

(H.B. 2985)

(No. 288)

(Approved December 26, 2006)

AN ACT

To amend subsections (a), (b) and (c) of Section 1012C of Act No. 120 of October 31, 1994, as amended, known as the “Internal Revenue Code of 1994,” in order to extend until June 30, 2008 the effectiveness of several of its provisions related to the indirect exchange or transfer of variable annuities contracts; and to amend paragraph (6) of subsection (b) of Section 1169 of the “Internal Revenue Code of 1994,” so that the premiums received by life insurance companies regarding the individual retirement annuities be invested according to Act No. 77 of June 19, 1957, as amended, known as the “Insurance Code.”

STATEMENT OF MOTIVES

Section 1012C of the “Internal Revenue Code of 1994” sets December 31, 2006 as the final date for paying in advance a tax of ten percent (10%) on certain accrued and undistributed amounts in a life insurance, dotal or annuities contract that is exchanged for or transferred to an Eligible Variable Annuities Contract. This measure extends the period for conducting said exchange or transfer to June 30, 2008. It becomes necessary to extend the terms provided in Section 1012C of the “Internal Revenue Code of 1994” to grant local insurance companies an additional period that would enable them to issue variable annuities contracts and to allow taxpayers to make the changes and payments necessary for them to avail themselves of the special 10% rate therein provided.

Pursuant to the provisions of Chapter 6B of the “Insurance Code,” insurance companies are bound to invest their funds in certain eligible investments specifically authorized for the purpose of protecting the economic soundness of said companies and so that they may, at the same time, be able to meet their obligations with the insured. To these ends, said Chapter of the “Insurance Code” seeks, among other things, to foster the diversification of the investment portfolios of the insurance companies. The preceding notwithstanding, the investment requirements imposed by Section 1169(b)(6) of the “Internal Revenue Code of 1994” to the life insurance companies that underwrite individual retirement annuities discourage the diversification of the investments promoted by Chapter 6B of the “Insurance Code.” Therefore, this Legislature deems it necessary that the life insurance companies that issue individual retirement annuities be able to meet the investment requirements imposed by Section 1169(b)(6) of the “Internal Revenue Code of 1994” by complying with the provisions of the “Insurance Code.” By doing this the diversification of the required investments is promoted.

BE IT ENACTED BY THE LEGISLATURE OF PUERTO RICO:

Section 1.-Subsections (a), (b) and (c) of Section 1012C of Act No. 120 of October 31, 1994, as amended, known as the “Internal Revenue Code of 1994,” are hereby amended to read as follows:

“Section 1012C.-Choice of paying in advance the tax on accrued and undistributed amounts in a Variable Annuities Contract.

(a) Any individual who owns or is the beneficiary of a life insurance, endowment insurance or annuities contract and who on or before June 30, 2008 exchanges said contract for an Eligible Variable Annuities Contract or makes an indirect transfer in exchange for an Eligible

Variable Annuities Contract according to Section 1112(b)(9) of this Code, may choose to pay in advance, in lieu of any other tax, a tax of ten percent (10%) on the total amount accrued and undistributed in the contract executed or cancelled that if distributed or paid would be subject to the payment of income tax. The payment of the tax provided in this subsection must be remitted not later than June 30, 2008, after filling out the form provided by the Secretary for this purpose.

(b) Any amount distributed by an Eligible Variable Annuities Contract on which the taxpayer has availed him/herself of the preferential rate provided in subsection (a) of this Section shall not be included in the gross income and shall be exempt from the payment of income tax under this Act and any successor Act.

(c) For the purposes of this Section, any variable annuities contract issued on or before June 30, 2008, by an insurance company organized under the Laws of the Commonwealth of Puerto Rico and whose contractual terms establish that no additional contributions may be made after June 30, 2008, shall constitute an Eligible Variable Annuities Contract.”

Section 2.-Paragraph (6) of subsection (b) of Section 1169 of the “Puerto Rico Internal Revenue Code of 1994,” is hereby amended to read as follows:

“b” ...

(6) That one hundred percent (100%) of the premiums received as contributions described in paragraph (1) of subsection (a), in paragraph (4) of subsection (d) of this Section and in paragraph (2) of subsection (b) of Section 1165, be invested according to the provisions of Act No. 77 of June 19, 1977, as amended, known as the “Puerto Rico Insurance Code.” Should the investment requirements provided in the

“Puerto Rico Insurance Code” not be complied with, it shall be necessary to comply with the investment requirements described below. That thirty-four percent (34%) or more of the premiums received as contributions described in paragraph (1) of subsection (a) and in paragraph (4) of subsection (d) of this Section and in paragraph (2) of subsection (b) of Section 1165, shall be invested in obligations of the Commonwealth of Puerto Rico or of any of its instrumentalities or political subdivisions or in mortgage loans executed for financing the construction or acquisition of residential properties. That not more than sixty-six percent (66%) of the premiums received as contributions described in paragraph (1) of subsection (a) and in paragraph (4) of subsection (d) of this Section and in paragraph (2) of subsection (b) of Section 1165, shall be invested in general assets in Puerto Rico, pursuant to the regulations that to such effects shall be promulgated by the Insurance Commissioner together with the Commissioner of Financial Institutions. For these purposes, shares in domestic corporations registered in the index of capital stock of Puerto Rico of the Government Development Bank for Puerto Rico shall be deemed general assets in Puerto Rico. Up to thirty-three percent (33%) of the premiums received as contributions described in paragraph (1) of subsection (a) and in paragraph (4) of subsection (d) of this Section and in paragraph (2) of subsection (b) of Section 1165, may be invested in assets in the United States, including capital stock and prime quality securities qualified as investment-grade by qualifying agencies, pursuant to the regulations to be promulgated by the Insurance Commissioner together with the Commissioner of Financial Institutions. The income derived from securities that qualify for the investment portfolios of thirty-four percent (34%) or more, up to sixty-six percent (66%) or up to thirty-three percent (33%) of the premiums, as described before, must be

reinvested in any of the described assets in the portfolio corresponding to the asset that generated such an income. It shall be the responsibility of both the Commissioner of Financial Institutions and the Insurance Commissioner of the Commonwealth of Puerto Rico to ensure faithful compliance with the provisions of this paragraph.

The term “individual retirement annuity” does not include an annuities contract for any tax year of the owner during which the same does not qualify due to the application of subsection (e) or for any subsequent tax year. For the purposes of this subsection, an endowment insurance contract shall be deemed to be that contract which comes due on or before the tax year in which the individual in whose name the contract is acquired reaches the age of seventy-five (75) and only that which is for the exclusive benefit of the individual in whose name it is acquired, or his/her beneficiaries, and only if the total sum of the annual premiums corresponding to such a contract do not exceed the amount permitted as deduction pursuant to paragraph (2) of subsection (bb) of Section 1023.

(c)
...”

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. 288 (H.B. 2985) of the 4th Session of the 15th Legislature of Puerto Rico:

AN ACT to amend subsections (a), (b) and (c) of Section 1012C of Act No. 120 of October 31, 1994, as amended, known as the “Internal Revenue Code of 1994,” in order to extend until June 30, 2008 the effectiveness of several of its provisions related to the indirect exchange or transfer of variable annuities contracts; and to amend paragraph (6) of subsection (b) of Section 1169 of the “Internal Revenue Code of 1994,” so that the premiums received by life insurance companies regarding the individual retirement annuities be invested according to Act No. 77 of June 19, 1957, as amended, known as the “Insurance Code.”,

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

In San Juan, Puerto Rico, today 17th of September of 2007.

Francisco J. Domenech
Director