

(H. B. 2316)

(No. 44-2015)

(Approved March 30, 2015)

AN ACT

To create the “Act to Incentivize the Payment of Taxes Prior to the Tax System Transformation”; amend Sections 1023.20, 1023.21, 1023.22, 1023.23, and 1081.06; and add Sections 1023.04 and 1023.25 to Act No. 1-2011, as amended, known as the “Puerto Rico Internal Revenue Code of 2011,” in order to incorporate technical amendments to clarify its scope and content; establish an incentive plan that allows the waiver of interests, surcharges, and penalties assessed on debts on account of income taxes, estate and gift taxes, Sales and Use Tax, withholding of income taxes and excise taxes at the source; and for other related purposes.

STATEMENT OF MOTIVES

An effective tax system must ensure fairness on its imposition, be simple to oversee, generate stable revenues for the Treasury, and promote economic development. Through taxes, citizens contribute to build their country in order to receive better services and opportunities in return.

Over the years, the weight of taxes has been carried by a specific sector of society: wage earners. The system’s complexity has promoted tax evasion and a lack of effective oversight. As a result, we are working on a new model to transform our tax system into one that is simpler, fair, effective, broad-based, easy to oversee, and that also promotes economic development. For the first time in our history, a reform bill based on a macroeconomic study that takes into account our economic culture and idiosyncrasy shall be introduced.

As an introduction to the tax system transformation bill, this measure provides through April 30, 2015 a prepayment window for individual retirement accounts and education savings accounts, as well as for variable annuity contracts in order to provide taxpayers with alternatives by incentivizing retirement and education savings, while simultaneously allowing a tax relief. Likewise, this measure provides for a special tax rate on the sale or prepayment of tax on the appreciation of capital assets. In addition, an incentive plan for the payment of debts on account of income taxes, estate and gift taxes, excise taxes, Sales and Use Taxes, and taxes withheld by employers. The deadline to avail oneself of this incentive plan and pay shall be June 30, 2015. These measures, in addition to encouraging tax compliance, shall provide additional funds to the Treasury prior to the enactment of the Puerto Rico Tax System Transformation Act.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:

Section 1.- Title.-

This Act shall be known as the “Act to Incentivize the Payment of Taxes Prior to the Tax System Transformation.”

Section 2.- Subsections (a) and (b) of Section 1023.20 of Act No. 1-2011, as amended, is hereby amended to read as follows:

“Section 1023.20.- Option to Prepay Taxes on Accumulated and Non-Distributed Amounts under a Variable Annuity Contract.-

(a) Any individual who is the owner or beneficiary of a life insurance, endowment, or annuity contract and who exchanges such contract on or before April 30, 2015, for an Eligible Variable Annuity Contract or makes an indirect transfer in exchange for an Eligible Variable Annuity Contract in accordance with Section 1034.04(b)(9) of this Code, may elect to prepay, in lieu of any other tax, a ten percent (10%) tax on the total accumulated and non-distributed amount under the assigned or canceled contract that, if distributed or paid out, would be subject to

income taxes. The payment of the tax provided in this subsection shall be remitted no later than April 30, 2015, by completing the form provided by the Secretary for such purposes.

(b) For purposes of this Section, an Eligible Variable Annuity Contract shall constitute any variable annuity contract issued on or before April 30, 2015 by an insurance company organized under the laws of the Commonwealth of Puerto Rico and whose contractual terms establish that no additional contributions may be made after April 30, 2015.”

Section 3.- Subsection (a) of Section 1023.21 of Act No. 1-2011, as amended, is hereby amended to read as follows:

“Section 1023.21.- Special Tax for Individuals, Estates, and Trusts upon the Sale or Prepayment of Tax on the Appreciation of Certain Assets.-

(a) Election to pay a special tax on the sale or to prepay tax on the appreciation of certain assets.- Any individual, estate, or trust may elect to pay the special tax established in this Section on the sale of capital assets during the period between the July 1, 2014 and April 30, 2015. Furthermore, the taxpayer may elect to pay said special tax on all or part of the rise in the appreciation of certain assets held by any such person, without taking into account or requiring the sale or disposition of such assets to recognize and realize such gains. Said special tax shall only apply in the case of assets held long-term.

(1) Special tax in the case of assets held by a partnership, special partnership, or corporation of individuals.- The special tax, whether on sale or prepayment, provided in this Section shall apply to the shareholders, members, or partners of an entity filing as a partnership under Chapter 7 of the Code, special partnership under Subchapter D of Chapter 11 of the Code, or an election as a corporation of individuals under Subchapter E of Chapter 11 of the Code who are individuals, estates, or trusts with respect to eligible capital assets covered by this

Section that are held by said partnership, special partnership or corporation of individuals. Provided, that the election to pay the tax on the sale or prepay tax on the appreciation of capital assets covered by this Section shall be made directly by the partnership, special partnership, or corporation of individuals and the tax rate established in subsection (b) applicable to eligible capital assets shall apply to the distributive share of a partner, stockholder, or member who is an individual, estate, or trust, as if he held the eligible capital asset.

(b) ...

...

(h) ...”

Section 4.- Subsection (a) of Section 1023.22 of Act No. 1-2011, as amended, is hereby amended to read as follows:

“Section 1023.22.- Special Tax for Corporations on the Sale or Tax Prepayment on the Appreciation of Certain Capital Assets.

(a) Election to pay a special tax on the sale or to prepay tax on the appreciation of certain assets.- Any corporation may elect to pay the special tax established in this Section on the sale of capital assets during the period between the July 1, 2014 and April 30, 2015. Furthermore, the taxpayer may elect to pay said special tax on all or part of the rise in the appreciation of certain capital assets held by any such person, without taking into account or requiring the sale or disposition of such assets to recognize and realize such gains. Said special tax shall only apply in the case of long-term capital assets.

(1) The election or the special tax provided in this Section shall apply to the shareholders, members, or partners of an entity that holds an election as a partnership under Chapter 7 of the Code or as a special partnership under Subchapter D of Chapter 11 of this Code that are corporations with respect to eligible capital assets covered by this Section that are held by said partnership or special

partnership. Provided, that the election to pay the tax on the sale or to prepay tax on the appreciation of capital assets covered by this Section shall be made directly by the partnership, special partnership, or corporation of individuals and the rate established in subsection (b) applicable to eligible capital assets shall apply to the distributive share of a partner, stockholder, or member who is a corporation, as if it held the eligible capital asset.

(b) ...

...

(g) ...”

Section 5.- Subsection (a) of Section 1023.23 of Act No. 1-2011, as amended, is hereby amended to read as follows:

“Section 1023.23.- Prepayment of Individual Retirement Accounts.

(a) Election to Prepay Tax on Accrued but Not Distributed Amounts.-

(1) General Rule.- Any individual who is the owner or beneficiary of an individual retirement account may elect to prepay, during the period between July 1, 2014 and April 30, 2015, the eight percent (8%) tax imposed by this subsection on all or part of any amount accrued but not distributed in an individual retirement account that, if distributed or paid would be subject to income tax under Section 1081.02. The taxpayer’s basis in such individual retirement account shall increase by the amount by which the taxpayer elected to prepay the tax.

(A) Election to make a Rollover Contribution to a Nondeductible Individual Retirement Account.- Any individual who is the owner or beneficiary of an individual retirement account that elects to prepay the total amount accrued but not distributed in his individual retirement account, in accordance with paragraph (1) of subsection (a) of this Section, may elect to transfer the total amount accrued that was subject to prepayment, to a nondeductible individual retirement

account for the benefit of said individual. This rollover contribution shall be subject to the provisions of Section 1081.02(d)(4).

(2) ...

(3) Exceptions.- The special eight percent (8%) tax rate shall not apply to the following distributions:

(A) Distribution of funds contributed to individual retirement accounts corresponding to taxable year 2015 and thereafter. Provided, that in order to make the prepayment from funds corresponding to taxable year 2014, such amounts should have been previously contributed to an individual retirement account to be eligible for the prepayment provided in subsection (a) of this Section.

(b) ...

(c) ...”

Section 6.- A new Section 1023.24 is hereby added to Act No. 1-2011, as amended, to read as follows:

“Section 1023.24.- Prepayment of Education Savings Account.-

(a) Election to Prepay Tax on Accrued but Not Distributed Amounts.-

(1) General Rule.- Any individual who is the owner or beneficiary of an education savings account may elect to prepay, during the period between March 1, 2015 and April 30, 2015, at a special eight percent (8%) tax rate, all or part of any amount accrued but not distributed in an education savings account that, if distributed or paid would be subject to income tax under Section 1081.05. The taxpayer’s base in such education savings account shall increase by the amount by which the taxpayer elected to prepay the tax.

(2) Election and Payment.- An election shall be made within the period provided in paragraph (1) of this subsection, by completing the form provided by the Secretary for such purposes. The tax shall be paid at the Internal Revenue Collections Office of the Department of the Treasury. It shall be responsibility of the

taxpayer to keep proof of the prepayment form of the education savings account and submit a copy of such proof to the financial institution where the taxpayer's account is held. Provided, further, that in order to make the payment of the special tax provided in paragraph (1) of this subsection, the taxpayer may withdraw funds from the trust for such purposes and none of the penalties imposed by this Code shall apply to such withdrawal.

(3) Exceptions.- The special eight percent (8%) tax rate shall not apply to the following distributions:

(A) Distribution of funds contributed to education savings accounts corresponding to taxable year 2015 and thereafter. Provided, that in order to make the prepayment from funds corresponding to taxable year 2014, such amounts should have been previously contributed to the education savings account to be eligible for the prepayment provided in subsection (a) of this Section.

(b) The taxpayer's basis in a prepaid education savings account under subsection (a) of this Section shall increase by the amount by which the taxpayer elected to prepay the tax.

Section 7.- A new Section 1023.25 is hereby added to Act No. 1-2011, as amended, to read as follows:

“Section 1023.25.- Special Dividend Distribution Tax and Prepayment of Special Tax on Deemed Distributions.-

(a) Tax Applicable to Dividend Distributions during the Temporary Period.-

(1) Special Five Percent (5%) Tax.- Any dividend distribution carried out during the period comprised between January 1, 2015 and April 30, 2015 shall be subject to a special five percent (5%) tax on the total amount received by a stockholder in lieu of any other tax imposed by the Code, or any other law

substituting the Code, including the alternative minimum tax and the alternate basic tax.

(2) Special Eight Percent (8%) Tax.- Any dividend distribution carried out during the period comprised between May 1, 2015 and June 30, 2015 shall be subject to a special eight percent (8%) tax on the total amount received by a stockholder in lieu of any other tax imposed by the Code, or any other law substituting the Code, including the alternative minimum tax and the alternate basic tax.

(3) Distributions carried out by a public corporation are excluded from the application of this provision.

(b) Tax Applicable to Deemed Distributions.- Any corporation has, within the terms provided in subsection (a) of this Section, the authority to designate as deemed distribution, up to the total amount of accumulated earnings and profits, subject to the special tax provided in subsection (a) of this Section, without having to distribute the same during the temporary period.

(1) Any corporation that designates an amount as deemed distribution and submits an election and payment not later than April 30, 2015 may avail itself of the special five percent (5%) tax.

(2) Any corporation that designates an amount as deemed distribution and submits an election and payment after April 30, 2015, but not later than June 30, 2015 may avail itself of the special eight percent (8%) tax.

(3) Any corporation that designates an amount as deemed distribution subject to taxation under Section 1062.13 and submits an election and payment during the periods established in paragraphs (1) and (2) of this subsection, may reduce the amount of earnings and profits as provided in Section 1062.13 of the Code.

(c) Election and Payment.- Election and payment of the special tax provided in subsections (a)(1) and (b)(1) of this Section shall be made not later than April 30, 2015 and the election and payment of the special tax provided in subsections (a)(2) and (b)(2) of this Section shall be made not later than June 30, 2015; by completing the form provided by the Secretary for such purposes. The tax shall be paid in the Internal Revenue Collections Centers of the Department of the Treasury. It shall be the responsibility of the taxpayer to keep proof of the prepayment form.

(d) Definitions.- For purposes of this Section, the following words shall have the meaning stated below:

(1) “Corporation” this term has the meaning provided in Section 1010.01(a)(2), provided that, for purposes of this Section, the term “Corporation” shall also include:

(A) partnerships that are, as provided in Section 1010.01(a)(4)(A), treated as a corporation under this Subtitle; and

(B) limited liability companies that are, as provided in Section 1010.01(a)(3), subject to taxation in the same form and manner as corporations.

(2) “Public Corporation” means a corporations whose stock is traded in a national stock exchange, including the New York Stock Exchange and NASDAQ.

(3) “Deemed Distribution” means that amount designated by a corporation as a distribution of dividends but that shall not be distributed during the year in which the designation is made. Thus, said monies may be kept in the books of the corporation in question for the purpose of meeting any contractual, business, or statutory obligations of said entities, to be taken into account at the time a distribution is carried by the Board of Directors or the chief officer of said corporations, and subject to the discretion of the latter, in terms of the source or

origin of the monies to be distributed in the future by any such entities. The amount of any distribution out of earnings and profits that were subject to the prepayment established in this Section shall not be subject to any addition taxes upon its distribution.

(4) “Dividends” this term has the meaning provided in Section 1034.09(a) of the Code.

(5) “Accumulated Earnings and Profits” this term has the same meaning established for purposes of Section 1034.09 and Section 1092.02 of the Code and the regulations adopted thereunder.”

Section 8.- Section 1081.06 of Act No. 1-2011, as amended, is hereby amended to read as follows:

“Section 1081.06.- Transitory Provisions for Individual Retirement Accounts.-

(a) General Rule.- In the event that any amount accumulated, but not distributed in an individual retirement account on which, and in accordance with Sections 1169A and 1169C of the Puerto Rico Internal Revenue Code of 1994, as amended, and Section 1023.23 of this Code, the taxpayer elected to prepay the ten-percent (10%), five-percent (5%), or eight-percent (8%) tax, as the case may be, the taxpayer’s basis in such individual retirement account shall increase by the amount by which the taxpayer elected to prepay the tax.”

Section 9.- Tax Payment Incentive Plan.-

(a) Incentive Plan for the Payment of Tax Assessed or Determined in Returns Filed by the Taxpayer.-

(1) Any taxpayer who has an assessed tax balance, or any taxpayer who has filed the corresponding return but whose debt is pending to be assessed as of December 31, 2014, on account of:

(A) income taxes, excluding taxable years beginning after December 31, 2013, under Subtitle A of Act No. 1-2011, as amended;

(B) estate and gift taxes under Subtitle B of Act No. 1-2011, as amended;

(C) excise taxes under Subtitle C of Act No. 1-2011, as amended;

(D) Sales and Use Tax under Subtitle D of Act No. 1-2011, as amended, for taxable periods, including months, ending before July 1, 2014;

(E) income taxes withheld at the source under Subtitle A of Act No. 1-2011, as amended, for taxable periods, including months, ending before January 1, 2015;

(F) any tax imposed under Act No. 7-2009, taxes imposed under Act No. 78-2008, Act No. 74-2010, Act No. 83-2010, Act No. 27-2011, Act No. 20-2012 or any other act similar in nature or that provides for a special income tax rate, may avail himself of the incentive plan created in this Act for the payment of debt within the term defined in subsection (e).

(2) Taxpayers who opt to pay their debt under the incentive plan provided herein shall be relieved from the payment of interest, surcharges, and penalties on debts covered under the incentive plan, incurred or owed for the taxable periods stated in paragraph (1) of this subsection. Provided, that in order to be relieved from the payment of interest, surcharges, and penalties, the principal of the debt shall be fully paid on or before June 30, 2015.

(3) The incentive plan provided in this Act shall not apply to income tax returns corresponding to taxable periods beginning after December 31, 2013.

(b) Incentive Plan for Voluntary Disclosure of Income and Payment of the Corresponding Tax.- Any person who, on or before December 31, 2013 has earned or accumulated gross income subject to taxation under Act No. 1-2011, as amended, known as the “Puerto Rico Internal Revenue Code of 2011” and who has failed to

file his return or pay the appropriate amount for taxable years beginning and ending on or before December 31, 2013; or who filed his returns, but failed to declare the correct amount of income or claimed excess deductions, may file a special return showing the amount of income and/or deduction and the taxable years during which such income was earned or accumulated or such deduction was claimed. In these cases, a twenty percent (20%) tax shall be imposed, collected, and paid on said excess income or deduction and shall be eligible for relief of payment of interests, surcharges, and penalties, but only if the debt is fully paid on or before June 30, 2015.

(c) Incentive Plan for Debts Related to the Sales and Use Tax and Debts on account of Income Taxes Withheld at the Source.

(1) In the case of debts involving Income Taxes Withheld at the Source, taxpayers who elect to pay such debt under the incentive plan herein provided, shall be relieved from the payment of interest, surcharges, and penalties assessed on the debts covered under the incentive plan, incurred and owed for taxable years, including months, ending before January 1, 2015. Provided, that to be entitled to the relief of interests, surcharges, and penalties, the principal of the debt shall be fully paid on or before June 30, 2015.

(2) In the case of debts relating to the Taxpayers' Sales and Use Tax, taxpayers who elect to pay such debt under the incentive plan herein provided shall be relieved of the payment of interest, surcharges, and penalties assessed on the debts covered under the incentive plan, incurred and owed for taxable years, including months, ending before July 1, 2014. Provided, that to be entitled to the relief of interest, surcharges, and penalties, the principal of the debt shall be fully paid on or before June 30, 2015.

(d) Incentive Plan for the Payment of Debt consisting only of Fines, Surcharges, Interests, Penalties.-

(1) Any taxpayer who has an unpaid assessed balance with the Department of the Treasury consisting of fines, surcharges, interest, or penalties, but no principal amount is owed, may settle such debt by paying twenty-five percent (25%) of the total amount owed and shall be eligible for the relief of the payment of the remaining balance of interest, surcharges, and penalties owed. Provided, that every taxpayer who wishes to avail himself of this incentive shall pay twenty-five percent (25%) of the total amount owed on or before June 30, 2015.

(e) Deadline for Payment of Debts under the Incentive Plan.

(1) Any taxpayer who wishes to avail himself of the incentive plan option provided in this Act, shall fill out the form prescribed by the Secretary for such purposes, including paying the full amount of the debt, as appropriate, on or before June 30, 2015.

(f) Terms and Conditions.-

(1) The taxpayer shall be current in the payment and filing of any tax, including those in which he acts as withholding agent, corresponding to taxable periods, including quarterly or monthly periods, beginning after December 31, 2014.

(2) At the time of establishing an incentive plan under this Act, all debts covered under the plan shall be itemized. However, upon availing himself of the incentive plan, the taxpayer waives his right to object the assessment or notification of the debt object of the plan.

(3) Taxpayers who are undergoing an intervention, fiscal audit or an administrative hearing or judicial review process may avail themselves of the incentive plan, and said fact shall suffice to desist from the investigation process, whether administrative or judicial, relating to the debt or debts object of the plan.

(4) Taxpayers who are availing themselves of a payment plan with the Department of the Treasury as of the effective date of this Act may renegotiate the outstanding balance of said payment plan with the Secretary of the Treasury and make the payment under the terms and conditions set forth in the incentive plan provided by this Act.

(5) The payment option made under this Act shall be voluntary and final for all purposes and shall not be subject to subsequent claims for refund or credit.

(g) Exclusions.-

(1) Taxpayers against whom a criminal action has been instituted and is pending or who have been referred to the Department of Justice to be charged with any tax-related crimes may not avail themselves of the provisions of this Act. Furthermore, taxpayers who have been convicted of tax fraud or whose source of income is unlawful or whose activities or business may be identified as criminal or organized crime activities as provided in Act No. 33 of July 13, 1978, as amended, known as an 'Act Against Organized Crime,' shall not avail themselves of the provisions of this Act.

(2) The foregoing shall not impair the Prosecutor's Office and the taxpayer from entering into an agreement to stay the proceedings, until the payment established in this Act is made. Once the payment is made, the Prosecutor's Office shall take into account the taxpayer's action to enter into agreements as appropriate in accordance with its ministerial duties.

(h) Circular Letters.- The Secretary may issue circular letters or administrative determinations as are necessary to establish the guidelines or procedures that shall govern the granting of incentives under this Act. However, the Secretary of the Treasury shall establish said guidelines swiftly and flexibly, free

from barriers and technicalities or that prevent the attainment of the objectives of this Act.”

Section 10.- Severability Clause.-

If any article, section, subsection, paragraph, subparagraph, clause, or part of this Act were held to be null or unconstitutional by a competent court, said holding shall not affect, impair, or invalidate the remaining provisions and parts of this Act.

Section 11.- Effectiveness.-

This Act shall take effect immediately after its approval; the provisions of Section 9, however, shall be effective from May 15, 2015 to June 30, 2015.

CERTIFICATION

I hereby certify to the Secretary of State that the following **Act No. 44-2015 (H. B. 2316)** of the **5th Regular Session** of the **17th Legislative Assembly of Puerto Rico**:

AN ACT to create the “Act to Incentivize the Payment of Taxes Prior to the Tax System Transformation”; amend Sections 1023.20, 1023.21, 1023.22, 1023.23, and 1081.06; and add Sections 1023.04 and 1023.25 to Act No. 1-2011, as amended, known as the “Puerto Rico Internal Revenue Code of 2011,” in order to incorporate technical amendments to clarify its scope and content; establish an incentive plan that allows the waiver of interests, surcharges, and penalties assessed on debts on account of income taxes, estate and gift taxes, Sales and Use Tax, withholding of income taxes and excise taxes at the source; 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 20th day of September, 2019.

Orlando Pagán-Ramírez
Director