

(H. B. 2610)

(No. 172-2020)

(Approved December 30, 2020)

AN ACT

To amend Sections 2031.01, 2032.01, 2032.02, 2100.01, 3000.02, 3010.01, and 5010.01, and add Section 5010.04 to Act No. 60-2019, as amended, known as the “Puerto Rico Incentives Code,” in order to add a new subsection (b) and renumber subsections (b), (c), (d), (e), and (f) as subsections (c), (d), (e), (f), and (g) in order to provide that an exempt business holding a Decree under Chapter 3 of said Act shall pay taxes at a preferential tax rate of twelve percent (12%) for royalties and license fees in lieu of any other tax imposed by Act No. 1-2011, as amended, known as the “Puerto Rico Internal Revenue Code”; conform subsection (f) of Section 2031.01 to Section 1020.01(a)(55) of the Puerto Rico Incentives Code, which extends the benefits for Services for Export and Promoter Services to natural and juridical persons; and for other related purposes; to incentivize the collection, management, and transformation of aluminum scrap into new products manufactured on the Island; incorporate technical amendments to clarify the scope and content thereof; and for other related purposes.

STATEMENT OF MOTIVES

The approval of Act No. 60-2019, as amended, known as the “Puerto Rico Incentives Code” (Act No. 60), allowed for the consolidation of different laws that promote economic development through the granting of preferential rates, credits, subsidies, and other incentives to various sectors that are fundamental to our economy. One of these sectors is the export trade and international trade activities. Prior to the approval of Act No. 60, these activities were included in Act No. 20-2012, as amended, known as the “Act to Promote the Export of Services” (Act No. 20), and Act No. 73-2008, as amended, known as the “Economic Incentives Act

for the Development of Puerto Rico” (Act No. 73). Section 3(b)(1) of Act No. 73 establishes a twelve percent (12%) preferential rate applicable to any payment (from sources within Puerto Rico) made by an exempt business under said Act to nonresident corporations, partnerships, or persons not engaged in trade or business in Puerto Rico. For the purposes of Act No. 73 and the applicability of the twelve percent (12%) preferential rate, the term exempt business includes those businesses engaged in export trade. However, upon the approval of Act No. 20 (whose purpose was to exclude export trade activities from Act No. 73), a similar provision was not included therein whereby a twelve percent (12%) preferential rate applicable to the payment of royalties and license fees was granted.

Likewise, when Act No. 60 was approved, Chapter 3 of said Act failed to include any provision on the twelve percent (12%) preferential rate for the payment of royalties and license fees. The Legislative Tracking on the approval of Act No. 20 and Act No. 60 does not show any express legislative intent to exclude the payments made by exempt businesses engaged in export trade or international trade on account of royalties and license fees from said preferential tax treatment. Even though this type of payment is more common within the manufacturing sector, there are corporate structures that include these payments for businesses engaged in export trade. In this sense, the purpose of this legislation was to allow for those payments on account of royalties and license fees made by exempt businesses engaged in export trade to be subject to the twelve percent (12%) preferential rate. This treatment shall be consistent with the applicable provisions of Act No. 73 and Act No. 60 for manufacturing activities, visitor’s economy, infrastructure, green energy, and opportunity zones. This amendment provides an opportunity for businesses engaged in export trade to expand or incorporate other activities, thus increasing Puerto Rico’s economic activity.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:

Section 1.- Subsection (f) of Section 2031.01 of Act No. 60-2019, as amended, better known as the “Puerto Rico Incentives Code,” is hereby amended to read as follows:

“Section 2031.01.- Export of Services.

(a) ...

(b) ...

...

(f) An Eligible Business that renders Services for Export or Promoter Services may also engage in any other activity, trade, or business insofar as it keeps, at all times, a system of books, records, documentation, accounting, and billing that clearly shows, to the satisfaction of the Secretary of the Treasury, all income, costs, and expenses incurred while rendering Services for Export or Promoter Services. An activity consisting of rendering services as an employee does not qualify as an eligible business.

...”

Section 2.- Section 2032.01 of Act No. 60-2019, as amended, known as the “Puerto Rico Incentives Code,” is hereby amended in order to add a new subsection (b) and renumber subsections (b), (c), (d) (e), and (f) as subsections (c), (d), (e), (f), and (g), to read as follows:

“Section 2032.01.- Tax on Income from Export of Services and Promoter Services.

(a) General Rule- ...

(b) Royalties and License Fees.- The provisions of the Puerto Rico Internal Revenue Code notwithstanding, in the case of payments made by Exempt Businesses holding a Decree granted under this Chapter to Foreign Persons not engaged in trade or business in Puerto Rico for the use or the privilege to use in

Puerto Rico Intangible Property relative to the operation declared exempt under this Chapter, and provided, that said payments are deemed to be totally derived from sources within Puerto Rico, the following rules shall be observed:

(i) Tax on Foreign Persons Not Engaged in Trade or Business in Puerto Rico-Imposition of Tax

A twelve percent (12%) tax shall be imposed, collected, and paid for each taxable year, in lieu of the tax imposed by Sections 1091.01 and 1091.02 of the Puerto Rico Internal Revenue Code, on the amount of said payments, received or implicitly received by any foreign corporation or partnership not engaged in trade or business in Puerto Rico, derived exclusively from sources within Puerto Rico.

(ii) Withholding at the Source of the Tax in the Case of Foreign Persons that are Entities not Engaged in Trade or Business in Puerto Rico. Any Exempt Businesses required to make payments to nonresidents for the use in Puerto Rico of Intangible Property related to the exempt operation under this Chapter, shall deduct and withhold at the source a tax equal to that imposed in paragraph (i) above.

(c) ...

(d) ...

(e) ...

(f) ...

(g) ...”

Section 3.- Section 2032.02 of Act No. 60-2019, as amended, known as the “Puerto Rico Incentives Code,” is hereby amended in order to add a new subsection (b) and renumber subsections (b), (c), (d), (e), and (f) as subsections (c), (d), (e), (f), and (g), to read as follows:

“Section 2032.02.- Tax on Income from Export Trade Activities.

(a) General Rule- ...

(b) Royalties and License Fees.- The provisions of the Puerto Rico Internal Revenue Code notwithstanding, in the case of payments made by Exempt Businesses holding a Decree granted under this Chapter to Foreign Persons not engaged in trade or business in Puerto Rico for the use or the privilege to use in Puerto Rico Intangible Property relative to the operation declared exempt under this Chapter, and provided, that said payments are deemed to be totally derived from sources within Puerto Rico, the following rules shall be observed:

(i) Tax on Foreign Persons Not Engaged in Trade or Business in Puerto Rico-Imposition of Tax. A twelve percent (12%) tax shall be imposed, collected, and paid for each Taxable Year, in lieu of the tax imposed by Sections 1091.01 and 1091.02 of the Puerto Rico Internal Revenue Code, on the amount of said payments, received or implicitly received by any foreign corporation or partnership not engaged in trade or business in Puerto Rico, derived exclusively from sources within Puerto Rico.

(ii) Withholding at the Source of the Tax in the Case of Foreign Persons that are Entities not Engaged in Trade or Business in Puerto Rico. Any Exempt Businesses required to make payments to nonresidents for the use in Puerto Rico of Intangible Property related to the exempt operation under this Chapter, shall deduct and withhold at the source a tax equal to that imposed in paragraph (i) above.

(c) ...

(d) ...

(e) ...

(f) ...

(g) ...”

Section 4.- Subparagraph (i) of paragraph (1) of subsection (c) of Section 2100.01 of Act No. 60-2019, as amended, known as the “Puerto Rico Incentives Code,” is hereby amended to read as follows:

“Section 2100.01.- Young Entrepreneurs.

(a) ...

(b) ...

(c) Requirements.-

(1) New businesses of Young Entrepreneurs who wish to avail themselves of the tax benefits provided under this Chapter shall comply with the following:

(i) The business shall begin its main business operations on or after the filing of the Decree application;

...

...”

Section 5.- Paragraph (6) of subsection (a) of Section 3000.02 of Act No. 60-2019, as amended, known as the “Puerto Rico Incentives Code,” is hereby amended to read as follows:

“Section 3000.02- Additional Rules for the Award, Sale, and Transfer of Tax Credits.-

(a) Tax credits granted under paragraph (a) of this Section shall be subject to the following:

(1) ...

(2) ...

(3) ...

(4) ...

(5) ...

(6) Except for the tax credits provided in Section 3020.01, tax credits or any part thereof issued in accordance with this Code, may be assigned, sold or otherwise transferred, without constituting a taxable event, under the Puerto Rico Internal Revenue Code and the ‘Municipal License Tax Act,’ or any subsequent law that substitutes it, for the Exempt Business that assigns, sells, or transfers such credits or for the person acquiring such credits. Likewise, in the case of tax credits granted under Section 3010.01(a)(1) and 3010.01 (a)(2) of this Code, such credits may be assigned, sold, or otherwise transferred solely by an Exempt Business upon the completion of the construction and development of the entire Tourist Project, and upon determining the total amount of the tax credit on tourist investment, through a certification to such effect issued by the Secretary of the DEDC. The foregoing notwithstanding, and subject to the terms and conditions provided by the Secretary of the DEDC in the Decree issued to the Exempt Business, the Secretary of the DEDC may authorize the Exempt Business to assign, sell, or transfer the portion of the credit established in Section 3010.01(a)(1)(i) of this Code in the year in which the Exempt Business obtained the necessary financing for the construction of the Tourist Project. Any deduction admitted by an assignee in the sale or any other transfer of tax credits granted pursuant to this Code shall not constitute income under the Puerto Rico Internal Revenue Code or volume of business under the ‘Municipal License Tax Act,’ or any subsequent law that substitutes it.

...”

Section 6.- Subsections (a) and (f) of Section 3010.01 of Act No. 60-2019, as amended, known as the “Puerto Rico Incentives Code,” are hereby amended to read as follows:

“Section 3010.01.- Tax Credit for Eligible Tourist Investment

(a) Tax Credit for Tourist Investment.- Any Exempt Business under this Code or Prior Incentive Law may apply, subject to the Secretary of the DEDC’s approval, for a Tax Credit for Tourist Investment, at the election of the Exempt Business, equal to:

(b) ...

...

(f) The Tax Credit for Eligible Tourist Investment may be assigned, sold, or otherwise transferred solely by an Exempt Business, unless said credit is pledged to the Government Development Bank, to any other agency of the Government of the Commonwealth of Puerto Rico, or any other lending institution, the Tax Credit for Eligible Tourist Investment granted to an Exempt Business for purposes of financing the eligible cost of the tourism project, the creditor of the pledge may sell, assign, or otherwise transfer such acquired credits through (i) the assignment of the credit by the Exempt Business as a source of repayment for said financing or (ii) the enforcement of the pledge to a third party, if the pledge is enforceable.”

Section 7.- Subsection (d) of Section 5010.01 of Act No. 60-2019, as amended, known as the “Puerto Rico Incentives Code,” is hereby amended to read as follows:

“Section 5010.01.- Economic Incentives Fund.

(a) ...

...

(d) The economic benefits provided in this Code through this Section and Sections 2014.01, 2022.06, 2034.01, 2084.01, 2025.01, 2025.02, 2100.02, 2100.03, 2110.03, 4010.01, 4010.02, 5010.02, 5010.03, and 5010.04 shall be defrayed by the Economic Incentives Fund.

(e) ...
 ...”

Section 8.- Section 5010.04 is hereby added to Act No. 60-2019, as amended, known as the “Puerto Rico Incentives Code,” to read as follows:

“Section 5010.04.- Incentives for the Recycling and Transformation of Aluminum Profile or Aluminum Extrusion Scrap in Puerto Rico

(a) It is hereby established as the public policy of the Government of Puerto Rico to promote the recycling and transformation of aluminum profile or aluminum extrusion scrap in Puerto Rico. To reduce the volume of solid waste that is ultimately disposed of in the authorized solid waste disposal facilities is a compelling public interest. Therefore, the collection, separation, and transformation of aluminum scrap is hereby promoted in order to prevent this material, which is so easily recyclable, from ending up in Puerto Rico’s landfills. As part of this public policy, a program to promote aluminum scrap recycling in Puerto Rico shall be created to allow for the transformation thereof into raw material and promote local manufacturing using aluminum recycled in Puerto Rico.

(b) The funds required to grant the incentives provided in this Section 5010.04 shall originate from the Economic Incentives Fund and shall be administered by the Secretary of the DEDC.

(c) Fund Administration.-

(1) The DEDC shall prescribe by regulations to such effect, all that pertains to the form and manner in which the incentives provided in this Section 5010.04 shall be applied for and granted in order to ensure the sound administration of public funds.

a. The DEDC shall adopt, within a period of time not to exceed one hundred eighty (180) days, regulations consistent with the purposes of this Section 5010.04 and this Code.

(2) It shall be the duty of the DEDC to ensure that the funds allocated to the Economic Incentives Fund are used in accordance with the regulations it adopts.

(i) It shall be the duty of the DEDC to carry out the design and implementation of a Scrap Aluminum Recycling Incentives Program using the monies available in the Economic Incentives Fund from other activities that nourish said Fund.

(3) The DEDC shall obtain, publish, and keep up to date a registry of companies that receive incentives from the Fund. The information to be published shall comply with the provisions on the publication of information of economic incentive recipients established in this Code.

(d) Eligibility:

(1) Only the following shall be eligible for the benefits of the Economic Incentives Funds:

(i) Extrusion Plant: Any plant that manufactures extruded aluminum profiles shall receive a six point five (6.5) cent-incentive per pound manufactured in Puerto Rico.

(ii) Scrap Aluminum Recycling Plant: Any plant where scrap aluminum ingots are melted for recycling purposes shall receive a six (6.0) cent-incentive per pound manufactured in Puerto Rico.”

Section 9.- This Act shall take effect immediately after its approval.