

Chapter 435

Approved Enterprise Zone Hotels

Subchapter 1: Net Cash Flow Requirements

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§435-1.1 Definitions

The following words and terms, when used in these rules, shall have the following meanings, unless the context clearly indicates otherwise:

- (a) “Commission” means the Virgin Islands Casino Control Commission.
- (b) “Hotel” means the hotel, banquet facilities and onsite casino required by 32 V.I.C. § 435(b)(A).
- (c) “Net Cash Flow” has the meaning set forth in 32 V.I.C. § 435(b)(B)(iii) and is based upon a calendar year. For any Hotel in which the hotel, and/or banquet facilities, and/or onsite casino are operated by separate entities, the Net Cash Flow is calculated based upon the combined operations of the hotel/banquet facility/casino.
- (d) “Net Cash Flow Account” refers to the account established in accordance with 32 V.I.R.&R. §435-2.3
- (d) “Operating Activities” as described in 32 V.I.C. § 435(a)(B)(iii) means the combined operating activities of the hotel, banquet facilities and onsite casino required by 32 V.I.C. § 435(b)(A).
- (e) “Qualifying Enterprise Zone Investment” means money spent for the acquisition or renovation of any property located within the Christiansted or Frederiksted Enterprise Zone. The costs of acquisition or renovation of property in order to become a hotel as defined by 32 V.I.C. § 435(b)(A) or to meet the requirements of becoming or remaining such a hotel shall not be considered a Qualifying Enterprise Zone Investment.

§435-2.1 Notification of Qualifying Enterprise Zone Investment

(a) Acquisitions. Within sixty days of acquiring a property intended as a Qualifying Enterprise Zone Investment, the Hotel shall notify the Commission that it has made such investment, identifying the property that is the subject of the investment, the amount of investment, a description of the purpose of the investment and disclosing all beneficial owners in the selling entity. The notification shall include a copy of the purchase contract.

(b) Renovations. Within sixty days of commencing a renovation intended as a Qualifying Enterprise Zone Investment, the Hotel shall notify the Commission that it has begun a renovation intended to qualify as a Qualifying Enterprise Zone Investment, identifying the property that is the subject of the investment, the anticipated amount of the investment, a description of the purpose of the investment and identifying the contractors and subcontractors who will perform the work.

(1) As contractors or subcontractors are added or replaced, the Hotel shall promptly (and no later than after sixty days of retention) identify the new contractors or subcontractors.

(2) Each identification of a contractor or subcontractor shall disclose the beneficial owners of the contractor or subcontractor.

(3) Within 60 days of completion of such renovation (as defined by the issuance of a certificate of occupancy if required; or if no certificate of occupancy is required, then as defined in the appropriate construction contract), the Hotel shall notify the Commission of the completion of the renovation, including the final amount of the investment. Any amendments to such notification, to address unforeseen expenses, "punch list" costs or items of a similar nature shall be promptly filed with the Commission.

(c) The documents submitted in accordance with subsections (a) and (b) shall not be considered confidential and shall be available for inspection by members of the general public.

§435-2.2 Statement of Net Cash Flow

(a) On or before March 1 of each year the Hotel shall file with the Commission (i) a statement of Net Cash Flow for the previous calendar year, computed in accordance with Section 935 (b)(B) of the Act and these Regulations; (ii) a statement of all Qualifying Enterprise Investments made by the Hotel during the previous calendar year; and (iii) a statement of all deposits and withdrawals from the account described in 32 V.I.R.&R. §435-2.3. Upon request, such persons shall make available to the Commission any records necessary for the Commission to determine the accuracy of the statements.

(b) The statements required by 32 V.I.R.&R. §435-2.2(a) shall be signed, subject to the penalties of perjury, by an officer of the Hotel and certified by a Certified Public Accountant in accordance with FASB standards.

Comment [AS1]: Need input from John DeLuca as to proper language/standards, etc.

§435-2.3 Net Cash Flow Account

If the Qualifying Enterprise Zone Investments made by the Hotel at the end of a calendar year do not equal sixty percent (60%) of the Net Cash Flow for that same calendar year, then the Hotel shall deposit, before March 1 of the ensuing year, the shortfall in an interest-bearing escrow account maintained in a bank authorized by the Division of Banking and Insurance to do business in the U.S. Virgin Islands. The Hotel may withdraw sums from this account at any time, but for the sole purpose of making Qualifying Enterprise Zone Investments. The Hotel shall provide the Commission with copies of the monthly statements for the account; shall promptly advise the Commission of any withdrawals from the account and the reason for same; and shall sign any documents required by the bank to allow the Commission to monitor the activities in the account.

§435-2.4 Disposition of Funds; Authority of the Commission

(a) If there are any funds remaining in the Net Cash Flow Account fifteen (15) years from the date of the opening of the casino authorized by 32 V.I.C. § 435(b), then such funds shall become the property of the Commission as set forth in 32 V.I.C. §435(b)(A). The Commission shall be entitled to withdraw such funds and shall expend them in a manner designed to further the objective of 32 V.I.C. §435(b)(A) to improve properties located in the Enterprise Zones on St. Croix. If the amount in the account is *de minimis*, defined as less than \$5,000, then such funds may be used to support the Commission's general activities as the Chairman of the Commission deems fit.

(b) The persons establishing such account shall provide the Commission, upon request, with such written authorizations as may be necessary to enable the Commission to withdraw such funds.

§435-2.5 Non-Qualifying Investments

(a) To further the intent of the Virgin Islands Casino and Resort Control Act of 1995 that individuals involved in the gaming industry not exert improper influence over the Commission or government office holders or government employees, the following investments that would otherwise fall within the definition of "Qualifying Enterprise Zone Investment" shall be presumed to NOT count towards the required 60% of Net Cash Flow that must be invested in the Christiansted or Frederiksted Enterprise Zones:

- (1) Acquisitions in which a beneficial owner of the selling entity is:
 - a. a member of the Legislature;
 - b. a person holding any elective or appointive office in the federal or territorial government;
 - c. an employee (other than secretarial or clerical) or Member of the Commission;

- d. an employee (other than secretarial or clerical) of the Division of Gaming Enforcement;
- e. a person who has held any direct or indirect interest in, or any employment (other than in a secretarial or clerical capacity) by, any person or entity licensed as a casino licensee pursuant to section 439 of this title or as a casino service industry pursuant to subsection (a) of section 444 of this title or has an application for any such license pending before the Commission;
- f. an applicant for or holder of a casino license, nor any member or employee of a holding, intermediary or subsidiary company thereof, nor any officer, director, casino key employee or principal employee of an applicant or holder of a casino license or of any holding, intermediary or subsidiary company thereof nor any person or agent on behalf of any such applicant, holder, company or person.

(2) That portion of any renovation performed by a contractor or subcontractor in which a beneficial owner of the contractor or subcontractor is:

- a. a member of the Legislature;
- b. a person holding any elective or appointive office in the federal or territorial government;
- c. an employee (other than secretarial or clerical) or Member of the Commission;
- d. an employee (other than secretarial or clerical) of the Division of Gaming Enforcement;
- e. a person who has held any direct or indirect interest in, or any employment (other than in a secretarial or clerical capacity) by, any person or entity licensed as a casino licensee pursuant to section 439 of this title or as a casino service industry pursuant to subsection (a) of section 444 of this title or has an application for any such license pending before the Commission;
- f. an applicant for or holder of a casino license, nor any member or employee of a holding, intermediary or subsidiary company thereof, nor any officer, director, casino key employee or principal employee of an applicant or holder of a casino license or of any holding, intermediary or subsidiary company thereof nor any person or agent on behalf of any such applicant, holder, company or person.

(b) Recognizing that the Virgin Islands is a small community and that dealings with the individuals identified in subsections (a)(1) and (2) of this section may, on occasion be unavoidable, the presumption established in subsection (a) may be rebutted by a decision of the Commission made at a public hearing of the Commission. At least six weeks public notice of such hearing shall be given. The Hotel seeking to rebut the presumption shall publish notice in a newspaper of general circulation in the Territory of the hearing four times, at least one week apart, commencing at least six weeks prior to the hearing. Said notice shall specify the identity of the person whose involvement has caused the

presumption to arise, the financial gain anticipated by that person, and state the reasons why the Hotel believes the presumption is rebutted.

(c) At the hearing to determine if the presumption is rebutted, the Commission may, but is not required to, hold that the presumption is rebutted if the substantial evidence establishes that the transaction is a *bona fide* transaction and that the intent of the Virgin Islands Casino and Resort Control Act of 1995 that individuals involved in the gaming industry not exert improper influence over the Commission or government office holders or government employees is not thwarted by allowing the transaction to otherwise qualify as a “Qualifying Enterprise Zone Investment”

§435-2.6 Penalties

Violation of any provision of this chapter may result in disciplinary action taken by the Commission that can include, without limitation, forfeiture of a license issued by the Commission or the disqualification of an investment from counting as a “Qualifying Enterprise Zone Investment”