

(S. B. 280)  
(Conference)

**(No. 86-2019)**

(Approved August 1, 2019)

**AN ACT**

To amend Sections 5023.04 and 5023.06 of Act No. 1-2011, known as the “Internal Revenue Code for a New Puerto Rico,” in order to allow for and promote the development of the craft brewing industry in Puerto Rico.

**STATEMENT OF MOTIVES**

Puerto Rico needs to lay the groundwork to develop new industries and rescue those that have been lost but that still have potential to grow if provided with a proper legal and regulatory framework. An industry that has not been fully developed in Puerto Rico, despite having a marked growth in the United States in the last decades, is the beer industry, more specifically, the craft brewing industry.

Many factors contribute to this and at least two are related to the legal provisions in Puerto Rico. The following are among the main factors: 1) the lack of specific legal provisions in our code of laws that fosters the local development of the craft brewing sector; and 2) the existence of an excise tax structure that is too burdensome for small-scale commercial operations, given that said structure was established with high-volume operations in mind. However, this is inconsistent with the legislation enacted in state jurisdictions in the United States where specific provisions that have incentivized and allowed craft brewing have been approved for personal or family use at a small-scale, which enable interested people to experiment with products that have a high potential before making an investment required to establish a commercial operation.

The accelerated growth of craft brewing in the United States began in 1978 when the US Congress, under the administration of President James Carter, enacted Public Law 95-458 to allow home brewing without paying federal taxes when it is solely intended for personal or family use. Federal statute 26 USC 5053, specifically allows for the at-home production of beer not to exceed two hundred (200) gallons per year, if there are two or more adults in such household, or one hundred (100) gallons per calendar year, if there is only one adult in such household, without the payment of tax. In 1978, when Public Law 95-458 was enacted, there were only eighty-nine (89) breweries across the United States. However, with the approval of said statute and other similar legislative measures, the number of breweries had increased to two thousand four hundred and three (2,403) by 2012.

It should be mentioned that in the past years, the craft brewing industry in the United States has registered a significant growth. According to the Brewers Association, the largest and most influential microbreweries organization in the United States, the craft brewing industry reported a seventeen percent (17%) growth in 2012, which represented an even higher growth percentage *vis à vis* the fifteen percent (15%) growth reported in 2011.

Recognizing the high volume of economic activity that microbreweries and craft brewing may generate, the U.S. Congress founded in 2007 the Small Brewers Caucus, nowadays composed of one hundred (100) Congress members to ensure the growth and development of this industry.

Currently, all the states of the United States have promulgated legislation to allow for home brewing following mostly the same federal parameters. Until recently, Mississippi and Alabama were the only states that had yet to approve legislation. Mississippi approved legislation to legalize home brewing effective on July 1, 2013, whereas Alabama approved legislation on May 9, 2013, thus being the last state of the United States to legalize home brewing. Puerto Rico has been lagging

with respect to these legislative matters, despite the fact that there is an increasing number of Puerto Ricans interested in exploring the opportunity to engage in craft brewing.

Furthermore, the second factor hindering the growth of craft brewing in Puerto Rico is the current structure of excise taxes on the beer industry set forth in our code of laws. Section 5021.01 of the Internal Revenue Code of 2011 (the “Code”) provides for a baseline excise tax of four dollars and thirty-five cents (\$4.35) per each gallon of beer with an alcohol content that exceeds one and a half percent (1½%) per volume, applicable to operations whose production exceeds thirty-one million (31,000,000) wine gallons per year. Moreover, Section 5023.04 of the Code establishes a structure of excise taxes on beer and similar products for operations with a production of less than thirty-one million (31,000,000) wine gallons. However, said Section 5023.04 establishes an initial scale of two dollars and fifty-five cents (\$2.55) per gallon, which applies to a production of nine million (9,000,000) gallons or less. This excise tax may be reasonable for industries that produce millions; however, it is unreasonable for emerging industries whose production is not even close to one million (1,000,000) gallons.

Therefore, in order to promote the craft brewing industry in Puerto Rico, a special scale must be added for low production volumes with competitive rates similar to those in effect in the states of the United States. For instance, Alaska promulgated legislation to establish a new category for beer production of less than one million eight hundred and fifty thousand (1,850,000) gallons, which shall be subject to an excise tax of thirty-five cents (\$0.35). Likewise, Montana established scales for productions of less than six hundred twenty thousand (620,000) gallons, on which an excise tax not to exceed eleven cents (\$0.11) is imposed. It should be noted that these are nominal amounts intended to promote industries starting up, thus enabling their growth which shall result in job creation and local capital generation.

It is estimated that craft brewing accounts for around 108,440 jobs in the United States. In proportion to our population, this could represent 1,267 potential jobs if we had a craft brewing industry in Puerto Rico at par with the United States.

Puerto Rico must foster job creation in this industry by promoting local beer brewing through the license or franchise mechanism in lieu of importing. Taking into account the consumption volume of beer in Puerto Rico, rules should be established to promote local beer brewing in order to create new jobs and increase economic activity in Puerto Rico through consumer spending.

For all of the foregoing, it is the public policy of this Legislative Assembly to promote craft brewing in Puerto Rico. In doing so, we shall incentivize the birth of a new industry and create new job opportunities in our economy. Puerto Rico shall become a competitive place where the conditions are set to allow for a new local industry to commercially compete with the industry in those states of the United States that have adopted rules similar to the federal provisions.

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

Section 1.- Section 5023.04 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 5023.04.- Special Exemptions

(a) In lieu of the tax imposed in paragraph (2) of subsection (c) of Section 5021.01 of this Subtitle on all beer, malt extract, and other fermented or unfermented analogous products with an alcohol content that exceeds one and a half percent (1½%) per volume, referred to in subsection (c)(2) of said section, a tax is hereby established as follows:

(1) If they are produced or manufactured by persons whose total production, if any, of such products during their most recent taxable year has not exceeded four hundred thousand (400,000) wine gallons, there shall be collected a

tax in a staggered manner, per wine gallon produced, imported, or introduced, as follows:

(A) Per each wine gallon – ninety-five cents (\$0.95).

(2) If they are produced or manufactured by persons whose total production, if any, of such products during their most recent taxable year has exceeded four hundred thousand (400,000) wine gallons but has not exceeded one million eight hundred sixty thousand (1,860,000) wine gallons, there shall be collected a tax in a staggered manner, per wine gallon produced, imported, or introduced, as follows:

(A) Per each wine gallon – one dollar and fifty cents (\$1.50).

(3) If they are produced or manufactured by persons whose total production, if any, of such products during their most recent taxable year has exceeded one million eight hundred sixty thousand (1,860,000) wine gallons but has not exceeded thirty-one million (31,000,000) wine gallons, there shall be collected a tax in a staggered manner, per wine gallon produced, imported, or introduced, as follows:

(A) The first nine million (9,000,000) wine gallons – two dollars and fifty-five cents (\$2.55);

(B) Per each wine gallon in excess of nine million (9,000,000) up to ten million (10,000,000) – two dollars and seventy-six cents (\$2.76);

(C) Per each wine gallon in excess of ten million (10,000,000) up to eleven million (11,000,000) – two dollars and ninety-seven cents (\$2.97);

(D) Per each wine gallon in excess of eleven million (11,000,000) up to twelve million (12,000,000) – three dollars and eighteen cents (\$3.18);

(E) Per each wine gallon in excess of twelve million (12,000,000) up to thirty-one million (31,000,000) – three dollars and thirty-nine cents (\$3.39).

(b) ...

(c) ...”

Section 2.- Section 5023.06 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 5023.06.- Rules to Determine Total Production

(a) In the case of persons who individually or collectively, directly or indirectly, control companies that produce one or more classes of the products described in Section 5023.04, under one or more trademarks, the total annual production of all said classes and marks shall be considered to determine whether these persons may avail themselves of the benefits of Section 5023.04. I

(1) For purposes of the exemption provided in paragraph (1) of subsection (a) of Section 5023.04, in order to determine the total production of the products during a specific year of any person, not only the direct production of said person shall be taken into account, but also any indirect production thereof made by other persons under franchises, licenses, rights, or similar contracts. If the products are produced under contract brewing by a person that is not a member of the controlled group of corporations, the total production to be considered to determine the applicability of the exemption shall be that of the person holding a license.

(2) For purposes of the exemption provided in paragraph (2) of subsection (a) of Section 5023.04, in order to determine the total production of the products during a specific year of any person, not only the direct production of said person shall be taken into account, but also any indirect production thereof made by other persons under franchises, licenses, rights, or similar contracts.”

Section 3. Effectiveness

This Act shall take effect sixty (60) days after its approval.