

(S. B. 1147)  
(Conference)

**(No. 21-2019)**

(Approved April 14, 2019)

## **AN ACT**

To create the “Puerto Rico Economic Development and Opportunity Zones Act of 2019,” add a new Section 1031.06 to Act No. 1-2011, as amended, known as the “Internal Revenue Code for a New Puerto Rico”; amend Section 1035.08 of the “Internal Revenue Code for a New Puerto Rico”; amend Section 5 of Act No. 22-2012, known as the “Act to Promote the Relocation of Individual Investors to Puerto Rico”; amend Sections 3 and 4 of Act No. 185-2014, as amended, known as the “Private Equity Funds Act”; and add a new Section 84A to Act No. 17-2017, in order to promote the incentives and a favorable regulatory environment to establish Qualified Opportunity Zones in Puerto Rico; and for other related purposes.

### **STATEMENT OF MOTIVES**

The “Tax Cuts and Jobs Act of 2017” (“Federal Tax Reform”) introduced a series of changes to the existing federal tax law. The changes approved under the new federal legislation include the creation of Qualified Opportunity Zones under Sections 1044Z-1 and 1400Z-2 of the U.S. Internal Revenue Code of 1986. Under the Opportunity Zones investment vehicle, investors may defer tax on capital gains by reason of the sale of an asset made before January 1, 2027, if an amount equal to the gain realized is invested in a Qualified Opportunity Fund.

An Opportunity Zone, in general, must have a population census within the state that qualifies as a low-income community, as defined in Section 45D(e) of the U.S. Internal Revenue Code. In order to qualify as a low-income community, the poverty rate for such population census shall not be less than 20%, nor the median family income for such tract shall exceed 80% of the statewide or metropolitan area median income (depending on the population census tract).

The Opportunity Zone designation process was carried out in early 2018 and included a nomination process by the states, the territories, and the District of Columbia. The nomination period deadline was March 21, 2018. The information published by the U.S. Internal Revenue Service shows that, throughout all the States and Puerto Rico, there are over 8,700 population censuses that have been designated as Qualified Opportunity Zones.

In the case of Puerto Rico, all low-income communities were automatically designated as Qualified Opportunity Zones. In addition, other 26 population censuses that did not qualify under the low-income community definition were designated. In total, approximately 95% of Puerto Rico is considered a Qualified Opportunity Zone, under federal parameters.

One of the most important issues that was object of analysis for this federal law is that the Opportunity Zone tax benefit is limited to the federal tax rules. For such reason, many States have been proactive in adopting tax and incentives legislation to create a favorable environment to attract investment to Opportunity Zones located in their jurisdictions. This federal legislation has created competition among States and territories. For such reason, the States have been aggressively establishing the most attractive tax, regulatory, and economic framework for a Qualified Opportunity Fund.

The unique treatment given to Puerto Rico under this federal legislation is one of the best tools available to Puerto Rico for economic development which we must maximize. Since Puerto Rico will be competing with other states as an investment destination, the Government of Puerto Rico deems it critical to adopt an incentive legislation for Qualified Funds that invest in Priority Projects within Opportunity Zones and that are not covered under incentive laws in effect. The tax incentives established in this legislation are directed to ensuring that the rate of return yielded by a Priority Project within Qualified Zones exceeds those offered by the States.

To attain these objectives, this measure proposes a fifteen (15)-year incentive framework. This proposal is similar to the incentives offered under other incentive laws, with the following distinctive features:

1. an 18.5%-tax on the net income of an exempt business.
2. a tax exemption on dividend income.
3. a 25% exemption on license and property tax.
4. a 25% tax exemption on construction excise taxes.
5. a transferable credit for investment up to a 25% maximum.
6. a credit priority system for Priority Projects within opportunity zones.
7. a tax deferral on capital gains for gains invested in a Qualified Opportunity Fund in Puerto Rico under similar rules to those adopted under federal legislation.
8. a tax exemption on interest earned on loans to exempt businesses.
9. a swift permit evaluation and issuance process for exempt businesses and projects agreed under a Partnership Contract pursuant to Act No. 29-2009, as amended.

This Act incorporates several amendments to clarify the rules applicable to funds operating under Act No. 185-2014, as amended, known as the “Private Capital Fund Act.” The Internal Revenue Code is also amended in order for said rules to be consistent with the purpose of promoting investment in Puerto Rico.

Moreover, in order to ensure an efficient and streamlined permit application evaluation process, developments designated as Priority Projects within opportunity zones are hereby declared as a compelling interest pursuant to this Act, since they shall, among other things, attract private investment to the Island that otherwise would not exist, thus helping its economic development and creating jobs at such a critical time for Puerto Rico’s economy. Furthermore, these Priority Projects within

opportunity zones are of a compelling interest because there is a limited window of opportunity to establish them, therefore, they should be established promptly in order to be feasible.

In view of the compelling interests involved, a special procedure is hereby established to efficiently and swiftly process permits for Priority Projects within opportunity zones, which shall ensure full compliance with substantive legal requirements despite having abbreviated processing terms. Pursuant to this special procedure, the government agencies concerned with the processing of permits, licenses, franchises, consultations, or certifications for Priority Projects within opportunity zones shall be governed by the provisions of this Act and shall be exempt from compliance with the terms and procedures established in Act No. 161-2009, as amended, known as the “Puerto Rico Permit Process Reform Act,” Act No. 75 of June 24, 1975, as amended, known as the “Puerto Rico Planning Board Organic Act,” Act No. 81-1991, as amended, known as the “Commonwealth of Puerto Rico Autonomous Municipalities Act of 1991,” and Act No. 38-2017, as amended, known as the “Government of Puerto Rico Uniform Administrative Procedure Act,” as well as the regulations promulgated thereunder. Substantive requirements applicable to particular permits shall be those established in the law or the regulations that govern the permit.

***BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:***

Section 1.- This Act shall be known and may be cited as the “Puerto Rico Economic Development and Opportunity Zones Act of 2019.”

Section 2.- Declaration of Public Policy.

(a) It shall be the Public Policy of the Government of Puerto Rico:

(1) To transform Puerto Rico into an investment destination for Opportunity Zone Funds that invest in Priority Projects within opportunity zones.

(2) To create the environment for a continuous generation of local and foreign capital to be invested in Priority Projects within Opportunity Zones.

(3) To establish the tax, legal, and regulatory framework that incentivizes, streamlines, and promotes investments in Priority Projects within opportunity zones.

Section 3.- Definitions.

(a) For purposes of this Act, the following terms and phrases shall have the meaning stated below:

(1) “Eligible activity” means a Priority Project within Opportunity Zones.

(2) “Chief Financial Officer” means the chief officer of public finances created by virtue of Executive Order OE-2013-007.

(3) “Chief Investment Officer” means the chief officer of investments created by virtue of Executive Order OE-2018-035.

(4) “Code” means Act No. 1-2011, as amended, known as the “Internal Revenue Code for a New Puerto Rico,” or any successor law.

(5) “U.S. Internal Revenue Code” means the United States Internal Revenue Code of 1986, Pub. Law 99-514, 68A Stat. 3, as amended, or any future law that substitutes it.

(6) “Commissioner” means the Commissioner of Financial Institutions created by virtue of Act No. 4 of October 11, 1985, as amended.

(7) “Committee” means the “Priority Projects within Opportunity Zones Committee,” attached to the Office of the Governor, invested with the powers provided in this Act, and constituted by the Chief Financial Officer, who shall be its chair, the Chief Investment Officer, the Executive Director of the Puerto Rico Fiscal Agency and Financial Advisory Authority, the Executive Director of the Puerto Rico Public-Private Partnership Authority, the Secretary of the Department of Economic

Development and Commerce, one member appointed by the Senate of Puerto Rico, and one member appointed by the House of Representatives of Puerto Rico, or the representatives thereof designated from time to time, who shall have the same rights and obligations of the officials they represent, including attending meetings by such means and/or technology as authorized, and therefore, used by the Committee to hold said meetings. At the request of the Committee Chair, the Governor may appoint other members to the Committee in order to address specific applications, according to the nature of the applicant business. The Committee shall adopt the rules, procedures, and regulations as are necessary for purposes of the functions assigned in this Act, without being subject to the provisions of Act No. 38-2017, known as the “Government of Puerto Rico Uniform Administrative Procedure Act.” Provided, that five (5) of the seven (7) members or a majority of Committee members shall constitute a quorum at the meetings of said Committee. However, a quorum shall be constituted only if a representative of the Legislative Bodies participates at the meeting and it is thus certified, unless there are unexcused absences from two (2) or more consecutive meetings, in which case, a quorum shall be certified with the other five (5) members present.

(8) “Decree” means the decree issued in accordance with Section 8 of this Act, whereby the approval of a duly filed application and the conditions imposed thereon are notified.

(9) “Credit for Eligible investment” means the credits provided in subsection (i) of Section 4 of this Act.

(10) “Director” means the Director of the Industrial Tax Exemption Office.

(11) “Distribution of Opportunity Zone Net Income” means any distribution of dividends or gains of an exempt business or a distribution in liquidation of an exempt business of the earnings and profits from the opportunity zone net income.

(12) “Disregarded Entity” means an entity treated as a disregarded entity for purposes of the U.S. Internal Revenue Code.

(13) “Fund” means an entity that meets the following requirements:

(A) not later than the date of commencement of operations pursuant to subsection (e) of Section 7 of this Act and during the designation period established in Section 1400Z-1(f) of the U.S. Internal Revenue Code, the entity is an “Opportunity Zone Fund” pursuant to Section 1400Z-2 (d)(1) of the U.S. Internal Revenue Code.

(B) during the period beginning on the day after the expiration of the designation established in Section 1400Z-1(f) of the U.S. Internal Revenue Code, and ending on the day the decree expires, the entity would otherwise qualify as an “Opportunity Zone Fund” pursuant to Section 1400Z-2(d)(1) of the U.S. Internal Revenue Code, if such designation were still in effect.

(14) “Governor” means the Governor of Puerto Rico.

(15) “Opportunity Zone Net Income” means the net income of an exempt business generated from an eligible activity, as determined under the Code.

(16) “Eligible Investment” means the amount in cash that has been contributed to:

(A) a Fund that is an exempt business in exchange for stocks issued by the Fund (if the Fund is a corporation) or in exchange for interest in the Fund (if the Fund is a partnership, a limited liability company, a joint partnership, or a venture);

(B) a Fund in exchange for stocks issued by the Fund (if the Fund is a corporation) or in exchange for interest in the Fund (if the Fund is a partnership, a limited liability company, a joint partnership, or a venture) and the Fund invests said contributions in the capital of a corporation that is an exempt business or a partnership that is an exempt business in exchange for stocks issued by the corporation or in exchange for interest in a partnership (if the partnership is a limited liability company, a joint partnership or a venture) and said investment by the Fund complies with Section 1400Z-2 (d)(2) of the U.S. Internal Revenue Code; or

(C) a corporation that is an exempt business in exchange for stocks issued by the corporation, or a limited liability company, or a joint partnership or venture that is an exempt business in exchange for interest in a limited liability company, or a joint partnership or venture insofar as a Fund invests in such corporation or limited liability company, or joint partnership or venture and said investment by the Fund complies with Section 1400Z-2 (d)(2) of the U.S. Internal Revenue Code.

(17) “Investor” means any natural or juridical person that makes a eligible investment, as defined in paragraph (16) of this Section.

(18) “Municipal License Tax Act” means Act No. 113 of July 10, 1974, as amended.

(19) “Business” means a corporation, a partnership, a limited liability company, or a joint partnership or venture.

(20) “Eligible Business” means a business that meets the following requirements:

(A) all of the business activities are carried out in a qualified zone;



(B) the activity carried out by the business is not eligible for a tax exemption decree under Act No. 20-2012, as amended, known as “Act to Promote the Export of Services,” Act No. 73-2008, as amended, known as “Economic Incentives Act for the Development of Puerto Rico,” Act No. 74-2010, as amended, known as the “Puerto Rico Tourism Development Act of 2010,” Act No. 83-2010, as amended, known as the “Green Energy Incentives Act of Puerto Rico,” Act No. 27-2011, as amended, known as the “Puerto Rico Film Industry Economic Incentives Act,” or any successor or similar law to any of the above described laws;

(C) the business is conducted by the Fund or any entity in which the Fund invests under Section 1400Z-2(d)(2) of the U. S. Internal Revenue Code, and fifty percent (50%) or more of the capital contributed to the Fund in exchange for the stock of the Fund (if the Fund is a corporation) or in exchange for interest in the Fund (if the Fund is a partnership, a limited liability company, or a joint partnership or venture) originates from investments with respect to which investors made an election under Section 1400Z-2(a) of the U.S. Internal Revenue Code, or Section 1031.06 of the Code. Provided, however, that the Committee may modify the fifty percent (50%) requirement provided in this subsection by regulations, administrative determination, circular letter, or general information bulletin; and

(D) the activity carried out by the business is a Priority Project within an opportunity zone.

(21) “Exempt Business” means an eligible business holding a tax exemption decree under this Act.

(22) “Tax Exemption Office” means the Industrial Tax Exemption Office.

(23) “Priority Project within Opportunity Zones” means a trade or business or other income-producing activity that shall contribute to the diversification, recovery, or social and economic transformation of the qualified zone’s community.

(24) “Eligible Residential Priority Project” means a Priority Project within opportunity zones that has an important affordable housing component, as determined by the Committee.

(25) “Secretary” means the Secretary of the Department of the Treasury of Puerto Rico.

(26) “Secretary of Economic Development” means the Secretary of the Department of Economic Development and Commerce.

(27) “Qualified Zone” means an area of Puerto Rico that has been designated as an opportunity zone under Section 1400Z-1 (b)(3) of the U.S. Internal Revenue Code, as demarcated in the map maintained by the US Department of Treasury, and designated as a qualified zone by the Committee through regulations, circular letter, administrative determination, or general information bulletin.

(b) Definitions of other terms.- All other terms used in this Act, except as otherwise provided, shall have the same meaning stated in the Code and the regulations thereunder.

#### Section 4.- Income Tax.

(a) Opportunity Zone Net Income.- In lieu of any other tax imposed by the Code, an exempt business shall be subject to a flat eighteen point five percent (18.5%) income tax rate on its opportunity zone net income.

(b) Treatment of Disregarded Entities and Partnerships.-

(1) If an exempt business is a disregarded entity, it shall be treated for purposes of the Code in the same manner it is treated under the U.S. Internal

Revenue Code, and the provisions of Chapter 7 of Subtitle A of the Code shall not apply.

(2) If a Fund or an exempt business is an entity that would otherwise be subject to the provisions of Chapter 7 of Subtitle A of the Code, the Fund or exempt business shall be treated as a corporation for purposes of Subtitle A of the Code.

(3) The Secretary shall publish the returns, forms, and statements that shall be filed by the Fund or exempt business covered by this subsection and issue any necessary regulations, administrative determination, circular letter, or general information bulletin for purposes of this subsection.

(c) **Rentals or Royalties and License Fees.**- Notwithstanding the provisions of the Code, in the case of payments made by an exempt business to corporations, partnerships, or nonresident individuals not engaged in trade or business in Puerto Rico for the use or the privilege of using in Puerto Rico intangible property relating to the operation declared to be exempt under this Act; provided, that said payments are considered from sources within Puerto Rico, the following rules shall be observed:

(1) **Tax on Corporations, Foreign Partnerships, or Nonresident Individuals Not Engaged in Trade or Business in Puerto Rico: Imposition of Tax.**- An eighteen point five percent (18.5%) tax shall be imposed, collected, and paid for each taxable year, in lieu of the tax imposed by Sections 1091.01 and 1092.02 of the Code, on the amount of said payments received or deemed received by nonresident alien individuals, or any corporation or foreign partnership not engaged in trade or business in Puerto Rico, derived exclusively from sources within Puerto Rico.

(2) **Withholding at the Source and Deposit of Tax.**- Any exempt business required to make payments to nonresident individuals for the use in Puerto Rico of intangible property relating to an exempt operation under this Act, shall

deduct and withhold at the source a tax equal to that imposed under paragraph (1) of this subsection and deposit such withholding pursuant to the rules set forth in Sections 1062.08 and 1062.11 of the Code, as applicable.

(d) Deduction and Net Operating Loss Carryover.-

(1) Deduction for Current Loss Incurred in Activities Not Covered by an Exemption Decree.- If an exempt business incurs in net operating losses other than operations declared exempt under this Act, said losses shall be used exclusively against income not covered by an exemption decree and shall be governed by the provisions of the Code.

(2) Deduction for Ongoing Loss Incurred in the Operation of an Exempt Business.- If an exempt business incurs net operating losses declared exempt under this Act, said loss may be deducted from its opportunity zone net income that incurred the loss or from its opportunity zone net income from operations covered by other exemption decrees under this Act.

(3) Deduction for Loss Carried Over from Previous Years.- A deduction for loss incurred in previous years shall be granted as provided below:

(A) The excess over losses deductible under paragraph (2) of this subsection shall be carried over against the opportunity zone net income of subsequent taxable years. Losses shall be carried over in the order they were incurred.

(B) Any net loss incurred in a year in which an election under subsection (b) of Section 7 is in effect may be carried over by the exempt business only against the opportunity zone net income, under the decree under which an election under subsection (b) of Section 7 of this Act was made. Losses shall be carried over in the order they were incurred.

(C) Once the exemption period has expired for income tax purposes, net losses incurred in an exempt operation under this Act, as well as any excess of the deduction allowed under subparagraph (B) of this paragraph that the exempt business is carrying over as of the expiration date of said period, may be deducted from any taxable income in Puerto Rico, subject to the limitations provided in Subtitle A of the Code. Said losses shall be deemed as incurred in the last taxable year in which the exempt business holding a decree under this Act enjoyed the income tax exemption under the decree.

(D) The amount of the net operating loss to be carried over shall be calculated pursuant to the provisions of Section 1033.14 of the Code.

(e) Distributions of Dividends or Profits.-

(1) Exemption.- The stockholders or partners of a corporation or partnership that is an exempt business shall not be subject to the payment of income taxes on distributions of dividends or profits from the earnings and profits from opportunity zone net income generated by the exempt business. Subsequent distributions of earnings and profits from opportunity zone net income made by any corporation or partnership shall also be exempt from all taxation. Provided, that the provisions of Section 1062.13 of the Code pertaining to the tax on deemed dividends, and Section 1092.02 of the Code pertaining to the tax on dividend-equivalent amount shall not apply to the exempt business.

(2) Attribution of Exempt Distributions.- The distribution of dividends or profits made by an exempt business, even after its tax exemption decree has expired, shall be deemed to have been made from the earnings and profits generated from its opportunity zone net income if, on the date of the distribution, it does not exceed the undistributed balance of said earnings and profits, unless said exempt business, when preparing the information statement, chooses to distribute the dividend or profit, totally or partially derived from other earnings or profits. The

amount, the year of accrual, and the nature of the distribution of earnings and profits from opportunity zone net income thus made, shall be as designated by said exempt business through notice delivered together with the payment thereof to its stockholders or partners and to the Secretary of the Treasury, through an information statement not later than February 28 following the year of the distribution.

(3) Other Exemptions.- The distributions of dividends or profits from earnings and profits generated from the opportunity zone net income of an exempt business shall not be subject to the following income taxes:

(A) The alternative minimum tax of Section 1022.03 of the Code;

(B) The surtax on corporations and partnerships of Section 1022.05 of the Code; and

(C) The alternate basic tax on individuals of Section 1021.02 of the Code, or any similar successor law.

(f) Sale or Exchange of Assets.- No gains or losses shall be recognized by an exempt business in the sale or exchange of assets made during its exemption period if the exempt business invests an amount equal to the amount realized in the sale or exchange pursuant to the requirements of Section 1400Z-2(d) (1) of the U.S. Internal Revenue Code. If the sale or exchange occurs after the expiration of a designation under Section 1400Z-1(f) of the U.S. Internal Revenue Code, the requirements of Section 1400Z-2 (d)(1) of the U.S. Internal Revenue Code shall continue to apply for purposes of this subsection.

(g) Exempt Exchanges.- The exchanges of assets which do not result in taxable events for being exempt reorganizations shall be treated in accordance with the provisions of the Code in effect on the date of the exchange.

(h) Exemption for Individuals, Estates, Corporations, Partnerships, Limited Liability Companies, and Trusts with Respect to Interest Paid or Credited on Bonds, Notes, or Other Obligations of Certain Exempt Businesses.-

(1) Exemption.- Any individual, estate, corporation, partnership, limited liability company, or trust shall be exempt from any tax imposed under the Code and any license fee imposed under the Municipal License Fees Act on interest income earned from bonds, notes, or other obligations of an exempt business for the development, construction, or rehabilitation or improvements of an exempt business under this Act; provided, that the funds shall be entirely used in the development, construction, or rehabilitation or improvements of an exempt business and/or for the payment of existing debts of said exempt business, insofar as the funds from these existing debts have been originally used in the development, construction, or rehabilitation or improvements of the exempt business. The expenses incurred by any person making an investment as described above shall not be subject to the provisions of Section 1033.17(a)(5), 1033.17(a)(11), and 1033.17(f) of the Code with respect to such investment and the income derived therefrom.

(2) Direct Relation.- The proceeds of bonds, notes, or other obligations must be remitted directly to an exempt business.

(i) Credits.-

(1) Investment Credit.- Subject to the provisions of paragraph (3) of this subsection, every investor shall be entitled to an investment credit equal to the eligible percentage of such investor's eligible investment made after the effective date of this Act, taken in four (4) installments: twenty-five percent (25%) of said credit in the year in which the exempt business finished the total construction of the Priority Project or, if the Priority Project does not require construction, upon the eligible business commencement of operations (as determined in Section 7 of this Act), whichever is later, and twenty-five percent

(25%) of the credit balance in the next three (3) years. Provided, that in the event the Eligible Investment is made after finishing the construction of a Priority Project within Opportunity Zones or that the exempt business has commenced operations, the credit shall be taken in the following four (4) installments: twenty-five percent (25%) of said credit in the year in which a significant expansion has been made in the real property constructed or in the exempt business, as the case may be, and as such term is defined by the Secretary of Economic Development through regulations, administrative determination, circular letter, or general information bulletin, as necessary for purposes of this paragraph, and twenty-five percent (25%) of the credit balance in the next three (3) years. If the Fund fails to carry out the Priority Project, the credit herein provided shall not be granted. Every eligible investment made during the taxable year of the investor shall qualify for the tax credit under this subsection for said taxable year, provided, that all the requirements of this subsection are met. Said investment credit may be applied against any tax liability of the investor, in accordance with Subtitle A of the Code, including the alternative minimum tax under Section 1022.03; or alternate basic tax under Section 1021.02 of the Code; or against any other tax imposed by Act No. 20-2012, as amended, known as the "Act to Promote the Export of Services," Act No. 73-2008, as amended, known as the "Economic Incentives Act for the Development of Puerto Rico," Act No. 74-2010, as amended, known as the "Puerto Rico Tourism Development Act of 2010," Act No. 83-2010, as amended, known as the "Green Energy Incentives Act of Puerto Rico," Act No. 273-2012, as amended, known as the "International Financial Center Regulatory Act," Act No. 399-2004, as amended, known as the "International Insurers and Reinsurers Act of Puerto Rico," or any other successor or similar law to the aforementioned.



(2) Credit Carry Over.- Any unused credit for investment in a taxable year may be carried over to subsequent taxable years until depleted.

(3) Maximum Credit Amount.-

(A) Investment Credit.- The maximum amount of the investment credit to be available for each Fund and exempt business in which the Fund invests shall not exceed twenty-five percent (25%) of the sum of the following items:

(i) The cash contributed by investors in exchange for stocks or interest in a Fund, which is contributed by the Fund to the exempt business in exchange for stocks or interest in the exempt business, plus

(ii) The cash contributed by investors to the exempt business, when such exempt business is conducted directly by the Fund, in exchange for the stocks or interest in the exempt business.

(B) Ownership and Distribution of Credits.- The maximum amount of the investment credit available shall be distributed among investors in the proportion they wish. The Fund shall notify the credit distribution to the Director, the Secretary, the stockholders and partners thereof and the stockholders and partners of the exempt business on or before the deadline provided by the Code to file the income tax return for the first taxable year of the exempt business, without considering extensions. The elected distribution shall be irrevocable and binding on the Fund, the exempt business, and the investors.

(4) Adjustment of Basis and Recovery of Credit.- The basis of any eligible investment shall be reduced by the amount taken as investment credit under this subsection, but it may never be reduced to less than zero. The basis of any eligible investment subject to the reduction under this paragraph, shall be the basis, as determined considering any election made under Section 1031.06 of the Code with respect to said investment. If the investment credit taken by investors exceeds

the investment credit computed by the Director, based on the total investment made by the investor in the Fund or the exempt business, said excess shall be considered income tax owed by investors to be paid in two installments beginning in the taxable year in which the aforementioned excess was found and notified, and the balance shall be paid the following year. The Director shall notify the excess credit taken by investors to the Secretary.

(5) Reports and Penalty under Section 1400Z-2(d)(1) of the U.S. Internal Revenue Code.- Exempt businesses shall submit an annual report to the Director and the Secretary, itemizing the total investment made in the exempt business as of the date of said annual report, showing compliance with the requirements of Section 1400Z-2(d)(1) of the U.S. Internal Revenue Code and if the Fund is subject to the penalty of Section 1400Z-2(f)(1) of said Code. In the event a Fund is subject to the penalty of Section 1400Z-2(f)(1) of the U.S. Internal Revenue Code, the Fund shall pay to the Secretary, as a penalty, an amount equal to the penalty imposed to the Fund under Section 1400Z-2(f)(1) of the U.S. Internal Revenue Code and shall be payable with the income tax return corresponding to the taxable year in which the penalty was imposed. In the case that a Fund is not subject to the penalty of Section 1400Z-2(f)(1) of the U.S. Internal Revenue Code due to the expiration of the designation under Section 1400Z-1(f) of the U.S. Internal Revenue Code, the Fund shall pay to the Secretary, as a penalty, an amount equal to the penalty that would otherwise be imposed on the Fund under Section 1400Z-2(f)(1) of the U.S. Internal Revenue Code, if such designation is still in effect, and shall be payable with the income tax return corresponding to the taxable year in which the penalty would otherwise be imposed.

(6) Assignment of Credit.-

(A) Investment Credit.-

(i) After the date of the notice of the investment credit distribution provided in paragraph (3) of this subsection, the investment credit provided in this Section may be assigned, sold, or otherwise conveyed in whole or in part, by an investor to any other person.

(ii) In the case of the investment credit, the basis of the eligible investment shall be reduced by the value of the assigned investment credit, but shall never be reduced to less than zero (0). The basis of an eligible investment that shall be subject to the reduction under this subparagraph, shall be the basis, as determined considering any election made under Section 1031.06 of the Code with respect to said investment.

(B) The money or value of the property received in exchange for the investment credit shall be exempt from taxation under the Code, up to an amount equal to the amount of the assigned investment credit.

(C) The investment credit may be may be assigned, sold, or otherwise conveyed solely by an Investor, except in the following cases:

(i) An Investor may assign, sell, or otherwise convey an investment credit through a broker-dealer registered as such with the Commissioner under the circumstances to be prescribed by the Secretary of Economic Development through regulations.

(ii) An underwriter who, acting as such, acquired an investment credit at the closing, to fund a Priority Project within Opportunity Zones, may assign, sell, or otherwise convey any investment credit to a third party. Said assignment, sale, or conveyance shall be treated as made by an Investor if it meets the requirements prescribed by the Secretary of Economic Development through regulations.

(D) The excess amount of an investment credit under this subsection (i) over the money or value of the property paid by the acquirer of said credit shall not be considered as gross income for purposes of the Code.

(E) The following individuals shall notify the Secretary of the assignment, sale, or conveyance through an affidavit to such effect which shall be enclosed with the income tax return for the year in which the assignment of the investment credit of this subsection (i) is made:

(i) The Investor has assigned, in whole or in part, the investment credit of this subsection (i);

(ii) The broker-dealer, underwriter, or pledgee who has assigned, in whole or in part, his investment credit under this subsection (i); and

(iii) The acquirer of the investment credit under this subsection (i).

The affidavit shall contain such information as deemed pertinent by the Secretary through regulations promulgated to such effect.

(7) Eligible Percentage.-

(A) The term “eligible percentage” shall mean the percentage determined by the Committee and shall not exceed twenty-five percent (25%). Except as otherwise provided in subparagraph (B) of this paragraph seven (7), the minimum eligible percentage for all exempt businesses shall be five percent (5%).

(B) The Committee may establish an eligible percentage, in accordance with Section 8, different from that established in subparagraph (A) of this paragraph (subject to a maximum of twenty-five percent (25%) to exempt businesses located in the qualified zones for which the Committee has determined to designate a different percentage and that meet the criteria established by said Committee, taking into account the following factors:

- (i) The exempt business' job creation potential;
- (ii) The exempt business' contribution to the fields of education, health, and housing; and
- (iii) The investment that the exempt business may make in lands, buildings, machinery, and equipment.
- (iv) The potential effect on the economy and the needs of the geographic area.

(C) Eligible percentages to be determined by the Committee and the criteria to be determined by the Committee in accordance with subparagraph (B) of this paragraph seven (7), shall be published in a circular letter, administrative determination, or other general publication, and shall be as binding as a regulation. Provided, further, that the provisions contained in the official publications established in this subparagraph shall be effective for, at least, one (1) year from the publication thereof.

(j) Priority of Credits under this Act.-

(1) In the event that another legislation establishes a cap or certain priority in the granting of investment credits, the approval of investment credits requested under this Act shall have priority over the approval of applications for credits submitted after the effective date of this Act under any other law providing investment credits, if it is thus determined by the Committee, except for the investment credits established in subsections (c) and (f) of Section 5 of Act No. 73-2008, as amended, known as "Economic Incentives Act for the Development of Puerto Rico," except also for investment credits with a positive Return on Investment. The Secretary of Economic Development shall prescribe by regulations, administrative determination, circular letter, or general information bulletin, the criteria to be used to calculate the estimated Return on Investment. An application for investment credit shall be deemed to have been submitted before the effective

date of this Act only if the agency with which it was filed issues a written certification to the Committee stating that the application was submitted before the effective date of this Act and that the application contained all the information required to be treated as a duly completed application.

(2) No agency with which an application for investment credit is filed under this Act may approve credits without the Committee's prior authorization.

(3) Agencies with which applications for credit are filed shall keep an inventory of the applications for credit submitted after the approval of this Act, containing the following information:

- (A) The law under which the credit is requested;
- (B) The amount of requested credit;
- (C) The location of the project that generates the credit;
- (D) The name of the project sponsor;
- (E) The type of project;
- (F) The total investment in the project;
- (G) The direct jobs to be created in the project;
- (H) If the project applying for credit has capital contributed by a Fund and the share or interest of the Fund therein; and
- (I) Any other information required by regulations.

(4) Agencies with which applications for credit are filed, the Secretary of the Treasury, and the Secretary of Economic Development shall submit a report to the Committee, every quarter, and to the Legislative Assembly, every year, on January 1<sup>st</sup> and July 1<sup>st</sup>, with the information provided for in paragraph (3) of this subsection, except that, such reports shall not disclose the name of the project sponsor or confidential information of each project such as, for instance, financial information, balance sheet, and trade secrets.

(5) The Secretary of the Treasury and the Secretary of Economic Development, in consultation with the Committee, shall issue the regulations on this subsection; however, such regulations shall not require the disclosure of the name of the project sponsor or confidential information of each project such as, for instance, financial information, balance sheet, and trade secrets.

#### Section 5.- Real and Personal Property Tax

##### (a) In General.-

(1) The personal property of an exempt business used in the development, organization, construction, establishment, or operation of an activity covered under the decree, shall have a twenty-five percent (25%) exemption from the municipal and state taxes on personal property during the exemption period established in Section 7 of this Act. Likewise, in the case of a Qualified Residential Priority Project, the exemption shall be twenty-five percent (25%).

(2) The real property of an exempt business used in the development, organization, construction, establishment, or operation thereof shall have a twenty-five percent (25%) exemption on municipal and state taxes on the property during the exemption period established in Section 7 of this Act.

(b) Property under Construction or Expansion.- The real property of an exempt business shall have a twenty-five percent (25%) exemption during the period authorized under the decree to carry out the construction of, or to establish said exempt business, and during the first fiscal year of the Government under which the exempt business would have been subject to property taxes for having been in operation as of January 1<sup>st</sup> prior to the beginning of said fiscal year, were it not for the exemption provided herein. Likewise, the real property of said exempt business which is directly related to any expansion of the exempt business, shall have a twenty-five percent (25%) exemption from property taxes during the period authorized under the decree for carrying out the expansion. Once the exemption

period established in this subsection expires, the partial exemption provided for in this Section shall begin to apply.

(c) Municipalities, at their discretion, and taking into account their fiscal and financial health, shall prescribe through an ordinance to such effect, not later than June 30 of each year, the additional exemptions for each type of municipal tax to be offered uniformly to all exempt business over the exemption percentages provided in this Section and up to a maximum of seventy-five percent (75%). Provided, further, that once the Committee publishes the list of business activities or specific geographic area in accordance with Section 8 of this Act, the municipalities are hereby empowered, pursuant to the requirements of this subsection and subject to the seventy-five percent (75%) maximum, to vary additional exemptions established for all exempt business, by municipal ordinance, provided, that the municipality deems it beneficial to promote any of said business activity or specific geographic area. Municipalities shall be required to publish the municipal ordinances provided in this subsection, which shall be in effect for, at least, one (1) year from the publication thereof.

(d) Municipalities with which applications for municipal tax exemption are filed, empowered in subsection (c) of this Section 5, shall keep an inventory of such applications after the approval of this Act, containing the following information:

- (A) The law under which the municipal exemption is requested;
- (B) The exemption requested;
- (C) A copy of the Municipal Ordinance granting the municipal exemption, if applies;
- (D) The location or geographic area of the project within the municipality that generates the exemptions;
- (E) The name of the project sponsor;
- (F) The type of project or business activity;



- (G) Total project investment in the municipality;
- (H) The direct jobs to be created by the project in the municipality;
- (I) Any other information required by the municipality.

(e) Every Eligible Business applying for municipal tax exemptions, empowered under subsection (c) of this Section 5, and the municipalities with which applications for municipal tax exemption are filed, shall submit a report with the information contained in subsection (d) of this Section 5 to the Committee and the Secretary of Economic Development at the end of each quarter on or before the fifteenth (15<sup>th</sup>) day of the month. The Secretary of Economic Development, in turn, shall submit a report with the information contained in subsection (d) to the Legislative Assembly not later than January 31<sup>st</sup> and July 31<sup>st</sup> of each year, except that, such reports shall not disclose the name of the project sponsor or confidential information of each project such as, for instance, financial information, balance sheet, and trade secrets.

**Section 6.- Municipal License Fees and Other Municipal Taxes.-**

(a) The exempt businesses shall have a twenty-five percent (25%) exemption on municipal license fees, municipal excise taxes, and other municipal taxes levied by any municipal ordinance, during the periods provided for in subsection (e) of Section 7 of this Act. Likewise, in the case of an Eligible Residential Priority Project, the exemption shall be twenty-five percent (25%).

(b) During the term of the decree, the taxable portion under subsection (a) of this Section shall be subject to the tax rate in effect as of the date the decree was signed, regardless of any subsequent amendment made to the decree to cover operations of the exempt business in one or various municipalities.

(c) The exempt business shall have a twenty-five percent (25%) exemption from municipal taxes or municipal license fees applicable to the volume of business of said exempt business during the semester of the fiscal year of the Government in which the exempt business commences operations in any municipality, pursuant to the provisions of the Municipal License Fee Act. Furthermore, the exempt business holding a decree under this Act shall have a twenty-five percent (25%) exemption from municipal taxes or license fees on the volume of business attributable to said municipality during the two (2) semesters of the fiscal year or years of the Government following the semester in which the exempt business commenced operations in said municipality.

(d) The exempt businesses and their contractors and subcontractors shall have a twenty-five percent (25%) exemption from any tax, levy, fee, license, excise tax (including construction excise taxes), duty, or tariff levied by any municipal ordinance on construction works to be used by said exempt business within a municipality, without it being understood that said taxes include the municipal license fee levied on the volume of business of the contractor or subcontractor of the exempt business, during the term authorized under the tax exemption decree.

(e) Municipalities, at their discretion and taking into account their fiscal and financial health, shall prescribe through an ordinance to such effect, not later than June 30 of each year, the additional exemptions for each type of municipal tax to be offered uniformly to all exempt businesses over the exemption percentages provided in this Section and up to a maximum of seventy-five percent (75%). Provided, further, that once the Committee publishes the list of business activities or specific geographic area in accordance with Section 8 of this Act, the municipalities are hereby empowered, pursuant to the requirements of this subsection and subject to the seventy-five percent (75%) maximum, to vary additional exemptions established for all exempt businesses, by municipal ordinance, provided, that the

municipality deems it beneficial to promote any of said business activity or specific geographic area. Municipalities shall be required to publish the municipal ordinances provided in this subsection, which shall be in effect for, at least, one (1) year from the publication thereof.

(f) The shareholders or partners of a corporation or partnership that is an exempt business shall not be subject to the municipal tax on distributions of dividends or profits of the earnings and profits generated by the opportunity zone net income of an exempt business.

(g) Municipalities with which applications for municipal tax exemption are filed, empowered under subsection (e) of this Section 6, shall keep an inventory of such applications after the approval of this Act, containing the following information:

- (A) The law under which the municipal exemption is requested;
- (B) The exemption requested;
- (C) A copy of the Municipal Ordinance granting the municipal exemption, if applies;
- (D) The location or geographic area of the project within the municipality that generates the exemptions;
- (E) The name of the project sponsor;
- (F) The type of project or business activity;
- (G) The total project investment in the municipality;
- (H) The direct jobs to be created by the project in the municipality;
- (I) Any other information required by the municipality.

(h) Every Eligible Business applying for municipal tax exemptions, empowered under subsection (e) of this Section 6, and the municipalities with which applications for municipal tax exemption are filed, shall submit a report with the information contained in subsection (g) of this Section 6 to the Committee and the

Secretary of Economic Development at the end of each quarter on or before the fifteenth (15<sup>th</sup>) day of the month. The Secretary of Economic Development, in turn, shall submit a report with the information contained in subsection (g) to the Legislative Assembly not later than January 31<sup>st</sup> and July 31<sup>st</sup> of each year, except that, such reports shall not disclose the name of the project sponsor or confidential information of each project such as, for instance, financial information, balance sheet, and trade secrets.

Section 7.- Tax Exemption Period.-

(a) Exemption.- An exempt business shall enjoy a tax exemption for a period of fifteen (15) years.

(b) Flexible Tax Exemption.- The exempt businesses shall have the option of choosing the specific taxable years to be covered under their decrees in terms of their opportunity zone net income, provided, that they so notify to the Secretary and the Director not later than the deadline established by law for filing their income tax return for said taxable year, including the time extensions granted for this purpose. Once said exempt businesses opt for this benefit, their exemption period in relation to the opportunity zone net income shall be extended for the number of taxable years in which they have not enjoyed the tax exemption under their decrees.

(c) Establishment of Operations in Other Municipalities.- An exempt business may establish operations covered by an exemption decree in effect, in the same municipality where the principal office is located, or in any other municipality of Puerto Rico, provided, that it notifies the Exemption Office within thirty (30) days before the commencement of operations in the other municipality; and provided, that the Committee has designated the business activity to be established within a geographic area of the same municipality where the principal office is located or in any other municipality, as a Priority Project within Opportunity Zones in accordance with Section 8 of this Act. Additional operations shall enjoy the exemptions and

benefits provided for in this Act for the remainder of the exemption period under the decree in effect, provided, that they are consistent with the operation covered by the exemption decree and the operations in the new municipality are located within a qualified zone.

(d) Interruption of the Exemption Period.- An exempt business, which has ceased operations and subsequently wishes to resume operations shall not have the time it was not operating deducted from its corresponding exemption period and may enjoy the remainder of its exemption period, while its tax exemption decree is in effect, provided, that the Director determines that said operations ceased for good cause and that the reopening of said exempt business would inure to the benefit of the best social and economic interests of Puerto Rico.

(e) Establishment of Dates of Commencement of Operations and Exemption Periods.-

(1) The exempt business may choose the date of commencement of operations for purposes of Section 4 of this Act by filing an affidavit with the Exemption Office, with a copy to the Secretary, stating the unconditional acceptance of the decree granted to the exempt business under this Act. For purposes of Section 4 of this Act, the date of commencement of operations may be the date of the first payroll for training or production of the exempt business holding a decree under this Act, or any other date within a period of two (2) years following the date of the first payroll.

(2) The exempt business may defer the application of the flat tax rate provided in Section 4 of this Act for a period not to exceed two (2) years from the date of commencement of operations as established under paragraph (1) of this subsection (e). During the deferral period, said exempt business shall be subject to the applicable tax rate under Subtitle A of the Code.

(3) The exemption period provided in subsection (a) of Section 5 of this Act for the exemption of real and personal property shall begin on the first day of the fiscal year of the Government of Puerto Rico following the last fiscal year in which the exempt business holding a decree under this Act was partially exempt pursuant to the provisions of subsection (b) of Section 5 of this Act. The partial tax exemption provided in subsection (a) of Section (5) of this Act for said fiscal year shall apply to the tax on property owned by the exempt business as of January 1<sup>st</sup> prior to the beginning of said fiscal year.

(4) For purposes of the municipal license tax and any other municipal tax exemption, the partial exemption period provided in subsection (a) of Section 6 of this Act shall begin on the first day of the first semester of the fiscal year of the Government of Puerto Rico following the expiration of the partial exemption period provided in subsection (c). Provided, that in the case of exempt businesses that have been operating on a commercial scale before applying for the benefits of this Act, the date of commencement of operations, for purposes of municipal license fees, shall be the first day of the semester following the filing date of the application for tax exemption.

(5) In the case of exempt businesses that have been operating on a commercial scale prior to applying for the benefits of this Act, the date of commencement of operations, for purposes of the flat income tax rate provided in Section 4 of this Act, shall be the filing date of an application with the Exemption Office, but the commencement date may be postponed for a period not to exceed two (2) years after said date.

(6) The exempt business shall begin operations on a commercial scale within one (1) year after the date of execution of the decree, which term may be postponed at the request of the business for good cause; however, no extensions

of the date of commencement of operations shall be granted for a period greater than five (5) years from the date of approval of the decree.

#### Section 8.- Procedures

(a) Ordinary Procedure for Priority Projects within Opportunity Zones under this Act.

(1) The Committee shall issue a list of all business activities or eligible businesses per geographic area, which shall be recognized as Priority Projects within Opportunity Zones. The first list shall be issued within sixty (60) days after the approval of this Act. Each list shall be in effect for at least one (1) year from the publication thereof. However, none of these provisions shall limit the Committee's authority to amend the list, including the list of activities or geographic areas that may arise by virtue of paragraphs (2) and (3) of this subsection, for the purpose of adding business activities or additional geographic areas, which shall be in effect from the approval thereof until the one (1)-year period of the original list ends.

(A) When determining which activities shall be considered as eligible activities, as well as the geographic areas to which the list shall apply, the Committee shall take into account:

(i) the need for the business activity in Puerto Rico or in a geographic area.

(ii) the economic impact that the granting of decrees shall have in the region.

(iii) The best interests of the people of Puerto Rico.

(B) When issuing the list, the Committee shall not impose requirements in addition to those provided in this Act.

(2) Activities not Published by the Committee as Priority:

(A) Any person interested in having an activity considered as a Priority Project within Opportunity Zones under this Act, and which activity is not designated as such by the Committee on the published list mentioned in paragraph (1) of this subsection, shall request such designation through a letter addressed to the Committee, and shall file a copy of the request with the Secretary of Economic Development. In said request, any person interested in having an economic activity established in a geographic zone, including the mayors of the Municipalities, shall explain and describe the activity or activities he intends to carry out, the location of the activity, the merits of the activity proposed as a Priority Project within Opportunity Zones, and any other information that the Committee may require by regulations or administrative order. Within thirty (30) days from the date of the request, the Committee shall approve or deny the designation of the activity as a Priority Project within Opportunity Zones, or request, in writing, any additional information it may deem necessary to make a determination or request a meeting to discuss the proposed project within thirty (30) days from the date of said request. The Committee shall act on the request within thirty (30) days from the date of receipt of the additional information or the holding of the meeting. In addition, the Committee may delay, at its discretion, for a term not to exceed fifteen (15) days, its decision as to whether the proposed activity constitutes a Priority Project within Opportunity Zones. The Committee shall evaluate the information furnished by the applicant and shall vote, within the terms provided herein, to approve or deny the designation of the proposed activity as a Priority Project within Opportunity Zones and/or extend the geographic area of an activity already approved in another region. If the request is approved, an amended list of Priority Projects shall be published to include said activity. If the Committee fails to act on the request within the terms provided herein, the request shall be deemed to be denied and the interested party



may request once again that such activity be considered as a Priority Project within Opportunity Zones under this Act.

(B) The Committee may delegate to the Secretary of Economic Development the evaluation of requests to determine whether an activity may be considered as a Priority Project within Opportunity Zones under this Act and include it on the published list mentioned in paragraph (1) of this subsection. The Secretary of Economic Development shall complete his analysis within the terms provided in subparagraph (A) of this paragraph and submit a report to the Committee, which shall determine whether the proposed activity constitutes a Priority Project within Opportunity Zones. The Committee, within the terms provided in subparagraph (A) of this paragraph, shall vote to approve or deny the designation of the proposed activity issued by the Secretary of Economic Development.

(3) Applications for Tax Exemptions.-

(A) Any person who has established or intends to establish in Puerto Rico an eligible business and has received a designation as a Priority Project within Opportunity Zones by the Committee, may request to the Director the benefits of this Act by filing the corresponding duly sworn application with the Exemption Office.

(B) At the time of the filing, the Director shall collect the corresponding processing fees, which shall be paid by certified check, postal money order or cashier's check to the order of the Secretary. Such fees shall be provided by regulations, circular letter, administrative determination, or general information bulletin.

(C) The Secretary of Economic Development shall prescribe by regulations, the processing fees to be collected. Provided that, such regulations shall be revised every three (3) years after the approval thereof.

(4) Interagency Consideration of Applications.-

(A) Once any application under this Act is received by the Exemption Office, the Director shall send, within five (5) days to be counted as of the filing date of the application, a copy thereof to the Secretary, the concerned municipality, and the Secretary of Economic Development for the latter to file an eligibility report of the activity to be conducted and other facts related to the application. Upon evaluating the application, the Secretary and the concerned municipality shall verify the eligible business shareholders or partner's compliance with their tax liabilities under the laws administered by the former. Said verification shall not be necessary in the case of non-Puerto Rico resident shareholders who have not been Puerto Rico residents before or who hold, directly or indirectly, less than ten percent (10%) shares in the Fund, or corporations with publicly traded stocks. Noncompliance with said tax liability shall be sufficient grounds for the Secretary to deny the application for exemption of the applicant business.

(B) After the Secretary of Economic Development submits his Eligibility Report and recommendations, the Director shall send a copy of the decree project within five (5) business days after receiving the documents needed to process the case, to the concerned agencies, including the concerned municipality and the Municipal Revenue Collections Center (CRIM, Spanish acronym), for evaluation and recommendation, if no application opposing the same have been submitted. Any unfavorable recommendation on the decree project shall include the reasons therefor.

(i) The agencies and municipalities consulted by the Director shall have ten (10) days to submit their reports and recommendations on the decree project referred to them. If the agency or the municipality makes a favorable recommendation, or if said recommendation me is not received by the Exemption Office during the aforementioned ten (10)-day period, it shall be

understood that said decree project has received a favorable recommendation and the Secretary of Economic Development may take the appropriate action regarding said application.

(ii) If the municipality raises any objection with regard to the decree project referred thereto, the Exemption Office shall consider said objection, if deemed necessary, and the Exemption Office shall notify the parties and the corresponding agencies for administrative action or review of the decree project, as appropriate. Once the dispute is resolved, the Director shall make the determination he deems appropriate and forward the case to the Secretary of Economic Development for his final consideration.

(C) In case of amendments to grants approved under this Act, the concerned agencies and municipalities shall have ten (10) days to submit a report or opinion to the Director.

(D) Upon receipt of the reports, or upon expiration of the terms to make such reports, the Director shall submit the draft decree and his recommendations to the Secretary of Economic Development for his consideration, within the following five (5) days.

(E) The Director may rely on the recommendations of the agencies or municipalities that submit reports or opinions and may request them to support them.

(F) The Secretary of Economic Development shall issue a final determination, in writing, within a term not to exceed five (5) days as of the date the draft decree was submitted for his consideration.

(G) The Secretary of Economic Development may delegate to the Director those functions as he deems convenient in his discretion, in order to facilitate the administration of this Act, except for the function of approving or denying original tax exemption grants.

(H) Neither the Secretary of Economic Development nor the Director shall impose requirements in addition to those provided in this Act on exempt businesses. The geographic area shall neither be limited beyond the limits established by the Committee.

(b) Renegotiations and Conversions-

(1) Renegotiation of Decrees in Effect.-

(A) Any exempt business may request the Secretary of Economic Development to consider renegotiating its decree in effect if said exempt business shows that it shall increase by twenty-five percent (25%) or more the average jobs it has created during the three (3) taxable years preceding the filing of the application; or that it shall make a substantial investment in its existing operations that shall help maintain the economic and labor stability and that represents a twenty-five (25%)-increase or more in the investment in property used in the exempt business that is land, buildings or structures, machinery or equipment.

(i) If said exempt business shows to the satisfaction of the Secretary of Economic Development that it is unable to meet the requirements relative to the increase in the average jobs or the increase in investment described above, it shall submit the evidence necessary to the Exemption Office. The Secretary of Economic Development, upon favorable recommendation of the Secretary of the Treasury, and upon recommendation of the agencies that submit tax exemption reports, may, in his discretion, consider the renegotiation, taking into account any other factor or circumstance which reasonably shows that the renegotiation of its decree shall inure to the best social and economic interests of Puerto Rico.

(ii) For purposes of this Section, the jobs of the aforementioned exempt business shall consist of the number of individuals residing in Puerto Rico who have a permanent, full-time job in the exempt business rendering services as employees, even if they are not directly on the payroll of the exempt

business (such as persons under employee leasing contracts, but shall not include persons such as freelance contractors or consultants).

(iii) For purposes of this Section, the investment of the exempt business in its existing operations shall be computed according to the book value of the property factoring in the benefit of admissible depreciation under the straight-line method, taking into account the useful life of said property as determined pursuant to Subtitle A of the Code, in lieu of any other accelerated depreciation allowed by law.

(iv) If the Secretary of Economic Development agrees to conduct the renegotiation thus requested, upon recommendation of the agencies that submit tax exemption reports, he shall take into account the number of jobs of the exempt business, the place where it is located, the investment and additional jobs, as well as the remainder of the term of its decree, the tax benefits already enjoyed and its financial capacity, in order for the exempt business to be able to obtain a new decree with tax benefits adjusted under this Act.

(v) The Secretary of Economic Development shall establish the terms and conditions he deems necessary and convenient to better serve the interests of Puerto Rico, within the limits provided in this Act, and may, in his discretion, upon recommendation of the agencies that submit tax exemption reports, impose special job requirements, limit the period and the percentage of the exemption, limit the taxes to be exempt, and require and provide any other term or condition as necessary to suit the economic development purposes proposed under this Act.

(vi) When the exempt business that wishes to renegotiate its decree fails to meet the increased job or investment requirements provided in this subsection, the Secretary of Economic Development may, upon favorable recommendation of the Secretary and the agencies that submit tax exemption reports,

impose a flat income tax rate greater than that imposed under the exempt business decree.

(c) Denial of Applications.-

(1) Denial when Not Beneficial for Puerto Rico.- The Secretary of Economic Development shall deny any application when he determines that the grant does not inure to the best economic and social interests of Puerto Rico, after considering the nature of the physical facilities, the number of jobs, the total sum of the payroll and the investment, the location of the project, its environmental impact, or other factors that, in his judgment, warrant such a determination, as well as the recommendations of the agencies that submit tax exemption reports.

(A) The applicant, upon notice of such denial, may request the Secretary of Economic Development to reconsider, within sixty (60) days as of the receipt of the notice of denial, setting forth the facts and arguments regarding its application, as deemed appropriate, including the offer of any consideration in benefit of Puerto Rico which he deems warrants the request for reconsideration.

(B) In the event said application is reconsidered, the Secretary of Economic Development may accept any consideration offered in benefit of Puerto Rico and may require and provide other terms or conditions as necessary to ensure that such a grant shall inure to the best interests of Puerto Rico and achieve the purposes of economic development proposed by this Act.

(2) Denial for being Inconsistent with the Public Interest.- The Secretary of Economic Development shall deny any application if, based on the facts presented for his consideration and after the applicant has had the opportunity to offer a complete presentation concerning the matters at issue, he determines that the application is inconsistent with the public interest of Puerto Rico because the applicant has not been organized as a permanent bona fide business, or in view of the moral or financial reputation of the persons that constitute the same, the plans

and methods of obtaining financing for the applicant, the nature and intended use for the product or services of the applicant business, or any other factor that might indicate that there is a reasonable possibility that granting the exemption would be detrimental to the economic and social interests of Puerto Rico.

Section 9.- Exempt Business Transfer.

(a) Exempt Business Transfer.-

(1) General Rule.- The transfer of a decree, or of the stocks, property, or other property interest of an exempt business shall be previously approved by the Director. If the transfer is carried out without being previously approved, the decree shall be rendered null from the date of the transfer, except in the cases listed in paragraph (2) of this subsection. The foregoing notwithstanding, the Director may retroactively approve any transfer carried out without his previous approval, when in his judgment, the circumstances of the case so warrant, taking into consideration the best interests of Puerto Rico and the purposes of this Act.

(2) Exceptions.- The following transfers shall be authorized with no need for previous consent:

(A) The transfer of the assets of a deceased to his estate or the transfer by bequest or inheritance.

(B) The transfer within the provisions of this Act.

(C) The transfer of stocks or partnership interest when such a transfer does not result, directly or indirectly, in a change in the ownership or control of an exempt business holding a decree under this Act.

(D) The transfer of stocks of a corporation that owns or operates an exempt business when said transfer takes place after the Secretary of Economic Development has determined that any transfers of stocks from said corporation shall be allowed without his previous approval.

(E) The pledge, mortgage, or other surety with the purpose of responding for a *bona fide* debt. Any transfer of control, title, or interest by virtue of said contract shall be subject to the provisions of subsection (a) of this Section.

(F) The transfer by operation of law, by a court order, or by a bankruptcy judge to a trustee or fiduciary. Any subsequent transfer to a third party other than the aforementioned debtor or the bankrupt himself, shall be subject to the provisions of subsection (a) of this Section.

(G) The transfer of all the assets of an exempt business holding a decree under this Act, to an affiliated business. For purposes of this paragraph, affiliated businesses are those whose stockholders or partners jointly hold eighty percent (80%) or more of the issued and outstanding voting stocks or interest of said exempt business.

(3) Notice.- All transfers included in the exceptions to this subsection shall be notified to the Director within thirty (30) days by the exempt business holding a decree under this Act, with a copy to the Secretary of Economic Development and the Secretary, except for those included in subparagraph (D) of paragraph (2) which do not turn the holder of ten percent (10%) or more of the capital issued by the corporation into a stockholder, as well as those included under subparagraph (G) of paragraph (2), which shall be notified by the exempt business to the Director, with a copy to the Secretary, prior to the date of the transfer.

#### Section 10.- Allowable and Mandatory Revocation.

(a) Allowable Revocation.- The Secretary of Economic Development may revoke a decree:

(1) When the exempt business fails to comply with any of the obligations imposed by this Act or the regulations thereunder, or by the terms of the exemption decree.



(2) When the exempt business fails to commence or complete the construction of the facilities necessary for the activities it intends to carry out or for rendering the services it intends to render, or when the exempt business fails to commence the activity within the period fixed for such purposes in the decree.

(3) When the exempt business suspends its operations for over thirty (30) days without the express authorization of the Secretary of Economic Development. Provided, that the Secretary of Economic Development may authorize such suspensions for periods longer than thirty (30) days when these are motivated by extraordinary circumstances.

(b) Mandatory Revocation.-

(1) The Secretary of Economic Development shall revoke any decree granted under this Act when such decree has been obtained by means of false or fraudulent representations concerning the nature of the qualified business, or any other facts or circumstances which in whole or in part motivated the granting of the decree.

(2) When any person commits, or attempts to commit, by himself or on behalf of someone else, a violation of the provisions pertaining to successor businesses or preceding exempt businesses, such an action shall be grounds for revocation under this paragraph.

(3) When the exempt business fails to comply with its tax liability under the Code and other tax laws of Puerto Rico, when said noncompliance is duly certified by the Secretary.

(c) Procedure.- In the event of revocation of a decree granted under this Act, the grantee shall have the opportunity to appear before and be heard by the Director or any Special Examiner of the Tax Exemption Office designated for such purpose, who shall report his conclusions and recommendations to the Secretary of

Economic Development, with the prior recommendation of the agencies that submit reports on tax exemption.

(d) Effect of Revocation.- In the event of revocation, all of the computed net income, previously reported as opportunity zone net income, whether distributed or not, as well as all distributions thereof, shall be subject to the taxes imposed under the provisions of the Code. Furthermore, the taxpayer shall be deemed to have filed a false or fraudulent tax return with the intent to evade the payment of taxes, and consequently, shall be subject to the criminal provisions of the Code. The taxes owed in such case, as well as any other taxes that were until then exempt and not paid, shall become due and payable from the date such taxes would have become due and payable were it not for the decree, and shall be assessed and collected by the Secretary, pursuant to the provisions of the Code.

#### Section 11.- Nature of the Decrees.

(a) In general.- The tax exemption decrees under this Act shall be deemed to be a contract between the exempt business, its stockholders, partners, or owners, and the Government of Puerto Rico, and said contract shall be binding upon the parties. Said contract shall be interpreted liberally, consistently with the purpose of this Act of promoting the socioeconomic development of Puerto Rico. The Secretary of Economic Development shall have discretion to include, on behalf and in representation of the Government of Puerto Rico, those terms and conditions, grants and exemptions, that are consistent with the purpose of this Act and which promote the creation of jobs through the socioeconomic development of Puerto Rico, taking into consideration the nature of the application filed or action requested, as well as the facts and circumstances relative to each particular case as these may apply.

(b) Obligation to Comply with Representations in Application.- Every exempt business holding a decree under this Act shall conduct its exempt operations substantially as they were represented in their application, except when such

operations have been varied through amendments authorized by the Secretary of Economic Development pursuant to the provisions of this Act.

Section 12.- Administrative Decisions - Purpose.-

(a) All decisions and determinations of the Committee, as to the designation of an activity as a Priority Project within Opportunity Zones, or of the Secretary of Economic Development, as to the granting of decrees and their contents, shall be final and no judicial or administrative review or other recourse may overturn them, unless otherwise specifically provided. Provided, that once a decree has been granted under this Act, no agency, public instrumentality, political subdivision, public corporation, or municipality, whether autonomous or not, of the Government of Puerto Rico, other than the Secretary of Economic Development or the Governor, may challenge the legality of such decree or of any of its provisions.

(b) Any grantee adversely affected or aggrieved by any action taken by the Secretary of Economic Development whereby an exemption decree under subsection (b) of Section 10 of this Act is being revoked and/or cancelled, shall be entitled to a judicial review thereof by filing a petition for review before the Court of Appeals of Puerto Rico within thirty (30) days after the final decision or adjudication of the Secretary of Economic Development. During the processing of such a judicial review, the Secretary of Economic Development is hereby authorized, when in his judgment the service of justice so warrants, to postpone the effective date of any action taken by him under those conditions that so require and to the extent necessary to prevent irreparable damages. When such postponement is requested and subsequently denied, the court before which the review is requested, including the Supreme Court of Puerto Rico, through a writ of certiorari, may decree any necessary and appropriate proceeding to postpone the date of effectiveness of any action taken by the Secretary of Economic Development in order to preserve the status or rights of the parties until the review proceedings conclude, upon prior

posting of a bond in favor of the Secretary of the Treasury in the amount of the unpaid taxes as of such date, plus interest and penalties, plus interests computed for a period of one (1) year at the prevailing legal rate. Any decision or ruling of the Court of Appeals of Puerto Rico shall be subject to review by the Supreme Court of Puerto Rico through certiorari requested by any of the parties as provided by law.

(c) The members of the Committee and employees with Committee-related functions shall not be held civilly liable for any action or omission while discharging their duties under this Act, unless such conduct constitutes an offense or involves gross negligence.

Section 13.- Periodical Reports to the Committee.

(a) In General.- Every year, and independent from any other report required by law, the Director, in consultation with the Secretary, the Secretary of Economic Development, and the Planning Board shall submit a report to the Committee on the economic and fiscal impact of this Act. Said report shall be submitted within one hundred eighty (180) days after the close of each fiscal year. Said report shall include the information that the Committee publishes through circular letter or other publication of general circulation.

Section 14.- Reports Required from Exempt Businesses and Their Stockholders or Partners.

(a) Every exempt business shall file annually with the Secretary an income tax return, regardless of the sum of their gross or net income, separate from any other return which they are for other reasons required to file in connection with industry operations covered under the benefits provided for in this Act, and pursuant to the Internal Revenue Code for a New Puerto Rico. The Secretary may share with the Tax Exemption Office the information so received, provided that the confidentiality of said information is protected.

(b) Any stockholder or partner of an exempt business holding a decree under this Act shall file annually with the Department of the Treasury an income tax return pursuant to the provisions of the Internal Revenue Code for a New Puerto Rico, insofar as such stockholder or partner is required to do so under said Code.

(c) The exempt business shall be required to keep a separate accounting in Puerto Rico for its operations, as well as records and files as necessary, in addition to making and submitting the sworn statements and complying with the rules and regulations in effect to duly achieve the purposes of this Act and those which the Secretary may prescribe from time to time in connection with the imposition and collection of all types of taxes.

(d) Every exempt business shall file annually with the Tax Exemption Office, with a copy to the Secretary, not later than thirty (30) days as of the date prescribed by law for filing the corresponding income tax return, including any extensions granted for such a purpose, a report authenticated with the signature of the President, managing partner, or his authorized representative. Said report shall contain an account of data ascertaining compliance with the conditions established in the decree as well as any information that may be required in the form to be adopted for such purpose, or as required by Regulations. This report shall enclose the fees provided through Regulations payable through postal money order or cashier's or certified check, or by electronic means to the order of the Secretary of the Treasury. The information furnished in this annual report shall be used for statistical purposes and economic studies, as provided in this Act. Likewise, the Tax Exemption Office shall conduct an audit at least every two (2) years to ascertain compliance with the terms and conditions of the decree granted under this Act.

(e) The Director may impose a ten thousand dollar (\$10,000)-administrative fine on any exempt business that fails to file any of the reports required by the Secretary or the Director, pursuant to the provisions of subsections

(a) through (e) of this Section, or that files such reports after the deadline. The Tax Exemption Office may bring civil action for collecting said administrative fine before the General Court of First Instance of Puerto Rico, Superior Court, San Juan Part, which shall have exclusive jurisdiction to hear said proceedings. Filing an incomplete report shall be deemed to be a failure to file said report, if the concerned agency notifies the exempt business of any omission on the required report and said exempt business does not submit the missing information within fifteen (15) days as of the date of such notice, or does not reasonably justify the reason for such missing information.

Section 15.- Regulations Under this Act.

The Secretary of Economic Development, in consultation with the Secretary, shall approve regulations as necessary to govern all that pertains to the form and manner in which the decrees contemplated herein are requested and granted, in order to enforce the provisions and purposes of this Act. The Secretary shall approve regulations, in consultation with the Secretary of Economic Development regarding the granting and assignment, or the sale of tax credits under Section 4 of this Act. Furthermore, these regulations shall be subject to the provisions of Act No. 38-2017, known as the “Government of Puerto Rico Uniform Administrative Procedure Act.”

The Secretary may issue regulations, administrative determinations, circular letters, or general information bulletins on all that pertains to the compliance by the exempt business and the Fund with the provisions of the Code and this Act.

Section 16.- Application of the Puerto Rico Internal Revenue Code.

The application of the Code shall be supplementary insofar as its provisions are not inconsistent with the provisions of this Act.

Section 17.- Special Process for the Evaluation and Issuance of Permits.

(a) Special Process.- Government agencies with jurisdiction over permit processing, consultations, licenses, franchises, or certifications for Priority Projects within Opportunity Zones shall be governed by the provisions of this Act and shall be exempt from compliance with the terms and procedures established in Act No. 161-2009, as amended, known as the “Puerto Rico Permit Process Reform Act,” Act No. 75 of June 24, 1975, as amended, known as the “Puerto Rico Planning Board Organic Act,” Act No. 81-1991, known as the “Autonomous Municipalities Act of the Commonwealth of Puerto Rico of 1991,” and Act No. 38-2017, as amended, known as the “Government of Puerto Rico Uniform Administrative Procedure Act,” as well as the regulations promulgated thereunder. The substantive requirements applicable to permits, consultations, licenses, franchises, consultations, or certification shall be those established by the law or regulations that govern the referred processing.

(b) Jurisdiction.- The provisions of any other law notwithstanding, every permit application for a Priority Project within Opportunity Zones shall be evaluated by the Permit Management Office (OGPe, Spanish acronym), regardless of its location and any hierarchy transfer agreement that exists with the municipality where it is located. Provided, however, that OGPe shall be required to request the municipality where the Priority Project within Opportunity Zones is located to make comments on the proposal.

(c) Term for Comments.- The agencies or municipalities from which OGPe requests comments shall have a non-extendable term of ten (10) business days after such comment request to submit them. If no response is received after said ten (10) business days, the proposal shall be deemed favorable.

(d) Term for Processing Environmental Documents.- A term of twenty (20) business days as of the filing of the environmental document for a Priority Project within Opportunity Zones is hereby established for OGPe to express its consent or objection in accordance with the provisions of Section 4(B)(3) of Act No. 416-2004, as amended, known as the “Environmental Public Policy Act.” OGPe may extend said term when the environmental document submitted is incomplete, when additional information is required, or for other meritorious reasons.

(1) An Interagency Subcommittee on Environmental Compliance to be created by the Governor through an Executive Order shall be responsible for the evaluation and final determination regarding the environmental document. Said subcommittee shall be composed of representatives empowered to evaluate and adjudicate the potential environmental impacts that the projects to be developed could have. In extraordinary circumstances, a majority vote of the Interagency Subcommittee may extend the term to evaluate and adjudicate possible environmental impacts up to a term not to exceed thirty (30) days. If the Interagency Subcommittee on Environmental Compliance has not been created, the Interagency Subcommittee on Environmental Compliance that has been created by the Governor pursuant to Act No. 76-2000, as amended, is hereby authorized to carry out the tasks authorized under this Section.

(e) Term for Evaluation of Site Consultation.- Once a Priority Project within Opportunity Zones has obtained the environmental compliance certification pursuant to Section 4(B)(3) of Act No. 416-2004, as amended, OGPe shall have twenty (20) business days to evaluate the site consultation for such project, if any.

(f) Term for Other Development Permits.- Permits for urban development, construction, land subdivision, and others for the development of the Priority Project within Opportunity Zones other than a site consultation and other individual, general, or consolidated permits under the jurisdiction of OGPe, shall be evaluated



by OGPe within ten (10) business days after the appropriate permit application has been satisfactorily filed.

(g) Notifications.- In every procedure where it is required to notify the interested parties, it shall be sufficient to publish only a single notice in two (2) newspapers of general circulation. Furthermore, a sign shall be placed in a conspicuous place indicating, among other things, the purpose of the work or project, the Web address, and the telephone number of the pertinent agency.

(h) Regulations and Administrative Orders.- The Office of Permit Management (OGPe) is hereby empowered to establish alternate procedures to expedite the granting of permits, licenses, endorsements, consultations, or certifications relating to Priority Projects within Opportunity Zones that are consistent with the requirements of this Act. Until such procedures are established, OGPe is empowered to apply the procedures established in the regulations that were adopted in accordance with Act No. 76-2000, as amended, and the timeframes established in this Act shall be applied thereto. The government agencies are also empowered herein to issue administrative orders as necessary to enforce and achieve the purposes of this Act.

(i) Priority.- The projects that are to be executed under the provisions of this Act shall have priority in the agendas of all the government agencies. However, the projects that qualify as emergencies under Act No. 76-2000, as amended, shall have priority over Priority Projects within Opportunity Zones if submitted simultaneously.

(j) Request for Review and Stay Order.- The only remedy available to the party adversely affected by any resolution or order issued by OGPe or any other agency shall be to file a request for review before the Court of Appeals. Any request for judicial review by the concerned administrative agency shall be filed before said court, within a jurisdictional term of twenty (20) calendar days from the date on

which a copy of the notice of the resolution or final order of the agency is entered in the record. The appellant shall serve notice of the filing of the request for review to the appellee agency, and to all interested parties, within the established term; Provided, that compliance with said notice shall be jurisdictional in nature.

(1) If the Court of Appeals so requests, the administrative agency in question shall refer the case file to the Court of Appeals within ten (10) calendar days following the Court order. The Court of Appeals shall consider the review as provided in Sections 13.1(b) and 13.1(c) of Act No. 161-2009, as amended.

(2) The issuance of a writ of review shall not stay the authorization or the performance of a work, nor the implementation of a rule, regulation, order, resolution, determination, processing, awarding, or effectiveness of any permit, license, endorsement, or certification of an agency or official; the adjudication of an auction; or the granting of a contract executed or entered into in connection of projects to be carried out, unless expressly ordered by the court to prevent an irreparable damage, after having considered a petition in aid of jurisdiction to such effects. In order for the court to issue such order, the petitioning party must prove that it is indispensable for the protection of the court's jurisdiction; that it has a great probability of prevailing on the merits; that the order to stay shall not cause substantial damage to the other parties; that it will not impair the public interest; that there is no reasonable alternative to avoid the alleged damages; and that the damages cannot be compensated by granting a monetary remedy or any other adequate legal remedy, all of which shall be in accordance with the provisions of the Code of Civil Procedure of 1933.

(3) Any court order shall only affect the component or components of the project that are subject to controversy in the case, and where a substantial damage is involved.

(k) For purposes of this Section, the term Priority Projects within Opportunity Zones shall include projects agreed upon under a Partnership Agreement in accordance with Act No. 29-2009, as amended, known as the “Public-Private Partnership Act.”

Section 18.- Interrelation with other Laws.

The provisions of this Act shall not be used in conjunction with other tax or economic incentive laws in such a manner that would result in tax or other benefits that exceed the benefits to which any person would be entitled under said laws individually. However, this Section shall not be construed as a limitation to the capacity of a Private Capital Fund under Act No. 185-2014, as amended, known as the “Private Capital Fund Act,” to invest in stock or interest in a Fund or a business as part of the investments made pursuant to the investment requirements set forth in said Act, or as a limitation in the application of the benefits of said Act, together with this Act, except that the investment made by a Private Capital Fund shall not be considered as an Eligible Investment for purposes of the credit for investment provided in Section 4 of this Act.

Section 19.- Section 1031.06 is hereby added to Act No. 1-2011, as amended, known as the “Internal Revenue Code for a New Puerto Rico,” to read as follows:

“Section 1031.06. Special Rules for Capital Gains Invested in a Qualified Opportunity Fund.-

(a) In General.-

(1) Treatment of Capital Gains.- In the case of gain from the sale to, or exchange with, an unrelated person of a capital asset held by the taxpayer, at the election of the taxpayer -

(A) gross income for the taxable year, for purposes of Section 1031.01, shall not include so much of such gain as does not exceed the aggregate amount invested by the taxpayer in a qualified opportunity fund during the one hundred and eighty (180) day period beginning on the date of such sale or exchange,

(B) The amount of gain excluded from the gross income under subparagraph (A) shall be included in gross income as provided by subsection (b), and

(C) subsection (c) of this Section shall apply.

(2) Treatment of Capital Gains for purposes of subsection (b) of Section 1022.04.- For purposes of subsection (b) of Section 1022.04, the amount of capital gain excluded under subsection (a)(1)(A) shall not be part of the ‘adjusted net income according to the books’ of the taxpayer.

(3) Election.- No election may be made under paragraph (1)-

(A) with respect to a sale or exchange if an election previously made with respect to such sale or exchange is in effect, or

(B) with respect to any sale or exchange after December 31, 2026.

(b) Deferral of Capital Gain Invested in a Qualified Opportunity Fund.

(1) Year of Inclusion.- Gain to which subsection (a)(1)(B) applies shall be included in the gross income of the taxable year which includes the earlier of:

(A) the date on which such investment in the qualified opportunity fund is sold or exchanged, or

(B) December 31, 2026.

(2) Amount Includible in the Gross Income.

(A) In General.- The amount of gain included in the taxpayer’s gross income under subsection (a)(1)(A) shall be the excess of:

(i) the lesser amount of capital gain excluded under subsection (a)(1)(A) or the fair market value of the investment determined as of the date described in paragraph (1) of this subsection, over

(ii) the taxpayer's basis in the investment in a qualified opportunity fund.

(B) Determination of Basis of the Taxpayer in the Investment in a Qualified Opportunity Fund

(i) In General.- Except as otherwise provided in this clause or in subsection (c), the taxpayer's basis in the investment in a qualified opportunity fund shall be zero.

(ii) Increase for Gain Recognized under Subsection (b)(1).- The taxpayer's basis in the investment in a qualified opportunity fund shall be increased by the amount of gain included in the gross income by reason of subsection (b)(1) with respect to such property.

(iii) Investment in a Qualified Opportunity Fund Held for Five (5) Years.- In the case of any investment in a qualified opportunity fund held for at least five (5) years, the basis of such investment shall be increased by an amount equal to ten percent (10%) of the amount of gain deferred by reason of subsection (a)(1)(A).

(iv) Investment in a Qualified Opportunity Fund Held for Seven (7) Years.- In the case of any investment in a qualified opportunity fund held by the taxpayer for at least seven (7) years, in addition to any adjustment made under clause (iii), the basis of such property shall be increased by an amount equal to five percent (5%) of the amount of gain deferred by reason of subsection (a)(1)(A).

(3) Treatment of capital gains for purposes of subsection (b) of Section 1022.04.- For purpose of subsection (b) of Section 1022.04, the amount of the gain recognized as gross income under subsection (b)(1) shall include the ‘gross income adjusted according to the books’ of the taxpayer.

(c) Special Rule for Investments in a Qualified Opportunity Fund held for at least ten (10) years.- In the case of any investment in a qualified opportunity fund held by the taxpayer for at least ten (10) years and with respect to which the taxpayer makes an election under this section, the taxpayer’s basis in an investment in a qualified opportunity fund shall be equal to the fair market value of such investment on the date that the investment is sold or exchanged.

(d) Definitions.

(1) Qualified Opportunity Fund.- The term ‘qualified opportunity fund’ means an entity that meets the following requirements:

(A) the entity is a qualified opportunity fund under Section 1400Z-2 of the United States Internal Revenue Code of 1986, as amended, and

(B) the property of the entity, or a corporation or partnership in which the entity acquires stocks or partnership interests is located in a qualified opportunity zone (as such term is defined in paragraph (2) of subsection (d) of Section 1400Z-2 of the United States Internal Revenue Code of 1986, as amended) and is a property located in Puerto Rico.

(2) Taxpayer.-

(A) In General.- The term ‘taxpayer’ means an individual, trust, estate, corporation, partnership, or corporation of individuals.

(B) Special Rules for Partnerships and Corporations of Individuals.- In the case of a portion of a capital gain derived by a partnership or corporation of individuals and with respect to which the partnership or corporation of individuals does not make an election under paragraph (1) of subsection (a), the

partners or shareholders of a partnership or corporation of individuals may be treated as a taxpayer with respect to their distributive share in said gain and make an election under paragraph (1) of subsection (a). In these cases, the one hundred eighty-day period provided in subsection (a)(1)(A) shall begin the next day of the last day of the taxable year of the partnership or corporation of individuals.

(e) Applicable Rules.-

(1) Treatment of Investments with Mixed Funds.- In the case of any investment in a qualified opportunity fund only a portion of which consists of investments of gain to which an election under subsection (a) is in effect-

(A) such investment in a qualified opportunity fund shall be treated as two (2) separate investments, consisting of:

(i) one investment that only includes amounts to which the election under subsection (a) applies, and

(ii) a separate investment consisting of other amounts, and

(B) subsections (a), (b), and (c) shall only apply to the investment described in subparagraph (A)(i).

(2) Related Persons.- For purposes of this Section, persons are related to each other if such persons are described in Sections 1010.05(b) or 1033.17(b), determined by substituting ‘twenty percent (20%)’ for ‘fifty percent (50%)’ each time it occurs in such Sections.

(3) Decedents.- In the case of a decedent, amounts recognized under this Section shall, if not properly includible in the gross income of the decedent, be includible in gross income as provided by Section 1032.03.

(4) Regulations.- The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this Section, including-

(A) rules for the certification of qualified opportunity funds for the purposes of this section, and

(B) rules to prevent abuse.”

Section 20.- Section 1035.08 of Act No. 1-2011, as amended, known as the “Internal Revenue Code for a New Puerto Rico,” is hereby amended to read as follows:

“Section 1035.08.- Sale of Partnership Interest.-

(a) For purposes of Sections 1091.02(b) and 1092.02(c)(2), any earnings, profits, or income derived by a foreign corporation or non-resident alien from the sale of an interest in a partnership engaged in trade or business in Puerto Rico shall constitute income actually related to the conduct of a trade or business in Puerto Rico in the amount established in subsection (b) of this Section.

(b) The amount of gain that is subject to subsection (a) of this Section is an amount equal to the distributive share of the foreign corporation or non-resident alien in the gain that the partnership would have generated if the partnership had sold all the assets of the partnership, at the market value, on the date of the sale of the partnership interest by the foreign corporation or non-resident alien and that would constitute income actually related to the conduct of a trade or business in Puerto Rico under Section 1035.05. Only for purposes of the application of Section 1035.05, in the case of a domestic partnership, the domestic partnership shall be treated as a foreign partnership.

(c) The purchaser shall be required to withhold at the source a fifteen percent (15%) tax on the portion of the gain considered income actually related to the conduct of a trade or business in Puerto Rico by virtue of the provisions of this Section. The withholding provided in this subsection shall be made in accordance



with Section 1062.08(k) of this Code. The Secretary shall prescribe by regulations, administrative determination, circular letter, or general information bulletin the requirements to determine the amount subject to taxation under this Section.

(d) The provisions of this subsection shall not apply to the sale of the interest in a partnership that is a Fund under Act No. 185 of November 12, 2014, as amended, or a Qualified Opportunity Zone Fund, in accordance with Section 1400Z-2 of the United States Internal Revenue Code of 1986, as amended.

(e) This Section shall apply to sales of partnership interests occurring after December 31, 2018.”

Section 21.- Subsection (a) of Section 5 of Act No. 22-2012, known as the “Act to Promote the Relocation of Individual Investors to Puerto Rico,” is hereby amended to read as follows:

“Section 5.- Special Tax for Resident Individual Investors on Net Long-term Capital Gain.-

(a) Appreciation Before Becoming a Resident of Puerto Rico.- Except as provided in Section 1031.06 of the Code, the portion of the net long-term capital gain generated by a Resident Individual Investor attributable to any appreciation of the securities owned by such Resident Individual Investor before becoming a Resident of Puerto Rico, which appreciation is recognized ten (10) years after becoming a resident of Puerto Rico and before January 1, 2036, shall be subject to a five percent (5%) tax, in lieu of any other tax imposed under the Code and shall not be subject to the alternate basic tax provided in Subsection A of the Code. If such appreciation is recognized at any other time, the net long-term capital gain with respect to said securities shall be subject to income taxes in accordance with the tax treatment provided by the Code, including the provisions of Section 1031.06 of the Code. The amount of the net long-term capital gain shall be limited to the portion of the gain related to the appreciation of the securities while the Resident Individual

Investor resided outside of Puerto Rico. Provided, that for taxable years beginning after December 31, 2016, said capital gain shall be considered income from sources outside of Puerto Rico for purposes of the income tax provided in the Code.”

Section 22.- Section 3 of Act No. 185-2014, as amended, known as the “Private Equity Funds Act,” is hereby amended to read as follows:

“Section 3.- Eligibility

(a) ...

(1) ...

...

(10) in case of a foreign partnership or foreign limited liability company, eighty percent (80%) or more of its gross income is generated from the activities of said entity’s office in Puerto Rico.”

Section 23.- Section 4 of Act No. 185-2014, as amended, known as the “Private Equity Funds Act,” is hereby amended to read as follows:

“Section 4.- Private Equity Fund Election

(a) Any entity that meets the eligibility requirements mentioned in Section 3 of this Act may elect to be treated as a Fund only if it is treated as a registered merchant for purposes of subtitle D of the Code and notifies said election to the Secretary of Treasury no later than the last day of the third month after the inception date of the Fund. The Secretary of Treasury shall prescribe by regulations, circular letter, administrative determination, or any other document of general character the form and manner in which the entity shall make the election to be treated as a Fund, including to require that the election be submitted electronically.

(b) ...”

Section 24.- A new Section 84A is hereby added to Act No. 19-2017 to read as follows:

“Section 84A.- Priority of Strategic Projects.

For projects declared as strategic under Section 84 of this Act, OGPe shall establish the terms and procedures to address the same promptly.

Only those projects that qualify as an emergency pursuant to Act No. 76-2000, as amended, and Priority Projects within Opportunity Zones under the ‘Puerto Rico Economic Development Opportunity Zones Development Act of 2019,’ in that order, shall have priority over projects declared as strategic.

Until Regulations on the processes and terms to streamline strategic projects are adopted, the terms provided in the ‘Puerto Rico Economic Development Opportunity Zones Development Act of 2019’ shall apply.”

Section 25.- Rules of Interpretation of this Act.

The provisions of this Act shall be interpreted liberally so as to promote the development and implementation of the public policy set forth in its Statement of Motives and Declaration of Public Policy and to carry out any other purpose set forth in this Act.

Section 26.- Severability and Rules of Interpretation in Case of other Conflicting Laws.

If any Section, subsection, paragraph, subparagraph, clause, phrase, or part of this Act were held to be unconstitutional by a court of competent jurisdiction, the holding to such effect shall not affect, impair or invalidate the remainder of the Act, and the effect thereof shall be limited to the section, subsection, paragraph, subparagraph, clause, phrase, or part of this Act, thus held to be unconstitutional.

Section 27.- Effectiveness.

This Act shall take effect immediately after its approval.

## CERTIFICATION

I hereby certify to the Secretary of State that the following **Act No. 21-2019 (S. B. 1147) (Conference)** of the **15<sup>th</sup> Regular Session** of the **18<sup>th</sup> Legislative Assembly of Puerto Rico**:

**AN ACT** to create the “Puerto Rico Economic Development and Opportunity Zones Act of 2019,” add a new Section 1031.06 to Act No. 1-2011, as amended, known as the “Internal Revenue Code for a New Puerto Rico”; amend Section 1035.08 of the “Internal Revenue Code for a New Puerto Rico”; amend Section 5 of Act No. 22-2012, known as the “Act to Promote the Relocation of Individual Investors to Puerto Rico”; amend Sections 3 and 4 of Act No. 185-2014, as amended, known as the “Private Equity Funds Act”; and add a new Section 84A to Act No. 17-2017, in order to promote the incentives and a favorable regulatory environment to establish Qualified Opportunity Zones in Puerto Rico; and for other related purposes.

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

In San Juan, Puerto Rico, on this 16<sup>th</sup> day of May, 2019.

Orlando Pagán-Ramírez  
Director