

(S. B. 1980)

(No. 23)

(Approved March 12, 2008)

AN ACT

To amend Sections 2, 24 and 31 of Act No. 272 of September 9, 2003, known as the “Commonwealth of Puerto Rico Room Occupancy Rate Tax Act,” to provide the portion of the tax to be allocated to the National Parks Company.

STATEMENT OF MOTIVES

Through the enactment of Act No. 272 of September 9, 2003, known as the “Commonwealth Room Occupancy Rate Tax Act,” the responsibilities and obligations to impose, fix, determine, assess, collect, monitor, distribute, regulate, investigate and sanction the tax on room occupancy rate, were transferred from the Department of the Treasury to the Puerto Rico Tourism Company, as well the defining of a new formula for the distribution of the collections from the same. Upon the approval of the aforesaid Act, it was recognized that the Tourism Company is the one that can most efficiently assign the monies generated by the tax.

Through the years, the tax has proven to be a safe and stable source of revenue. It represents at the same time one of the Company’s main sources of revenue, thus allowing it to continue its ministerial role of promoting Puerto Rico as the foremost tourism destination of the Caribbean. It is unquestionable that the room occupancy rate is the suitable means for

achieving the reinvestment of the revenues accrued by the tourism industry in the development of this important segment of our economy.

The Recreational Development Company (CFR, Spanish acronym) was created in 1961 as the entity responsible for the planning, development and construction of recreational and sports facilities for the People of Puerto Rico. For the purpose of promoting investment, issuing public debt and guaranteeing repayment sources, a distribution of the occupancy rate tax of hotels and inns that was allocated for the CFR was established, and the Puerto Rico Recreational Fund was created. Through this mechanism, the CFR developed the recreational and sports infrastructure of the modern day Puerto Rico. It also planned and constructed the facilities of the main public beaches of the Island, including the public vacation centers, mainly directed to local low and moderate income clientele, and set the foundations that enable the creation of a National Park System for the preservation, use and enjoyment of present and future generations.

On the other hand, the National Parks Company (CPN, Spanish acronym), successor of the former CFR, is in charge of the protection, preservation and use of our parks, beaches, and forests, as well as our historic and natural monuments, to preserve and keep them in optimum conditions for the enjoyment of present and future generations. It is evident that these resources represent, to a great extent, the tourist attractions sought out by both foreign and local visitors. To reinforce the tourism industry and to comply with the public policy of the Commonwealth to create additional parks throughout the Island for the improvement of our quality of life, it is necessary for the CPN to have the economic resources that shall enable it to achieve such an important task, which is an integral part of our tourism development.

To achieve the foregoing, amendments are hereby proposed to Act No. 272, *supra*, so that the Tourism Company may redistribute the sums collected from the Room Occupancy Rate Tax, and thus may allocate resources to the CPN, to be used for capital improvements in the National Park System, as well as for the construction of new facilities and the acquisition of land for the development of parks. The proposed amendments shall also allow for the structuring of financing mechanisms to the achieve the specified goals.

BE IT ENACTED BY THE LEGISLATURE OF PUERTO RICO:

Section 1.—A new subsection (13) is hereby added, subsequent subsections are renumbered, and a new subsection (22) is added to Section 2 of Act No. 272 of September 9, 2003, to read as follows:

“Section 2.—Definitions

For purposes of this Act, the following terms shall be defined as follows:

(1) Entry – ...

...

(13) National Parks Company – Means the Puerto Rico National Parks Company, a public corporation and instrumentality of the Commonwealth of Puerto Rico, created by virtue of Act No. 114 of June 23, 1961, as amended.

(14) Taxpayer – ...

(15) ...

(16) ...

(17) ...

(18) ...

(19) ...

(20) ...

(21) ...

(22) Lodging—Means every furnished building, commonly used and maintained open for the lodging of guests by means of payment of a rental rate, which derives its revenues from the rental of rooms, and that within its offerings provides rental rates computed daily, weekly, fractionally or by a global rent on account of an all-inclusive concept. The term lodging shall also include hotels, condohotels, all-inclusive hotels, motels, inns, short-term rentals, hostelries, guesthouses, apartment hotels and recreational facilities operated by the agencies or instrumentalities of the Commonwealth of Puerto Rico.

(23) ...

(24) ...

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(30) ...

(31) ...

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(33) ...

(34) ...”

Section 2.—Subsection (B) of Section 24 of Act No. 272 of September 9, 2003, is hereby amended to read as follows:

“Section 24.—Tax

- A. The tax shall be ...
- B. The Company shall levy, charge, and collect a general tax of nine percent (9%) over the room occupancy rate. When dealing with lodgings authorized by the Commissioner of Financial Institutions to operate casinos, the tax shall be equal to eleven percent (11%). When dealing with lodgings authorized by the Company to operate as inns, the tax shall be equal to seven percent (7%). Motels shall pay a tax of nine percent (9%) when such rates exceed five (5) dollars daily. In the case of an all-inclusive hotel, as defined in subsection 23 of Section 2, the tax shall be equal to five percent (5%) of the global and grouped charge that guests are charged. In the case of supplementary short-term lodging, the tax shall be equal to seven percent (7%). In the case of recreational facilities operated by agencies or instrumentalities of the Commonwealth of Puerto Rico, the tax shall be equal to five percent (5%), with the exception of the facilities of the National Parks Company.
- C. ...”

Section 3.—Subsection (B) of Section 31 of Act No. 272 of September 9, 2003, is hereby amended to read as follows:

“Section 31.—Disposition of Funds

The Company shall distribute all funds collected from the tax imposed under Section 24 of this Act, as follows:

- A. Before the beginning of each fiscal year ...
- B. The Company shall make monthly distributions of the excess over the amounts needed for each monthly transfer to the

Bank as provided in subsection (A), of the tax levied in Section 24 of this Act that is collected each fiscal year, in accordance with the following order of priority:

- i. Two percent (2%) of the total tax collected shall enter monthly into the general funds of the Company to cover expenses related to the operation, management and distribution of the tax collected, or for any other use as determined by the Company.
- ii. Five percent (5%) of the total tax collected shall enter monthly into the General Fund of the Department of the Treasury for Fiscal Years 2005–2006 and 2006–2007 and into the funds of the National Parks Company as of Fiscal Year 2007–2008. As of the year in which the Authority certifies to the Department of the Treasury and to the Company, the commencement of the operation of the Convention Center, and during the ten (10) subsequent years, this five percent (5%) shall be available to cover any deficit, if any, arising exclusively from the operations of the Convention Center in excess of the reserves of two million five hundred thousand (2,500,000) dollars to be maintained by the Company, as provided in clause (iv) of this subsection. Provided, however, that for each fiscal year and/or each time the Convention Center intends to propose a budget which exceeds the deficit of two million five hundred thousand (2,500,000) dollars, the budget of the Convention Center shall be presented jointly to the Board of Directors of the

Authority, to the Board of Directors of the Company and to the Secretary of the Treasury for Fiscal Years 2005–2006 and 2006–2007, and to the Board of Directors of the National Parks Company as of Fiscal Year 2008–2009 at a meeting held specifically for such a purpose. This five percent (5%) shall be available during each fiscal year in a special reserve account maintained by the Company to cover any deficit in excess of the two million five hundred thousand (2,500,000) dollars, arising exclusively from the operation of the Convention Center. For each fiscal year, any surplus after covering such operational deficit, if any, shall be released from the special reserve and shall be available for use by the Department of the Treasury for Fiscal Years 2005–2006 and 2006–2007, and by the National Parks Company as of Fiscal Year 2007–2008.

- iii. Nine percent (9%) of the total tax collected shall be covered monthly into the general funds of the Company to cover the expenses of the Convention Center Bureau. Provided, however, That after the fiscal year 2003–2004, the amount of the collections on account of the tax to be remitted by the Company under this subsection shall not be less than four million five hundred thousand (4,500,000) dollars annually. The Company shall transfer to the Convention Center Bureau the corresponding amount in monthly installments of three hundred seventy-five thousand (375,000) dollars. In case the

amount deposited for any month is less than three hundred seventy-five thousand (375,000) dollars, the Company shall correct such deficiency by depositing the funds that become available in subsequent months of the same fiscal year.

- iv. Up to two million five hundred thousand (2,500,000) dollars shall be kept available during each fiscal year, in a special reserve account maintained by the Company, to cover any deficit arising exclusively from the operations of the Puerto Rico Convention Center. Provided, however, That for each fiscal year and/or each time that a modified budget is to be presented, the budget of the Convention Center shall be presented jointly to the Board of Directors of the Authority and to the Board of Directors of the Puerto Rico Tourism Company, at a meeting held specifically for such a purpose. For each fiscal year, any surplus after covering such operational deficit, if any, shall be released from the special reserve and shall be available for use by the Company for Fiscal Years 2005–2006 and 2006–2007, and by the National Parks Company as of Fiscal Year 2007–2008. The Company shall maintain this amount in said reserve in monthly amounts of two hundred eight thousand three hundred thirty-three dollars and thirty-three cents (\$208,333.33). This amount shall be reserved as of the year in which the Authority certifies in writing to Company that the Convention Center has commenced

operations, and for a period of ten (10) years. Upon the conclusion of the 10 year period, the total amount shall be remitted to the National Parks Company.

In case the operational deficit of the Convention Center exceeds the amount of two million five hundred thousand (2,500,000) dollars, to be reserved by the Company for such a purpose, said deficit shall be corrected through the five percent (5%) given to the Department of the Treasury for Fiscal Years 2005–2006 and 2006–2007, and to the National Parks Company as of Fiscal Year 2007–2008, as provided in clause (ii) of this subsection. Provided, however, That upon detection of any deficit arising exclusively from the operations of the Convention Center, and before utilizing the mechanism set forth in Section 31, clauses (ii) and (iv) of this subsection, the Authority shall first utilize any excess in possession of the Authority and any surplus that on account of previous collections of the tax, the Company shall transfer to the Authority, at the time of approval of this Act. The Authority, when requiring that the Company and/or the National Parks Company cover the deficit arising exclusively from the operations of the Convention Center, as provided in clause (ii) of this subsection, shall present clear justification of the causes and the reasons for this insufficiency, including, but not limited to, showing that any surplus of funds of the Authority were

utilized, as provided in Section 4.01 (6) of Act No. 351 of September 2, 2000, as amended, better known as the “Puerto Rico Convention Center District Act.” The justification shall be presented and carefully examined by the Pertinent Boards of Directors.

- v. The remainder available after the payments provided in clauses (B)(i), (B)(ii), (B)(iii) and B(iv), will be assigned to the Company. The funds appropriated to the Company shall be used by the latter for promoting, marketing, developing and strengthening the tourism industry in Puerto Rico. Provided, however, that the amount collected from the tax, to be remitted annually to the Company under this subsection, in excess of twenty million (20,000,000) dollars, shall be remitted to the funds of the National Parks Company for a four (4) year period, beginning on Fiscal Year 2007–2008, up to Fiscal Year 2010–2011. Provided further, that in the subsequent five (5) years, from Fiscal Year 2011–2012 to Fiscal Year 2015–2016, the Company shall remit to the National Parks Company only 50% of the excess of the twenty million (20,000,000) dollars that the Company collects pursuant to this subsection, with the remaining 50% being withheld by the Company.
- vi. The National Parks Company shall utilize the funds thus received to guarantee compliance with any obligation, including cash debt payment obligations, for which it

shall have the legal authority to encumber or pledge this source of revenues.

The Company shall submit an itemization of the collections arising from the tax to the Authority, the Convention Center Bureau, and to the National Parks Company on a monthly basis.”

Section 4.— The National Parks Company of Puerto Rico shall allocate a minimum sum of one million (1,000,000.00) dollars arising from this Act for purposes of rehabilitating the physical plant and facilities of the Boquerón Public Beach in the Municipality of Cabo Rojo and the establishment of the Blue Flag Program in said public beach.

Section 5.—Effectiveness

This Act shall take effect immediately after its approval.

CERTIFICATION

I hereby certify to the Secretary of State that the following Act No. 23 (S.B. 1980) of the 7th Session of the 15th Legislature of Puerto Rico:

AN ACT to amend Sections 2, 24 and 31 of Act No. 272 of September 9, 2003, known as the “Commonwealth of Puerto Rico Room Occupancy Rate Tax Act,” to provide the portion of the tax to be allocated to the National Parks Company,

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

In San Juan, Puerto Rico, today 15th of August of 2008.

Francisco J. Domenech
Director