

(H. B. 2710)
(Conference)

(No. 244)

(Approved November 10, 2006)

AN ACT

To amend subsections (c), (d), and (e) of Article 1016; amend clause (9) of subsection (b) of Article 1165; amend subsections (a), (b), (c), and (d) of Article 1169C; add subsections (c) and (d) to Article 6130 of Act No. 120 of October 31, 1994, as amended, known as the “Puerto Rico Internal Revenue Code of 1994,” in order to correct certain technical errors, clarify the language of the affected provisions, extend the term to avail oneself of the 5% preferential rate in pension plans and individual retirement accounts to December 31, 2006, and to temper the text of other Articles to the changes resulting from the corrections of technical errors.

STATEMENT OF MOTIVES

Acts No. 41 of August 1, 2005, No. 87 of May 13, 2006, and No. 89 of May 13, 2006, amended various Articles of Act No. 120 of October 31, 1994, as amended, known as the “Puerto Rico Internal Revenue Code of 1994.” After analyzing said statutes, this Legislature deems it necessary to clarify the application of the amendments incorporated through them, extend the term to avail oneself of the 5% preferential rate in pension plans and individual retirement accounts to December 31, 2006, and correct certain technical errors caused by such amendments.

BE IT ENACTED BY THE LEGISLATURE OF PUERTO RICO:

Section 1.- Subsections (c), (d), and (e) of Article 1016 of Act No. 120 of October 31, 1994, as amended, are hereby amended to read as follows:

“Article 1016.—Surtax on Corporations and Regular Partnerships.—

(a) ...

(c) Recovery of Taxes for Tax rate differences.- In the case of a corporation or partnership whose net taxable income exceeds five hundred thousand (500,000) dollars, in order to recover the tax not levied for differences in tax rates on the net taxable income, there shall be levied, collected and paid a tax of five (5) percent on the net taxable income in excess of five hundred thousand (500,000) dollars, provided the tax does not exceed:

(1) forty-one point five (41.5) percent in the case of corporations or partnerships subject to the surtax provided for in subsections (b)(1) and (d). In the case the tax provided in subsection (e) of this Article is levied, the limit referred to shall be forty-three point five (43.5) percent. Notwithstanding the above, for every taxable year beginning after December 31, 2006, the limit shall be thirty-nine (39) percent.

(2) ...

(d) Imposition of Special Tax.— For every taxable year beginning after December 31, 2004, and before January 1, 2007, there shall be levied, collected and paid a special two point five (2.5) percent tax on the net income subject to normal taxes, as defined by subsection (a) of Article 1015 of this Code, from every corporation or partnership subject to the surtax provided

by clause (1) of subsection (b) of this Article. This provision shall not apply to those corporations and partnerships whose net taxable income is less than twenty thousand (20,000) dollars.

(e) Special Surtax on Corporations Covered Under Act No. 55 of May 12, 1933, as amended, known as the ‘Puerto Rico Bank Act.’— In addition to the surtax and the special tax established in subsections (b) and (d) of this Article, there shall be levied, collected and paid for every taxable year beginning after December 31, 2005 and before January 1, 2007, a special two-percent (2.0) tax on the net income subject to normal taxes, as defined in subsection (a) of Article 1015, from all corporations covered under Act No. 55 of May 12, 1933, as amended, known as the ‘Puerto Rico Bank Act.’”

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

“Article 1165.- Employee Trusts

(a) ...

(b) Taxation of Beneficiary.—

(1)...

(9) Temporary Provisions.—Any distribution or distributions originating from such trusts, only due to severance of the employee from the service, paid between May 16, 2006, and December 31, 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 any tax levied by

the Code or any subsequent analogue law. The preceding notwithstanding, and subject to the additional considerations or requirements indicated further, said distributions shall be subject to all other provisions of this subsection.

(A) Additional Considerations and Requirements.—

- (i) The special five (5)-percent tax shall apply to the amount distributed over the amount contributed by the participant that has already been paid by him/her. Likewise, the participant or beneficiary may pay in advance the special contribution in whole or in part of the amount deposited or accrued which is in excess of the amount contributed on which the participant has previously paid taxes. The amounts over which said taxes have been paid in advance, but that are distributed after the payment of said taxes, shall not be subject to the requirement that the distribution be only made due to severance of the employee from the service.
- (ii) The base of the participant or employee in said trusts shall increase by the amount on which the taxpayer chose to pay taxes in advance pursuant to the provisions of this

clause, which shall include the amounts that the participant and/or employee decides to withdraw, if any, in order to pay the special tax provided in this clause, which shall not have the effect of disqualifying said distribution. Such partial distributions shall be subject to the rules and limitations applicable to said trust and shall not be available for trusts covered under subsection (h) of Article 1165 of the Code. Likewise, the partial amounts thus distributed shall not be subject to taxation.

- (iii) In the case of amounts paid in advance by the participant or beneficiary pursuant to this paragraph, but distributed later, the same shall not include the additional amounts accrued in said trusts after payment thereof. At the time of their distribution, said amounts, as well as any amount accrued before their payment and on which amounts taxes have not been paid in advance shall pay taxes pursuant to clause (1) of this subsection.

(B) Choice to Pay in Advance Taxes on Undistributed Amounts. – The choice to pay taxes in advance shall be made within the term provided in Clause (9) of this subsection, upon completing the form provided for such

purposes by the Secretary. The tax shall be paid at the Internal Revenue Collection Centers of the Department of the Treasury of Puerto Rico.

(C) Obligation to Deduct and Withhold.-

(i) Any person, acting in any capacity, who makes distributions or total payment with respect to any participant or beneficiary due to severance from service during the period specified in clause (9) of this subsection, shall deduct and withhold from said distributions an amount equal to five (5)-percent of the amounts thereof in excess of the amounts paid by the participant of the plan which have been paid by the latter.

(ii) Any person bound to deduct and withhold five (5)-percent tax pursuant to paragraph (i), shall be subject to clauses (4), (5), (6), (7), and (8) of this subsection, except that the deposit of the tax deducted and withheld shall be deposited solely in the Internal Revenue Collection Centers of the Department of the Treasury.

(c) ...”

Section 3.- Paragraph (a), (b), (c), and (d) of Article 1169(C) of Act No. 120 of October 31, 1994, as amended are hereby amended to read as follows:

“Article 1169C.—Temporary Provision 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 December 31, 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 or any subsequent analogous law. For purposes of this Section, the term ‘Individual Retirement Account’ shall have the same meaning as in subsections (a) and (b) of Article 1169.

(1) Taxes on Distributed Amounts.—

- (A) The provisions of subsection (a) shall apply to the total payments or distributions from individual retirement accounts which, except for the provisions of this Article, would be subject to would be subject to income tax pursuant to Article 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;

- (B) Any distribution or payment exceeding the limit established in subclause (A) shall be subject to taxes pursuant to the provisions of Article 1169(d), and, if it may apply the penalty for early withdrawal provided in Article 1169(g)(1);
- (C) In the case of married individuals, the fifty thousand (50,000) dollar limit shall apply separately to each spouse, so that each may receive distributions from their respective individual retirement accounts up to said maximum limit.

(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 December 31, 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 Article 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. However, every subsequent distribution in any amount on which the taxpayer chose to pay in advance the five (5)-percent tax, shall be subject to the penalties provided in clause (1) of subsection (g) of Article 1169, if the individual receives the same before he/she attains sixty (60) years of age, except that any of the circumstances described in clause (2) of subsection (g) of Article 1169 applies.

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

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

(A) Distributions of funds contributed to individual retirement accounts corresponding to taxable year 2005 henceforth.

(B) Distributions made during the period set forth in subsection (a) pursuant to clauses (2), (3), (4) (5), or (6) of subsection (d) of Article 1169.

- (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 at the Internal Revenue Collection Centers of the Department of the Treasury on or before the tenth day of the month following the date of said distribution. 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) No withholding.—If the trustee of the individual retirement account, in violation of the provisions of subsection (b), fails to deduct and withhold the amount that should have been deducted and withheld (unless the recipient of the distribution pays the tax to the Secretary) said amount 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) ...”

Section 4.- Subsections (c) and (d) are hereby added to Article 6130 of Act No. 120 of October 31, 1994, as amended to read as follows:

“Article 6130.- Rules and Regulations.—

(a) ...

(c) The Secretary is hereby authorized to prepare any regulations necessary for the implementation of Act No. 87, and Act No. 89 of May 13, 2006, and of Act No. 98 of May 16, 2006, including all special forms and returns related thereto, without being subject to Act No. 170 of August 12, 1988, as amended, known as the Uniform Administrative Procedure Act of the Commonwealth of Puerto Rico.”

(d) Circular letters or administrative determinations.— The orders, informative brochures, circular letters, administrative determinations, or other interpretative rules of general application issued by the Secretary of the Treasury regarding the application of the “Code” or any rules or regulations promulgated thereunder, shall constitute the official interpretation of the law which the Secretary is in charge of interpreting, deserve the corresponding deference and shall be presumed to be correct before the courts.”

Section 5.- Severability Clause

If any section or provision of this Act were declared null or unconstitutional by a Court with competence and jurisdiction, such ruling shall not affect nor invalidate the remaining provisions thereof, and its effect shall be limited to the paragraph, section, part or provisions thus declared.

Section 6.- Effectiveness

This Act shall take effect immediately after its approval, and its provisions shall be retroactive to May 13, 2006, except for Section 5.

CERTIFICATION

I hereby certify to the Secretary of State that the following Act No. 244 (H.B. 2710) (Conference) of the 4th Session of the 15th Legislature of Puerto Rico:

AN ACT to amend subsections (c), (d), and (e) of Article 1016; amend clause (9) of subsection (b) of Article 1165; amend subsections (a), (b), (c), and (d) of Article 1169C; add subsections (c) and (d) to Article 6130 of Act No. 120 of October 31, 1994, as amended, known as the “Puerto Rico Internal Revenue Code of 1994”,

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

In San Juan, Puerto Rico, today 28th of September of 2007.

Francisco J. Domenech
Director