

(H.B. 3169)

(No. 292)

(Approved December 26, 2006)

AN ACT

To add a paragraph (57) to subsection (b) of Section 1022 of Act No. 120 of October 31, 1994, as amended, known as the Puerto Rico Internal Revenue Code of 1994, in order to provide for the exclusion of the gross income corresponding to the payment of the federal subsidy for prescription drugs plans under Section 1860D-22 of the Social Security Act, as amended, and for other purposes.

STATEMENT OF MOTIVES

The Federal Law known as the “Medicare Prescription Drugs, Improvement and Modernization Act of 2003” (“MMA”) represents the most profound and broadest revision of Medicare since its creation in 1965. Among other novelties, the MMA created a new optional benefit in its Part D which covers 75% of the cost of prescribed drugs, after a deductible has been paid and for up to the top limits therein set forth. The cover under Part D is strictly voluntary and entails the payment of a monthly premium by the insured.

Furthermore, the MMA provides for the payment of a subsidy to those employers who voluntarily sponsor retirement plans for their retired employees with a cover for prescribed drugs beginning in January 2006. Under the plan approved, the Federal Government pays the employer who sponsors this type of plan (which should be actuarially equal to the Medicare Plan, Part D), a subsidy of up to 28% of the annual cost of the prescribed drugs per retiree who qualifies, subject to the top limits specified in the Act. A retiree who qualifies is an individual who is eligible to avail him/herself of

the cover of Part D of Medicare but who chooses not to solicit said benefits and so is able to participate in the plan provided by his/her employer. The purpose of the subsidy is to put a stop, as much as possible, to the trend towards eliminating or decreasing the coverage for prescription drugs in the retirement plans (private, government and union retirement plans), especially now that Medicare shall provide the coverage through its Part D. Lastly, as an additional incentive the MMA establishes that the subsidy shall not be considered to be the gross income of the employer under the Federal Internal Revenue Code of 1986, as amended (“Federal Code”) and also provides that said exclusion shall not be taken into consideration for the purpose of determining any deduction allowed under the Federal Code.

The incentive legislated under the MMA is consonant with the public policy of the Government of the Commonwealth of Puerto Rico which recognizes the attention our elderly population deserves and the right of our retirees to a decent pension for their years of service so that late in their lives they do not find themselves forsaken or having become an economic burden for their relatives or for the government. It is particularly important that our senior pensioners have access to the medications that would allow them a proper quality of life and physical and mental independence within their familial and social milieu.

Private employers, the unions and the State and Federal Governments presently cooperate and join forces on behalf of this enterprise and in planning this public policy. In order to maximize the incentives considered by the MMA at the federal level, this tax incentive must be incorporated into our juridical reality under the Code.

Thus, in order to contribute to achieving the purpose that inspires the Federal Legislation and with the implementation of our public policy itself

in matters relative to the health and to the wellbeing of our retired seniors, this Legislature believes it proper to amend the Puerto Rico Internal Revenue Code so as to provide for the exclusion of the gross income corresponding to the payment of the federal subsidy for prescription drugs plans under Section 1860D-22 of the Social Security Act, as amended, and to provide that said exclusion shall not be taken into consideration in determining any deduction allowed for said employer under the Code.

BE IT ENACTED BY THE LEGISLATURE OF PUERTO RICO:

Section 1.-To add a paragraph (57) to subsection (b) of Section 1022 of Act No. 120 of October 31, 1994, as amended, to read as follows:

“Section 1022.-Gross Income

(a) ...

(b) Exclusions from the gross income.-The following items shall not be included in the gross income and shall be exempt from the payment of taxes under this Subtitle:

(1) ...

(2) ...

(57) Federal Subsidy for Prescriptions Drugs Plans.-The payments on account of the subsidy received under the provisions of Section 1860D-22 of the Social Security Act, as amended, or to be subsequently amended. This exclusion of the gross income shall not affect the determination of any deduction allowed under Section 1023 of this Subtitle. Thus, a taxpayer may claim a deduction under Section 1023 of this Subtitle even when said taxpayer also receives an excludable subsidy related to the deduction allowed under Section 1023 of this Subtitle.”

Section 2.-This Act shall take effect for the tax years beginning after December 31, 2005.

CERTIFICATION

I hereby certify to the Secretary of State that the following Act No. 292 (H.B. 3169) of the 4th Session of the 15th Legislature of Puerto Rico:

AN ACT to add a paragraph (57) to subsection (b) of Section 1022 of Act No. 120 of October 31, 1994, as amended, known as the Puerto Rico Internal Revenue Code of 1994, in order to provide for the exclusion of the gross income corresponding to the payment of the federal subsidy for prescription drugs plans under Section 1860D-22 of the Social Security Act, 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 30th of April of 2007.

Francisco J. Domenech
Director