

(H. B. 741)

**(No. 2-2013)**

(Approved February 28, 2013)

**AN ACT**

To amend Sections 2101 and 2102 of Act No. 120-1994, as amended, known as the “Internal Revenue Code of 1994,” regarding the imposition of an excise tax on certain products wholly or partially manufactured or produced in Puerto Rico and services related thereto, acquired by non-resident individuals, corporations, and partnerships from entities affiliated to the buyer.

**STATEMENT OF MOTIVES**

The Commonwealth of Puerto Rico continues to face a difficult economic and financial situation. For such reason, a significant tax reform known as the “Internal Revenue Code for a New Puerto Rico,” Act No. 1-2011, was adopted in 2011 to foster the Island’s economic recovery. According to such tax reform, economic recovery would be assessed through certain higher revenue goals, a cutback on government spending, and economic growth. However, none of those goals were accomplished. Under these difficult circumstances, and with a different view, this Legislative Assembly is committed to help Puerto Rico accomplish those goals and overcome the crisis. To such ends, it is necessary to moderately increase the excise tax rate established in Act No. 154-2010.

Act No. 154-2010 applies to entities that acquire products manufactured or produced in Puerto Rico, or manufacturing services provided in Puerto Rico, from their affiliates. The manufacturing and distribution operations of some of the groups engaged in manufacturing activities on the Island are structured so that manufacturing takes place in Puerto Rico, whereas product distribution throughout the world is carried out by affiliate entities outside of Puerto Rico. These groups of

corporations reap substantial benefits from operating in the Island, to wit: a highly educated and efficient workforce, a solid infrastructure, and a reliable legal system, among many others. Without such benefits, these groups would not be able to manufacture their products as efficiently.

As a general rule, the corporate structure adopted and maintained by multinational groups arises from strategies to reduce the group's taxes at a global level. Even though the structure typically involves several different entities, they are all part of the same group engaged in the same business: the manufacturing and sale of products around the world. Manufacturing activities are carried out in Puerto Rico in order to exploit its resources, infrastructure, and workforce, while other components of the business are located outside of Puerto Rico; however, all these activities are integrated and combined to operate for the same global business.

According to Act No. 154-2010, once a person acquires significant amounts of tangible personal property that is manufactured wholly or partially in Puerto Rico, or manufacturing services rendered in Puerto Rico, from members of a controlled group, such person is required to pay excise taxes on acquisitions, or income taxes on the amount of such income considered as effectively connected with the conduct of a trade or business in Puerto Rico. (Under Section 3070.01 of the Internal Revenue Code for a New Puerto Rico; the provisions regarding excise taxes under Sections 2101, 2102, 2103, 2104, 2105, and 2106 of the Internal Revenue Code of 1994, as amended, continued to be in effect after the adoption of Act No. 1-2011).

Since the effective date of Act No. 154-2010, its excise tax and Income Source Rule have been essential sources of income for the Treasury. Modestly increasing the excise tax rate is crucial for implementing the plan that our

Governor, the Honorable Alejandro García-Padilla, proposed to stabilize public finances and set Puerto Rico on the path to progress and economic growth.

Therefore, as a means to achieve fiscal stability, this Legislative Assembly hereby amends Act No. 120-1994. The provisions regarding reductions in the excise tax rate (from 3.75% in 2012 to 2.75% in 2013, 2.5% in 2014, 2.25% in 2015, and 1% in 2016) are hereby repealed. In lieu thereof, this Legislative Assembly sets forth a fixed excise tax rate of four percent (4%) for the years 2013, 2014, 2015, 2106, and 2017.

***BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:***

Section 1. – The Spanish text of subsection (b)(4) of Section 2101 of Act No. 120-1994, as amended, is hereby repealed and substituted for a new subsection (b)(4), to read as follows:

“Sección 2101. – Imposición de Arbitrio a la Adquisición de Cierta Propiedad Mueble y Servicios. –

(a) ...

(b) ...

(1) ...

(2) ...

(3) ...

(4) Porcentaje Aplicable. – Para propósitos del apartado (a)(1), el porcentaje aplicable será:

(A) para los periodos comenzados después del 31 de diciembre de 2010 y terminados en o antes del 31 de diciembre de 2011, cuatro (4) por ciento,

(B) para los periodos comenzados después del 31 de diciembre de 2011 y terminados en o antes del 31 de diciembre de 2012, tres y tres cuartos (3.75) por ciento,

(C) para los periodos comenzados después del 31 de diciembre de 2012 y terminados en o antes del 30 de junio de 2013, dos y tres cuartos (2.75) por ciento, y

(D) para los periodos comenzados después del 30 de junio de 2013 y terminados en o antes del 31 de diciembre de 2017, cuatro (4) por ciento.

(5) ...

(6) ...

(c) ...”

Section 2.-The Spanish text of subsection (a) of Section 2102 of Act No. 120-1994, as amended, is hereby repealed and substituted for a new subsection (a), to read as follows:

“Sección 2102. – Cobro y Depósito del Arbitrio. –

(a) Cada persona que reciba cualquier consideración por propiedad mueble o servicios en una transacción sobre la cual el arbitrio es impuesto por la Sección 2101(a), deberá cobrar el arbitrio, computado bajo esta sección, de la persona que provee tal consideración y depositar el arbitrio con el Secretario o cualquier institución autorizada por el Secretario a ser depositaria de fondos públicos en o antes del decimotercer día del mes siguiente al mes en que ocurrió la adquisición dentro del tiempo establecido en este apartado. Cualquier persona que no cobre el arbitrio o no deposite el arbitrio cobrado, estará sujeta a una penalidad de dos (2) por ciento de la insuficiencia si la omisión dura treinta (30) días o menos, y a una penalidad adicional de dos (2) por ciento de la insuficiencia por cada periodo de treinta (30) días, o fracción del mismo, durante el cual continúe la omisión, disponiéndose que la penalidad no excederá veinticuatro (24) por ciento de la insuficiencia. Para propósitos de esta sección, el término insuficiencia significará el exceso de la cantidad del arbitrio que debió haber sido depositado

sobre la cantidad del arbitrio depositada en o antes de la fecha en la que se requiere el depósito del arbitrio.

(b) ...”

Section 3. – Language Conflict. –

This Act shall be adopted both in English and Spanish. In case of conflict between both versions, the English version shall prevail.

Article 4. – Repealing subsection (b)(4) of Section 2101 of Act 120-1994, as amended, and replaced with a new subsection (b)(4) to read as follows:

“Section 2101. – Imposition of Excise Tax on Certain Personal Property and Services.-

(a) ...

(b) ...

(1) ...

(2) ...

(3) ...

(4) Applicable Percentage. – For purposes of Subsection (a)(1), the applicable percentage shall be:

(A) For periods beginning after December 31, 2010 and ending on or before December 31, 2011, four (4) percent,

(B) For periods beginning after December 31, 2011 and ending on or before December 31, 2012, three and three quarters (3.75) percent,

(C) For periods beginning after December 31, 2012, and ending on or before June 30, 2013, two and three quarters (2.75) percent, and

(D) For periods beginning after June 30, 2013 and ending on or before December 31, 2017, four (4) percent.

(5) ...

(6) ...

(c) ...”

Article 5. – Repealing subsection (a) of Section 2102 of Act 120-1994, as amended, and replaced with a new subsection (a) to read as follows:

“Section 2102. – Collection and Deposit of Tax. –

(a) Each person receiving any consideration for personal property or services in a transaction on which a tax is imposed by Section 2101(a) shall collect the tax computed under this Section from the person providing such consideration and deposit the tax with the Secretary or any institution authorized by the Secretary to be a depository of public funds on or before the thirteenth day of the month following the month in which the acquisition occurs. Any person that does not collect the tax or does not timely deposit the tax collected, shall be subject to a penalty of two (2) percent of the insufficiency if the omission is for thirty (30) days or less, and an additional penalty of two (2) percent of the insufficiency for each thirty (30) day period or fraction thereof for which the omission continues, provided the penalty shall not exceed twenty-four (24) percent of the insufficiency. For purposes of this Section, the term “insufficiency” shall mean the excess of the amount of tax that should have been deposited over the amount of tax deposited on or before the date the tax is required to be deposited.

(b) ...”

Section 6. – Severability. –

If any clause, paragraph, subparagraph, article, provision, section, subsection, chapter, subchapter, or part of this Act were held to be null or unconstitutional, the holding to such effect shall not affect, impair, or invalidate the remainder thereof. The effect of such holding shall be limited to the clause, paragraph, subparagraph, article, provision, section, subsection, chapter, subchapter, or part of this Act thus held to be null or unconstitutional.

Section 7. – Effectiveness. –

This Act shall take effect immediately after its approval.

## CERTIFICATION

I hereby certify to the Secretary of State that the following **Act No. 2-2013 (H. B. 741)** of the **1<sup>st</sup> Session of the 17<sup>th</sup> Legislature** of Puerto Rico:

**AN ACT** to amend Sections 2101 and 2102 of Act No. 120-1994, as amended, known as the “Internal Revenue Code of 1994,” regarding the imposition of an excise tax on certain products wholly or partially manufactured or produced in Puerto Rico and services related thereto, acquired by non-resident individuals, corporations, and partnerships from entities affiliated to the buyer.

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

In San Juan, Puerto Rico, on this 6<sup>th</sup> day of June, 2013.

Juan Luis Martínez-Martínez  
Director Interino