

(H. B. 4037)
(Conference)

(No. 189-2012)

(Approved August 18, 2012)

AN ACT

To amend Subsection (d)(4) of Section 1022.03 of Act No. 1-2011, as amended, known as the “Internal Revenue Code for a New Puerto Rico,” in order to clarify its application to certain transactions; and for other related purposes.

STATEMENT OF MOTIVES

In compliance with the public policy of this democratically elected Administration, this Legislative Assembly approved the Internal Revenue Code for a New Puerto Rico. At that time, we established that the underlying purposes of said tax reform were: (a) to provide all Puerto Ricans with financial relief by dramatically lowering tax rates; (b) to establish a fair and simple taxation system with tools to aggressively fight tax evasion; (c) to provide work incentives and reliefs for the elderly; and (d) to promote economic development and job creation.

Section 1022.03 of the Internal Revenue Code of 2011 imposes a one percent (1%)-tax on the value of personal property acquired by a taxpayer from a related party. This tax does not apply to purchases from nonrelated parties. However, despite its laudable purpose, this Section’s current wording does not take into account a particular situation that will lead to increased prices on several products upon the application of said tax.

The situation that was overlooked when drafting Section 1022.03 was how to deal with a purchase made by a taxpayer from a related party, when said related party acquired such personal property from a third party, and then sold it to the taxpayer for the same value or for a similar value but adding a reasonable fee attributed to factors such as shipping, transportation, storage, insurance costs, excise and/or sales and use taxes. The Government of Puerto Rico must be proactive when dealing with and understanding common business practices within our reality as an Island. It is a common business practice for manufacturers to make a sale to an entity in the United States, or in any other part of the world, and such entity, in turn, would make a sale to a related party in Puerto Rico. When said sale is made for the same or a substantially similar value, the situation that Section 1022.03 sought to address does not arise. What actually happens in the cases described above is that a taxpayer acquires a property from a third party that turns out to be a related party. Should the tax imposed under Section 1022.03 apply in this situation, Puerto Rican consumers could face an increase in the price of several products, including medicines. This, in turn, could adversely affect the finances of the *Mi Salud* program as a result of the increase in the cost of medicines that companies import to Puerto Rico and are sold through said program.

Lastly, this Act empowers the Secretary of the Treasury to prescribe by regulations the documents that taxpayers shall submit to prove that they qualify under the new exception included in Section 1022.03. Such power is granted to the Secretary to ensure that Section 1022.03 is fairly applied, thus protecting the public interest and ensuring that said Section is applied to all those transactions that it should be actually applied.

For all of the foregoing, this Legislative Assembly deems it necessary to approve this Act and thus clarify the provisions of Section 1022.03 of the Internal Revenue Code for a New Puerto Rico.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:

Section 1.- Subsection (d)(4) of Section 1022.03 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 1022.03.- Alternative Minimum Tax Applicable to Corporations.

(a) ...

...

(d) Exceptions to the Tentative Minimum Tax of Subsection (b)(2) of this Section.- The tentative minimum tax imposed under subsection (b)(2) of this Section shall not apply to:

(1) ...

...

(4) When the Secretary determines that the value of the personal property acquired by the taxpayer from the related party is equal to or substantially similar to (i) the value for which such related party sells such property to a nonrelated party in Puerto Rico or (ii) the value for which such related party acquires such personal property from a nonrelated party, including as part of said value a reasonable fee of up to five percent (5%) of the value of the expenses incurred by the related party in the original acquisition of the personal property, such as transportation or shipping costs, insurance, storage, excise and/or sales and use taxes; the Secretary shall prescribe by regulations the conditions to be met and the documents that shall be submitted by the taxpayer—including an agreement between the seller and the buyer that allows the Secretary to audit the prices of

items acquired from the unrelated third party—in order to qualify under this exception.

(5) ...

(e) ...”

Section 2.- This Act shall take effect immediately after its approval; however, the effects thereof shall be retroactive to January 1, 2011, and shall apply to all taxable years beginning after December 31, 2010.

CERTIFICATION

I hereby certify to the Secretary of State that the following **Act No. 189-2012 (H. B. 4037) (Conference)** of the **7th Regular Session** of the **16th Legislative Assembly of Puerto Rico**:

AN ACT to amend Subsection (d)(4) of Section 1022.03 of Act No. 1-2011, as amended, known as the “Internal Revenue Code for a New Puerto Rico,” in order to clarify its application to certain transactions; and for other related purposes.

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

In San Juan, Puerto Rico, on this 25th day of September, 2015.

Juan Luis Martínez Martínez
Director