

(H. B. 3025)

(No. 214-2016)

(Approved December 30, 2016)

AN ACT

To amend subsection (8) of Section 6, add subsection (d) to Section 12 of Act No. 23-1991, as amended, known as the “Puerto Rico National Guard Institutional Trust Act”; add subsection (c) to Section 3030.18; and amend Sections 4030.25 and 5023.01 of Act No. 1 of January 31, 2011, as amended, known as the “Puerto Rico Internal Revenue Code of 2011”; in order to clarify the tax exemption benefit on goods sold in post exchanges operated by the National Guard to all officials listed in this Act; establish retroactivity; and for other related purposes.

STATEMENT OF MOTIVES

Section 8 of Article II of the Constitution of the United States of America states that the Congress shall have power:

[t]o provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress.

Congress complies with said constitutional mandate through Title 32 of the United States Code and creates the Puerto Rico National Guard. We cannot overlook the fact that this organization is an integral part of the Reserve Component of the Army or Air Force and that there is a compelling federal interest in ensuring that it can respond to the federal call in the event of war or national emergency. However, although it is true that the Federal Government provides funds for the operation and training of the National Guard, it is up to the state or territory to create its own National Guard, as an organized militia, under its

constitution. The Puerto Rico National Guard has a dual mission as authorized by the Constitution of the United States of America. Moreover, Section 201 of the Military Code of Puerto Rico states that:

The National Guard of Puerto Rico shall consist of units that, as part of the National Guard of the United States, may be organized in Puerto Rico in conformity with the proportional appropriation that to such effects may be prescribed by the President in accordance with the laws of the Congress of the United States. It shall also consist of those units organized, as prescribed, from time to time, by the Governor of Puerto Rico.

The Puerto Rico National Guard is one of the few U.S. military forces authorized to operate under a territory/state status within the territorial limits of Puerto Rico. The Puerto Rico National Guard may be called into federal service by the President or Congress of the United States of America in times of war, during national emergencies, or as needed. Furthermore, the Governor of Puerto Rico may call the Puerto Rico National Guard into service during state emergencies or as necessary, as provided in our code of laws. Its Commander-in-Chief shall be the President of the United States under federal service and the Governor of Puerto Rico under state service.

However, the Governor of Puerto Rico must reimburse equipment costs and other related expenses whenever the National Guard is activated, thus generating expenses to be defrayed from the General Fund of the Commonwealth of Puerto Rico.

The Puerto Rico National Guard Institutional Trust (FIGNA, Spanish acronym) was created with the commendable purpose of providing funds for those officials who have dedicated years of their lives to public and military service and risked their lives to protect the lives and property of our People. The foregoing was unequivocally expressed in the Statement of Motives of Act No. 23-1991:

The Legislature of Puerto Rico declares that the public policy of the Commonwealth of Puerto Rico is that, to the extent that its economic resources allow, the Puerto Rico National Guard and its members shall enjoy adequate facilities and resources that contribute to maintain the high “esprit de corps” of said entity and its members; that the active members of the National Guard shall have assistance in the payment of their educational expenses; that upon retirement after 20 or more years of honorable and meritorious service, and having attained 55 years of age and until they are 60 years old, when they receive their regular annuity for years of service, active members shall receive a modest pension as a gesture of their country in gratitude for such services.

Additional resources have been provided to the National Guard through FIGNA, including, among others, life and funeral insurance, financial assistance for educational expenses to active members of the Puerto Rico National Guard, and annuities to retired members who meet certain requirements.

Initially, as stated in the Statement of Motives, FIGNA was also created for the purpose of rehabilitating, improving, and building the facilities of the National Guard because, at the time, similar to our current situation, the General Fund of the Commonwealth of Puerto Rico was compromised and unable to allocate sufficient funds for such purposes. In the past three years, seventy-six percent (76%) of FIGNA’s income has come from military stores. These monies have been used to fulfill all FIGNA’s statutory purposes. Since its creation in 1991, FIGNA has never received funds from the General Fund through legislative appropriations. The reason for this is simple, this public corporation is self-sufficient and positively impacts thousands of Puerto Rican families due to the revenues it generates from its commercial activities. None of the foregoing costs the General Fund a single dollar.

Over the years, the Puerto Rico Internal Revenue Code has been amended, and the applicable tax has changed. Act No. 117-2006, better known as the “Taxpayers Justice Act,” amended the Internal Revenue Code of 1994 to replace the general excise tax with a Sales and Use Tax. The foregoing was expressly provided in the Statement of Motives of Act No. 117-2006:

As an initial step towards a Tax Reform that seeks great social justice, this Legislature has decided, through the present measure, to implement a tax on sales and use (IVU). The system consists of a tax that intends to be simple, efficient and broad based. The general excise tax is substituted by an IVU. **Articles that had been subject to the general excise tax shall be now subjected to the IVU.** Excise taxes are maintained on certain articles that, due to their peculiarities require separate provisions, such as: cigarettes, gasoline and other fuels, vehicles and alcoholic beverages. (Emphasis added)

Goods sold in post exchanges have always been tax-free. This exemption was established in FIGNA's organic act when excise taxes were in effect and endorsed by the Department of the Treasury. Said tax exemption remained in effect after the SUT replaced the excise tax. This has been confirmed by the Department of the Treasury, which has never questioned the exemption in over 10 years. In fact, the Secretary of the Treasury has even acknowledged, through position statements before this Legislative Assembly, that this exemption can only be modified through legislation, thus recognizing its existence.

Over the years, the benefit extended to the users of the post exchanges operated by FIGNA has not changed. The benefit consists of granting said users the privilege of purchasing tax-free goods in order to complement other vested rights and provide the Puerto Rico National Guard with the resources necessary to pay for such benefits and offer a good quality of life to its members in a self-

sustainable manner without resorting to appropriations from the State General Fund.

We believe it is necessary to clarify that said benefit has been and remains in effect under the current tax law and any subsequent amendment or changes thereto.

In accordance with the foregoing, this Legislative Assembly deems it appropriate to amend subsection (8) of Section 6; amend subsection (a) and add subsection (d) to Section 12 of Act No. 23-1991, as amended, known as the “Puerto Rico National Guard Institutional Trust Act,” in order to clarify that the benefit of shopping in post exchanges of the Puerto Rico National Guard is precisely, the tax exemption on goods sold in post exchanges operated by FIGNA or any of its Concessionaires.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:

Section 1.- Subsection (8) of Section 6 of Act No. 23-1991, as amended, is hereby amended to read as follows:

“Section 6.-

The Puerto Rico National Guard Institutional Trust is hereby authorized to establish and operate post exchanges, canteens, and other services through the direct sale and resale of products in the spaces transferred thereto from time to time by the Adjutant General of Puerto Rico within the quarters and installations of the Military Forces of Puerto Rico, for the benefit of:

- (1) ...
- (2) ...
- (3) ...
- (4) ...
- (5) ...
- (6) ...
- (7) ...

(8) ...

Provided, that under this Act, the Trust is also authorized to contract or grant the use or lease of such spaces by third parties for the operation of said establishments. The above-mentioned operation of post exchanges, canteens, and other services, or their assignment or lease to be operated by third parties shall be conducted pursuant to the regulations prescribed to that effect by the Adjutant General and the Secretary of the Treasury. In addition, said officials shall jointly prescribe the appropriate regulations with respect to the control of the sale of alcoholic beverages, cigarettes, and other taxable items under Act No. 1-2011, as amended, better known as the 'Puerto Rico Internal Revenue Code of 2011,' or any similar successor law, which are sold tax-free in post exchanges and canteens. The operation of such post exchanges, canteens, and other services shall enjoy the benefits provided by virtue of special laws. The Puerto Rico National Guard Institutional Trust is authorized to use the income from the leasing or concession of those spaces for the purposes authorized in this Act. Provided, that in order to properly protect the public interest involved in the granting of said authorization under the contracts executed after the effective date of this Act, the following safeguards are hereby established in case the Trust decides to grant the use or lease of spaces for the operation of the post exchanges:

(a) A notice of intent to grant the operation of such post exchanges to third parties shall be published.

(b) Individuals wishing to operate the post exchanges must demonstrate their financial solvency and administrative competence.

(c) No member of the Trust may be an official, incorporator, partner, or employee of the Concessionaire.

(d) The Department of the Treasury and the Board of Directors of the Trust shall adopt and publish joint regulations setting forth the

details of the contract with the Concessionaire, the term of the contract, oversight measures, annual reporting and auditing requirements, and any other details that, in the judgment of such agencies, is advisable for this type of operation.”

Section 2.- A subsection (d) is hereby added to Section 12 of Act No. 23-1991, as amended, to read as follows:

“Section 12.- Tax Exemption.

(a) ...

(b) ...

(c) ...

(d) Provided, that users who purchase taxable items or services, as defined in the Puerto Rico Internal Revenue Code or any similar prior or successor law, from post exchanges, canteens, or other facilities operated by the Puerto Rico National Guard Institutional Trust or the Concessionaire thereof shall be exempt from taxes, excise taxes, or levies.”

Section 3.- A Section 4030.25 is hereby added to Act No. 1-2011, as amended, to read as follows:

“Section 4030.25.- Exemption for Taxable Items Sold in Post Exchanges Operated by the Puerto Rico National Guard Institutional Trust.

(a) Any taxable item purchased by a user, as defined in Act No. 23-1991, as amended, from post exchanges, canteens, or other facilities operated by the Puerto Rico National Guard Institutional Trust or the Concessionaire thereof shall be exempt from the sales and use tax imposed under this Subtitle.”

Section 4.- A subsection (c) is hereby added to Section 3030.18 of Act No. 1-2011, as amended, to read as follows:

“Section 3030.18.- Exemption on Cigarettes.

(a) ...

(b) ...

(c) Furthermore, cigarettes sold or transferred to users, as defined in Act No. 23-1991, as amended, in post exchanges, canteens, or other facilities operated by the Puerto Rico National Guard Institutional Trust or the Concessionaire thereof shall be exempt from the excise tax imposed under this Subtitle.”

Section 5.- Section 5023.01 of Act No. 1-2011, as amended, is hereby amended to read as follows:

“Section 5023.01.- Exempt Persons, Organizations, and Agencies.

(a) Distilled spirits and alcoholic beverages shall be exempt from taxation under this Subtitle when they are sold or transferred to the following persons, agencies, and organizations:

(1) The United States Armed Forces, including the Puerto Rico National Guard (land and air):

(A) The United States Armed Forces, when they are for use and consumption within duly authorized military establishments only. This exemption shall be extended to the use and consumption by active military personnel at their homes outside of military bases;

(B) The Military Forces of Puerto Rico, when the same are for use and consumption within duly authorized military establishments only. This exemption shall be extended to the use and consumption by active military personnel at their homes outside of military installations.

(2) International Organizations entitled to enjoy the privileges, exemptions, and immunities, such as International Organizations under Public Law No. 291, 79th Congress, 59 Stat. 669, as well as their foreign officials and employees.

(3) Career consuls accredited by the Department of State of Puerto Rico when reciprocity treaties exist between the government they represent and the United States government.

(4) The exemption established in this Section shall apply to the individuals included in Section (6) of Act No. 23-1991, as amended, known as the ‘Puerto Rico National Guard Institutional Trust Act,’ except those included in paragraphs (4), (5), (6), and (7).”

Section 6.- The Adjutant General of the National Guard and the Secretary of the Treasury may promulgate regulations to achieve the purposes of this Act, however, the adoption of regulations is not jurisdictional in nature; therefore, this Act shall take effect upon its approval.

Section 7.- This Act shall take effect upon its approval and clarifies that the tax exemption hereby granted is retroactive to the repeal date of Act No. 5 of October 8, 1987, as amended.