

(S. B. 60)

(No. 94-2017)

(Approved August 8, 2017)

AN ACT

To amend paragraph (iv) of subsection (c) of Section 4 of Act No. 20-2012, as amended, known as the “Act to Promote the Export of Services,” in order to eliminate progressively the Base Period Income for tax exemption decrees.

STATEMENT OF MOTIVES

Puerto Rico’s economy has received a boost from countless laws that seek to incentivize investment and development in different sectors and industries. Currently, there are laws that incentivize manufacturing, recycling, software development, and service export, among others, thus allowing merchants to pay income taxes at reduced rates, and granting tax exemptions on property and the acquisition of raw materials.

These laws are ideal for wealthy merchants who want to start up a business or trade and request these benefits from the beginning, since they have capital to acquire the necessary equipment and personnel required by law. Unfortunately, however, the story has been different for small-sized merchants who are engaged in the same trade or economic activity.

Incentive laws in Puerto Rico impose a so-called base period income based on the fact that a merchant who is already engaged in an economic activity shall pay taxes at a regular rate on the average income generated prior to the approval of the decree or economic incentive. Hence, incentive laws tend to punish small-sized businesses already engaged in the economic activity under which they are requesting the incentive that imposes a limitation on the base period income.

For instance, the requirement to create at least five (5) jobs which is imposed under Act No. 20-2012 does not constitute an issue for new businesses that have sufficient capital from the beginning and are able to create these five (5) jobs. On the contrary, small-sized businesses that have struggled to develop their service export business are unable to create such number of jobs when they begin operations given that they lack the funds therefor. Once such business is able to grow (and is able to create the required five (5) jobs), the owner is punished by denying him the incentives on the average income that it was already generating.

According to this example, this limitation prevents the small-sized businesses from applying the preferential rates to the total income generated from the eligible activity, which is not the case for foreign or wealthy taxpayers.

This limitation does not take into account that these businesses contribute to our economy and its growth, and are an essential part of the foundation of Puerto Rico's economy. The income generated by these businesses translates into capital that remains in Puerto Rico and creates jobs. Allowing established merchants to pay taxes at preferential rates when they are able to meet the statutory requirements contributes to our very much needed economic growth, and allows them to compete with large and foreign businesses.

For all of the foregoing, this Act is a key factor in eliminating the limitations entailed by the imposition of a base period income, thus allowing small-sized businesses that meet the statutory requirements to avail themselves of all of the economic incentives provided thereunder.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:

Section 1.- A new paragraph (iv) is added to subsection (c) of Section 4 of Act No. 20-2012, as amended, known as the "Economic Incentives Act for the Development of Puerto Rico,"[sic] to read as follows:

(c) Limitation of Benefits

(i) ...

(ii) ...

(iii) ...

(iv) For decrees approved after June 30, 2017, the Base Period Income shall be adjusted by a twenty-five percent (25%) annual reduction until it is reduced to zero (0) by the fourth taxable year of the application of the terms of the decree of the exempt business under this Act.

Provided, that the limitation on benefits imposed in this subsection (c) shall not apply to any request for incentives filed or to be filed under Act No. 173-2014.”

Section 2.- This Act shall take effect immediately after its approval.

CERTIFICATION

I hereby certify to the Secretary of State that the following **Act No. 94-2017 (S. B. 60)** of the **1st Regular Session** of the **18th Legislative Assembly of Puerto Rico**:

AN ACT to amend paragraph (iv) of subsection (c) of Section 4 of Act No. 20-2012, as amended, known as the "Act to Promote the Export of Services," in order to eliminate progressively the Base Period Income for tax exemption decrees.

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

In San Juan, Puerto Rico, on this 13th day of March, 2018.

Orlando Pagán-Ramírez
Director