

(H. B. 2596)  
(Conference)

(No. 87)

(Approved May 13, 2006)

## AN ACT

To create the “Act for the Integration of Incentivized Revenues To Cover Insufficiencies Due to Excess in Government Spending and Give Fiscal Attention to the Finances of the State”; to add a clause (9) to subsection (b) of Section 1165 and add Section 1169C to Act No. 120 of October 31, 1994, as amended, known as the “Puerto Rico Internal Revenue Code of 1994,” in order to provide a special five (5)-percent rate applicable to distributions from employee trusts and Individual Retirement Accounts, in the case of distributions made and paid during the period starting on May 16, 2006, and ending on November 15, 2006, as well as for undistributed amounts accrued also from said funds or instruments, but paid within that same period, with the purpose of implementing measures aimed at obtaining additional revenues to finance the payroll of the central government, chargeable to the General Fund of the Government of Puerto Rico for the fiscal year ending on June 30, 2006; and to set the appropriation of said funds.

### ***BE IT ENACTED BY THE LEGISLATURE OF PUERTO RICO:***

Section 1.—This Act shall be known as the “Act for the Integration of Incentivized Revenues To Cover Insufficiencies Due to Excess in Government Spending and Give Fiscal Attention to the Finances of the State.”

Section 2.—Clause (9) is hereby added to subsection (b) of Section 1165 of Act No. 120 of October 31, 1994, as amended, to read as follows:

“Section 1165.—Employee Trusts.—

(a) ...

(b) Taxation of Beneficiary.—

(1) ...

...

(9) Temporary Provisions.—Any amount paid or distributed by any such trust during the period beginning on May 16, 2006, and ending on November 15, 2006, or any undistributed amount accrued from said trusts on which, within the same period, the taxpayer chooses to pay taxes in advance, shall be subject to a special five (5)-percent tax rate in lieu of the tax levied under clause (1) of this subsection. The preceding notwithstanding, and subject to the additional considerations and/or requirements indicated further, said distributions shall be subject to all other provisions of this subsection.

(A) Additional Considerations.—

(i) The distributed amounts from such trusts during said period of time shall comprise amounts payable to a participant due to severance of the employee from the service, in excess of the amount contributed by the participant and/or employee, on which the latter has previously paid taxes. Said requirement shall also apply to amounts paid in advance during said period but distributed later.

(ii) The amounts thus distributed pursuant to this clause do not have to comprise the total of the amounts deposited or accrued in such trusts. Therefore, the same may comprise only a part of the amounts

deposited in said trusts at the option of the participant and/or employee.

(iii) The base of the participant and/or employee in said trusts shall increase by the amount on which the taxpayer chose to pay taxes pursuant to the provisions of this clause, which shall include the amounts that the participant and/or employee decides to withdraw in order to pay the special tax provided for in this clause, which shall not have the effect of disqualifying said distribution, subject to the rules and limitations that apply to said trusts. Likewise, the partial amounts thus distributed shall not be subject to taxation.

(iv) In the case of amounts paid in advance but distributed later, the same shall not include the additional amounts accrued in said trusts after payment thereof, on which amounts taxes shall be paid according to the long-term capital gain rate in effect on the date of the distribution.”

Section 3.—Section 1169C is hereby added to Act No. 120 of October 31, 1994, as amended, to read as follows:

“Section 1169C.—Temporary Provisions on Individual Retirement Accounts.—

(a) General Rule.—Subject to the limitations established in clause (1), any amount paid or distributed from an individual retirement account during the period beginning on May 16, 2006, and ending on November 15, 2006, or any undistributed amount accrued in an individual retirement account on which, within that same period and pursuant to clause

two (2), the taxpayer chooses to pay taxes in advance, shall be subject to a five (5)-percent tax in lieu of any other tax levied under the Code. For purposes of this Section, the term ‘Individual Retirement Account’ shall have the same meaning as in subsections (a) and (b) of Section 1169 of Act No. 120 of October 31, 1994, as amended.

(1) Limitations.—

(A) (i) The provisions of subsection (a) shall apply to the total payments or distributions from individual retirement accounts which, except for the provisions of this Section, would be subject to income tax pursuant to Section 1169(d)(1), and which are made during the period established in subsection (a) to the owners or beneficiaries of said accounts and whose total amount does not exceed fifty thousand (50,000) dollars;

(ii) Any undistributed amount accrued in an individual retirement account on which the taxpayer chooses to pay the five (5)-percent tax in advance, pursuant to the provisions of clause two (2).

(B) Any distribution or payment exceeding the limit established in subclause (A) shall be subject to taxes pursuant to the provisions of Section 1169(d).

(2) Choice to Pay in Advance Taxes on Undistributed Amounts Accrued.—

(A) Any individual who is the owner or beneficiary of an individual retirement account may choose to pay in advance during the period beginning on May 16, 2006, and ending on November 15, 2006, the five (5)-percent tax levied by this

subsection on the total or on part of any undistributed amount accrued in an individual retirement account, which if distributed or paid would be subject to income tax pursuant to Section 1169(d)(1). The base of the taxpayer in such an individual retirement account shall increase by the amount on which the taxpayer chose to pay taxes in advance.

(B) Choice and Payment.—The choice shall be made within the period provided for in subclause (A), by filling out the form provided by the Secretary for such purposes. The tax shall be paid at the Internal Revenue Collection Offices of the Department of the Treasury of Puerto Rico.

(3) Exceptions.—The special five (5)-percent rate shall not apply to the following distributions:

(A) Distributions of funds contributed to individual retirement amounts that correspond to taxable year 2005 henceforth.

(B) Distributions made during the period established in subsection (a) on the grounds provided for by clauses (2), (3), (4), (5), or (6) of subsection (d) of this Section 1169(d).

(b) Obligation to Deduct and Withhold.—Any trustee of an individual retirement account who makes distributions from individual retirement accounts subject to the tax established in subsection (a), shall deduct and withhold from said distributions an amount equal to five (5) percent of the amount thereof.

(c) Obligation to Pay or Deposit Deducted or Withheld Taxes.—Any trustee of an individual retirement account under the obligation to deduct and withhold any taxes under the provisions of subsection (b), shall

pay the amount of the taxes thus deducted and withheld pursuant to the provisions of Section 1169(d)(1)(F). Said trustee shall be responsible to the Secretary for the payment of said taxes and shall not be responsible to any other person for the amount of any payment thereof.

(d) Nonwithholding.—If the trustee of the individual retirement account, in violation of the provisions of this subsection, fails to withhold as indicated in subsection (b), the amount that should have been deducted and withheld (unless the recipient of the distribution pays the tax to the Secretary) shall be collected from the trustee of the individual retirement account, following the same procedure and in the same manner as if it were a tax owed by the trustee.

(e) Penalties.—For the provisions relative to the applicable penalties for failing to withhold or deposit the tax provided for in subsection (a), see Section 6060.

(f) Exemption from Penalty for Distributions Before Reaching the Age of Sixty (60).—Any amount distributed or deemed to be distributed pursuant to the provisions of this Section, shall not be subject to the penalty imposed by clause (1) of subsection (g) of Section 1169.”

#### Section 4.—Appropriation to Special Fund.—

The money collected by virtue of the provisions of this Act shall be covered into the Special Fund created by the “Act to Impose the Supertax of 2006,” including matters relative to the authorization granted to the President of the Government Development Bank with respect to the use of said Fund, as well as the corresponding limitations, as applicable; provided, further, that in the event that the Fund surpasses the amount of \$531,525,744.00 in funds received since its creation, the excess shall be appropriated to service the debt existing as of June 30, 2006, with the

Teachers' Retirement System and the Retirement System of the Employees of the Commonwealth, and any other additional excess, to defray the costs of early retirement plans of the Retirement System of the Employees of the Commonwealth. In the event that the money collected under this Act, as well as under any other legislation providing funds for these same purposes, does not suffice to repay the advance granted by the Government Development Bank, this fund insufficiency shall be covered by the Urgent Interest Fund as defined by law and which shall be an integral part of the Tax Reform proposal under Joint Resolution Number 321 of November 21, 2005.

Section 5.—Rulemaking Authority.—

The Secretary of the Treasury is hereby authorized to prepare all the regulations necessary to implement this Act, including all related special forms and returns, as applicable. The regulations to be approved for the implementation of this Act is exempted from the provisions of Act No. 170 of August 12, 1988, known as the “Uniform Administrative Procedures Act of the Commonwealth of Puerto Rico,” as amended, pursuant to the terms and conditions established in said statute.

Section 6.—Severability Clause.—

If any section or provision of this Act were to be found null or unconstitutional by a court with competence and jurisdiction, the ruling thus delivered shall not affect or impair the remaining provisions of this Act and its effect shall be limited to the paragraph, section, part or provision found to be null or unconstitutional.

Section 7.—Effectiveness.—

This Act shall take effect immediately after its approval.

## CERTIFICATION

I hereby certify to the Secretary of State that the following Act No. 87 (H.B. 2596) (Conference) of the 3<sup>rd</sup> Session of the 15<sup>th</sup> Legislature of Puerto Rico:

**AN ACT** to create the “Act for the Integration of Incentivized Revenues To Cover Insufficiencies Due to Excess in Government Spending and Give Fiscal Attention to the Finances of the State”; to add a clause (9) to subsection (b) of Section 1165 and add Section 1169C to Act No. 120 of October 31, 1994, as amended, known as the “Puerto Rico Internal Revenue Code of 1994,” in order to provide a special five (5)-percent rate applicable to distributions from employee trusts and Individual Retirement Accounts, etc.,

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

In San Juan, Puerto Rico, today 22<sup>nd</sup> of May of 2006.

Francisco J. Domenech  
Director