

(S. B. 1303)
(Conference)

(No. 195-2015)

(Approved November 24, 2015)

AN ACT

To amend subsection (a) of Section 5001.01 and paragraph (3) of subsection (a) of Section 5021.01 of Act No. 1-2011, as amended, known as the “Puerto Rico Internal Revenue Code of 2011,” in order to establish the uniform parameters related to the production volume in the definitions of products classified as tropical fruit wine, concentrated must wine, and substandard wine for purposes of the tax on alcohol beverages applicable under Subtitle E to maintain the competitiveness of the industry in Puerto Rico and clarify the provisions thereof; add Section 5023.15 to Act No. 1-2011, as amended, known as the “Puerto Rico Internal Revenue Code of 2011,” in order to include an exemption for the production of beer for personal or family use; and other purposes.

STATEMENT OF MOTIVES

Act No. 238-2014 amended paragraphs 55 and 57 of subsection (a) of Section 5001.01 of the Puerto Rico Internal Revenue Code of 2011 for the purpose of modifying the definitions of products classified as tropical fruit wine and substandard wine. A significant portion of the wines available in the market that fall under these classifications are produced in Puerto Rico and marketed at low and accessible prices for the majority of consumers. Therefore, the production of tropical fruit wines and substandard wine represent an important sector in the food and beverage industry in Puerto Rico.

The amendments to said definitions unintentionally result in an increase in the tax rate applicable to tropical fruit wine and substandard wine products produced domestically upon establishing a maximum volume production.

According to the Puerto Rico Wine Producers Association, the change in the tax rate prompts an increase of up to double the current cost for wines produced domestically. Domestic businesses have also indicated their inability to assume the economic impact of the new income taxes. Thus, the changes established by Act No. 238-2014 may adversely affect several domestic businesses, which was not the intent of the amendments approved thereunder to the provisions on alcoholic beverages.

The goal of this Legislative Assembly and its main objectives are to incentivize the economy of the Island, contribute to the development of all local industries, and promote job creation. These objectives must be conformed to the need of the Government to collect sufficient revenues to offer services and cover the needs of our People. Consequently, it is necessary to formulate a fair tax system with clear and uniform rules in order to maintain a balance between economic growth and fiscal soundness.

For such purposes, this Legislative Assembly deems it necessary to amend the definitions of products classified as tropical fruit wine, concentrated must wine, and substandard wine included in subsection (a) of Section 5001.01 of the Puerto Rico Internal Revenue Code of 2011 in order to correct unanticipated misinterpretations as a result of changes made under Act No. 238-2014 and make said language retroactive to December 22, 2014, the date of approval thereof.

On the other hand, the accelerated growth of craft brewing in the United States began in 1978 when the US Congress, under the administration of President James Carter, enacted Public Law 95-458 to allow home brewing without paying federal taxes when it is solely intended for personal or family use. Federal statute 26 USC 5053, specifically allows for the at-home production of beer not to exceed two hundred (200) gallons per year, if there are two or more adults in such household, or one hundred (100) gallons per calendar year, if there is only one adult in such household, without the payment of tax.

Currently, all the states of the United States have promulgated legislation to allow for home brewing following mostly the same federal parameters. Until recently, Mississippi and Alabama were the only states that had yet to approve legislation. Mississippi approved legislation to legalize home brewing effective on July 1, 2013, whereas Alabama approved legislation on May 9, 2013, thus being the last state of the United States to legalize home brewing. Puerto Rico has been lagging with respect to these legislative matters, despite the fact that there is an increasing number of Puerto Ricans interested in exploring the opportunity to engage in craft brewing.

For all of the foregoing, it is the public policy of this Legislative Assembly to promote craft brewing in Puerto Rico. In doing so, we shall incentivize the birth of a new industry and create new job opportunities in our economy. Puerto Rico shall become a competitive place where the conditions are set to allow for a new local industry to commercially compete with the industry in those states of the United States that have adopted rules similar to the federal provisions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:

Section 1.- Subsection (a) of Section 5001.01 of Act No. 1-2011, as amended, known as the “Puerto Rico Internal Revenue Code of 2011,” is hereby amended to read as follows:

“Section 5001.01.- Definitions.

(a) ...

(1) ...

(55) Tropical fruit wine.- The product of the regular alcoholic fermentation of citrus fruit, pineapple, acerola, tomato, gooseberry, and passion fruit, and the maceration of guava, mango, banana, papaya, soursop, and other fruits commonly produced in tropical zones and whose alcoholic content does not exceed

twenty-four percent (24%) of alcohol per volume. In addition, to qualify under this category, the manufacturer's total production of wine (inside and outside of Puerto Rico) for the previous calendar year, shall be less than two million (2,000,000) wine gallons. This product may be offered either in its simple or carbonated state.

(56) Concentrated must wine.- The product of the normal alcoholic fermentation of the pure must of grapes and other fruits, except tropical fruits, concentrated to a minimum density of twenty-eight (28) degrees Baumé and a maximum density of forty-two point five (42.5) degrees Baumé, and diluted by adding water to the original and exact concentration of fresh juice. The product may have a carbonation level of carbonic gas of up to zero point three hundred ninety-two (0.392) grams in one hundred (100) cubic centimeters of wine. In addition, to qualify under this category, the manufacturer's total production of wine (inside and outside of Puerto Rico) for the previous calendar year, shall be less than two million (2,000,000) wine gallons.

(57) Substandard wine.- Any wine manufactured in its country of origin using sugar, water, sugarcane alcohol, or any other substance in excess of what is needed to correct the natural deficiencies of the fruit, and whose alcohol content by fermentation has been complemented by fortifying it exclusively with distilled spirits obtained from the fermentation and distillation of products derived from sugar cane. The product may have a carbonation level of up to zero point three hundred ninety-two (0.392) grams in one hundred (100) cubic centimeters of wine. To convert wines manufactured under other categories into substandard wines by merely adding sugar, water, or sugarcane alcohol shall not be permitted. In addition, to qualify under this category, the manufacturer's total production of wine (inside and outside of Puerto Rico) for the previous calendar year, shall be less than two million (2,000,000) wine gallons.

(58) ...”

Section 2.- Paragraph (3) of subsection (a) of Section 5021.01 of Act No. 1-2011, as amended, known as the “Puerto Rico Internal Revenue Code of 2011,” is hereby amended to read as follows:

“Section 5021.01.- An internal revenue tax shall be imposed, collected, and paid only once on the following products kept in a warehouse or which have been or may be, in the future, distilled, rectified, produced, manufactured, imported, or introduced to Puerto Rico at the following rate:

(a) Distilled spirits.-

(1) ...

(2) ...

(3) Any distilled spirit stored in a bonded warehouse authorized by the Secretary, inside or outside of Puerto Rico, which shall be used, in whole or in part, in the production of cocktails shall continue paying the tax on distilled spirits prior to producing the cocktail. The tax rate payable shall be established pursuant to paragraphs (1), (2), and (4) of this Section on each wine gallon and a proportional tax at equal rate shall be paid of each fraction of wine gallon insofar as the taxpayer has made the election to pay the tax on distilled spirits before removing the product from the bonded warehouse.

(4) ...

(5) ...

(6) ...

(7) ...”

Section 3.- Section 5023.15 is hereby added to Act No. 1-2011, as amended, known as the “Puerto Rico Internal Revenue Code of 2011,” to read as follows:

“Section 5023.15.- Exemption for the production of beer for personal or family use.

(a) No license, certification, or permit shall be required for the manufacture of beer for personal or family use by a person over eighteen (18) years of age. The total amount of beer manufactured pursuant to this subsection shall be exempt from the excise taxes imposed by subsection (c) of Section 5021.01 of this Subtitle.

(b) Limitations.-

Eligible production of beer pursuant to the provisions of subsection (a) of this Section shall not be sold nor exceed the following quantities:

(i) two hundred (200) gallons per calendar year if there are two (2) or more adults in the household;

(ii) one hundred (100) gallons if there is only one (1) adult in the household.

(c) For purposes of this Section, no beer manufactured for personal or family use in a facility that rents the use of brewing and fermentation equipment shall be deemed for sale. Any beer manufactured in accordance with this Section may be transported from the facility where it was made to the residence, as well as from the residence to competitions, exhibitions, and events, including tastings.”

Section 4.- If any section or provision of this Act were held to be null, invalid, or unconstitutional by a competent court with jurisdiction, said holding shall not affect or invalidate the remaining provisions of this Act. The effect of such holding shall be limited to the paragraph, article, part, or provision of this Act thus held to be null, invalid, or unconstitutional.

Section 5.- This Act shall take effect immediately after its approval. The provisions of Section 1 of this Act shall take effect retroactively to December 22, 2014.