

(S. B. 523)

(No. 138-2018)

(Approved July 10, 2018)

AN ACT

To amend paragraph (5) of Section 1101.01 of Subchapter A of Chapter 10 of Act No. 1-2011 as amended, known as the “Internal Revenue Code for a New Puerto Rico,” for the purpose of clarifying that the tax exemption for nonprofit entities available to homeowner associations for residential real estate and condominium management applies to the homeowner associations of apartments intended for housing in mixed-use condominiums, to wit, condominiums in which there are or there shall be apartments intended for residential use together with apartments intended for nonresidential use; and for other purposes.

STATEMENT OF MOTIVES

Any building or structure subject to the horizontal property regime shall be deemed to be part of an entity governed by the Condominium Association and an administration, which for all legal purposes, operates as a nonprofit in order to manage the common areas thereof as well as govern and manage the community life of its titleholders. As a result, the management of common areas represents a nonprofit and non-taxable activity under the tax laws and codes applicable to corporations or for-profit entities or those that produce a taxable income under the provisions of the Internal Revenue Code in effect.

For such purposes, paragraph (5) of Section 1101.01 of Subchapter A in Chapter 10 of Act No. 1-2011, as amended, known as the “Internal Revenue Code for a New Puerto Rico,” exempts, from taxation, the homeowners associations organized to manage “residential real estate and condominiums,” to wit, associations organized and operated to provide for the management, construction, maintenance, care of association property, surveillance control, and similar activities for the benefit of the community.

The wording in the aforementioned paragraph, when referring to “residential real estate and condominiums,” has allowed for the interpretation that the exemption applies exclusively to condominiums intended solely for residential purposes and not to the homeowner associations in mixed-use condominiums (condominiums with apartments intended for residential use as well as apartments intended for nonresidential use). Through this Act, this Legislative Assembly establishes in a clear and unambiguous manner that the aforementioned exemption applies to homeowner associations, including those associations organized exclusively to manage residential real estate in mixed-use condominiums.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:

Section 1.- Paragraph (5) of Section 1101.01 of Subchapter A in Chapter 10 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:

“SUBTITLE A – INCOME TAXES

CHAPTER 10 – NONPROFIT ORGANIZATIONS

SUBCHAPTER A – TAX EXEMPT ORGANIZATIONS

Section 1101.01.- Tax Exemption to Corporations and Nonprofit Organizations.

(a) Except as provided in Subchapter B of Chapter 10 of this Subtitle, the following organizations shall be exempt from taxation under this Subtitle:

(1) ...

(5) Homeowner associations:

(A) residential real estate management associations and[sic.]

(i) Qualified residential real estate management associations organized to provide for the management, construction, maintenance, care of the property, surveillance control, and similar activities for the benefit of the community, including:

(I) Condominium projects the units of which shall be used for residential purposes, property intended for housing in mixed-use condominiums and condominiums intended for nonresidential purposes;

(II) a subdivision, development, or similar area in which the lots or buildings may be used exclusively by individuals for residential purposes; and

(III) property owned by the government and used for the benefit of the residents of such units.

(ii) ...

...”

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