

(H. B. 4035)
(Conference)

(No. 13)

(Approved January 8, 2004)

AN ACT

To amend subsection (a), to add new subsections (b) and (c) and to re-designate subsections (b), (c), (d), (e), (f), (g), (h) and (i) as subsections (d), (e), (f), (g), (h), (i), (j) and (k) of Section 25 of Act No. 52 of August 11, 1989, as amended, known as “International Banking Center Regulatory Act,” for the purpose of taxing the excess net income derived by taxable International Banking Entities.

STATEMENT OF MOTIVES

The “International Banking Center Regulatory Act” was originally promulgated as Act No. 16 of July 2, 1980, with the purpose of establishing and promoting Puerto Rico as an important international banking center. This Act was intended to attract foreign capital to Puerto Rico, to directly and indirectly create jobs and to foster the expansion and growth of the service sector within our economy.

Even with the tax benefit of operating with a ninety (90) percent exemption of its income under the “Industrial Incentives Act of 1978,” neither Act No. 16, supra, nor its subsequent amendments, produced the desired results and objectives. After its repeal in 1989, the same was substituted by Act No. 52 of August 11, 1989, which was later amended in 1996. Under this Act, international banking entities are totally exempted from the income tax imposed by the “Puerto Rico Internal Revenue Code of 1994,” as amended. Likewise, the benefit granted by the former

law was retained with regard to that financing interest or charges for benefits paid by these entities on loans to them do not constitute income from Puerto Rican sources, thus they are not subject to a withholding at source of the tax imposed by the Code.

To date, the intended international banking center has not been established in Puerto Rico. Rather, the tax advantages of operating as an international banking entity have motivated certain financial institutions and other entities to establish a division destined to function as an international banking entity as part of their operations. Although this action is not prohibited by Act No. 52, it does not meet the expectations of the law to attract foreign capital and the creation of better jobs.

The present situation of the economy requires that an evaluation be made of the tax benefits granted to these entities in comparison with what they contribute to the economy in terms of jobs and the expansion of this service sector. For this reason, this Legislature deems it appropriate to tax the net income in excess of twenty (20) percent derived by the international banking entities that operate in Puerto Rico, as a means to achieve a greater economic contribution of these entities to the country.

BE IT ENACTED BY THE LEGISLATURE OF PUERTO RICO:

Section 1.- Subsection (a) is amended, subsections (b) and (c) are added and subsections (b), (c), (d), (e), (f), (g), (h) and (i) are re-designated as subsections (d), (e), (f), (g), (h), (i), (j) and (k) of Section 25 of Act No. 52 of August 11, 1989, as amended, known as “International Banking Center Regulatory Act,” to read as follows:

“Section 25.- Provisions Related to Income Taxes

- (a) Income derived by the international banking entities duly authorized by this Act, from activities described in subsection (a) of Section 12 of this Act, shall not be included in the gross income of said entities and shall be exempt from the tax imposed by Act No. 120 of October

31, 1994, as amended, known as the “Puerto Rico Internal Revenue Code of 1994” or its preceding law, except for the provisions of subsection (b) of this Section.

(b) excess net income derived in the taxable year by every international banking entity subject to taxation, as said term is defined in paragraph (1), shall be subject to the tax rates established in the “Puerto Rico Internal Revenue Code of 1994,” as amended, for corporations and companies. For the purposes of this subsection (b), the following terms mean:

(1) “taxable international banking entity”.- means an international banking entity that operates as the unit of a bank organized under the Puerto Rico Banking Act, whose net income derived from activities described in subsection (a) of Section 12 of this Act exceeds twenty (20) per cent of the net income derived in the taxable year by said bank (including income derived by said unit). Said net income shall be computed pursuant to the provisions of Subchapter B of Chapter 2, of Subtitle A of the “Puerto Rico Internal Revenue Code, 1994,” as amended.

(2) “excess net income”.- means the net taxable income, computed pursuant to the provisions of Subchapter B of Chapter 2 of Subtitle A of the Puerto Rico Internal Revenue Code, 1994, as amended, derived by the international banking entity of the activities described in subsection (a) of Section 12 of this Act, which exceeds twenty (20) per cent of the total net income derived in the taxable year by the bank of which it operates as a unit (including the income derived by said unit).

(c) The income generated by the international banking entities that, as determined by the Commissioner, function as an affiliated unit or entity of a business that operates under the industrial incentive laws, as said terms are defined in Act No. 135 of December 2, 1997, as amended, or any preceding or successor act thereof, shall not be included in the gross income of said entities and shall be exempt from the tax imposed in subsection (b) and in Act No. 120, of October 31, 1994, as amended, known as “Puerto Rico Internal Revenue Code of 1994”.

(d) ...

(e) ...

(f) ...

(g) ...

(h) ...

(i) ...

(j) ...

(k) ...”

Section 2.- Rules of Transition

For the taxable years commencing after June 30, 2003 and before July 1, 2005, the reference of 20% which is referred to in subsection (b) of this Act, shall be substituted by the following:

(a) forty (40) per cent for any taxable year commencing after June 30, 2003 and before the first of July, 2004, and

(b) thirty (30) per cent for any taxable year commencing after June 30, 2004 and before the first of July, 2005.

Section 3.- Effectiveness

This Act shall take effect immediately after its approval, but its provisions shall apply to taxable years commencing as of July 1, 2003.

CERTIFICATION

I hereby certify to the Secretary of State that the following Act No.13 (H.B. 4035) (Conference) of the 6th Session of the 14th Legislature of Puerto Rico:

AN ACT to amend subsection (a), to add new subsections (b) and (c) and to re-designate subsections (b), (c), (d), (e), (f), (g), (h) and (i) as subsections (d), (e), (f), (g), (h), (i), (j) and (k) of Section 25 of Act No. 52 of August 11, 1989, as amended, known as “International Banking Center Regulatory Act,” for the purpose of taxing the excess net income derived by taxable International Banking Entities,

has been translated from Spanish to English and that the English version is correct.

In San Juan, Puerto Rico, today 4th of April of 2005.

Luis E. Fusté-Lacourt
Director