

(H. B. 2950)

**(No. 229)**

(Approved October 17, 2006)

## **AN ACT**

To amend subsection (a) of Section 2015 and to add a new Section 2902 to Act No. 120 of 1994, as amended, known as the “Puerto Rico Internal Revenue Code of 1994,” to establish a mechanism to avoid double taxation through the general excise tax on articles of use and consumption to be taxed under the sales and use tax established in Subtitle BB of said statute, as amended; and for other purposes.

### **STATEMENT OF MOTIVES**

As a part of the approval of Act No. 117 of 2006, known as the “Taxpayers Justice Act of 2006,” a sales and use tax established under Subtitle BB of said statute was imposed to take effect as of November 15, 2006. Said tax falls on or is imposed on taxable items that have been or may be subject to taxation by state excise taxes applicable to certain articles of use and consumption not sold by November 15, 2006, subject to the tax rate known as the 6.6% excise tax corresponding to Section 2015 (a) of Subtitle B of Act No. 120 of 1994, as amended, known as the “Puerto Rico Internal Revenue Code of 1994.” This creates the possibility of double taxation on said items.

For such purposes and in order to avoid such an impact, a mechanism to prevent the effect of such double taxation is established through this Act. This consists of the exclusion of such taxable items from the excise tax on articles for use and consumption acquired as of the date of effectiveness of this Act, or through the granting of a tax credit on articles for which said excise tax has already been paid, and have not yet been sold by November 1, 2006. In order to avail themselves of this procedure, taxpayers who generate annual gross sales of five

hundred thousand (500,000) dollars or less shall be required to file a sworn statement attesting to the amount of such excise taxes, and those who generate annual gross sales over five hundred thousand (500,000) dollars, a certification to such effects issued by a Certified Public Accountant, which shall be subject to the requirements, conditions or safeguards provided in this Act, as well as those established to such effects by the Secretary of the Treasury.

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

Section 1.- Section 2015(a) of Act No. 120 of 1994, as amended, is hereby amended to read as follows:

“Section 2015.- Articles for Use and Consumption Otherwise Untaxed under This Subtitle

- (a) An excise tax of five (5) percent of the taxable price in Puerto Rico shall be levied, collected and paid for each article of use and consumption otherwise untaxed by this Subtitle (except for the fixed excise tax under Section 2011), including parts and accessories for them, with the exception of articles introduced after October 17, 2006.”

Section 2.- Section 2902 is hereby added to Act No. 120 of 1994, as amended, to read as follows:

“Section 2902.- Credit for Excise Taxes paid on Articles for Use and Consumption in Inventory by November 15, 2006

Transitory Provisions

- (a) Declaration of Intent

As of October 17, 2006, articles for use and consumption subject to taxation under the sales and use tax established in Subtitle BB of the Puerto Rico Internal Revenue Code, as amended, are hereby excluded, except for the excise tax fixed by Section 2011, from the payment of

the general state excise tax provided in Section 2015(a). This legislation contains elements to prevent double taxation on articles for use and consumption subject to Section 2015(a) of the Puerto Rico Internal Revenue Code on articles for use and consumption that shall eventually be considered as taxable items subject to the sales tax established in Section 2401 of the Puerto Rico Internal Revenue Code. It also provides the procedure for requesting tax credits in accordance with the parameters specified in this Act.

(b) Inventory Subject to the General Excise Tax in Existence on the effective Date of Subtitle BB of the Code

(1) Granting of Credit - In the case of inventory acquired and introduced in Puerto Rico during the period comprising July 1, 2006 and October 17, 2006, on which the general excise tax provided in Section 2015 of Subtitle B of the Code was paid, that has not yet been sold by November 1, 2006, or in the case of direct sale to the consumer on November 15, 2006, which is considered as a taxable item pursuant to the provisions in Section 2301 of Subtitle BB of the Code, a credit shall be granted equal to such excise tax. For the purposes of granting said credit, it shall be required that taxpayers generate an annual gross sales volume in excess of five hundred thousand (500,000) dollars, and that they obtain and file a certification issued by a Certified Public Accountant authorized to practice and holding a license issued in Puerto Rico, attesting to the amount of such excise tax, which shall be subject to the terms and conditions required by the Secretary through regulations issued to such effects. In the case of taxpayers who generate annual gross sales of five hundred thousand (500,000) dollars or less, they shall file a sworn

statement before the Secretary of the Treasury attesting to the amount of the excise tax paid, subject to the terms and conditions provided in this Section and those others established to such effects through regulations issued by the Secretary. The credit obtained by virtue of the provisions of this Section may be deducted from the quarterly payments made by the merchant in the estimated income tax return. Said deduction shall never exceed thirty-five (35%) percent of the total amount of the quarterly payments to be remitted to the Department of the Treasury. Said tax credit may be carried over by the merchant until he/she makes use of the full amount thereof. The certification issued by a Certified Public Accountant authorized to practice and holding a license issued in Puerto Rico attesting to a sales volume over five hundred thousand (500,000) dollars, or the sworn statement in the case of a sales volume equal to or less than five hundred thousand (500,000) dollars, as it may apply, shall be filed under oath together with the request for credit, as required in subsection b (3) of this Section.

(2) Credit Limitation - The credit for the excise tax paid pursuant to the provisions in subsection (b) of this Section shall be available provided that when the person or entity, upon payment of the tax, has not transferred the same, in whole or in part, to the sales price charged to the consumer under the following situations:

- (a) When the one who introduces, imports or consigns has paid the tax directly; or
- (b) The merchant extends the benefit of the credit to the consumer.

(3) No tax credit shall be claimed unless a request is filed before the Secretary under oath within the term and subject to the conditions established by the Secretary, which shall contain the following information, as a minimum:

- (a) Name and address of the person who claims the credit;
- (b) A certification issued by a Certified Public Accountant authorized to practice and holding a license issued in Puerto Rico, or a sworn statement, as applicable, attesting that the articles for which the credit established in this Section is claimed were sold within the period comprising from November 1, 2006, or in the case of direct sales to the consumer, from November 15, 2006 to June 30, 2007;
- (c) Lists that itemize the sales price of the articles for which credit is claimed, in effect to July 1, 2006 and for the period comprising from November 1, 2006, or in the case of direct sales to the consumer, November 15, 2006 until June 30, 2007, or the last date in which said person would claim the credit established in this Section. The lists required herein shall comply with the regulations or administrative determinations adopted in coordination with the Department of Consumer Affairs.
- (d) A certification issued by a Certified Public Accountant authorized to practice and holding a license issued in Puerto Rico, or a sworn statement, as applicable, attesting to the satisfaction of the Secretary that the articles for which the credit under this Section is requested were acquired between July 1, 2006 and October 17, 2006, as

well as the amount paid for the excise tax fixed in Section 2015(a).

- (e) A copy of the 2005 Personal Property Tax Return, as required in Act No. 83 of August 30, 1991, as amended.”

#### Section 3.- Regulations

The Secretary of the Treasury is hereby empowered to adopt the necessary regulations to enforce this Act, without being subject to the provisions of Act No. 170 of August 12, 1988, as amended, known as the “Uniform Administrative Procedures Act of the Commonwealth of Puerto Rico.”

#### Section 4.- Severability Clause

If any Section or provision of this Act were to be declared unconstitutional by a competent court with jurisdiction, said ruling shall not affect or invalidate the remaining provisions of this Act, and its effect shall be limited to the paragraph, section, part or provision which has been ruled unconstitutional or null.

#### Section 5.- Effectiveness

This Act shall take effect immediately after its approval.

## CERTIFICATION

I hereby certify to the Secretary of State that the following Act No. 229 (H.B. 2950) of the 4<sup>th</sup> Session of the 15<sup>th</sup> Legislature of Puerto Rico:

**AN ACT** to amend subsection (a) of Section 2015 and to add a new Section 2902 to Act No. 120 of 1994, as amended, known as the “Puerto Rico Internal Revenue Code of 1994,” to establish a mechanism to avoid double taxation through the general excise tax on articles of use and consumption to be taxed under the sales and use tax established in Subtitle BB of said statute, as amended; and for other purposes,

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

In San Juan, Puerto Rico, today 14<sup>th</sup> of December of 2007.

Francisco J. Domenech  
Director