

(Substitute for S. B. 280)
(Reconsidered)

(No. 41-2021)

(Approved August 29, 2021)

AN ACT

To amend subsections (a), (b), (c), (d), (e), and (h) and add subsections (i), (j), (k), (l), (m), and (n) to Section 1052.01 of Act No. 1-2011, as amended, known as the “Puerto Rico Internal Revenue Code of 2011,” in order to incorporate the earned income credit provisions available to U.S. residents, through the U.S. Internal Revenue Code of 1986, as amended, and extend them to U.S. residents in Puerto Rico; and for other related purposes.

STATEMENT OF MOTIVES

Since 1975, the United States tax system has provided some type of Earned Income Tax Credit (EITC). This credit is a tool that has been proven to reduce poverty by increasing workers’ total annual income. Moreover, this direct work incentive encourages workers to transition from the informal to the formal economy, thereby increasing the labor force participation rate, which has historically been very low in Puerto Rico when compared to other state jurisdictions. However, the benefits of this credit had never been extended to Puerto Rico’s workers.

Through the approval of the American Rescue Plan Act in March 2021, the Biden-Harris administration extended the EITC program to Puerto Rico. This historic inclusion, together with the CTC (Child Tax Credit), shall represent more than one billion in annual payments for our working class. Fortunately, the EITC program was extended to Puerto Rico while allowing for a considerable amount of local discretion in its application. This shall allow us to adjust the credit to our demographic reality, poverty levels, and labor force participation rate. Our reality is

very different from that of workers in the continental United States and for such reason it is crucial that the program be designed accordingly.

There is a general consensus between the consulted economists that, if designed correctly, the extension of this program to Puerto Rico shall represent a unique opportunity in our history to lift our workers out of poverty, increase the labor force participation rate, reduce the welfare dependency of our impoverished families, increase the minimum wage, move workers from the informal economy to the formal economy, and reduce emigration in Puerto Rico. However, a poorly designed program would represent a wasted opportunity to change the financial reality of Puerto Rico's workers. This is a reality that, for many decades, has hindered development, formalization, and social mobility. It is for this reason that everything is contingent on the program's design.

The federal model is designed for an economy in which very few people earn the minimum wage (contrary to Puerto Rico) and individuals or couples have one or more qualified children (in contrast to Puerto Rico's low birth rate). For such reason, when the federal EITC guidelines are applied in Puerto Rico, a childless worker who earns more than \$15,080 annually, or \$7.25 per hour (minimum wage), would be eligible for an EITC of only \$64 annually. Similarly, married couples without children who earn more than \$21,740 annually are not eligible for EITC.

Adopting the EITC as it is currently designed for the United States would simply not work in Puerto Rico in terms of achieving the public policy objectives of reducing poverty, increasing the labor force participation rate, and reducing participation in the informal economy. In light of the foregoing, this legislation is designed with the objective of maximizing the changes proposed under ARPA by making use of the discretion granted thereunder to Puerto Rico to properly finance an Earned Income Tax Credit that adjusts to our reality and helps us achieve the economic and social development public policy objectives we yearn for.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:

Section 1.- Subsections (a), (b), (c), (d), (e), and (h) are hereby amended and subsections (i), (j), (k), (l), (m), and (n) are hereby added to Section 1052.01 of Act No. 1-2011, as amended, known as the “Puerto Rico Internal Revenue Code of 2011,” to read as follows:

“Section 1052.01.- Earned Income Tax Credit.-

(a) ...

(1) ...

(2) ...

(3) ...

(4) For taxable years beginning after December 31, 2018, but before January 1, 2021, the earned income tax credit shall be:

...

(5) For taxable years beginning after December 31, 2020, the earned income credit shall be:

(A) Taxpayers with no Dependents.- The earned income tax credit shall be equal to fifteen percent (15%) of the gross earned income, up to a maximum credit of one thousand five hundred dollars (\$1,500) in a taxable year. In the case of an individual taxpayer whose adjusted gross income is in excess of sixteen thousand dollars (\$16,000), but not in excess of twenty-six thousand dollars (\$26,000), the maximum credit described in this paragraph shall be reduced by an amount equal to fifteen percent (15%) of the adjusted gross income in excess of sixteen thousand dollars (\$16,000). In the case of married taxpayers filing a joint return, if the sum of the adjusted gross income earned by both spouses exceeds eighteen thousand dollars (\$18,000), but does not exceed twenty-eight thousand dollars (\$28,000), the maximum credit described in this paragraph shall be reduced

by an amount equal to fifteen percent (15%) of the adjusted gross income in excess of eighteen thousand dollars (\$18,000).

(B) Taxpayers with one (1) Dependent.- The earned income tax credit shall be equal to thirty-three point ninety-eight percent (33.98%) of the gross income earned, up to a maximum credit of three thousand five hundred dollars (\$3,500) in a taxable year. In the case of an individual taxpayer whose adjusted gross income is in excess of eighteen thousand dollars (\$18,000), but not in excess of thirty-one thousand dollars (\$31,000), the maximum credit described in this paragraph shall be reduced by an amount equal to twenty-six point ninety-two percent (26.92%) of the adjusted gross income in excess of eighteen thousand dollars (\$18,000). In the case of married taxpayers filing a joint return, if the sum of the adjusted gross income earned by both spouses exceeds twenty-two thousand dollars (\$22,000), but does not exceed thirty-five thousand dollars (\$35,000), the maximum credit described in this paragraph shall be reduced by an amount equal to twenty-six point ninety-two percent (26.92%) of the adjusted gross income in excess of twenty-two thousand dollars (\$22,000).

(C) Taxpayers with two (2) Dependents.- The earned income tax credit shall be equal to forty percent (40%) of the gross income earned, up to a maximum credit of five thousand five hundred dollars (\$5,500) in a taxable year. In the case of an individual taxpayer whose adjusted gross income exceeds twenty-one thousand dollars (\$21,000), but does not exceeds thirty-seven thousand dollars (\$37,000), the maximum credit described in this paragraph shall be reduced by an amount equal to thirty-four point thirty-eight percent (34.38%) of the adjusted gross income in excess of twenty-one thousand dollars (\$21,000). In the case of married taxpayers filing a joint return, if the sum of the adjusted gross income earned by both spouses exceeds twenty-five thousand dollars (\$25,000), but does not exceed forty-one thousand dollars (\$41,000), the maximum credit described in this paragraph

shall be reduced by an amount equal to thirty-four point thirty-eight percent (34.38%) of the adjusted gross income in excess of twenty-five thousand dollars (\$25,000).

(D) Taxpayers with three (3) or more Dependents.- The earned income tax credit shall be equal to forty-four point eighty-three percent (44.83%) of the gross income earned, up to a maximum credit of six thousand five hundred dollars (\$6,500) in a taxable year. In the case of an individual taxpayer whose adjusted gross income exceeds twenty-one thousand dollars (\$21,000), but does not exceed forty thousand dollars (\$40,000), the maximum credit described in this paragraph shall be reduced by an amount equal to thirty-four point twenty-one percent (34.21%) of the adjusted gross income in excess of twenty-one thousand dollars (\$21,000). In the case of married taxpayers filing a joint return, if the sum of the adjusted gross income earned by both spouses exceeds twenty-five thousand dollars (\$25,000), but does not exceed forty-four thousand dollars (\$44,000), the maximum credit described in this paragraph shall be reduced by an amount equal to thirty-four point twenty-one percent (34.21%) of the adjusted gross income in excess of twenty-five thousand dollars (\$25,000).

(6) Provided, that the credit granted under paragraph (5) of this subsection may be increased to a higher amount after the Secretary issues a certification showing that the total amount of the Earned Income Tax Credit claimed for the taxable year has been in an amount lower than \$800 million. In such cases, the Secretary shall issue to each beneficiary an additional Earned Income Tax Credit to that claimed by the taxpayer in the income tax return without requiring the taxpayer to take any other action. This additional Credit shall be granted so that the total benefits distributed on account of the Earned Income Tax Credit reaches the sum of \$800 million for that year. The additional amount shall be distributed at the same percentage rate to all beneficiaries. This percentage rate shall be applied to the

benefit claimed by the beneficiary for that taxable year. The Secretary may not vary the percentage rate of the benefit for any group of taxpayers by reason of marital status, age, sex, income level, income source, or any other reason. Provided, that the Secretary shall issue the aforementioned certification not later than November 30 following the due date for filing the individual income tax return, including extensions. Said certification shall include the total credit established in this Section claimed by the taxpayers in the filed income tax return. If the total credit claimed by individual taxpayers who filed returns is lower than eight hundred million dollars (\$800,000,000), then the Secretary shall publish a notice stating that an additional credit amount shall be granted to every eligible individual taxpayer. This payment shall be issued not later than March 31 of the year following the issuance of the certification. The Secretary is hereby empowered to postpone the dates established in this paragraph if the due date for filing the income tax return or an extension thereof were postponed.

(7) To be eligible for the Earned Income Tax Credit, the taxpayer should have filed his income tax return on or before the due date provided in this Subtitle, including any extension granted by the Secretary for the filing thereof.

(b) Gross Earned Income.- For the purposes of this Section, the term 'gross earned income' means wages, salaries, tips, pensions, any payment for services rendered by an employee to his employer, whether exempt or taxable, or any other employee compensation for services rendered, but only if such amounts are included as gross income for the taxable year; provided, that said amounts are duly reported in a withholding statement as required under Section 1062.01(n)(2) whether these are subject to withholding or not, or in an information statement issued under Section 1081.01 of this Code, or in the case of federal retirees, the pension amounts reported in Form 1099-R or any other form used for such purposes by the federal government. Provided, that, for the purposes of paragraph (5) of subsection (a), the term 'gross

earned income' also includes income received from a trade, self-employment, or income producing activity by a Puerto Rico resident who complies with Section 4060.01 of this Code, and which income is subject to the social security tax at the federal level, and said income has been duly reported in an information statement issued under Section 1062.03, 1063.01, or 1063.23 of this Code and reported in the Income Tax Return as taxable income.

(c) Limitations.- For the purposes of subsection (b) of this Section, the gross earned income shall be computed separately for each individual, even if said individual may file a joint return, without regard to any pension or annuity income, income subject to taxation under Section 1091.01 (relating to nonresident aliens), or income earned by an individual for services rendered while incarcerated. However, for taxable years beginning after December 31, 2018, in the case of married taxpayers filing a joint return, whether they choose the optional computation or not, the credit shall be computed based on the sum of the earned income of both spouses. In addition, married taxpayers who choose to file separately shall not be eligible for the credit provided in paragraphs (4) and (5) of subsection (a) of this Section, respectively.

(d) Taxable Year of Less than Twelve (12) Months.- Except in the case of a taxable year ended by reason of the taxpayer's death, no credit shall be allowed under this Section in the case of a taxable year that covers a period of less than twelve (12) months. For taxable years beginning after December 31, 2018, this credit may be claimed only if the taxpayer has not died at the time of filing the income tax return in which the credit provided paragraphs (4) and (5) of subsection (a) of this Section, respectively, is claimed.

(e) Credit Denial.- No credit whatsoever shall be allowed under subsection (a) if the taxpayer earns net income on account of interests or dividends, rentals or royalties, the sale of capital assets, child support payments in connection with

divorce or separation, any other kind of income not treated as earned income, as defined under subsection (b) of this section, in excess of two thousand two hundred dollars (\$2,200) for the taxable year. Provided, that for taxable years beginning after December 31, 2020, the amount of other income, including exempt income not considered as gross earned income that may be generated by an individual and still be eligible for the credit provided in paragraph (5) of this section, shall be equal to or less than ten thousand dollars (\$10,000).

(f) ...

(g) ...

(h) Additional requirements to be eligible for the credit provided in paragraphs (4) and (5) of subsection (a) of this section, respectively.- In addition to the requirements in subsections (a) through (g) of this section, every taxpayer shall comply with the following:

(1) the taxpayer, his/her spouse, in the case of married taxpayers, and dependents eligible for the credit provided in paragraphs (4) and (5) of subsection (a) of this section, respectively, shall be Puerto Rico residents during the entire taxable year for which the credit is claimed and at the time of filing the income tax return;

(2) the taxpayer and his/her spouse, in the case of married taxpayers, shall be, on the last day of the taxable year, nineteen (19) years of age or older;

(3) only the children of the taxpayer or his/her spouse who, on the last day of the taxable year, are eighteen (18) years of age or younger, shall be treated as dependents; provided, that children who are full-time students shall be treated as dependents under this section if, on the last day of the taxable year, such children are twenty-five (25) years of age or younger;

(4) married taxpayers who file separate returns shall not be eligible for the credit provided in paragraphs (4) and (5) of subsection (a) of this section, respectively; and

(5) shall not claim the credit granted under Section 1052.02.

(i) Increase for Inflation. The gross earned income limit and maximum credit amounts provided in paragraph (5) of subsection (a) of this section shall be subject to the increase provided for inflation as adjusted by the U.S. Internal Revenue Service. The Secretary of the Treasury shall issue an information bulletin notifying the earned income and maximum credit limits, after the U.S. Internal Revenue Service announces the inflation adjustments.

(j) The Secretary shall have the duty to disburse all such funds allocated to the Earned Income Tax Credit program timely and expeditiously. To such effect, the Secretary is hereby directed to formulate a strategic and operational plan for identifying and implementing administrative efficiencies directed at reducing the information processing period required under said credit in order to disburse the benefits on a semiannual, quarterly or, ideally, monthly basis.

(k) The Department of the Treasury shall establish the administrative framework necessary to announce the credit and follow up on the performance thereof. To such ends, the Department shall publish an annual Report on Program Performance and Measurement stating the following information:

(1) The claim or adoption rate, as well as the method used for the calculation thereof;

(2) The estimated claim or adoption rate for the following 3 years, as well as the method used for the calculation thereof;

(3) The demographics of filers, including marital status, age, income level, and total amount;

(4) The demographics of non-filers, including marital status, age, income level, and total estimated amount;

(5) The demographics of the taxpayer universe, including marital status, age, income level, and total amount;

(6) Total program spending level;

(7) Total state program spending level;

(8) Total federal program spending level; and

(9) Estimated state and federal program spending for the next 3 program years.

(10) The Department of the Treasury shall ensure that the confidentiality of the information submitted to the Department by the taxpayer and contained in the report is guaranteed, as provided in Section 1001.01 of this Code.

(l) The supporting data for the Report on Program Performance and Measurement shall be available to the general public so that any person and/or governmental and nongovernmental body may review, measure, model, and make public policy recommendations thereon. For these purposes, said data shall:

(1) be public;

(2) be accessible through the webpage of the Department of the Treasury;

(3) include all the information contained in the Report on Program Performance and Measurement;

(4) be machine readable and processable and downloadable into a spreadsheet format as well as other widely-used electronic formats;

(5) be updated continuously and as quickly as it becomes available;

and

(6) comply with the Open Data Standards.

(m) ‘Open Data Standards’- The term shall mean and shall be construed as data and information of a public nature that is accessible to citizens in order to promote active civic participation in matters of governance, and which allows third parties to reuse public data in order to develop all types of analytic tools for the benefit of society. Likewise, the public data and information must comply with seven (7) basic principles:

(1) Complete: Open data shall be as complete as possible.

(2) Primary: Open data must be primary source data. Detailed information on the primary source and origin of such data shall be provided.

(3) Timely: Data shall be made available to the public in a quick and timely manner. Priority shall be given to data whose utility is of an urgent nature or time sensitive; however, in all cases, the data shall be released as quickly as possible once it is collected.

(4) Accessible in physical and electronic format: Data shall be released and remain as accessible as practicable both through physical and electronic means so as to prevent and/or minimize the need to request access to public information.

(5) Machine Readable and Processable: Data must be made available in a widely-used electronic file format; and in what pertains to the collection and publication of qualitative and quantitative data for the purpose of analysis, such data shall be made and remain available as a spreadsheet.

(6) Non-discriminatory: Data shall be made available for use to all without the need to submit a request or submit to any other process in order to access the public information.

(7) License-free: The use of data shall not be subject to any regulation that restricts its reuse; however, reasonable privacy and security restrictions may be allowed. In such cases, the data to which such considerations

apply shall be redacted and the sanctioned data shall be published. No payment shall be established as a requirement to access or reuse the data and public information.”

Section 2.- Rulemaking Authority

The Department of the Treasury and any other agencies, departments, or instrumentalities of the Commonwealth of Puerto Rico are hereby authorized to adopt regulations, or amend or repeal any regulation in effect in order to achieve the purposes of this Act.

Section 3.- Supremacy

The provisions of this Act shall prevail over any other provision that is inconsistent with the purposes thereof.

Section 4.- Severability Clause

If any clause, paragraph, subparagraph, sentence, word, letter, article, provision, title, chapter, subchapter, heading, or part of this Act were held to be null or unconstitutional, the ruling, holding, or judgment to such effect shall not affect, impair, or invalidate the remainder of this Act. The effect of said holding shall be limited to the clause, paragraph, subparagraph, sentence, word, letter, article, provision, title, chapter, subchapter, heading, or part of this Act thus held to be null or unconstitutional. If the application to a person or a circumstance of any clause, paragraph, subparagraph, sentence, word, letter, article, provision, title, chapter, subchapter, heading, or part of this Act were held to be null or unconstitutional, the ruling, holding, or judgment to such effect shall not affect or invalidate the application of the remainder of this Act to such persons or circumstances where it may be validly applied. It is the express and unequivocal will of this Legislative Assembly that the courts enforce the provisions and application thereof to the greatest extent possible, even if it renders ineffective, nullifies invalidates, impairs, or holds to be unconstitutional any part thereof, or even if it renders ineffective, invalidates, or holds to be unconstitutional the application thereof to any person or

circumstance. This Legislative Assembly would have approved this Act regardless of any determination of severability that the Court may make.

Section 5.- This Act shall take effect immediately upon approval.