

(S. B. 1020)

**(No. 232-2014)**

(Approved December 19, 2014)

## **AN ACT**

To amend subparagraph (B) of subsection (d)(1) of Section 2 of Act No. 73-2008, as amended, known as the “Economic Incentives Act for the Development of Puerto Rico,” in order to expand the eligible activities; amend Section 4, Section 10, and Section 13 of Act No. 20-2012, as amended, known as the “Act to Promote the Export of Services,” in order to broaden the definition of eligible business and the definition of eligible service, and amend and thus streamline the application process; among other related purposes.

### **STATEMENT OF MOTIVES**

This Act strives to strengthen the industrial sector of the Commonwealth of Puerto Rico and to make it feasible for our Island to become a genuine center for international commerce. The approval of Act No. 73-2008, known as the “Economic Incentives Act for the Development of Puerto Rico” (“Act No. 73”) and Act No. 20-2012, known as the “Act to Promote the Export of Services” (“Act No. 20”), was a response to a historic moment of formidable challenges for Puerto Rico. The increased competitiveness and productivity growth of emerging economies, the creation of new markets, free trade agreements, regionalization, and modern production models have created a global economy. As a result of such economic dynamics, efforts to attract capital investment face an increase in aggressive competitiveness between different jurisdictions. According to Act No. 73, part of its purpose is to provide an entrepreneurial environment and adequate economic opportunities to continue developing the local industry by recognizing that the local entrepreneur is the cornerstone of the present and future economic development of Puerto Rico.

Within this context, this Legislative Assembly believes that, in the face of Puerto Rico's serious economic challenges, it must secure opportunities for rising Puerto Rican entrepreneurs in order to support their development and growth. This shall be achieved by expanding the scope of businesses eligible for incentives and eliminating obsolete and unnecessary restrictions in our code of laws that hinder the emergence of new industries and job creation in Puerto Rico. Furthermore, it aims to reduce high operating costs and lessen the regulatory restrictions that weaken Puerto Rico's competitive position in the global economy.

Puerto Rico has a history of more than sixty (60) years of capital investment promoted by its industrial incentives program. Such program has had as a common denominator the granting of tax incentives, which have been calibrated to respond to the industrial development strategy of each period. Act No. 135-1997, as amended, known as the "Tax Incentives Act of 1998," was no exemption. Said Act significantly changed the approach to industrial advertising, since it effectively adopted the "controlled foreign corporation" model which became more relevant due to the elimination of certain federal incentives, available up to that point under Section 936 of the U.S. Internal Revenue Code.

We believe that amending Act No. 135-1997 to enable us to offer more competitive benefits, by allowing the establishment of pioneering industries of novel and innovative technology, while strengthening the public policy of the Commonwealth of Puerto Rico on environmental preservation, shall reap benefits for Puerto Rico. At present, local industries engaged in working with materials such as corrugated cardboard are not able to grow in our Island due to the obsolete and unnecessary limitations imposed by our laws, even though the Solid Waste Authority has expressed that paper and cardboard constitute most of the waste generated in the Island and that the growth of said industry shall increase our capacity and industrial base, which are essential to compete.

In addition, one of the purposes of Act No. 20 was to incentivize the export of all types of services and to transform Puerto Rico into a highly competitive international service center. Nevertheless, said legislation did not take into account certain services that were eligible activities up to that point under Act No. 73 and that we deem should remain eligible in the incentives structure that furthers the public policy of Act No. 20 and transform Puerto Rico into a genuine international service export center for the rest of the hemisphere.

In light of the foregoing, it is necessary to expand the eligible activities and services in order to offer more competitive benefits by allowing the establishment of pioneering industries of novel and innovative technology. This Legislative Assembly deems it necessary to promote the inclusion of new eligible businesses and services to incentivize the creation of new jobs.

***BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:***

Section 1.- Subparagraph (B) of subsection (d)(1) of Section 2 of Act No. 73-2008, as amended, known as the “Economic Incentives Act for the Development of Puerto Rico,” is hereby amended to read as follows:

“Section 2.- Definitions.-

For the purposes of this Act, the following terms, phrases, and words shall have the meaning and scope stated hereinbelow:

- (a) ...
- (b) ...
- (c) ...
- (d) Eligible Business.-

(1) For the purposes of this Act, the following shall be eligible businesses:

(A) Any industrial unit established permanently for the production of a product manufactured at commercial scale.

(B) Notwithstanding the provisions of subparagraph (A) of this paragraph, any industrial unit that is established permanently for the production of a product manufactured at commercial scale not eligible under Section 2(d)(1) nor considered as a designated article under Section 2(e) of Act No. 135-1997, as amended, or similar provisions under previous laws, except for the manufacture of boxes, cartons, and containers produced from corrugated cardboard, shall enjoy the benefits provided in this Act, solely for the export activities thereof and, at the same time, shall be subject to the limitations regarding the determination of industrial development income and the base period income established in subsections (f) and (g) of Section 3 of this Act.”

Section 2.- Subsection (k) of Section 4 of Act No. 20-2012, as amended, known as the “Act to Promote the Export of Services,” is hereby amended to read as follows:

“Section 4.- Definitions.-

For the purposes of this Act, the following terms, phrases, and words shall have the meaning and scope stated below, except when it is otherwise clearly indicated, and terms used in the singular form shall also include the plural form, and vice versa:

(a) ...

...

(k) Eligible Services.- Eligible services include the following services which are, in turn, considered export services:

(i) ...

...

(viii) Centralized management services that include, but are not limited to, strategic direction, planning, distribution, logistics, and budgetary services performed in the headquarters or similar regional offices of an entity

engaged in the rendering of such services. Furthermore, strategic and organizational planning processes, distribution, and logistics services rendered to persons outside of Puerto Rico shall also be eligible;

...

(xviii) Commercial distribution and trading of products manufactured in Puerto Rico for jurisdictions outside of Puerto Rico.

(xix) Assembly, bottling, and packaging operations of products for export.

(xx) Marketing centers engaged primarily in providing, through leasing, service, or other type of fees, space and services such as: clerical, translation, and data processing services, communications, marketing, telemarketing, and other consulting services to businesses outside of Puerto Rico, including export and marketing companies, commercial attachés, government agencies responsible for foreign trade, exchange, and product and service exhibition centers.

(xxi) Trading Companies.- For the purposes of this Section, trading companies shall mean any entity that derives not less than eighty percent (80%) of its gross income from:

(A) the purchase of products manufactured inside or outside of Puerto Rico and their resale for use, consumption, or disposition outside of Puerto Rico; and

(B) commissions derived from the sale of products for use, consumption, or disposition outside of Puerto Rico; provided, that no part of the income derived from the sale or resale of products for use, consumption, or disposition in Puerto Rico shall be deemed to be industrial development income and that the income-producing property is not used for purposes other than those authorized by the decree.

(xxii) Any other service that the Secretary, with the advice of the Secretary of the Treasury, determines that must be treated as an eligible service upon deeming it to be in the best interest and for the social and economic wellbeing of Puerto Rico, taking into account the demand that there may be for such services outside Puerto Rico, the total number of jobs to be created, its payroll, the investment that the proponent would make in Puerto Rico, or any other factor that warrants special consideration.

(j) ...

(k) ...

(l) ...”

Section 3.- Section 10 of Act No. 20-2012, as amended, known as the “Act to Promote the Export of Services,” is hereby amended to read as follows:

“Section 10.- Procedures.-

(a) Regular Procedure.-

...

(ii) Interagency Consideration of Applications.-

(A) Once the Exemption Office receives an application under this Act, the Director shall verify that the application meets all formal requirements and that it includes any additional documents required; prepare a report including his determination of eligibility; and prepare a decree project that shall be submitted for evaluation and recommendations, within a term of fifteen (15) business days, as of the filing date of such application, to the Secretary of the Treasury, the Executive Director, the corresponding Municipality, and the Municipal Revenue Collection Center in the event that the decree project includes the property tax exemption described in Section 5 of this Act. An unfavorable recommendation shall contain the specific reasons therefor. Upon review of the application, the Secretary of the Treasury shall verify that the shareholders, members, or partners of the applicant

business comply with their tax obligations under the Code and the Internal Revenue Code of 1994, as amended. This verification shall be unnecessary in the case of public corporations or shareholders who are non-residents of Puerto Rico. Non-compliance with said tax obligations shall serve as a basis for the Secretary of the Treasury to reject the exemption application of the applicant business.

The agencies consulted by the Director shall have twenty (20) days to submit their report on, or recommendation for, the decree project referred thereto. In case the agency issues a favorable recommendation, or if the Exemption Office does not receive a recommendation within the aforementioned twenty (20)-day term, the decree shall be deemed to have received a favorable recommendation, and the Secretary may take the appropriate action with regards to such application.

In the event that any agency raises an objection with respect to the decree project referred thereto, the Exemption Office shall proceed to consider said objection as it deems necessary, and shall notify the parties and the agencies concerned of the administrative action or decree project review it deems pertinent. Once the controversy is resolved, the Director shall make the determination he deems pertinent and submit the case to the Secretary for his final consideration.

(B) In the case of amendments to decrees approved under this Act, the term for the agencies concerned to submit a report or opinion to the Director shall be of ten (10) days.

(C) ...

...

(G) ...

(iii) ...

(b) ...

...

(e) ...”

Section 4.- Section 13 of Act No. 20-2012, as amended, known as the “Act to Promote the Export of Services,” is hereby amended to read as follows:

“Section 13.- Reports Required from Exempt Businesses and their Shareholders or Partners.-

(a) ...

...

(d) Every eligible business holding a decree granted under this Act shall file annually with the Exemption Office, a report authenticated by the signature of the President, managing partner, or his authorized representative, along with a copy to the Secretary, the Secretary of the Treasury, and the Executive Director not later than thirty (30) days after filing the corresponding income tax return. Said report shall include an account of data ascertaining compliance with the conditions established in the decree for the taxable year immediately preceding the filing date thereof, including, but not limited to the following: average number of jobs, services covered under the decree, as well as any other information that may be required in the form to be adopted for such purposes or required through regulations. The report shall enclose the payment of the fees established through regulations, by money order, cashiers or certified check payable to the order of the Secretary of the Treasury. The information provided in this annual report shall be used for statistical and economic research purposes, as provided in this Act. Likewise, the Industrial Tax Exemption Office shall conduct an audit every two (2) years to ascertain compliance with the terms and conditions of the decree granted under this Act. An



audit process shall be adopted for such purposes within a term of sixty (60) days as of the effective date of this Act. The Tax Exemption Office shall be empowered to charge fees for said audits.

The fees in effect for the annual reports under Act No. 73-2008, as amended, shall apply to the reports to be filed by exempt businesses under this Act until the first regulations pursuant to these provisions are approved.

(e) ...”

Section 5.- Severability Clause.-

If any article, section, subsection, paragraph, subparagraph, clause, phrase, or part of this Act were held to be unconstitutional by a court with jurisdiction, said holding shall not affect, impair, or invalidate the remaining provisions of this Act. The effect of said holding shall be limited to the article, section, subsection, paragraph, subparagraph, clause, phrase, or part thereof thus held to be unconstitutional.

Section 6.- Effectiveness.-

This Act shall take effect immediately after its approval.

## CERTIFICATION

I hereby certify to the Secretary of State that the following **Act No. 232-2014 (S. B. 1020)** of the **4<sup>th</sup> Regular Session** of the **17<sup>th</sup> Legislative Assembly of Puerto Rico**:

**AN ACT** to amend subparagraph (B) of subsection (d)(1) of Section 2 of Act No. 73-2008, as amended, known as the “Economic Incentives Act for the Development of Puerto Rico,” in order to expand the eligible activities; amend Section 4, Section 10, and Section 13 of Act No. 20-2012, as amended, known as the “Act to Promote the Export of Services,” in order to broaden the definition of eligible business and the definition of eligible service, and amend and thus streamline the application process; among other related purposes.

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

In San Juan, Puerto Rico, on this 18<sup>th</sup> day of April, 2018.

Orlando Pagán-Ramírez  
Director