

(H. B. 3493)

(No. 108-2011)

(Approved July 1, 2011)

AN ACT

To add a new Section 1051.09 and amend Sections 1061.01 and 4050.10 of Act No. 1 of January 31, 2011, as amended, known as the “Internal Revenue Code for a New Puerto Rico,” in order to make technical amendments; and for other purposes.

STATEMENT OF MOTIVES

With the recent approval of the “Internal Revenue Code for a New Puerto Rico,” justice is served to taxpayers by significantly reducing their tax burden. This Administration is committed to constantly reviewing the tax provisions in effect and guaranteeing that the same are consistent with the legislative intent and are not subject to interpretations contrary thereto. For such reason, this Legislative Assembly deems it pertinent to incorporate these technical amendments to Act No. 1 of January 1[sic], 2011, better known as the “Internal Revenue Code for a New Puerto Rico,” in order to clarify its scope and contents.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:

Section 1.- A new Section 1051.09 is hereby added to Act No. 1 of January 31, 2011, as amended, known as the “Internal Revenue Code for a New Puerto Rico,” to read as follows:

“Section 1051.09.- Credit for Purchasing Products Manufactured in Puerto Rico.-

(a) Any eligible business that purchases eligible products manufactured in Puerto Rico, including components and accessories, shall be entitled to claim a credit against the taxes established in Subtitle A, as provided in subsection (c) of this Section.

(b) Definitions.- For purposes of this Section:

(1) Eligible Business.- An 'eligible business' shall be considered to be:

(A) A Manufacturing Business.- Any person or entity engaged in the manufacture of any item or product in Puerto Rico, including assemblers, bottlers, integrators, and persons who remanufacture items that are partially manufactured, and

(B) Other Business.- Business engaged in trade or business in Puerto Rico insofar as the annual sales volume of the purchaser does not exceed the limit established by the Secretary through regulations, circular letter, or administrative determination of general application.

(C) The term 'eligible business' shall not include persons and entities holding tax exemption decrees under Act No. 73 of May 28, 2008, better known as the 'Economic Incentives Act for the Development of Puerto Rico,' or any previous or subsequent similar law.

(2) Eligible Products.- For purposes of this credit:

(A) The term 'products manufactured in Puerto Rico' means products transformed from raw materials into commodities through any process, and any product made in a manufacturing business in Puerto Rico, as defined in subparagraph (A) of paragraph (1).

(B) A product shall be considered manufactured in Puerto Rico only if more than thirty percent (30%) of its value has been added in Puerto Rico.

(C) Purchases of products manufactured by persons related to the eligible business shall be excluded.

(D) The purchase of energy or water shall never be eligible for credit for purchases of products manufactured in Puerto Rico.

(E) Neither shall products manufactured by any manufacturing business that, individually or in the aggregate with other members of a controlled group to which it belongs, has had a net sales volume (inside or outside Puerto Rico) in excess of one hundred million dollars (\$100,000,000) during calendar year 2010, or any other limit that can be established by the Secretary through Circular Letter or Administrative Determination of general application, be considered eligible products.

(i) The exclusion in this subparagraph (E) shall not apply to tuna products manufactured in Puerto Rico by plants engaged in the processing of tuna, regardless of the sales volume said processing plant may have.

(ii) For purposes of this subparagraph (E), two (2) or more corporations or partnerships shall not be considered related persons if shareholders or partners of said legal entities are members of the same family, unless the same member of the family owns more than fifty percent (50%) of the value of the shares or of the interests in each corporation or partnership.

(iii) For purposes of clause (ii), 'members of the same family' shall include brothers or sisters, be they whole-blood siblings or not, and linear ancestors or descendants.

(iv) Any transaction or series of transactions shall be rendered without effect if one of its main purposes is to circumvent subparagraph (C) and (E), including, but not limited to the organization or use of corporations, partnerships or other entities, the use of shareholder representative agreements (including facilitation agreements) or the use of any other plan or agreement to avoid matching the description of related person provided in subparagraph (C) or meeting the requirement of net sales volume provided in subparagraph (E).

(3) Added Value in Puerto Rico.- For purposes of this Section, added value in Puerto Rico shall be understood as the difference between the price collected by the manufacturing business for the manufactured product, and the cost of any imported raw material or any other cost incurred outside of Puerto Rico. Added value in Puerto Rico includes, without it being understood as a limitation, direct or indirect costs incurred in Puerto Rico such as labor, overhead expenditures, and the cost of locally manufactured raw material.

(c) The credit provided in this Section shall be computed as follows:

(1) First, the amount of the purchases of eligible products manufactured in Puerto Rico made by the eligible business during the taxable year shall be determined;

(2) Then, the average of the purchases of eligible products manufactured in Puerto Rico made by the eligible business shall be determined for three (3) of the ten (10) preceding taxable years that show the lowest purchase amount, that is, excluding the seven (7) years in which the amount of the purchases was higher.

(3) Amount of the Credit.-

(A) In General.- The credit for purchases of eligible products shall be ten percent (10%) of the excess of the purchases of said eligible products, as provided in paragraph (1), on the average determined pursuant to paragraph (2).

(B) In the case of products manufactured in Puerto Rico by plants engaged in the processing of tuna, the credit shall be ten percent (10%) of the total purchases of said eligible products, as determined in paragraph (1), but the limitations provided in subsection (b)(2)(B) of this Section shall not apply.

(C) Credit Limitation.- The credit provided in this Section may be used to reduce up to twenty-five percent (25%) of the tax imposed on the eligible business under Subtitle A. The amount of unused credit of the eligible business in a taxable year may be carried over to subsequent taxable years until it is exhausted, subject to the aforementioned limitation.

(d) The Secretary shall establish, through regulations, the documentation to be submitted by the eligible business as evidence to claim the credit provided in this Section.

(e) The credit shall not be transferrable, except in the case of an exempt reorganization.

(f) The credit granted in this Section shall not generate a refund.

(g) In addition to any other penalty applicable by law, any person who submits false or incorrect information to an eligible business or to the Secretary about the manufacturing place or the amount of added value in Puerto Rico of any product with the purpose of qualifying for the provisions of this Section shall be liable to the Secretary for the amount of any credit unlawfully claimed by the eligible business under this Section, and shall also be assessed a penalty of one hundred percent (100%) of the amount of the unlawfully claimed credit.”

Section 2.- Subsections (a) and (b) of Section 1061.01 of Act No. 1 of January 31, 2011, are hereby amended to read as follows:

“Section 1061.01.- Individual Tax Returns.-

(a) ...

(1) Any individual resident of Puerto Rico who is a single or married taxpayer, if his/her gross income for the taxable year, reduced by the exemptions provided in Section 1031.02, is over five thousand dollars (\$5,000);

(2) Any individual nonresident of Puerto Rico during all or part of the taxable year and who is a citizen of the United States, who is a single or married taxpayer whose gross income for the taxable year earned from sources within Puerto Rico, reduced by the exemptions provided in Section 1031.02, is over five thousand dollars (\$5,000), unless the tax on said income has been paid in full at the source;

(3) Any individual who is a nonresident alien of Puerto Rico and who earned taxable gross income from sources within Puerto Rico for the taxable year, unless the tax on said income has been paid in full at source.

(4) Any individual whose net income for the taxable year subject to alternate basic tax, in accordance with Section 1021.02, is one hundred fifty thousand dollars (\$150,000) or more.

(b) Married Taxpayers.-

(1) In the case of married individuals, as defined in Section 1010.03(a)(2), if a husband and wife live together and have an aggregate gross income for the taxable year of over five thousand dollars (\$5,000) reduced by the exemptions provided in Section 1031.02, the total income of both individuals shall be included in a joint return and the tax imposed under Section 1021.01 shall be computed on the aggregate income. The gross income earned by any one of the spouses shall not be divided between them.

(2) Separate Returns of Spouses.- Notwithstanding the provisions in subsection (a) and in paragraph (1) of this subsection, spouses who are living together at the close of the taxable year may opt to file separate returns for such taxable year, subject to the following conditions:

(A) The statement required under subsection (a) shall be filed when the gross income of the spouse, reduced by the exemptions provided in Section 1031.02, is two thousand five hundred dollars (\$2,500) or more.

(B) ...

(C) ...”

Section 3.- Subsections (a) and (b) of Section 4050.10 of Act No. 1 of January 31, 2011, as amended, known as the “Internal Revenue Code for a New Puerto Rico,” are hereby amended to read as follows:

“Section 4050.10.- Credit for Purchasing Products Manufactured in Puerto Rico.-

(a) Any eligible business that purchases eligible products manufactured in Puerto Rico, including components and accessories, for export shall be entitled to claim a credit against the taxes established in subsection (h), as provided in subsection (c) of this Section.

(b) Definitions.- For purposes of this Section:

(1) Eligible Business.- An ‘eligible business’ shall be considered to be:

(A) Any person or entity engaged in the manufacture of any item or product in Puerto Rico.

(B) The term ‘eligible business’ shall not include persons and entities holding tax exemption decrees under Act No. 73 of May 28, 2008, better known as the ‘Economic Incentives Act for the Development of Puerto Rico,’ or any previous or subsequent similar law.

(2) Eligible Products.- For purposes of this credit:

(A) The term ‘products manufactured in Puerto Rico’ means products transformed from raw materials into commodities through any process, and any product made in a manufacturing business in Puerto Rico, as defined in subparagraph (A) of paragraph (1) of subsection (b) of Section 1051.09.

(B) ...

...”

Section 4.- This Act shall take effect immediately after its approval. However, the provisions of Sections 1 and 3 shall take effect for taxable years beginning after June 30, 2011, and the provisions of Section 2 shall take effect retroactively to January 1, 2011, that is, the effective date of Act No. 1 of January 31, 2011, known as the “Internal Revenue Code for a New Puerto Rico.”