

(H. B. 3139)
(Conference)

(No. 270)

(Approved December 14, 2006)

AN ACT

To amend subsections (a), (b), (c), (d), (e), and (f) of Section 1014A, and to amend subsections (a), (b), (c), (d), (e), and (f) of Section 1121A of Act No. 120 of October 31, 1994, as amended, known as the “Puerto Rico Internal Revenue Code of 1994,” to correct certain technical errors and to clarify the language of the affected provisions.

STATEMENT OF MOTIVES

Act No. 117 of July 4, 2006, made several amendments to Act No. 120 of October 31, 1994, as amended, known as the “Puerto Rico Internal Revenue Code of 1994” (the “Code”). After having made an analysis of said statutes, this Legislature deems it necessary to clarify the applicability of certain amendments incorporated therein and to correct certain technical errors caused by said amendments.

BE IT ENACTED BY THE LEGISLATURE OF PUERTO RICO:

Section 1.- To amend subsections (a), (b), (c), (d), (e), and (f) of Section 1014A of Act No. 120 of December 31, 1994, as amended, to read as follows:

“Section 1014A.- Special Tax for Individuals, Estates and Trusts on the sale or on advance payment on the increase in accrued value of capital gains.

Election to pay the special tax on the sale or in advance on the increase in accrued value of capital gains.- Any individual, estate or trust may choose to pay the special tax established in this Section on the sale of capital gains during

the period between the July 1, 2006 and December 31, 2006. Furthermore, he/she may choose to pay said special tax on the total or part of the increase in accrued value of capital gains owned by any of said persons, without taking into consideration or requiring the sale or disposition of such assets to recognize and obtain said gains. Said special tax shall only be applicable in the case of long-term capital gains. The special tax, whether on pre-payment or sale, provided in this Section shall be applicable to the shareholders or partners of an entity having an election as a special partnership under Subchapter K of the "Code" or an election as a corporation of individuals under Subchapter N of the "Code" who are individuals, estates or trusts with respect to capital gains covered by this Section that are owned by said special partnership or corporation of individuals.

Special Tax.- The special tax established in this Section shall be five (5) percent of the increase in value at the time of the sale or the increase in value determined by said persons on the capital gains at the time of the payment in advance.

Capital gains included.-

The shares of corporations or participations in domestic and foreign partnerships.

Real property located in Puerto Rico, including property that is owned by any individual, estate or trust that is subject to the concession for depreciation whose gains in the sale would be subject to taxation as a capital gain pursuant to the provisions of Section 1121(i), or in the case of pre-payment for increase in accrued value, which if it had been sold, would qualify as a capital gain pursuant to the provisions of Section 1121(i). Notwithstanding the aforementioned, the increase in value or base of this recognized modality shall only be used by said taxpayer for purposes of the future sale of said property,

and not to calculate the depreciation of the property prior to the future sale thereof.

Base increase in the case of advance payment.- For all purposes under the “Code,” the base of the individual, estate or trust on capital gains subject to the present tax on which he/she chose to pay in advance shall include the increase in value over which any of said persons chose to pay tax pursuant to the provisions of this Section. The base thus determined shall be taken into account at the time or date on which said persons sell or dispose of the capital gains. Notwithstanding the aforementioned, any amount or increase in value in such capital gains generated after the election or special treatment provided in this Section shall pay taxes in accordance with the provisions of the laws in effect at the time in which the sale or disposition of said capital gains is finally effected.

Recognition of Loss.- The amount of losses generated by the subsequent sale or disposition of the capital gains object of this Section on which the election to pay in advance was made shall be adjusted in accordance to the tax rate in effect applicable to that type of transaction at the time of the sale or disposition of said assets, prior to their use or carry-over by the individual, estate or trust. In accordance to which, said loss shall be adjusted by formula or fraction, whose numerator shall be a five (5) percent rate and the denominator shall be the tax rate in effect on the date of the sale or disposition of the asset in question.

Election and payment.- The election to pay the tax on the sale or in advance on the increase in value of capital gains covered by this Section shall be made within the period provided in the present Section, by completing the forms provided by the Secretary of the Treasury for such purposes. The tax

shall be paid at the Internal Revenue Collection Offices of the Department of the Treasury of Puerto Rico.”

Section 2.- To amend subsections (a), (b), (c), (d), (e), and (f) of Section 1121A of Act No. 120 of December 31, 1994, as amended, to read as follows:

“Section 1121A.- Special tax for corporations and partnerships on the sale or for advance payment on the increase in accrued value of capital gains.

(a) Election to pay the special tax on the sale or of advance payment on the increase in accrued value of capital gains.- Any corporation or partnership may choose to pay the special tax provided in this Section on the sale of capital gains during the period between July 1, 2006 and December 31, 2006. Furthermore, they may choose to pay said special tax on the total or part of on the increase in accrued value of capital gains owned by said taxpayers, without taking into consideration or requiring the sale or disposition of such assets to obtain said gains. Said special tax shall only apply in the case of long-term capital gains. The election or the special tax provided in this Section shall be applicable to the shareholders or partners of an entity having an election as a special partnership under Subchapter K of the “Code” that are corporations or partnerships with respect to capital gains eligible under this Section that are owned by said special partnership.

(b) Special Tax.- The special tax provided in this Section shall be ten (10) percent of the increase in value at the time of the sale or the increase in accrued value determined by said taxpayers on the capital gains at the time of the payment in advance.

(c) Capital gains included.- Real property located in Puerto Rico, including property that is owned by any corporation or partnership that is subject to the concession for depreciation, whose gains in the sale would be subject to taxation as capital gain pursuant to the provisions of Section 1121(i),

or in the case of pre-payment for increase in accrued value, which if it had been sold, would qualify as a capital gain pursuant to the provisions of Section 1121(i). Notwithstanding the aforementioned, the increase in value or base of this recognized modality shall only be used by said taxpayer for purposes of the future sale of said property, and not to calculate the depreciation of the property prior to the future sale thereof.

(d) Base increase in the case of advance payment.- For all purposes under the “Code,” the base of the corporation or partnership on the capital gains subject of the present Section for which he/she chose to pay tax in advance shall include the increase in accrued value over which the taxpayers choose to pay pursuant to the provisions of this Section. The base thus determined shall be taken into account at the time or date on which the corporation or partnership sells or disposes of said capital gains. Notwithstanding the above, any amount or increase in value in said capital gains generated after the election or special treatment provided in this Section shall pay taxes pursuant to the provisions of the laws in effect at the time of the final sale or disposition of said capital gains.

(e) Recognition of Loss.- The amount of losses generated by the sale or disposition of the capital gains object of this Section shall be adjusted in accordance with the tax rate in effect applicable to that type of transaction at the time of the sale or disposition of said assets, prior to their use or carry-over by the taxpayer. In accordance to which, said loss shall be adjusted by a formula or fraction, in whose the numerator shall be a ten (10) percent rate and the denominator shall be the tax rate in effect on the date of the sale or disposition of the asset in question.

(f) Election and payment.- The election to pay the tax on the sale or in advance on the increase in value of the capital gains covered by this Section

shall be made within the period provided in the present Section, by completing the forms provided by the Secretary of the Treasury for such purposes. The tax shall be paid at the Internal Revenue Collection Offices of the Department of the Treasury of Puerto Rico.”

Section 3.- This Act shall take effect immediately after its approval.

CERTIFICATION

I hereby certify to the Secretary of State that the following Act No. 270 (H.B. 3139) (Conference) of the 4th Session of the 15th Legislature of Puerto Rico:

AN ACT to amend subsections (a), (b), (c), (d), (e), and (f) of Section 1014A, and to amend subsections (a), (b), (c), (d), (e), and (f) of Section 1121A of Act No. 120 of October 31, 1994, as amended, known as the “Puerto Rico Internal Revenue Code of 1994,” to correct certain technical errors and to clarify the language of the affected provisions,

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

In San Juan, Puerto Rico, today 14th of December of 2007.

Francisco J. Domenech
Director