a business in its category would receive under this subsection. The Commission shall establish procedures for the establishment of this process and advise existing beneficiaries accordingly.

HISTORY: -Amended Sept. 23, 1975, No. 3748, § 1, Sess. L. 1975, p. 150; Oct. 27, 1980, No. 4502, § 1(e), Sess. L. 1980, p. 238; Jan. 8, 1982, No. 4665, §§ 11, 12, Sess. L. 1981, p. 294; Dec. 8, 1986, No. 5224, § 1(21), Sess. L. 1986, p. 348; July 30, 1987, No. 5270, § 2, Sess. L. 1987, p. 111; Feb. 1, 2001, No. 6390, § 2, Sess. L. 2000, p. 403.

NOTES:

HISTORY

Revision note

-1986.

Substituted "paragraphs (b)(1) and (2) of this section" for "paragraphs (b)(1) and (2) hereof" in subsec. (b) to conform reference to V.I.C. style pursuant to section 14 of Title 1. See, however, the references in text note below.

References in text.

Paragraphs (b)(1) and (2), referred to in subsec. (b), were deleted pursuant to Act Dec. 8, 1986, No. 5224, § 1(21), Sess. L. 1986, p. 348.

Effective date.

For effective date of this section, see note set out under section 701 of this title.

Amendments

-2000.

Rewrote subsection (b) and added subsection (d).

-1987.

Subsection (c): Added.

-1986.

Deleted former subsec. (b), redesignated former subsec. (c) as present subsec. (b), deleted "and subsidy" following "tax exemption" in the first sentence of present subsec. (b), and in the second sentence of that subsection deleted "and for all subsidies as a group, but the exemption option may differ from the subsidy option" following "exemptions as a group".

-1981.

Act January 8, 1982, No. 4665, § 12, Sess. L. 1981, p. 294, renumbered this section from former section 713.

Subsection (b)(1): Added the second proviso relative to subsidy on customs duties on the importation of raw materials and component parts for the purpose of manufacturing or assembling watches and watch movements.

-1980.

Subsection (b)(2): Rewritten to include partners and partnerships.

-1975.

Provided certain tax exemptions; granted non-taxable subsidies and benefit options.

Effective date of amendments

-1986.

Act Dec. 8, 1986, No. 5224, § 10(a), Sess. L. 1986, p. 365, provided that the section of the act which amended this section shall take effect January 1, 1987, provided, however, that the exchange of tax subsidies for tax exemptions or reductions shall not take effect until October 1, 1987.

Legislative intent of 1980 amendment.

See Act Oct. 27, 1980, No. 4502, § 2, Sess. L. 1980, p. 239.

Extension of benefits.

Act Oct. 25, 1977, No. 4047, § 2, Sess. L. 1977, p. 242, provided: "Notwithstanding any other provision of law, the Commissioner of Commerce shall, upon application, extend the benefits granted pursuant to Title 29, section 713 [this section] of the Virgin Islands Code for an additional five years beyond the expiration date of an existing valid industrial development certificate to any person or corporation who owns or operates a business or industry, which on or before the date of enactment of this act, was producing in whole or in part, costume jewelry or pharmaceutical products." The act became effective Oct. 25, 1977.

ANNOTATIONS

1. Extension of industrial development benefits.
2. Excise tax exemption.

1. Extension of industrial development benefits.

Where legislature had, by section 715 of this title, established standards for extension of industrial development benefits, and had given Industrial Development Commission power, subject to the Governor's approval, to extend the benefits in particular cases, the legislature could not by another statute (Act 1977, No. 4047, § 2, Sess. L. 1977, p. 242) provide that the Commissioner of Commerce (by which was presumably meant the Industrial Development Commission and Governor) must grant extensions of benefits to costume jewelry manufacturers and pharmaceutical products, as such provision was an unconstitutional usurpation of executive authority by the legislature. *8 V.I.Op.A.G. 94.*

2. Excise tax exemption.

Hotel granted excise tax benefits was not entitled to an exemption from such taxes on the importation of replacement furnishings. *9 V.I.Op.A.G. 132.*

HIERARCHY NOTES:

Tit. 29 Note

Tit. 29, Ch. 12 Note

Tit. 29, Ch. 12, Subch. IV Note

§ 713b. Income tax reduction

- 1) Each applicant, who is granted an industrial development certificate, shall have his income tax liability, for income derived from the business or industry for which the certificate is granted, and income from investments described in section 713d(c)(2), reduced on a current basis, as provided in this section.
 - a. All exemptions granted under section 713a of this title shall be made available to the applicant hereunder.
 - b. The option to choose the term and the percentage of its tax exemptions, granted under section 713a(b) of this title, shall be made available to the applicant hereunder.
 - c. Beneficiaries receiving subsidies of income taxes under this chapter prior to the effective date of this act who elect to have their income tax liability, or payments, date of this act who elect to have reduced on a current basis (after December 31, 1990), as provided in this section, must obtain a revised industrial development certificate evidencing this election, along with the terms thereof, prior to its implementation; provided, that no increase in the term or in the percentage of benefit shall be granted under this section than appertained at the date of the election to have its income tax liability or payments reduced on a current basis. Notwithstanding section 715(a) of this chapter, the Commission shall issue a revised certificate without public hearings, provided, that no beneficiary issued a certificate before January 1, 1987, and no successor beneficiary to whom benefits are transferred (from a predecessor beneficiary who received a certificate prior to January 1, 1987) may receive income tax exemptions prior to January 1, 1991.
 - d. An applicant may obtain the benefits effective only commencing with the first day of said applicant's taxable year for income tax purposes, or commencing one day after the due date for the payment of an installment of estimated income taxes by said applicant. If no payment of an installment of estimated income taxes by the applicant is due, then the date of commencement of the benefits under this section shall be the due date of such a payment if one were due from the applicant.
- 2) An applicant shall be entitled to:
 - i. reduce the amount of each payment of estimated income taxes by ninety percent (90%); and
 - ii. reduce his income tax liability shown on his income tax return for the taxable year by ninety percent (90%); for each of the remaining years specified in the revised industrial development certificate granted him under the provisions of this section. In the case of estimated income taxes such reduction shall be prorated over the quarterly payments due, or constructively due by the applicant, and in the case of the determination of his income tax liability, by the entire amount of the subsidy thus constructively calculated.
- 3) The reduction of income tax liability on a current basis of, or the reduction of income taxes otherwise payable by, applicants entitled to such reduction shall be applicable with respect to all of the computations, assessments, and collection of such income taxes, as provided by the 1954 Internal Revenue Code, as amended, and with respect to the payment of the estimated income taxes, as provided by *sections 6105, 6153, 6154 and 6201 of the 1954 Internal Revenue Code*, as amended.

- 4) An individual whose permanent residence is in the United States Virgin Islands; a corporation which is organized under the laws of the United States Virgin Islands; or a corporation organized under the laws of the United States, or one of the States, territories or Commonwealth thereof, whose principal office is located in the United States Virgin Islands, is presumed to continue to be permanently domiciled in the United States Virgin Islands for purposes of this section, unless it is established that such residency or domicile has been superceded by a new residence or domicile.
- 5) **(1)** This subsection applies to:
1. shareholders, members, partners, grantors, beneficiaries, or other direct or indirect owners who are bona fide residents of the Virgin Islands pursuant to *section 932(c) of the Internal Revenue Code of 1986*, as amended and who have been approved for tax reductions by the Economic Development Commission; and
 2. entities, including without limitation, corporations, trusts, partnerships and limited liability companies, established in, qualified, or registered to do business in the Virgin Islands which have been approved for tax reductions by the Economic Development Commission.
- ii. The shareholders, members, partners, grantors, beneficiaries, or other owners referenced in paragraph (1) of this subsection are entitled to a ninety percent (90%) reduction on income taxes payable with respect to income derived from the dividends paid to them or the distributive share allocated to them by the beneficiary, as applicable, and which dividends or distributive shares are attributable to income derived from the business or industry for which the certificate is granted and income from investments described in section 713d(c)(2).

HISTORY: -Added Jan. 8, 1982, No. 4665, § 12, Sess. L. 1981, p. 294; amended Dec. 8, 1986, No. 5224, § 1(22), (23), Sess. L. 1986, p. 348; Feb. 1, 2001, No. 6390, § 13, Sess. L. 2000, p. 408; Sept. 1, 2005, No. 6748, § 3, Sess. L. 2005, p. -.

NOTES:

HISTORY

Revision note

-1998.

Substituted "United States Virgin Islands" for "Virgin Islands" in subsections (d) and (e) for purposes of clarity pursuant to section 14 of Title 1.

-1986.

Substituted "section 713a of this title" for "section 713a hereof" in subsecs. (a)1 and 2 to conform references to V.I.C. style pursuant to section 14 of Title 1.

References in text.

Section 6105 of the 1954 Internal Revenue Code, referred to in subsec. (c), was classified to *26 U.S.C. § 6105*, which was repealed by Pub. L. 94-455, Title XIX, § 1906(a)(7), Oct. 4, 1976, 90 Stat. 1824.

Section 6153 of the 1954 Internal Revenue Code, referred to in subsec. (c), was classified to *26 U.S.C. § 6153*, which was repealed by Pub. L. 98-369, Title IV, § 412(a)(3), July 18, 1984, 98 Stat. 792.

Section 6154 of the 1954 Internal Revenue Code, referred to in subsec. (c), was classified to 26 U.S.C. § 6154, which was repealed by Pub. L. 100-203, Title X, § 10301(b)(1), Dec. 22, 1987, 101 Stat. 1330-429.

Section 6201 of the 1954 Internal Revenue Code, referred to in subsec. (c), is classified to 26 U.S.C. § 6201.

Amendments

-2005.

Act 6748, § 3, rewrote subsection (e).

-2000.

Rewrote subsection (e).

-1986.

Subsection (a): Amended generally.

Subsection (b): Amended generally.

Subsection (e): Added.

Effective date of amendments

-1986.

Act Dec. 8, 1986, No. 5224, § 10(a), Sess. L. 1986, p. 365, provided that the section of the act which amended this section shall take effect January 1, 1987, provided, however, that the exchange of tax subsidies for tax exemptions or reductions shall not take effect until October 1, 1987.

HIERARCHY NOTES:

Tit. 29 Note

Tit. 29, Ch. 12 Note

Tit. 29, Ch. 12, Subch. IV Note

§ 713c. Customs duty reduction

Notwithstanding any other law, raw materials and component parts (as defined by the Commission) brought into the United States Virgin Islands by a beneficiary for the purpose of producing, creating or assembling an article, good or commodity as a result of industrial or manufacturing processing such raw materials or component parts shall be imported into the United States Virgin Islands at a customs duty rate of one percent (1%).

HISTORY: -Added Dec. 8, 1986, No. 5224, § 1(24), Sess. L. 1986, p. 350.

NOTES:

HISTORY

Revision note

-1998.

Substituted "United States Virgin Islands" for "Virgin Islands" in the section for purposes of clarity pursuant to section 14 of Title 1.

Effective date.

Act Dec. 8, 1986, No. 5224, § 10(a), Sess. L. 1986, p. 365, provided that the section of the act which added this section shall take effect January 1, 1987, provided, however, that the exchange of tax subsidies for tax exemptions or reductions shall not take effect until October 1, 1987.

HIERARCHY NOTES:

Tit. 29 Note

Tit. 29, Ch. 12 Note

Tit. 29, Ch. 12, Subch. IV Note

§ 713d. Exemption and partial exemption of tax on interest and dividends; withholding

- 1) Every person who receives a payment of dividends or interest subject to the tax imposed by *section 871(a)(1) or 881 of the Internal Revenue Code* (as it applies in the United States Virgin Islands) from an applicant granted an industrial development certificate as hereunder provided, and every such applicant subject to a tax on a dividend equivalent amount imposed by *section 884 of the Internal Revenue Code* (as it applies to the United States Virgin Islands) shall be exempted from the payment of 100% of such tax on interest and of that percentage of such tax on dividends and dividend equivalent amounts as is determined pursuant to subsection (c) of this section, to the extent that such dividends, interest and dividend equivalent amounts are derived from or related to the business or industry for which the said certificate has been granted.
- 2) An applicant granted an industrial development certificate as hereunder provided shall be exempted from the requirement to withhold tax pursuant to *sections 1441 and 1442 of the Internal Revenue Code* (as it applies in the United States Virgin Islands) with respect to the payments and dividend equivalent amounts referred to in subsection (a) of this section to the extent that such payments and dividend equivalent amounts are exempt from the tax described in said subsection.
- 3) (1) The percentage of exemption from tax on dividends and dividend equivalent amounts referred to in subsection (a) of this section shall be 60% unless the conditions of paragraph (2) of this subsection are met, in which case the percentage shall be 80%.
- 4) (2) The percentage of exemption of 80% shall apply with respect to the tax on dividends and dividend equivalent amounts paid by an applicant granted an industrial development certificate who, at any time from the beginning of each taxable year that the certificate is in effect, but not later than ninety (90) days after the date of filing of the corresponding income tax return for such taxable year, places, invests, and maintains, for a fixed term of not less than (5) years, not less than fifty percent (50%) of its net income derived from the business or industry for which an industrial development certificate has been granted for such year after the payment of the taxes provided by law, in the payment of the balance of the principal of any debt by law, in the payment of the incurred by the applicant for the acquisition of property to be devoted to said business or industry or in any of the following:
 - (A) obligations of the Government of the United States Virgin Islands or any of its instrumentalities;

- (B) mortgage loans or loans guaranteed by an instrumentality or agency of the Government of the United States Virgin Islands or of the Government of the United States for the financing of the construction or acquisition or improvement of housing in the United States Virgin Islands;
- (C) loans for the construction, expansion or purchase of industrial buildings or industrial land, and for the acquisition of machinery and equipment or working capital utilized in businesses or industries granted industrial development benefits;
- (D) loans of the Virgin Islands Government Development Bank;
- (E) commercial loans in excess of one million dollars made to Virgin Islands borrowers or borrowers in the Virgin Islands that (i) have been rejected by, or not approved within 30 days from the date a written loan application has been made to, any licensed Virgin Islands financial institution; and (ii) bear interest at an interest rate of not less than five percentage points above the Federal Home Loan Mortgage Corporation's posted yield on the last business day of the month on thirty-year standard conventional fixed-rate mortgages committed for delivery within sixty days, rounded to the nearest one-fourth percent, which rate shall take effect (a) on the first day of the immediately subsequent month and continue in effect for the remainder of said month, and (b) apply to all commitments made by a beneficiary during such month. If for any reason, the Federal Home Loan Mortgage Corporation ceases its auction, temporarily or permanently, the index in the preceding sentence shall be based on the Federal Home Loan Bank Board's average monthly contract rate. All existing and future beneficiaries are permitted to make such loans without modification of their certificates;
- (F) capital contributions in excess of one million dollars made to Virgin Islands business entities or business entities in the Virgin Islands. All existing and future beneficiaries are permitted to make such capital contributions without modification of their certificates.
 - (i) All loans and investments made under subparagraphs (E) and (F) must be registered with the Economic Development Commission within thirty days after the investment or loan was made.
 - (ii) For the purposes of this paragraph, the prime interest rate is determined by the Lieutenant Governor pursuant to *title 9, section 183 of the Virgin Islands Code*.
 - (iii) All companies wishing to make loans under this section must register with and provide quarterly reports to the Office of the Lieutenant Governor.
- (G) any other loans, obligations, or investments approved by the Governor and the Legislature of the United States Virgin Islands.

HISTORY: -Added Dec. 8, 1986, No. 5224, § 1(25), Sess. L. 1986, p. 350; amended Sept. 1, 2005, No. 6748, § 4, Sess. L. 2005, p. -; Oct. 17, 2005, No. 6793, § 8, Sess. L. 2005, p. -.

NOTES:

HISTORY

Revision note

-1998.

Substituted "United States Virgin Islands" for "Virgin Islands" throughout the section for purposes of clarity pursuant to section 14 of Title 1.

-1996.

Substituted "subsection (a) of this section" for "subsection (a)" and "paragraph (2) of this subsection" for "paragraph (2)" following "conditions of" in subsec. (c)(1) to conform references to V.I.C. style pursuant to section 14 of Title 1.

Substituted "Government of the United States Virgin Islands" for "Government of the Virgin Islands" throughout subsecs. (c)(2)(A) and (c)(2)(B) for purposes of clarity pursuant to section 14 of Title 1.

References in text.

Sections 871, 881 and 884 of the Internal Revenue Code, referred to in subsec. (a), are classified to 26 U.S.C. §§ 871, 881 and 884.

Sections 1441 and 1442 of the Internal Revenue Code, referred to in subsec. (b), are classified to 26 U.S.C. §§ 1441 and 1442.

Amendments

-2005.

Act 6748, § 4, in subsection (c)(2)(D), deleted "or" at the end; redesignated subsection (c)(2)(E) as (c)(2)(G), and inserted (c)(2)(E) and (c)(2)(F).

Act 6793, § 8, deleted "either" before "(i)" and substituted "and" for "or" before "(ii)" in subsection (c)(2)(E).

Effective date.

Act Dec. 8, 1986, No. 5224, § 10(d), Sess. L. 1986, p. 365, provided that the section of the act which added this section shall take effect on January 1, 1987 with respect to United States corporations subject to the tax imposed pursuant to *sections 881 and 884 of the federal Internal Revenue Code [26 U.S.C. §§ 881 and 884]* (as it applies in the Virgin Islands) and to payments made to such corporations, and on the same date as sections 3, 4, and 5 take effect with respect to all other persons and payments.

HIERARCHY NOTES:

Tit. 29 Note

Tit. 29, Ch. 12 Note

Tit. 29, Ch. 12, Subch. IV Note

§ 713e. Tax exemptions for the production of affordable housing

- 1) Notwithstanding any other provision of law to the contrary, in order to carry out the purposes of the Act, every person, firm, partnership, joint venture or corporation providing affordable housing pursuant to an approved Affordable Housing Development Agreement entered into with the Government of the United States Virgin Islands pursuant to the United States Virgin Islands Affordable Housing Program shall be entitled to an exemption from payment of the following taxes:
 - a. all gross receipts taxes related to receipts, cash or accrued, derived from or directly connected with the production of affordable housing units under the Act, but if such receipts are derived from or effectively connected with the production of affordable housing units

- under the Act and other housing units or other types of construction, then the provider of affordable housing under the said Act must allocate the gross receipts between the housing units under the Act and the other construction, based on the provider of affordable housing's total cost of construction. The provider of affordable housing must only claim an exemption for the portion of the receipts allocated to the production of affordable housing units under the Act. The costs of any common facilities must also be allocated between the housing units under the Act and the other construction;
- b. all excise taxes on building materials, articles, supplies, goods, merchandise, tools manufactured or brought into the United States Virgin Islands on or after April 1, 1990, to be used or employed exclusively in the production of affordable housing units under the Act;
 - c. all customs duties in excess of a 1% handling charge on all materials, goods, tools, equipment, articles and commodities imported into the United States Virgin Islands to be used exclusively for the production of affordable housing under an approved Affordable Housing Development Agreement under the program.
- 2) In addition to the exemptions provided in subsection (a), every person, firm, partnership, joint venture or corporation qualifying under subsection (a) of this section, shall have all corporate and individual income tax liability reduced to zero for a period equal to the term of the applicable Affordable Housing Development Agreement or applicable construction, operation or management agreement with respect to income derived: (1) from the construction of affordable housing units under the United States Virgin Islands Affordable Housing Program; (2) from or effectively connected with the sale or rental of affordable housing under the United States Virgin Islands Affordable Housing Program, whether such housing is new construction, rehabilitated or improved; (3) from the operation or management of such affordable housing during the period in which it is not sold; or (4) where applicable, from the management of rental property, provided that, in addition to any prerequisites stated in the Act, the person seeking such exemption meets the following conditions:
- a. in the case of an individual or a partner in a firm or partnership or a participant in a joint venture, such person is a bona fide resident of the United States Virgin Islands, and in the case of a corporation, is created under the laws of the United States Virgin Islands;
 - b. such person meets the requirements of subsection (b) of *section 934 of the Internal Revenue Code of 1986*, as amended, or any other applicable provision of federal law, and the provisions of this section 713e, or any regulations issued under such laws;
 - c. such person undertakes to provide affordable housing as provided in the Act.
- 3) The exemptions granted in this section shall apply to any vendor of construction supplies and material for use in affordable housing projects pursuant to the Affordable Housing Program authorized by Title 29, chapter 16, Virgin Islands Code, in the same manner that such exemption is applied to providers of affordable housing.
- 4) Notwithstanding any provision of law to the contrary, the exemption from payment of gross receipts taxes set forth in paragraph (1) of subsection (a) of this section, shall also be granted to all subcontractors for work performed on affordable housing projects pursuant to the United States Virgin Islands Affordable Housing Program in the same manner that such exemption is applied to providers of affordable housing.
- 5) Any person entitled to the tax benefits hereby conferred shall apply to the Director under this chapter for an appropriate certificate of tax exemption. Certificates shall be approved or disapproved by the Commission and the Governor in accordance with rules and regulations promulgated by the Commission. In considering an application for a certificate, the Director shall consult with the

Department or the VIHFA as the case may be to determine whether the applicant for tax benefits hereunder is in default under the Affordable Housing Development Agreement signed by the applicant or under any other agreement or arrangement undertaken by the applicant in connection with the program.

- 6) Subject to the approval of the Governor, the Commission shall issue rules and regulations, consistent with this section and the Act, as may be necessary and appropriate to implement this section.
- 7) No loan made pursuant to any provision of this Act, including, without limitation, any loan to finance the construction, rehabilitation, improvement, or purchase of affordable housing under this Act, shall be considered a below-market loan for the purposes of *section 7872 of the Internal Revenue Code of 1986*, as amended. Accordingly, no interest in excess of the rate charged on a loan shall be imputed as income with regard to any loan made pursuant to any provision of this Act.
- 8) A developer agreement with the Housing Finance Authority entered into by such Authority in connection with mortgage revenue bonds issued by such Authority before December 1, 1990, pursuant to the provisions of applicable Federal tax law shall be treated for all purposes of this section as an approved Affordable Housing Development Agreement entered into pursuant to the Affordable Housing Program for the production of affordable housing units under the Low and Moderate Income Affordable Housing Act of 1990, as amended.
- 9) A developer who has entered into an Affordable Housing Development Agreement with the Virgin Islands Housing Finance Authority for the construction, rehabilitation or improvement of housing units under the Low and Moderate Income Affordable Housing Act of 1990, as amended, for a project included in an Affordable Housing Plan, which is approved pursuant to Title 21, chapter 2, Virgin Islands Code, shall automatically receive a certificate of exemption from taxes as provided under this section.

HISTORY: -Added Mar. 19, 1990, No. 5523, § 13, Sess. L. 1990, p. 64; amended June 8, 1990, No. 5575, §§ 1(b), 2, Sess. L. 1990, p. 226; Jan. 3, 1991, No. 5694, Sess. L. 1990, p. 588; May 3, 1994, No. 5978, §§ 3(g), (h), 7, Sess. L. 1994, p. 67.

NOTES:

HISTORY

Revision note

-1998.

Substituted "United States Virgin Islands" for "Virgin Islands" in subdivision (a)(2) for purposes of clarity pursuant to section 14 of Title 1.

Substituted "this section" for "Act" throughout the section pursuant to section 14 of Title 1.

-1996.

Substituted "Government of the United States Virgin Islands" for "Government of the Virgin Islands" in subsec. (a) for purposes of clarity pursuant to section 14 of Title 1.

Redesignated items (i)-(iii) as pars. (1)-(3) in subsec. (b) in view of the redesignation of former subsec. (a)(4) as subsec. (b) for purposes of conformity with general V.I.C. style pursuant to section 14 of Title 1.

Substituted "paragraph" for "item" following "set forth in" in subsec. (c) to conform reference to V.I.C. style pursuant to section 14 of Title 1.

References in text.

Section 934 of the Internal Revenue Code of 1986, referred to in subsec. (b)(2), and *section 7872 of the Internal Revenue Code of 1986*, referred to in subsec. (f), are classified to 26 U.S.C. §§ 934 and 7872, respectively.

The Low and Moderate Income Affordable Housing Act of 1990, referred to in subsecs. (g) and (h), is classified to Title 29, chapter 16, Virgin Islands Code.

Amendments

-1994.

Subsection (b): Added the undesignated concluding paragraph following paragraph (3).
Subsection (d): Inserted "or the VIHFA as the case may be" following "Department" in the third sentence.
Subsection (h): Added.

-1990.

Act No. 5575 inserted "in excess of a 1% handling charge" following "customs duties" and made a minor change in punctuation in subsec. (a)(3), redesignated former subsec. (a)(4) as subsec. (b), substituted "in addition to the exemptions provided in subsection (a), every person, firm, partnership, joint venture or corporation qualifying under subsection (a) of this section, shall have all corporate and individual income tax liability reduced to zero" for "all corporate and individual income taxes" preceding "for a period equal" in that subsection, and redesignated former subsecs. (b)-(e) as subsecs. (c)-(f).

Act No. 5694 added subsec. (g).

Severability of enactment.

See Act March 19, 1990, No. 5523, § 14, Sess. L. 1990, p. 66 and *1 V.I.C. § 51*.

Tax exemptions contingent upon use of vocational education students in construction of affordable housing.

Act March 19, 1990, No. 5523, § 18, Sess. L. 1990, p. 67, provided:

"(a)

The tax exemptions described in Section 13 of this Act shall not be available to any provider of affordable housing unless that provider agrees to hire and train, on a part time basis for the duration of the construction project, no fewer than eight students enrolled in vocational education programs in the Virgin Islands; provided, that at least two students shall be chosen from each of the fields of plumbing, electrical work, carpentry and masonry.

"(b)

Upon completion of the construction project, the students will be issued certificates of participation in the program."

CROSS REFERENCES

Exemption from duty on items imported for affordable housing production, see § 527 of Title 33.

HIERARCHY NOTES:

Tit. 29 Note

Tit. 29, Ch. 12 Note

Tit. 29, Ch. 12, Subch. IV Note

§ 714. Special provisions or limitations

- 1) Applicants for benefits under section 713a or section 713b of this subchapter shall be granted an additional five years of tax exemption and subsidy at one hundred (100%) percent of benefits (or, at applicant's option, ten years at fifty (50%) percent of benefits or any proportionate gradation thereof) in consideration for the location of their businesses or industries in the economically depressed town or country district of Frederiksted, St. Croix, or any other town or country district of the territory declared by the Commission to be economically depressed.
- 2) An applicant granted benefits under section 713a or section 713b of this subchapter shall be allowed the option, to be exercised prior to the issuance of the industrial development benefit certificate, of determining when any or all of said benefits shall commence, provided, that all of said benefits shall commence at some point during the first five years of operation of the beneficiary's enterprise.
- 3) The total of benefits granted a single business or industry under this chapter, operated in whole or in part by a person or entity other than the owner, shall in no event be greater than if such enterprise were operated solely by said owner, however, this provision shall not be construed as limiting any private agreement between an owner and operator of an enterprise regarding the disposition of the proceeds of those benefits between said parties.
- 4) If the beneficiary owns and operates more than one enterprise in the United States Virgin Islands, benefits granted under this chapter shall apply only to those specified in the certificate.
- 5) With respect to a corporation, partnership, including a general partnership, limited partnership, limited liability partnership, or limited liability limited partnership, the Commission shall review the ownership structure, or the proposed ownership structure, of the corporation, partnership, limited liability company, trust or similar entity and may, upon review of the applicant's business plan or amended business plan, and consistent with the basic purposes and objectives of this chapter, limit the number of shareholders, partners, owner or beneficiary of the entity. Any new shareholder, partner, owner or beneficiary added to the entity after its application has been approved may not claim benefits under this chapter without the prior written approval of the Commission prior to the establishment of the new shareholder, partner owner or beneficiary of the entity. The Commission may adopt additional rules governing the approval of additional entities. The Commission shall provide to the applicant a written, detailed explanation of the basis for any withholding of approval.
- 6) Any entity, including without limitation, a limited liability company, that is disregarded for income tax purposes pursuant to *Treasury Regulation section 301.7701-3(b)(1)(ii)*, as applicable in the Virgin Islands, shall be similarly disregarded for all purposes of title 29, chapter 12 of the Virgin Islands Code, so that a beneficiary can establish directly or indirectly one or more such single-owner entities, and such entity or entities shall be considered to be a part of the beneficiary.
- 7) Notwithstanding anything herein to the contrary, and in addition to the benefits applicable under subsection (a) above, applicants for benefits under section 713a or 713b of this subchapter shall be granted an additional:
 - 8) ten years of tax exemption and subsidy at one hundred percent (100%) of benefits in consideration for the location of their business or industries in the town of Christiansted as defined in the Christiansted Town Limits Map on file with the Cadastral section of the Recorder of Deeds;
 - 9) **(ii)** fifteen years of tax exemption and subsidy at one hundred percent (100%) of benefits in consideration for the location of businesses or industries in the town of Frederiksted as defined in the Frederiksted Town Limits Map on file with the Cadastral section of the Recorder of Deeds; or

- 10) (iii) fifteen years of tax exemption and subsidy at one hundred percent (100%) of benefits if the business is agriculture or mariculture as defined in Category II of section 708(a) of this title. Furthermore, if a beneficiary qualifies for benefits under this subparagraph, it shall receive an additional ten (10) years of benefits, it is also the current holder of a certificate as defined in Category IIA of section 708(a) of this title, provided that the beneficiary is in compliance with all terms and conditions of the certificate.

HISTORY: -Added July 17, 1972, No. 3263, § 1, Sess. L. 1972, p. 205; amended Sept. 23, 1975, No. 3748, § 1, Sess. L. 1975, p. 152; Jan. 8, 1982, No. 4665, §§ 13, 14, Sess. L. 1981, p. 296; June 7, 2004, No. 6675, § 27, Sess. L. 2004, p. 47; Sept. 1, 2005, No. 6748, §§ 1(b), 2, Sess. L. 2005, p. -; Oct. 17, 2005, No. 6793, § 9, Sess. L. 2005, p. -.

NOTES:

HISTORY

Revision note

-1998.

Substituted "United States Virgin Islands" for "Virgin Islands" in subsection (d) for purposes of clarity pursuant to section 14 of Title 1.

Amendments

-2005.

Act 6748, § 1, redesignated former subsection (e) as (g) and inserted present subsection (e).

Act 6748, § 2, added subsection (f).

Act 6793, § 9, added "prior to the establishment of the new shareholder, partner owner or beneficiary of the entity. The Commission may adopt additional rules governing the approval of additional entities" at the end of the penultimate sentence in (e).

Effective date.

For effective date of this section, see note set out under section 701 of this title.

Amendments

-2004.

Act 6675, § 27, added subsection (e).

-1982.

Subsections (a) and (b): Substituted "section 713a or section 713b" for "section 713".

-1975.

Provided for additional years of tax exemption and subsidy for locating of tax exemption and subsidy for locating businesses or industries in economically depressed town or county district.

ANNOTATIONS

1. Construction. 2. Transfer.

1. Construction.

Phrase "total of benefits granted" in tax exemption statute refers to the total dollar amount of benefits granted, and not the total percentage of benefits granted. *10 V.I.Op.A.G. 89.*

Purpose of the legislature in providing industrial development benefits was to provide assistance to individual entities in exchange for fulfilling certain requirements set forth by statute. *10 V.I.Op.A.G. 89.*

2. Transfer.

If any business or entity is unable to realize industrial development income tax benefits due to inherent financial factors, such benefits cannot be created by passing on such benefits by private agreement. *10 V.I.Op.A.G. 93.*

HIERARCHY NOTES:

Tit. 29 Note

Tit. 29, Ch. 12 Note

Tit. 29, Ch. 12, Subch. IV Note

§ 714a. Extended tax benefits for producers of Virgin Islands rum

- a) Notwithstanding any other law, Virgin Islands producers of Virgin Islands rum, who possess an industrial development certificate, under the provisions of this chapter, shall receive extended benefits under sections 713a and 713b of this chapter, for a period of time equal to the greater of (1) twenty (20) years from the date of enactment of this section, or (2) the period of time during which any bonds, issued by the Government of the Virgin Islands pursuant to *48 USC § 1574a(a)* ("Matching Fund Bonds", in existence on the date of enactment of this section which remain outstanding. However, should the Government of the Virgin Islands after the enactment of this section, issue any new Matching Fund Bonds secured by United States excise taxes returnable to the Treasury of the Government of the Virgin Islands pursuant to section 28(b) of the Revised Organic Act of 1954 and *section 7652(b) of the United States Internal Revenue Code*, as amended, the period of time referenced in (2) hereof shall be the period of time during which any new Matching Fund Bonds remain outstanding.
- b) The provisions of section 715, of this chapter, shall not apply to the provisions of this section.

HISTORY: -Added Oct. 6, 2000, No. 6360, § 18, Sess. L. 2000, p. 420.

HIERARCHY NOTES:

Tit. 29 Note

Tit. 29, Ch. 12 Note

Tit. 29, Ch. 12, Subch. IV Note

§ 714b. Extended tax benefits for Virgin Islands processors and producers of milk and milk products

- a) Notwithstanding any other law, Virgin Islands processors and producers of milk and milk products, who possess an Industrial Development Certificate, under the provisions of this chapter, shall receive

29 V.I.C. § 714b

extended benefits under sections 713a, 713b, 713c and 713d of this chapter, for a period of time equal to twenty-five (25) years from the date of enactment of this section.

- b) The provisions of section 715 of this chapter shall not apply.

HISTORY: -Added Feb. 1, 2001, No. 6391, § 2(n), Sess. L. 2000, p. 453.

HIERARCHY NOTES:

Tit. 29 Note

Tit. 29, Ch. 12 Note

Tit. 29, Ch. 12, Subch. IV Note

§ 714c. Extended benefits for watch and jewelry manufacturing and assembly business

- a) Notwithstanding any other law, watch and jewelry manufacturing and assembly businesses that possess an industrial development certificate or an economic development certificate, under the provisions of this chapter, shall receive extended benefits under sections 713a, 713b, 713c and 713d of this chapter, for a period of time equal to the greater of (1) twenty (20) years from the date of enactment of this section, or (2) the period of time that the Federal Production Incentive Certificate Program provisions, which are set forth in the Harmonized Tariff Schedule of the United States, Supplement 1, Chapter 91, Additional U.S. Note 5 and Chapter 71, Additional U.S. Note, are in effect.
- b) The provisions of section 715, of this chapter, shall not apply to the provisions of subsection (a) of this section.

HISTORY: -Added Dec. 23, 2003, No. 6634, § 58, Sess. L. 2003, p. 159.

HIERARCHY NOTES:

Tit. 29 Note

Tit. 29, Ch. 12 Note

Tit. 29, Ch. 12, Subch. IV Note

§ 715. Certificate modifications, extensions or renewals; reopening of industries

- 1) Upon proper application or reapplication, public hearing and in compliance with all other relevant provisions of this chapter pertaining to the grant of initial benefits, as determined and required by the Commission, any recipient of industrial development benefits, granted either pursuant to this chapter or under previously existing law, may be granted an extension, modification or renewal of those benefits subject to the conditions stated herein.
 - a. Benefits granted hereunder shall be pursuant to the provisions of this chapter only, and not pursuant to the provisions of any previous law.

- b. Enterprises operating under certificates granted pursuant to pre-existing law as of the effective date of this chapter shall be eligible for modification of said certificates to obtain any enhanced industrial development benefits available hereunder.
 - c. The Commissioner of Labor shall certify the applicant's compliance with all labor laws, rules and regulations prior to extension, modification or renewal of benefits.
 - d. All benefits granted under this section shall be subject to the approval of the Governor.
- 2) Certificate extensions, modifications or renewals shall be for a period or periods approved by the Commission; however, no extension, modification or renewal of any exemption or subsidy benefit shall exceed an aggregate duration of more than five years at ninety (90%) percent of benefits, (or ten years at forty (40%) percent of benefits, or proportionate gradations thereof, at the applicant's option).
 - 3) The Commission shall not grant any extension or modification of benefits under an existing certificate or grant a new certificate unless it is determined at the time of the application or reapplication for same that the industry or business of the applicant is deserving of the benefits applied for and that it will or continues to promote the industrial development of the United States Virgin Islands.
 - 4) However, the Commission shall not grant any extension or modification under an existing certificate if that industry or business is expanded as a result of a merger of a similar business or acquisition of an existing business.
 - 5) In making such determination the Commission shall consider all of the following:
 - a. The amount of additional investment utilized in improving or expanding existing equipment or facilities.
 - b. Increase in employment of United States Virgin Islands residents and the progressive nature, or lack thereof, of the applicant's employment practices in general, including the scope and effectiveness of employee training programs designed to qualify United States Virgin Islands residents for employment or promotion within the applicant's industry or business.
 - c. Whether the industry or business continues to be compatible with the ecology of the United States Virgin Islands.
 - d. Such other criteria as are required to be applied in determining qualification for the initial industrial development certificate under this chapter as are appropriate, as determined by the Commission.
 - 6) Notwithstanding the other provisions of this section, and consistent therewith, it is specifically contemplated that this section may be utilized to permit the granting of exemption and subsidy benefits for the continuation or reopening of businesses or industries which have previously enjoyed such benefits but which the Commission deems to be a particular importance to the economy of the United States Virgin Islands and finds could not otherwise continue or reopen.

HISTORY: -Added July 17, 1972, No. 3263, § 1, Sess. L. 1972, p. 205; amended Sept. 23, 1975, No. 3748, § 1, Sess. L. 1975, p. 153; Dec. 2, 1999, No. 6333, § 32, Sess. L. 1999, p. 206; Sept. 1, 2005, No. 6748, § 14, Sess. L. 2005, p. -.

NOTES:

HISTORY

Revision note**-1998.**

Substituted "United States Virgin Islands" for "Virgin Islands" in subsections (c) and (d) for purposes of clarity pursuant to section 14 of Title 1.

Amendments**-2005.**

Act 6748, § 14, in subsection (b), substituted "ninety (90%)" for "one hundred (100%)" and "forty (40%)" for "fifty (50%)."

-1999.

Subsection (c): Added the second paragraph.

-1975.

Provided for extension, modification or renewal of grants of initial benefits subject to certain conditions.

Effective date.

For effective date of this section, see note set out under section 701 of this title.

ANNOTATIONS

1. Extension of industrial development benefits.

1. Extension of industrial development benefits.

Where legislature had, by this section, established standards for extension of industrial development benefits and had given Industrial Development Commission power, subject to the Governor's approval, to extend the benefits in particular cases, the legislature could not by another statute (Act 1977, No. 4047, § 2, Sess. L. 1977, p. 242) provide that the Commissioner of Commerce (by which was presumably meant the Industrial Development Commission and Governor) must grant extensions of benefits to costume jewelry manufacturers and pharmaceutical products, as such provision was an unconstitutional usurpation of executive authority by the legislature. *8 V.I.Op.A.G. 94.*

HIERARCHY NOTES:

Tit. 29 Note

Tit. 29, Ch. 12 Note

Tit. 29, Ch. 12, Subch. IV Note

Subchapter V. Administration and Procedure**§ 716. Applications to Director; report to Commission**

- a) Applications for industrial development benefits shall be filed with the Director on forms to be designed, printed and provided by him or at his direction. All applications of partnerships shall include a list of the names and addresses of the partners. All applications from a corporation shall include a statement listing the names and addresses of all persons, firms or corporations owning five or more percent of the stock or equitable interest in the enterprise filing the application, which

statement shall specify the percentage of stock or equitable interest owned by each such listed person, firm or corporation and, in the case of such a firm or corporation, shall also specify the names of its directors and principal officers. All applications of limited liability companies shall include a list of the names and addresses of the members. If the applicant is granted an industrial development certificate, the holder of such certificate shall annually file in the office of the Lieutenant Governor, not later than April 15, a report authenticated by the beneficiary's president, vice-president or other authorized officer or employee, listing the names and addresses of all persons owning five or more percent of the stock or equitable ownership in the benefitted business or industry of such certificate holder, which report shall specify the percentage of stock or equitable interest owned by each such listed person. The report must also include the names and addresses of all legal or equitable owners of such benefitted business who have or will claim benefits under this chapter as bona fide residents of the Virgin Islands. The Director shall carefully review all such applications and undertake such preliminary research and investigations, including, but not limited to the reputation, business background and experience of the applicant, as he deems necessary in formulating his recommendations with regard to same.

- b) The Director shall, within forty-five (45) working days after receiving an application for industrial development benefits, submit such application to the Commission Chairman accompanied by a detailed report containing his findings and recommendations with regard to that application. The Director shall, prior to submitting his recommendations, consult with the Virgin Islands Planning Office and any other governmental department or agency possessing expertise regarding a particular application, and shall conduct such other investigations or inquiries as he deems appropriate. The Director may recommend that all industrial development benefits available under this chapter be granted or may recommend the certificate be denied outright or until such time as the applicant effects specific changes in his investment proposals.

HISTORY: -Added July 17, 1972, No. 3263, § 1, Sess. L. 1972, p. 207; amended Aug. 11, 1972, No. 3293, Sess. L. 1972, p. 430; Dec. 21; 1973, No. 3504, § 1, Sess. L. 1973, p. 295; Sept. 23, 1975, No. 3748, § 1, Sess. L. 1975, p. 154; Oct. 27, 1980, No. 4502, § 1(f), Sess. L. 1980, p. 238; Feb. 12, 1998, No. 6204, § 6(c), Sess. L. 1998, p. 100; Sept. 1, 2005, No. 6748, § 1(c), Sess. L. 2005, p. -.

NOTES:

HISTORY

Amendments

-2005.

Act 6748, § 1, added the next to last sentence in subsection (a).

-1998.

Subsection (a): Added the fourth sentence.

-1980.

Subsection (a): Inserted sentence beginning "All applications of partnerships" after first sentence.

-1975.

Provided that applications for industrial development benefits shall be filed with the Director and that the holder of an industrial development certificate shall annually file a report in the office of the Lieutenant Governor.

Effective date.

For effective date of this section, see note set out under section 701 of this title.

Legislative intent of 1980 amendment.

See Act Oct. 27, 1980, No. 4502, § 2, Sess. L. 1980, p. 239.

CROSS REFERENCES

Planning Office as Division of Planning within Department of Planning and Natural Resources, see § 402 of Title 3.

ANNOTATIONS

1. Generally.

1. Generally.

A corporation is not entitled to exemptions or subsidy until application therefore is filed and hearing had. *4 V.I.Op.A.G. 92.* (Decided under prior law.)

HIERARCHY NOTES:

Tit. 29 Note

Tit. 29, Ch. 12 Note

§ 717. Action by Commission; public hearings

- a) Upon receiving the report and recommendations of the Director on a particular application the Commission shall, after due public notice, hold a public hearing on said application, of which a verbatim transcript shall be taken, at which hearing all interested parties, including members of the public, shall have an opportunity to appear and testify. After carefully considering all relevant factors regarding an application for industrial development benefits, the Commission shall make its determination regarding whether said benefits should be granted or denied, and shall prepare and submit to the Governor and the applicant a detailed report containing its findings thereon.
- b) A finding that said benefits should be denied shall be final and not subject to review by the Governor, and the report submitted to the applicant shall constitute official notice of the denial of benefits. Said report of denial shall describe in detail the reasons for said denial and may specify changes in the investment proposal which would likely lead to a more favorable consideration of a future benefit application.
- c) A report finding that said benefits should be granted shall be subject to the approval of the Governor as provided in section 717a, and in this event the Commission shall submit the public hearing transcript and all other relevant data to the Governor along with its reports for the Governor's consideration.

HISTORY: -Added Sept. 23, 1975, No. 3748, § 1, Sess. L. 1975, p. 155.

NOTES:

HISTORY

Effective date.

For effective date of this section, see note set out under section 701 of this title.

HIERARCHY NOTES:

Tit. 29 Note

Tit. 29, Ch. 12 Note

§ 717a. Action by Governor and Commission

Upon receiving a finding from the Commission that industrial development benefits applied for should be granted, the Governor shall proceed to make his determination as to whether to approve the Commission's finding.

- a) If the Governor approves the Commission's finding he shall certify his approval forthwith to the Commission, which shall then proceed to issue the appropriate certificate.
- b) If the Governor disapproves the Commission's finding, he shall certify his disapproval forthwith to the Commission, accompanied by specific reasons for the disapproval and, at the Governor's discretion, specifying changes in the investment proposal which would likely lead to his more favorable consideration of a future benefit application. The Commission shall then forward a copy of the Governor's disapproval and accompanying comments to the applicant, which copy shall constitute official notice of the denial of benefits.
- c) If, after 60 calendar days, excluding Sundays and holidays, have elapsed from the date of receipt of the Commission's findings, the Governor has neither actively approved nor disapproved the issuance of an industrial development certificate, the issuance of said certificate shall be deemed approved, and the Commission shall then proceed to issue the appropriate certificate.

HISTORY: -Added Sept. 23, 1975, No. 3748, § 1, Sess. L. 1975, p. 156.

HIERARCHY NOTES:

Tit. 29 Note

Tit. 29, Ch. 12 Note

§ 718. Contents of certificate

- a) An industrial development certificate shall be issued by the Commission in the name of the Government of the United States Virgin Islands and shall bear the signature of the Commission Chairman. The certificate shall specify all of the following:
 - a. In the case of a non-publicly owned corporation, a partnership, including a general partnership, limited partnership, limited liability partnership or limited liability limited partnership; a limited liability company; a trust, or similar entity, the names and addresses of all shareholders, partners, owners or beneficiaries.
 - b. The line or lines of businesses for which benefits have been granted.

- c. The date by which the required financial investment shall have been completed by the beneficiary.
 - d. Subject to the provision of section 714(b) of this chapter, the date or dates upon which benefits shall commence, which date may be retroactive to the first date of investment by the beneficiary in the industry or business granted the certificate, but such date shall not be before the effective date of this chapter.
 - e. The specific commencement and termination dates for the benefits granted under the certificate.
 - f. Such other conditions as the Commission shall deem appropriate, not inconsistent with the provisions of this chapter or regulations promulgated hereunder.
- b) In addition to the foregoing specifications, the certificate shall include a recital that it is conditioned upon the performance and observance of same by the beneficiary within a period of time specified, and upon the final determination of the Secretary of the Treasury of the United States or his delegate, of compliance with the requirement of *Internal Revenue Code section 934* or *936*. Upon failure of the beneficiary to perform or observe the conditions as required by the Commission within the specified period, or any extension thereof granted for good cause shown to the Commission, the certificate shall be deemed to be of no force and effect, and the beneficiary shall pay or refund as the case may be, to the Government of the United States Virgin Islands the amount of any benefit actually received under the certificate. Upon a final determination by the Secretary of the Treasury of the United States or his delegate that the beneficiary has not complied with the requirement of *Internal Revenue Code section 934* or *936*, the beneficiary shall pay or refund, as the case may be, to the Government of the United States Virgin Islands, the amount of any subsidy benefits, based on income tax liability, actually received, or the amount of the reduction of income tax liability on a current basis for all the years of non-compliance.

HISTORY: -Added Sept. 23, 1975, No. 3748, § 1, Sess. L. 1975, p. 156; amended Jan. 8, 1982, No. 4665, § 15, Sess. L. 1981, p. 297; Dec. 8, 1986, No. 5224, § 1(26), Sess. L. 1986, p. 352; Sept. 1, 2005, No. 6748, § 1(d), Sess. L. 2005, p. -.

NOTES:

HISTORY

Revision note

-1996.

Substituted "Government of the United States Virgin Islands" for "Government of the Virgin Islands" throughout subsecs. (a) and (b) for purposes of clarity pursuant to section 14 of Title 1.

-1986.

Deleted "the" preceding "*Internal Revenue Code section 934* or *936*" in the third sentence of subsection (b) in light of amendment by Act Dec. 8, 1986, No. 5224, § 1(26), Sess. L. 1986, p. 352.

References in text.

Sections 934 and *936 of the Internal Revenue Code*, referred to in the first and third sentences of subsec. (b), are classified to 26 U.S.C. §§ 934 and 936.

Amendments

-2005.

Act 6748, § 1, in subsection (a), added present paragraphs (1) and (2) and renumbered former paragraphs (1) through (4) as (3) through (6).

Effective date.

For effective date of this section, see note set out under section 701 of this title.

Amendments

-1986.

Subsection (b): Substituted "*Internal Revenue Code section 934 or 936*" for "*I.R.C. § 934*" following "requirement of" at the end of the first sentence and following "requirement of" in the third sentence.

-1981.

Subsection (b): Added "or the amount of the reduction of income tax liability on a current basis for all the years of non-compliance" following "actually received" at the end of the last sentence.

Effective date of amendments

-1986.

Act Dec. 8, 1986, No. 5224, § 10(a), Sess. L. 1986, p. 365, provided that the section of the act which amended this section shall take effect January 1, 1987, provided, however, that the exchange of tax subsidies for tax exemptions or reductions shall not take effect until October 1, 1987.

HIERARCHY NOTES:

Tit. 29 Note

Tit. 29, Ch. 12 Note

Subchapter VI. Miscellaneous Provisions

NOTES:

HISTORY

Industrial Development Commission certificates-Transfer of benefits under previously issued certificates.

Act Dec. 8, 1986, No. 5224, § 9(c), Sess. L. 1986, p. 364, provided:

- 1) This subsection applies to any corporation which received a certificate of benefits under Title 29, chapter 12, Virgin Islands Code, prior to January 1, 1987.
- 2) Notwithstanding *Title 29, section 719, Virgin Islands Code*, any person who, after January 1, 1987, forms a corporation which:
 - a. is incorporated in a State of the United States (or the District of Columbia);
 - b. is the successor in interest of all of the assets and liabilities of a beneficiary corporation;
 - c. applies to the Executive Director of the Industrial Development Commission for a transfer of the certificate for the unexpired portion of the term of the certificate; and

- d. is otherwise qualified to receive the benefits of the certificate; then such corporation shall be entitled to the transfer of benefits, if the Executive Director, without a hearing, determines that the applicant will carry on the operation of the industry or business for which the certificate was granted. However, such a transferee of benefits shall not be entitled to receive an income tax exemption prior to January 1, 1991."

Grounds for denial of new certificates to certain organizations.

Act Dec. 8, 1986, No. 5224, § 9(d), Sess. L. 1986, p. 365, provided:

"After January 1, 1987, and until December 31, 1990, the Industrial Development Commission shall refuse to grant a certificate to an applicant for benefits if the Commission finds that:

"(1)

the applicant's business or industry will be the same or substantially the same enterprise under the same or substantially the same ownership as another beneficiary whose benefit period has not expired; and

"(2)

the applicant is applying for a new certificate for the purpose of receiving income tax exemptions in lieu of income tax subsidies prior to January 1, 1991."

HIERARCHY NOTES:

Tit. 29 Note

Tit. 29, Ch. 12 Note

§ 719. Transferability of certificates

An industrial development certificate granted under the provisions of this chapter may be transferred, for the unexpired portion of the term of the certificate, to another person, corporation, partnership, who or which succeeds the beneficiary in carrying on or in operating the industry or business for which the certificate is granted, upon determination of the Commission that such person, corporation or partnership, is otherwise qualified to receive such benefits and provided the industrial or business activity with respect to which the certificate was granted is continued by the said person, corporation or partnership. Thereafter the transferor of the certificate shall lose all industrial development benefits under this chapter and shall be subject to the operation of the tax laws of the United States Virgin Islands.

HISTORY: -Added Sept. 23, 1975, No. 3748, § 1, Sess. L. 1975, p. 157; amended Oct. 27, 1980, No. 4502, § 1(g), Sess. L. 1980, p. 238.

NOTES:

HISTORY

Revision note

-1998.

Substituted "United States Virgin Islands" for "Virgin Islands" for purposes of clarity pursuant to section 14 of Title 1.

Amendments

-1980.

Rewritten to include partnerships.

Effective date.

For effective date of this section, see note set out under section 701 of this title.

Legislative intent of 1980 amendment.

See Act Oct. 27, 1980, No. 4502, § 2, Sess. L. 1980, p. 239.

HIERARCHY NOTES:

Tit. 29 Note

Tit. 29, Ch. 12 Note

Tit. 29, Ch. 12, Subch. VI Note

§ 720. Computation and determination of subsidy

- 1) The Director of the Virgin Islands Bureau of Internal Revenue, upon application for payment made by a beneficiary entitled to subsidy under the provisions of this chapter and after audit, shall compute and determine currently the amount of such subsidy. Upon certification of the Director of the Economic Development Commission, the proper officers are hereby authorized to make payments of the subsidy in each case to the beneficiary entitled to receive the same from funds in the special account in the Treasury of the United States Virgin Islands designated as the "Industrial Development Fund", as provided for in subsection (b) of this section.
- 2) Import duties or income tax payments made by persons qualifying for industrial development certificates under the provisions of this chapter shall be covered into a special account in the Treasury of the United States Virgin Islands to be designated as the "Industrial Development Fund". The proper officers are authorized, without further legislation, to pay the subsidies authorized under the provisions of this chapter from moneys in such special account and to transfer, with the consent of the Legislature or if the Legislature is not in session then with the consent of the Committee on Finance, surplus fund in the special account not required for the payment of such subsidies into the General Fund of the Treasury of the United States Virgin Islands.
- 3) In the case of any beneficiary who, in accordance with the applicable laws of the United States Virgin Islands, shall have applied for and been granted a redetermination of tax liability or taxes payable and a reduction in the amount of such tax liability or taxes payable has been granted pursuant thereto, the amount of subsidy determined for such beneficiary for the taxable years affected shall be accordingly adjusted by the Director of the Virgin Islands Bureau of Internal Revenue and such beneficiary shall be required to refund the excess of subsidy received for the said taxable years, together with interest at the rate of nine (9%) percent per annum from the date the beneficiary received the subsidy, or otherwise realized the subsidy benefit; provided, that said subsidy return, including accrued interest, may be offset or credited against any tax refund due to the beneficiary.

HISTORY: -Added July 17, 1972, No. 3263, § 1, Sess. L. 1972, p. 208; amended Sept. 23, 1975, No. 3748, § 1, Sess. L. 1975, p. 158; May 11, 1977, No. 3977, Sess. L. 1977, p. 66; Jan. 14, 1981, No. 4519, § 1(b), (c), Sess. L. 1980, p. 255; Feb. 1, 2001, No. 6390, § 15, Sess. L. 2000, p. 409.

NOTES:**HISTORY****Revision note****-1998.**

Substituted "Treasury of the United States Virgin Islands" for "Treasury of the Virgin Islands" in subsections (a) and (b) and substituted "United States Virgin Islands" for "Virgin Islands" in subsection (c) for purposes of clarity pursuant to section 14 of Title 1.

Effective date.

For effective date of this section, see note set out under section 701 of this title.

Amendments**-2000.**

Subsection (a): Substituted "Economic Development Commission" for "Industrial Development Commission" in the second sentence.

-1980.

Subsection (a): Amended generally.

Subsection (c): Substituted "Director of the Virgin Islands Bureau of Internal Revenue" for "Commissioner of Finance."

-1977.

Subsection (b): Added in the last sentence provisions providing for transfer of surplus monies in the Industrial Development Fund to the General Fund.

-1975.

Provided for the computation and determination of subsidy.

ANNOTATIONS

1. Loans. 2. Certification.

1. Loans.

Virgin Islands government may legally borrow funds to replace the \$14,000,000 in operating revenues that was anticipated from a federal grant expected to be received during the 978 fiscal year and which apparently would not be received until the first quarter of the 1979 fiscal year, though the debt could be incurred only if authorized by the legislature under federal law; and the loan could be made from the territory's Industrial Development Fund if the loan was authorized by the legislature. *8 V.I.Op.A.G. 160.*

2. Certification.

Assistance Commissioner of Commerce or other official designated as the Acting Commissioner of Commerce is the proper person to perform the duty of Certifying Officer. *6 V.I.Op.A.G. 2.* (Decided under prior law.)

The general authority granted by the Governor in his letter of appointment of the Assistant Commissioner of Commerce to assume the duties of the Acting Commissioner of the Department of Commerce includes within the scope thereof the specific duty to certify subsidy payments to tax exempt entities and membership ex officio on the Board. *6 V.I.Op.A.G. 2.* (Decided under prior law.)

The express language of this section clearly calls for certification by the Industrial Incentive Board prior to the payment of subsidy by Commissioner of Finance. *4 V.I.Op.A.G. 313.* (Decided under prior law.)

HIERARCHY NOTES:

Tit. 29 Note

Tit. 29, Ch. 12 Note

Tit. 29, Ch. 12, Subch. VI Note

§ 721. Limitation of claims or deductions

No claim or deduction by a beneficiary from income tax liability to the United States Virgin Islands for any taxable year based upon subsidy benefits provided for under this chapter shall be allowed or made after the expiration of two years from the time the tax was paid.

HISTORY: -Added July 17, 1972, No. 3263, § 1, Sess. L. 1972, p. 209; amended Sept. 23, 1975, No. 3748, § 1, Sess. L. 1975, p. 158.

NOTES:

HISTORY

Revision note

-1998.

Substituted "United States Virgin Islands" for "Virgin Islands" for purposes of clarity pursuant to section 14 of Title 1.

Effective date.

For effective date of this section, see note set out under section 701 of this title.

Amendments

-1975.

Established a limitation of claims or deductions from income tax liability based upon subsidy benefits.

HIERARCHY NOTES:

Tit. 29 Note

Tit. 29, Ch. 12 Note

Tit. 29, Ch. 12, Subch. VI Note

§ 722. Revocation, suspension or modification of certificate

Subject to the approval of the Governor, an industrial development certificate granted in accordance with the provisions of this chapter may be revoked, suspended or modified by the Commission, after due notice, public hearing and written findings by the Commission that:

- 1) the beneficiary has failed to maintain compliance with the requirements of this chapter, or any regulation hereunder; or
- 2) in the case of a corporation, upon finding submitted to the Commission by the Attorney General of the United States Virgin Islands that the corporation:
 - a. has been dissolved; or
 - b. has filed, or there has been filed against the corporation, a petition in bankruptcy which has been approved; or
- 3) the beneficiary has failed to file an annual report of ownership as required by subsection (a) of section 716 of this chapter; or
- 4) the beneficiary, or in the case of a corporate beneficiary, any officer acting in behalf of the corporation, has been convicted of a felony connected with the operation of the beneficiary's business or industry; or
- 5) the beneficiary, or in the case of a corporation an officer acting in behalf of the corporation, has given or offered, or caused to be given or offered, a bribe, or any money, property, or value of any kind, or any promise or agreement therefor, to a public officer, or to a person executing any of the functions of a public office, or to a person elected, appointed or designated to thereafter execute the same, with intent to influence him with respect to any act, decision, vote, opinion or other proceedings, in the exercise of the powers or functions which he has or may have pertaining in any way to the industrial development program. In addition to the fine and/or addition to the fine and/or imprisonment provided in *Title 14, section 406 of the Virgin Islands Code* for this offense, any benefit granted or obtained as a result of such act, decision, vote, opinion or other proceeding shall be void as to the briber and/or recoverable from the briber as the circumstances of the particular case may dictate.

HISTORY: -Added July 17, 1972, No. 3263, § 1, Sess. L. 1972, p. 210; amended Sept. 23, 1975, No. 3748, § 1, Sess. L. 1975, p. 159.

NOTES:

HISTORY

Revision note

-1998.

Substituted "Attorney General of the United States Virgin Islands" for "Attorney General of the Virgin Islands" in subdivision (2) and inserted "Virgin Islands" before "Code" in subdivision (5) for purposes of clarity pursuant to section 14 of Title 1.

Effective date.

For effective date of this section, see note set out under section 701 of this title.

Amendments

-1975.

Provided that an industrial development certificate may be revoked, suspended or modified.

HIERARCHY NOTES:

Tit. 29 Note

Tit. 29, Ch. 12 Note

Tit. 29, Ch. 12, Subch. VI Note

§ 723. Penalty for violations

- 1) The Commission shall promulgate a schedule of fines for violation of any provision of this chapter and the Beneficiary's Certificate within 90 days of the effective date of this section and submit the schedule of fines to the Governor for approval.
- 2) If any Beneficiary shall violate any provision of this chapter, any rule or regulation promulgated hereunder, or provision of its Industrial Development Certificate, or shall fail or refuse to perform any duty, requirement or lawful order made by the Commission, such beneficiary, after notice and the opportunity of a hearing, shall be fined in accordance with the schedule of fines under subsection (a) of this section. These fines shall be deposited into the Industrial Promotion Fund. In construing and enforcing the provisions of this section, the act, omission, or failure of any officer, agent, or person acting for or employed by any Beneficiary, acting within the scope of employment, shall, in every case be deemed to be an act, omission, or failure of such Beneficiary.
- 3) The Attorney General of the Virgin Islands, at the request of the Commission, shall forthwith bring appropriate action to compel adherence to, or enjoin violations of any lawful orders of the Commission issued pursuant to this chapter, and to recover in the name of the Government of the Virgin Islands the penalties provided herein.

HISTORY: -Added Feb. 1, 2001, No. 6390, § 6, Sess. L. 2000, p. 406.

NOTES:

HISTORY

Codification.

This subchapter, as amended, was comprised of sections 719 to 722, 724 and 725. Section 723 is set out as being reserved for future use.

HIERARCHY NOTES:

Tit. 29 Note

Tit. 29, Ch. 12 Note

Tit. 29, Ch. 12, Subch. VI Note

§ 724. Appeals

Any applicant or beneficiary aggrieved by any action of the Commission or the Governor under the provisions of this chapter shall be entitled to judicial review thereof by appealing to the District Court of the United States Virgin Islands within 30 days after final decision by the Commission or Governor. Upon such review all findings, decisions or determinations by the District Court shall be deemed final in the absence of conclusive showing to the Court of fraud or misrepresentation.

HISTORY: -Added Sept. 23, 1975, No. 3748, § 1, Sess. L. 1975, p. 159.

NOTES:

HISTORY

Revision note

-1998.

Substituted "District Court of the United States Virgin Islands" for "District Court of the Virgin Islands" for purposes of clarity pursuant to section 14 of Title 1.

Annotations Under Prior Law

1. Grounds for appeal. 2. Power of District Court. 3. Revocation of order. 4. Remand.

1. Grounds for appeal.

A notice of hearing which constitutes a misrepresentation as to the nature of the hearing by reason of failure to specify the true nature of issues to be considered by the Industrial Incentive Board renders the Board's decision appealable to the District Court of the Virgin Islands under this section. *Vitex Manufacturing Company Ltd. v. Government of the Virgin Islands*, 5 V.I. 72, 1964 U.S. Dist. LEXIS 3224 (D.C.V.I. 1964). (Decided under prior law.)

A decision of the Industrial Incentive Board modifying tax exemptions and subsidies which was arbitrary and capricious violated the provisions of Act July 5, 1957, No. 224, § 9(b), Sess. L. 1957, p. 154, and was appealable to the District Court of the Virgin Islands. *Vitex Manufacturing Company Ltd. v. Government of the Virgin Islands*, 5 V.I. 72, 1964 U.S. Dist. LEXIS 3224 (D.C.V.I. 1964). (Decided under prior law.)

2. Power of District Court.

District Court has power to review the action of the Industrial Incentive Board and the Governor in order to determine whether any error of law infected their proceedings or decisions and to set aside the Governor's decision if such error is found and remand the case for further proceedings in accordance with the applicable rules of law properly applied, but the court cannot order the Government to grant tax exemptions and subsidies when the Governor has denied them. *Virgo Corp. v. Paiewonsky*, 5 V.I. 417, 259 F. Supp. 26, 1966 U.S. Dist. LEXIS 9578 (D.C.V.I. 1966), rev'd on other grounds, 6 V.I. 256, 384 F.2d 569, 1967 U.S. App. LEXIS 4996 (3d Cir. 1967), cert. denied, *Virgo Corp. v. Paiewonsky*, 390 U.S. 1041, 88 S. Ct. 1634, 20 L. Ed. 2d 303, 1968 U.S. LEXIS 1840, (1968), rehearing denied, *Virgo Corp. v. Paiewonsky*, 392 U.S. 917, 88 S. Ct. 2053, 20 L. Ed. 2d 1379, 1968 U.S. LEXIS 1467 (1968). (Decided under prior law.)

The District Court for the Virgin Islands exceeded its power by ordering the Government of the Virgin Islands exceeded its power by ordering the Government of the Virgin Islands to grant a corporate taxpayer tax exemption and subsidy benefits which had been denied by the Governor. *King Christian Enterprises, Inc. v. Government of the Virgin Islands*, 5 V.I. 170, 345 F.2d 633, 1965 U.S. App. LEXIS 6138 (3d Cir. 1965). (Decided under prior law.)

3. Revocation of order.

An order of the Governor modifying tax exemption benefits is void if induced by misrepresentation or if arbitrary and capricious, and will be revoked by the District Court of the Virgin Islands. *Vitex Manufacturing Company Ltd. v. Government of the Virgin Islands*, 5 V.I. 72, 1964 U.S. Dist. LEXIS 3224 (D.C.V.I. 1964). (Decided under prior law.)

4. Remand.

While the questions of tax exemptions and subsidies involve many economic factors which are administrative and legislative functions, the court will not sit idly by and permit officials to fail to assume their responsibilities and hence would remand for proper action, application of applicant whose application had been frozen although 4 other watchmakers had received a tax exemption and subsidy and who had fulfilled its statutory obligations. *Virgo Corp. v. Paiewonsky*, 5 V.I. 359, 254 F. Supp. 405, 1966 U.S. Dist. LEXIS 9682 (D.C.V.I. 1966). (Decided under prior law.)

Failure of Governor or Industrial Incentive Board to act within time prescribed would entitle plaintiff to reopen proceedings and seek an order compelling defendants to grant tax exemption and subsidy benefits applied for. *Virgo Corp. v. Paiewonsky*, 5 V.I. 359, 254 F. Supp. 405, 1966 U.S. Dist. LEXIS 9682 (D.C.V.I. 1966). (Decided under prior law.)

HIERARCHY NOTES:

Tit. 29 Note

Tit. 29, Ch. 12 Note

Tit. 29, Ch. 12, Subch. VI Note

§ 725. False or fraudulent statements or representations; false claims for benefits

Any applicant or beneficiary who shall willfully make any false or fraudulent statement or representation as to any fact required or appropriate to the determination of the qualifications of eligibility of such applicant or beneficiary for benefits under this chapter, or for the continuation or extension of the same, or who shall willfully make or present any claim for benefits under this chapter knowing such claim to be false, fictitious or fraudulent, shall be fined not more than \$25,000 or imprisoned not more than two years, or both. In addition to the foregoing, any benefits previously granted under this chapter to such applicant or beneficiary shall be deemed automatically revoked, without necessity for the procedures established under section 722 of this subchapter; all taxes that were otherwise due and payable by such applicant or beneficiary but for the tax exemption benefits granted, shall become due and payable as of the date or dates when, but for such tax exemption, they would have been due and payable, and the same shall be assessed and collected in accordance with the provisions of the applicable tax laws in force for such date or dates; and the amount or amounts of all subsidy benefits, based on income tax liability, actually received, shall be deemed debts due and owing to the Government of the United States Virgin Islands as of the date or dates when payment of subsidy was made.

HISTORY: -Added Sept. 23, 1975, No. 3748, § 1, Sess. L. 1975, p. 160.

NOTES:

HISTORY

Revision note

-1996.

Substituted "Government of the United States Virgin Islands" for "Government of the Virgin Islands" near the end of the section for purposes of clarity pursuant to section 14 of Title 1.

HIERARCHY NOTES:

Tit. 29 Note
Tit. 29, Ch. 12 Note
Tit. 29, Ch. 12, Subch. VI Note

§ 726. Industrial Promotion Fund

There is established in the Treasury of the United States Virgin Islands a special account to be known as the "Industrial Promotion Fund" (hereinafter, the "Fund"). The Fund shall contain all appropriations made by the Legislature to the Fund for promotional activities and other purposes, and all monies deposited therein, pursuant to section 705 of this chapter shall remain available until expended. Expenditures from the Fund shall be made in accordance with law. The Director shall be the certifying officer for the Fund.

HISTORY: -Added Dec. 8, 1986, No. 5224, § 1(27), Sess. L. 1986, p. 352; amended Feb. 1, 2001, No. 6390, § 9, Sess. L. 2000, p. 407.

NOTES:

HISTORY

Revision note

-1998.

Substituted "Treasury of the United States Virgin Islands" for "Treasury of the Virgin Islands" for purposes of clarity pursuant to section 14 of Title 1.

Amendments

-2000.

Inserted "all monies deposited therein, pursuant to section 705 of this chapter" following "purposes, and" in the second sentence.

Effective date.

Act Dec. 8, 1986, No. 5224, § 10(a), Sess. L. 1986, p. 365, provided that the section of the act which added this section shall take effect January 1, 1987, provided, however, that the exchange of tax subsidies for tax exemptions or reductions shall not take effect until October 1, 1987.

HIERARCHY NOTES:

Tit. 29 Note
Tit. 29, Ch. 12 Note
Tit. 29, Ch. 12, Subch. VI Note