

(H. B. 3529)

(No. 299)

(Approved September 1, 2000)

AN ACT

To amend clause (7) of subsection (b) and add a new subsection (f) to Section 2051; to add a new clause (5), amend and renumber clause (5) as clause (6), and renumber clauses (6), (7), (8) and (9) as clauses (7), (8), (9) and (10) of subsection (a) of Section 2084 of Act No. 120 of October 31, 1994, as amended, known as the “Internal Revenue Code of Puerto Rico of 1994,” to provide what shall be included in the term rental or rentals; to prohibit hoteliers from charging fees denominated as “tax,” “assessment duties,” or any other word that may indicate that it is a tax imposed by the Commonwealth of Puerto Rico when said charge has not been imposed by the Commonwealth; to amend the formula for the distribution of general revenues on room occupancy tax in hotels, apartment hotels, guest houses, motels and *paradores*; and to fix penalties.

STATEMENT OF MOTIVES

The Puerto Rico tourism industry plays an ever increasingly significant role in our Island’s development. This government acknowledges the need to continue to strengthen this sector so that it may continue to be an important source of income in our economy.

A part of the revenues from this industry is generated by the room occupancy tax in hotels, apartment hotels, guest houses, motels and *paradores*, pursuant to Act No. 120 of October 31, 1994, as amended, known as the “Internal Revenue Code of Puerto Rico of 1994.” Actually, the hotelier charges the room occupancy tax corresponding to each guest, and remits it to the Secretary of the Treasury. In order to protect the Puerto

Rico tourism industry, this measure expressly defines and establishes which rental rates are subject to room occupancy tax. Thus, we avoid situations in which hoteliers are not certain of the obligation to charge their guests the room occupancy tax. In the past, said situation created inconveniences for the hoteliers and their guests, as well as for the Government of Puerto Rico. In contrast, this measure, among other things, prohibits hoteliers from changing their guests any fees for their services, for the use of their facilities, or for any other reason that may indicate that said fee is an assessment tax, or duty imposed by the Government of Puerto Rico, when it is not so. As hoteliers decide to charge their clients for certain services, they shall make sure that said fees are not denominated as an assessment duty, tax, or any other word that may indicate that it is imposed by the Government of Puerto Rico, when it is not so. Notwithstanding the above, it shall be clear that this measure in no way limits the authority and power of the Government of Puerto Rico to impose any other taxes it deems necessary.

In addition, a means is herein provided for the revenues generated by the tourism industry to be reinvested in its development and improvement, because it also modifies the formula for the room occupancy tax, providing that part of these revenues shall be remitted to the Puerto Rico Tourism Company and to the Convention Bureau monthly, so that they can invest it in accordance with the provisions contained herein.

Furthermore, the Tourism Company depends on legislative appropriations in order to fulfill its responsibilities, especially with the commitment of developing the tourism industry in Puerto Rico, an industry from which our economy has benefited significantly, in particular with its growth during the past years. For example, we shall state that during the past five years, the number of hotel rooms occupied has increased from

1,001,303 in 1992 to 1,637,751 in 1999. Additionally, the number of rooms available in Puerto Rico, has increased from 8,416 in 1992 to 11,635 in 1999. This measure is of utmost importance because it helps continue the development of tourism in Puerto Rico since it allows the Tourism Company to have a consistent source of income and, thus, those programs focused on tourist development in Puerto Rico are not affected from year to year.

The Tourism Company, being the government agency responsible for the tourist development in Puerto Rico, is the agency that can most efficiently appropriate part of the moneys generated by the room occupancy tax. Any additional funds the Tourism Company may obtain through the approval of this legislation shall be destined to strengthening tourist programs, such as product development, diversification of promotional points in Puerto Rico, expansion to other markets in order to have a greater diversification of the tourist who visits us, and promotion of tourist attractions in and out of Puerto Rico. Strengthening these programs and implementing other similar ones maximizes the economic benefit Puerto Rico receives from every tourist that visits the Island, introduces Puerto Rico to new markets promoting it as a complete tourist destiny, develops a tourist industry focused on service and, at the same time, generates new sources of employment for Puerto Ricans.

In addition, this measure allows for part of the funds generated by the Puerto Rico tourism industry, per se, to be allocated to the Puerto Rico Convention Center Authority for the payment of the bonds issued for the construction and development of the Puerto Rico Convention Center, a project that is very important for furthering the development of the tourist market in our Island. The Puerto Rico Convention Bureau has been designated as the entity in charge of conducting the promotion and

marketing for said Center, given the experience they have in said field. The Puerto Rico Convention Bureau is the main organization in charge of promoting Puerto Rico as a destiny for groups, conventions, fairs and incentive trips, with the main purpose of benefiting our partners, who represent the community of suppliers for the hospitality industry in Puerto Rico.

Lastly, through Act No. 102 of August 23, 1997, that amended clause (5) of subsection (a) of Section 2084 of Act No. 120, *supra*, the 10% revenue of the taxes collected over public shows was omitted. This took place because Act No. 39 of July 19, 1997, renumbered Section 2084 of Act No. 120, *supra*, which was not taken into consideration in the approval of Act No. 102, *supra*, as to clause (5). Therefore, the current Act corrects said omission.

BE IT ENACTED BY THE LEGISLATURE OF PUERTO RICO:

Section 1.- Clause (7) of subsection (b) is hereby amended; and a new paragraph (f) is added to Section 2051 of Act No. 120 of October 31, 1994, as amended, to read as follows:

“Section 2051.- Occupancy of hotel, apartment hotel, guest house and motel rooms.

(a) ...

(b) For purposes of this Section and the other applicable provisions of this subtitle, the following terms shall have the meaning stated below:

(1) ...

(7) Rental or rentals, shall mean the price a hotelier may charge for the occupancy of any room in a hotel, motel, or guest house, or for the occupancy of a hotel apartment valued in terms of money, received in

money or otherwise, including cash, credit, property or services of whatever kind or nature.

...

(f) No hotelier may impose or charge his guests fees denominated as “assessment,” “duty,” “tax,” or that which in any other form may indicate that said fee is imposed by the Commonwealth of Puerto Rico when the fee has not been imposed nor shall be collected by the Commonwealth of Puerto Rico. The Secretary shall impose any sanction deemed necessary, including but not limited to, an administrative fine or revocation of a tax exemption against any hotelier who violates the provisions of this paragraph.”

Section 2.- A new clause (5) is hereby added, clause (5) is amended and renumbered as clause (6), and clauses (6), (7), (8) and (9) are renumbered as clauses (7), (8), (9) and (10) of subsection (a) of Section 2084 of Act No. 120 of October 31, 1994, as amended, to read as follows:

“Section 2084.- Disposition of funds

(a) ...

(1) ...

(5) Ten (10) percent of the product on the taxes collected on public shows, except taxes on public shows mentioned in clauses (2) and (3) of this subsection and those corresponding to public shows held at Coliseo Pachín Vicéns in Ponce and Coliseo Roberto Clemente in San Juan, shall be covered into a special fund for the operating expenses of Festival Casals, Inc., the Puerto Rico Symphonic Orchestra Corporation, the Children’s Strings Program and the Puerto Rico Conservatory of Music Corporation.

The Secretary, from time to time, shall transfer the amounts covered into this fund to the Musical Arts Corporation, created by Act No. 4 of July 31, 1985, as amended, to place said funds at the disposal of such entities, pursuant to the applicable laws, for the purposes of same and in the manner and at the time deemed by the Secretary.

(6) For fiscal year 2000-2001 and subsequent fiscal years, the Secretary shall distribute the product collected on room occupancy tax, as provided in Section 2051 of Chapter 4 of this subsection, in the following manner:

(A) Up to maximum of twenty (20) million dollars on room occupancy tax, as provided in Section 2051 of Chapter 4 of this subsection, collected each fiscal year shall be deposited in a special account in favor of the Puerto Rico Tourism Company and the Puerto Rico Convention Center Authority, once this has been created by law. These amounts shall be used exclusively for the payment or amortization of the principal plus interests of the debts incurred by the Puerto Rico Tourism Company with the Puerto Rico Government Development Bank, or bonds issued, debts assumed or incurred by the Puerto Rico Convention Center with the authorization of the Puerto Rico Tourism Company, to develop and build a convention center and its related infrastructure, including the payment of any expense incurred, or to pay any reserve amount required to finance said debts or bonds.

The Secretary shall deposit the maximum of twenty (20) million dollars per fiscal year provided herein, in monthly transfers equivalent to one tenth (1/10) of the amount that the Puerto Rico Government Development Bank certifies as the amount necessary to pay or cover the

annual amortization of the principal plus interests on the debts or bonds referred to hereinabove. In addition, it is provided that if in any month of the fiscal year, the product on said tax is not enough to cover the monthly payment herein provided, the Secretary shall deposit the deficit using the excess of the amount that should be deposited each month, in accordance with the provisions in the preceding clause (A), which is collected in subsequent months of the same fiscal year. The Secretary shall distribute any residual amount after having paid the debts or bonds provided for in clauses (b) and (c) of this paragraph.

The Puerto Rico Tourism Company, or the Puerto Rico Convention Center Authority, with prior consent from the Puerto Rico Tourism Company, is hereby authorized to pledge or pignorate up to twenty (20) million dollars per year from the product on room occupancy tax established in Section 2051 of chapter 4 of this subsection, to pay or cover the annual amortization of the principal plus interests on the debts or bonds referred to in paragraph 6(A), to pay the financing costs of said debts or bonds, and to pay the maintenance of any reserve amount required by said debts or bonds. In addition, the Puerto Rico Tourism Company or the Puerto Rico Convention Center Authority are hereby authorized to establish a reserve account in the amount deemed necessary to guarantee full compliance of their obligations. Said pledge or pignoration shall be subject to the provisions of Section 8 of Article VI of the Constitution of the Commonwealth of Puerto Rico. The product of said collection shall be only used to pay interests or cover the amortization of the public debt, as provided for in said Section 8 of Article VI of the Constitution, until the other available resources referred to in said section be insufficient for said purposes. Otherwise, the product of said collection in the necessary amount

shall be only used to pay the principal of and the interests on bonds and other debts contained herein, and to comply with any other stipulation convened with the holders of said bonds or debts issued or incurred with the approval of the Puerto Rico Tourism Company.

The Commonwealth of Puerto Rico hereby agrees and binds itself with any person, firm or corporation, or any agency of the United States of America, of any state, or of the Government of the Commonwealth of Puerto Rico, to subscribe or acquire bonds for the payment of which the product on room occupancy tax imposed in Section 2051 of Chapter 4 of this Subsection be pignorated, as so authorized by this Section, to not reduce said tax and not reduce the types imposed in Section 2051 in effect at the time this Act was approved. In addition, it agrees and binds itself to deposit said amounts in a special account as provided in this Section, until said bonds issued at any time, including interests, are paid in full. In the case the amount of the product on room occupancy tax appropriated, at present or in the future, to the Puerto Rico Convention Center Authority or the Puerto Rico Tourism Company, pursuant to this subclause (A), is used to pay the requirements of the public debt and be applied to cover the deficit in the amounts necessary to make said payments, the amounts used on this tax to cover said deficit shall be reimbursed to the Puerto Rico Convention Center Authority or the Puerto Rico Tourism Company from the first product received during the following fiscal year or years by the Commonwealth of Puerto Rico from any surplus amount on the room occupancy tax in effect at the time. The product of the surplus amount on room occupancy tax used pursuant the provisions of this Section to reimburse the reserve funds for the requirements of the public debt shall not be deposited in the General Fund of the Government of the Commonwealth of Puerto Rico upon collection.

Instead, it shall be deposited in a Special Deposit to be used to reimburse the Puerto Rico Convention Center Authority or the Puerto Rico Tourism Company, pursuant to the provisions of this clause and subject to the provisions of Section 8 of Article VI of the Constitution of the Commonwealth of Puerto Rico.

(B) Each month, the Secretary shall distribute the surplus on the amounts needed to pay the debts or bonds, referred to in clause (A) of this paragraph, up to fifty (50,000,000) million dollars, from the product on room occupancy tax imposed in Section 2051 of Chapter 4 of this subsection, collected every fiscal year. The distribution of surplus shall be made according to the following order of priorities:

(i) Two (2) percent of the total tax collected each year corresponding to the first fifty (50,000,000) million dollars shall be deposited each month in a Special Fund in favor of the Department of the Treasury.

(ii) Twelve (12) percent of the total tax collected each year corresponding to the first fifty (50,000,000) million dollars shall be deposited each month in the General Fund of the Puerto Rico Tourism Company to cover the expenses incurred by the Convention Bureau. It is provided, however, that for fiscal years 2000-2001 and 2001-2002, the amount remitted by the Department of the Treasury from the product on room occupancy tax, under this subclause shall be up to five (5,000,000) million dollars per year. The Secretary shall transfer said amount in monthly installments of four hundred thousand six hundred sixty-six dollars and sixty-six cents (\$466,666.66). If in any month the amount deposited is less than the four hundred thousand six hundred sixty-six dollars and sixty-six cents (\$466,666.66), the Secretary shall deposit an additional amount to

cover the deficit from the funds available in subsequent months of the same fiscal year.

(iii) Up to three thousand three hundred dollars (\$3,300.00) shall be deposited during each fiscal year in a special reserve account kept by the Department of the Treasury to cover any deficit that may arise from the operations of the Puerto Rico Convention Center. Any surplus amount after covering said operational deficit shall be deposited in the General Fund. The Secretary shall deposit said amount in said reserve account in monthly installments of two hundred seventy five thousand (275,000) dollars. If in any month the amount deposited is less than two hundred seventy five thousand (275,000) dollars, the Secretary shall also deposit an additional amount to cover the deficit from the funds available in subsequent months of the same fiscal year. This amount shall be reserved and deposited in the year the Puerto Rico Convention Center Authority and the Puerto Rico Tourism Company certify to the Department of the Treasury that the Puerto Rico Convention Center Authority has begun its operations. Up to thirty million dollars (\$30,000,000.00) shall be assigned to the Puerto Rico Tourism Company for fiscal years 2000-2001 and 2001-2002, and any surplus over such amount shall be deposited in the General Fund. The funds appropriated to the Puerto Rico Tourism Company shall be used by it to promote, advertise, develop, and strengthen the industry in Puerto Rico. During fiscal years 2000-2001 and 2001-2002, this amount shall be transferred by the Secretary of the Puerto Rico Tourism Company in monthly installments of two million five hundred thousand dollars (\$2,500,000.00). If in any month the amount deposited is less than two million five hundred thousand dollars (\$2,500,000.00) the

Secretary shall also transfer an additional amount as soon it is available to cover the deficit from said month.

(iv) From fiscal year 2002-2003 on, the surplus amount left after having made the payments provided in paragraphs (i), (ii), and (iii) shall be assigned to the Puerto Rico Tourism Company on a monthly basis.

(C) Once the amounts needed to pay the debts or bonds are satisfied, as provided for in clause (A), each month the Secretary shall distribute the surplus amount over the first fifty (50) million dollars from the product on room occupation tax imposed in Section 2051 of Chapter 4 of this Subtitle collected every fiscal year. The distribution of surplus shall be done in the following order of priorities:

(i) Two (2) percent shall be deposited each month in a special fund in favor of the Department of the Treasury.

(ii) Forty-nine (49) percent shall be covered each month into the General Fund of the Government.

(iii) Twelve (12) percent shall be assigned each month to the Tourism Company to cover the expenses of the Convention Bureau.

(iv) Thirty-seven (37) percent shall be assigned each month to the Tourism Company.

Each month, the Secretary shall remit to the Puerto Rico Tourism Company, the Puerto Rico Convention Center Authority and the Convention Bureau a detailed report of the product collected on room occupancy tax and of the way in which is distributed. The Department of the Treasury shall allow representatives from the Puerto Rico Tourism Company to inspect and review all the information and documents related to the payments made by the hoteliers and to the distribution of said funds.

(7) Twenty-five (25) percent from the tax collected on prizes obtained from pools, *quinielas* (daily doubles) subscription funds and any other wagers at places where horse races are held, other than wagers at race tracks, as established by Section 2053 of Chapter 4 of this subtitle, shall be covered into the Educational Fund.

(8) One-fifth (1/5) of the product from the tax on prizes obtained by horse race owners established in Section 2055 of Chapter IV of this subtitle shall be destined to the Racing Vocational School for trainers and jockeys created by Act No. 129 of July 23, 1974, as amended.

(9) The funds collected by virtue of the provisions of Section 2013 of Chapter 2 of this subsection shall be covered into a special fund by the Secretary that shall only be used to cover special appropriations by the Legislature.

(10) The taxes on carbonated beverages imposed by Section 2007 shall be covered into a Special Fund denominated as "Fund for the Children's Health," with no determined fiscal year and shall be accounted for in a manner separate from other funds under the custody of the Secretary of the Treasury. The resources of this special fund shall be used solely to cover special appropriations to attend, with priority, the needs of the University Pediatric Hospital, and to cover special assignments directed to newly born and pediatric health programs, the teaching of health education at all levels in the public education system of the country, and programs for the treatment and prevention of the acquired immunological deficiency syndrome in children and adults in all state and municipal health facilities. The income of this Special Fund shall not be taken into account in determining the annual total income of the General Fund.

Section 3.- This Act shall take effect immediately after its approval, except for the provisions contained in Section 2, which shall take effect on July 1, 2000.

CERTIFICATION

I hereby certify to the Secretary of State that the following Act No. 299 (H.B. 3529) of the 7th Session of the 13th Legislature of Puerto Rico:

AN ACT to amend clause (7) of subsection (b) and add a new subsection (f) to Section 2051; to add a new clause (5), amend and renumber clause (5) as clause (6), and renumber clauses (6), (7), (8) and (9) as clauses (7), (8), (9) and (10) of subsection (a) of Section 2084 of Act No. 120 of October 31, 1994, as amended, known as the “Internal Revenue Code of Puerto Rico of 1994,” to provide what shall be included in the term rental or rentals; to prohibit hoteliers from charging fees denominated as “tax,” “assessment duties,” or any other word that may indicate that it is a tax imposed by the Commonwealth of Puerto Rico when said charge has not been imposed by the Commonwealth; etc.,

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

In San Juan, Puerto Rico, today 1st of February of 2005.

Luis Fusté-Lacourt
Director