

(H. B. 896)
(Conference)

(No. 41-2013)

(Approved June 30, 2013)

AN ACT

To amend Section 3020.05 and add a new Section 3020.13 to Act No. 1-2011, as amended, known as the “Internal Revenue Code for a New Puerto Rico,” in order to increase the excise tax on the sale of cigarettes and impose an excise tax on the sale of smokeless tobacco used to chew or inhale; amend Section 5 of Act No. 290-2000, as amended, in order to clarify the contribution made to the Special Fund for the Repository for Archives and Memorabilia of Ex-Governors and Ex-First Ladies of Puerto Rico; and for other purposes.

STATEMENT OF MOTIVES

The Commonwealth of Puerto Rico is undergoing an unprecedented fiscal crisis. The economic growth of our Island has declined as a consequence of unwise fiscal policies. Government finances are a reflection of the Island’s economic crisis creating a compelling need to procure funds for the treasury as reasonably as possible.

Various measures have been identified, namely, an increase in the excise tax on cigarettes and the imposition of a new excise tax on tobacco-derived products, among others. As this Legislative Assembly has stated, our intent is to identify alternative measures other than the mass layoff of public servants, which in the long-term could prove detrimental to the services provided to the people and could worsen our current economic crisis.

As it has been previously stated, the economic recovery, which served as a political campaign slogan, was a work of fiction given that by the Fiscal Year ending on June 30, 2013, it is estimated that there would be a \$2.157 billion structural deficit. In addition, the past administration approved an unsustainable tax reform despite the Island's deficit and economic contraction situation. This resulted in the downgrading of general obligation bonds at the beginning of the year, and consequently, Puerto Rico's credit was rated at a level above speculative investments (non-investment grade or junk bonds).

For such reason, and in view of the need to procure more revenues for the General Fund, we introduce an increase in the excise tax on the sale of cigarettes through amendments to Section 3020.05 of Act No. 1-2011, as amended, known as the "Internal Revenue Code for a New Puerto Rico." This excise tax would fulfill a dual purpose: to procure resources for the general fund and discourage cigarette consumption, which is associated to an increase in the incidence of respiratory tract diseases and different types of cancer.

There are, however, countless forms of tobacco consumption. Cigarettes are the most popular form of tobacco consumption, but there is an alternative form of consumption that is commonly known as smokeless tobacco. Smokeless tobacco is usually sold in foil packages, pouches, in small units and dosage, or as discrete single-use units. These products are found in the form of lozenges, tablets, pouches, and dissolvable strips, among others, and are available in three forms:

- a) Chewing tobacco: sold in loose leaves, twist, or roll;
- b) Snuff: available both, moist or dry, sold in loose leaves or pouches resembling tea bags. A pinch of this snuff is placed between the cheek or gums or may be inhaled through the nose; and
- c) Betel quid: a product manufactured in India, Africa, or Asia.

According to the Scientific Advisory Committee on Tobacco Products Regulation of the World Health Organization “[s]mokeless tobacco use is a significant part of the overall world tobacco problem.” In its report on smokeless tobacco, the committee stresses the following potential harms: a) promoting smokeless tobacco products may encourage individuals to adopt smokeless tobacco use in addition to continuing smoking; b) use of smokeless tobacco products increase the chances of subsequent initiation of smoking; c) children who might not have started smoking may start smokeless tobacco use due to its easy access; d) the possibility that smokeless tobacco may cause significant long-term effects to the health of its users, such as an increased risk of developing oral cancer, is not ruled out; and e) the risks of developing an addiction are considerable since most of them have hazardous components such as nicotine and nitrosamine. Likewise, the United States Surgeon General has determined that the use of smokeless tobacco may cause gum-related diseases and conditions, in addition to oral cancer. According to the report of the Surgeon General entitled “The Health Consequences of Using Smokeless Tobacco: A Report of the Advisory Committee to the Surgeon General,” the prolonged use of smokeless tobacco leads to a higher risk of developing oral lesions, such as leukoplakia, both in teenagers and adults. Furthermore, the Scientific Committee on Emerging and Newly Identified Health Risks (SCENIHR) of the European Commission adopted in 2008 the following scientific opinion in its report on the health effects produced by the use of smokeless tobacco:

Smokeless tobacco products are carcinogenic to humans, and the pancreas has been identified as the main target organ.[...] All types of smokeless tobacco products cause localized oral lesions and a high risk for development of oral cancer [...]. There is some evidence for an increased risk of fatal myocardial infarction among STP users. Some

data indicate reproductive effects of smokeless tobacco used during pregnancy [...].

On the other hand, the smokeless tobacco industry is booming to the extent that it generates over three (3) billion dollars in the United States since it has become a feasible alternative mostly in jurisdictions where there are laws prohibiting smoking in public and private places, which are very similar to the laws and regulations of our jurisdiction. It is and has been the public policy of the Government of the Commonwealth of Puerto Rico to take measures to promote the prevention and cessation of tobacco use. One of the means to promote prevention and cessation of tobacco use is the implementation of measures relating to taxation on tobacco-derived products.

In fiscal year 2011-2012, the revenues deposited in the General Fund on account of the current excise tax on cigarettes amounted to 172 million dollars. The estimated proceeds to be collected on account of the increase and the new taxes imposed shall exceed forty (40) million dollars for the Treasury. This measure would be in effect jointly with others to be taken by the Government to address the fiscal crisis while reducing the burden on the middle class. Although we are aware of the need to act promptly, we also understand that the burden cannot be placed on the middle class.

For all of the foregoing, and in consideration of the fight against nicotine addiction, the medical service expenses incurred by patients suffering from diseases caused or related to tobacco-derived products addiction, the apparent cost and loss of productivity in the workplace and the economy in general, and lastly, in order to emulate in our jurisdiction the efforts of the international community under the World Health Organization Framework Convention of Tobacco Control, this Legislative Assembly deems it meritorious to impose an excise tax on smokeless tobacco and increase the current excise tax on cigarettes.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:

Section 1.- Section 3020.05 of Act No. 1-2011, as amended, is hereby amended to read as follows:

“Section 3020.05.- Cigarettes

An excise tax of eleven dollars and fifteen cents (\$11.15) shall be imposed, paid, and collected on each hundred or fraction of one hundred (100) cigarettes. As of July 1, 2013, the excise tax shall be of sixteen dollars and fifteen cents (\$16.15) on each hundred or fraction of one hundred (100) cigarettes. As of July 1, 2015, the excise tax shall be of seventeen dollars (\$17.00) on each hundred or fraction of one hundred (100) cigarettes. For the purposes of this part, the term ‘cigarette’ shall mean any roll of finely cut natural or synthetic tobacco, or any other finely cut natural vegetable or synthetic matter, or any mixture thereof, or any other finely cut solid matter or substance that is used to make the products known as cigarettes, cigars, and little cigars. Cigars or cigarettes introduced or made in Puerto Rico for export are excluded, subject to those requirements or conditions imposed by the Secretary through regulations, as well as handcrafted cigars or cigarettes as defined by the Secretary through regulations.

Cigarettes manufactured, introduced, sold, conveyed, used, or consumed in Puerto Rico shall have affixed on the boxes, packages, or packs in which they are packed, a label with the information and characteristics as prescribed through regulations. Each cigarette box, package, or pack must bear the word ‘tributable’ or ‘taxable’ stamped on a visible place and in clear and legible form. These provisions shall not apply to exempt cigarettes.”

Section 2.- Section 3020.13 is hereby added to Act No. 1-2011, as amended, to read as follows:

“Section 3020.13.- Smokeless Tobacco

An excise tax shall be imposed, paid, and collected on smokeless tobacco manufactured in or imported into Puerto Rico. For purposes of this subtitle, the term ‘smokeless tobacco’ shall mean any tobacco-derived product that:

- a) Is intended to be consumed without creating combustion or burning;
and
- b) Is found or sold in foil packages, pouches, in small units, and/or discrete single-use units, in the form of lozenges, tablets, pouches, and dissolvable strips, among others.

The excise tax shall be imposed as follows:

- 1) Chewing tobacco: One dollar (\$1.00) for every pound or fraction thereof.
- 2) Snuff or any other tobacco-derived product. Three dollars and two cents (\$3.02) for every pound or fraction thereof.

Tobacco-derived products manufactured, introduced, sold, conveyed, used, or consumed in Puerto Rico shall have affixed on the boxes, packages, or packs in which they are packed, a label with the information and characteristics as prescribed by regulation. Each cigarette box, package, or pack must bear the word ‘tributable’ or ‘taxable’ stamped on a visible place and in clear and legible form

Section 3.- Section 5 of Act No. 290-2000, as amended, is hereby amended to read as follows:

“Section 5.- Special Fund

The Special Fund for the Repository for Archives and Memorabilia of Ex-Governors and Ex-First Ladies of Puerto Rico is hereby created to defray all construction and operating costs, as well as all efforts as are necessary to strictly attain the purposes of this chapter.

...

The Special Fund shall be composed of:

(a) ...

(b) ...

(c) The annual apportionment of one percent (1%) from the revenues collected on account of the tax on cigarettes established in Section 3020.05 of the Internal Revenue Code of 2011, as amended, up to a maximum of one million dollars (\$1,000,000) annually until the fund accumulates and maintains the maximum amount of six million dollars (\$6,000,000).

This apportionment shall take effect on Fiscal Year 2001-2002.”

Section 4.- The Department of Treasury of the Commonwealth of Puerto Rico shall conform any regulations in effect to the provisions of this Act.

Section 5.- This Act shall take effect on July 1, 2013.

CERTIFICATION

I hereby certify to the Secretary of State that the following **Act No. 41-2013 (H. B. 896) (Conference)** of the **1st Regular Session** of the **17th Legislative Assembly of Puerto Rico:**

AN ACT to amend Section 3020.05 and add a new Section 3020.13 to Act No. 1-2011, as amended, known as the “Internal Revenue Code for a New Puerto Rico,” in order to increase the excise tax on the sale of cigarettes and impose an excise tax on the sale of smokeless tobacco used to chew or inhale; amend Section 5 of Act No. 290-2000, as amended, in order to clarify the contribution made to the Special Fund for the Repository for Archives and Memorabilia of Ex-Governors and Ex-First Ladies of Puerto Rico; and for other purposes.

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

In San Juan, Puerto Rico, on this 18th day of April, 2018.

Orlando Pagán-Ramírez
Director