

(H. B. 4350)

(No. 73)

(Approved May 28, 2008)

## **AN ACT**

To establish the “Economic Incentives Act for the Development of Puerto Rico,” in order to provide the adequate environment and opportunities to continue developing a local industry; to offer an attractive tax proposal to attract direct foreign investment and to promote economic development and social betterment in Puerto Rico; to add subclause (S) and subclause (T) to Section 1022 (b)(4); to amend Section 1232(f)(2) of the Puerto Rico Internal Revenue Code of 1994; and to create the Energy Affairs Administration.

## **STATEMENT OF MOTIVES**

Puerto Rico has a history of more than 60 years of capital investment promoted by its industrial development program. It has evolved with the passing of time, responding to the challenges and opportunities of the different historical moments. Said program has had as common denominator the granting of tax incentives, which have been calibrated to respond to the industrial development strategy of each period. Act No. 135 of December 2, 1997, as amended, known as the “Tax Incentives Act of 1998” was not the exception. Said Act incorporated a significant change in the industrial promotion standpoint, since it effectively adopted the “controlled foreign corporation” structure model which acquired greater relevance due to the elimination of certain federal incentives.

The promotion efforts under Act No. 135 have created more than 113,000 direct jobs and 273 indirect jobs, which constitutes 40% of the workforce of Puerto Rico. The pioneer industry, one of the most recent initiatives incorporated to said Act, has attracted a significant investment in biotechnology, medical instruments, telecommunications and informatics, and has generated more than 3,000 jobs. Of the 1,400 businesses covered by Act No. 135, 70% is local capital. The multinational enterprises that have also availed themselves of Act No. 135 contribute to the treasury approximately 1.3 billion dollars in income tax and withholdings on the payment of royalties to nonresidents. Those enterprises also make significant tax contributions to our municipal governments.

The manufacturing sector has been and continues to be vital for the economy of Puerto Rico. However, the economic models that we knew 60 years ago, and even those dating 10 years back, have changed. The globalization of the market, the increase in productivity boosted by high technology, the rise of new markets, the signing of free trade treaties, the regionalization and the new production models have turned the world into a global hamlet. These changes present challenges and opportunities for the industries and for our people.

Puerto Rico faces a historic moment full of great challenges. Its competitive position vis-à-vis other jurisdictions for attracting the investment of capital has been undermined by external and internal circumstances. The emerging economies are evermore aggressive and effective in their efforts to attract capital. The advances in the fields of technology, informatics, communications, biotechnology, robotics and renewable energy, among others, have changed the interests of investors and the skills required from human capital. The increase in energy costs and the

costs of doing business in Puerto Rico in general negatively affect our competitiveness.

The international tax system has undergone changes that eliminate barriers. The world is becoming a great yet single jurisdiction. The isolated stands reduce competition. As global barriers are being eliminated in all ambits, the synergy between manufacturing and services is attained through new processes that may be manual, technological or virtual. The recognition of this reality and its adoption as an essential part of the new promotion strategy entails the search for alternatives for the development and strengthening of the value added chains.

The future of our people depends on the establishment of strategies that introduce us into the global economy sustained by knowledge that shall lead Puerto Rico to development on the basis of transfer processes of the technology, generation of intellectual property and innovation. Thus, we should adopt a sustainable development perspective that addresses economic, social, political, technological and environmental factors. Education should be a priority. Puerto Rico must establish an action plan that is a cohesive instrument with a firm commitment to an educational system based on languages, mathematics and science.

The “Economic Incentives Act for the Development of Puerto Rico” shall spearhead multiple initiatives that Puerto Rico shall undertake to achieve success in this effort. This Act recognizes the importance for Puerto Rico to continue to be an attraction for the group of enterprises that constitute the backbone of the incentives program, raising to the maximum level the competitive advantages resulting from 60 years of experience and relations with that industry. Said sector has had a great multi-sector impact such as the creation of a middle class and the offer of world-class technical

service providers. Likewise, we should point out and recognize the preponderance of the local sector, an essential tool for the creation of employment and for the strengthening of the value chains.

This “Economic Incentives Act for the Development of Puerto Rico” responds to strategic decisions as to what shall be the public policy of Puerto Rico, to wit:

1. Provide an entrepreneurial environment and the adequate economic opportunities to continue developing a local industry recognizing that the local entrepreneur is the cornerstone for the present and future economic development of Puerto Rico. It is our interest to grant a priority extension to the emerging entrepreneur to support his/her development and growth that shall integrate the interlinking of our economy and the value added chains.

2. Offer an attractive tax proposal to attract direct foreign investment and to be at par with the most competitive jurisdictions in the high technology and high value added industries.

3. Ensure a relationship between the promoted industry and the Government of Puerto Rico and all its components that is based on public transparency, stability, reliability, and credibility. All the components of our society shall offer ironclad support to this program and to the respect and compliance of the commitments that are part thereof for the benefit of Puerto Rico.

4. Support initiatives from the private sector, academia, community enterprises and the municipalities that lead to the economic development of Puerto Rico through innovation, research and development and investment in the infrastructure needed for a better quality of life and efficiency in industrial operations.

5. Minimize the high operational costs and make flexible the regulatory limitations that undermine the competitive position of Puerto Rico. For example, it is necessary to promote the revision of laws and/or regulations that limit the use of certain fuels in the manufacturing processes so as to allow the industrial sector to use less expensive fuel, provided the efficiency of the absorption process or of the control equipment does not interfere with the compliance of the required atmospheric concentration of pollutants established by law or any other applicable requirement.

6. Take forceful action to reduce energy costs, through the different renewable sources alternatives.

7. Recognize the importance of the decentralization of the Government and thus, support the efforts that are being developed at regional level to promote economic development and technological innovation. Said efforts, conducted by the government, enterprises and academia have already begun to bear fruit and it is proper to support them to ensure their contribution to the economic future of Puerto Rico.

In consideration of the stated above, this Act compiles all the benefits of Act No. 135 and of proposals such as H.B. 3798, and broadens the definition of eligible business in order to acknowledge the importance of the services industry, based on the economy of knowledge, and thus boost the local industry. It also establishes a fixed tax rate system, calibrated to address the permanence and stability of the existing enterprises, to respond to the growing world competition, and to protect the fiscal basis of Puerto Rico in an equitable manner. It further includes an offering of tax alternatives to promote strategic investments and to increase the acceleration of the economy and mechanisms are provided so that the autonomous and non-autonomous municipalities shall have a broader and more stable

revenue base, while reducing the unnecessary friction and the uncertainty with the investors in said municipalities. Likewise, the “Economic Incentives Act for the Development of Puerto Rico” establishes as a key element, the Development Fund and increases its resources to increment its positive impact in the economy in general. The strong points and the achievements of this Act, as well as the need to make decisions proactively in the short, medium and long term so that it continues to be effective, shall be measured through some procedures, performance measurements and information requirements, as established in the statute. For the purposes of the effectiveness and continuity of this Act, an expiration term is not established for the same, since measurement, revision and monitoring mechanisms have been included. These mechanisms shall ensure that this statute remains an instrument of agile and competitive promotion, and that the continuous compliance of its provisions is monitored.

This “Economic Incentives Act for the Development of Puerto Rico” is the result of a historic collaborative effort process between the private sector and the Executive and Legislative Branches of the Government of Puerto Rico. It is one of several initiatives that shall be considered and emulated to harmonize the public policy of Puerto Rico with the current global trends in order to satisfy our present needs, and to set the foundations for the welfare of our future generations. This initiative constitutes an excellent starting point for investment in the future of Puerto Rico and a great first step towards the solution of the problems that afflict our social contract.

***BE IT ENACTED BY THE LEGISLATURE OF PUERTO RICO:***

Article 1.—The “Economic Incentives Act for the Development of Puerto Rico” is hereby created to read as follows:

**Section 1.—Statement of Public Policy.—**

It shall be the public policy of the Government of Puerto Rico:

- (1) To promote the adequate environment and opportunities for the development of the local industries.
- (2) To offer an attractive tax proposal to high technology and high added value industries to attract direct foreign investments to be able to compete with other jurisdictions.
- (3) To guarantee a relationship between the industries and the Government of Puerto Rico based on stability, reliability and credibility. All the components of our society shall offer ironclad support to this program and to the respect for and compliance with the commitments that are part of the same for the benefit of Puerto Rico.
- (4) To support the initiatives of the private sector, academia, community enterprises and municipalities in order to contribute to the economic development, of Puerto Rico through innovation, research and development and investment in the necessary infrastructure for a better quality of life and the efficiency in industrial operations.

(5) To curb the high operational costs and make flexible the regulatory limitations that hinders the competitive position of Puerto Rico. For example, it is necessary to promote the revision of laws and/or regulations that limit the use of certain fuels in the manufacturing process in order to allow the industrial sector to use less expensive fuels, provided that the efficiency of the absorption process or of the control equipment does not interfere with the compliance requirements for atmospheric concentration of pollutants established by law or any other applicable requirement.

(6) To take strong action to reduce energy costs through different alternatives of renewable sources.

(7) To recognize the importance of the decentralization of the Government and, in accordance with the preceding, to support the efforts that are being developed at the regional level to promote economic development and technological innovation. Said efforts constituted by the government, the entrepreneurial sector and academia, have already begun to bear fruit and it is essential to support them to ensure their contribution to the economic future of Puerto Rico.

**Section 2.—Definitions.—**

For the purposes of this Act, the following terms, phrases and words shall have the meaning and scope stated hereinbelow:

(a) Industrial Development Income.—

(1) The net income derived from the operation of an eligible activity or service designated by a tax-exempt business that holds a decree granted under this Act, computed pursuant to the Puerto Rico Internal Revenue Code, adjusted by the special deductions provided by this Act, including the income from the operation of said tax-exempt business when it makes an election under clause (b) of Section 10 of this Act.

(2) The eligible income described in subsection (j) of Section 2 of this Act or under similar provisions of similar preceding or subsequent Acts.

(3) The net income derived from the operation of a tax-exempt business that holds a decree granted under this Act as the result of currency exchange that is attributable to the sale of products or to the rendering of services to foreign countries, including the net income derived from hedging transactions.

(4) The income received as dividend or benefit by a corporation or partnership that has stocks or shares in the tax-exempt business that conducts the distribution and which income is

attributable to the industrial development income derived by said tax-exempt business.

(5) The net income derived by the tax-exempt business that holds a decree granted under this Act from business interruption insurance policies, provided that there is no reduction in the employment level in the tax-exempt business as a result of the act which caused the collection of said income.

(6) The net income derived from the sale of the intangible property and any other right to receive income related to activities or intangible property owned by the tax-exempt business with a decree under this Act.

(b) Property Devoted to Industrial Development.—

(1) Real property, including land and improvements or parts thereof, as well as any addition equivalent to not less than twenty-five percent (25%) of the area of the main plant devoted to the exploitation of an industry that is made available to and used or owned by a tax-exempt business that holds a decree granted under this Act in its development, organization, construction, establishment or operation.

(2) Machinery and equipment needed for a tax-exempt business that holds a decree granted under this Act to carry out the

activity that motivated the granting of the tax exemption that is owned, installed, or otherwise used under contract by said tax-exempt business.

Nothing of the provided under this subsection shall apply to contracts known as financing leases.

(c) Tax-exempt business.—

An eligible business, as defined in this Act, established or to be established in Puerto Rico by a natural or juridical person or a combination thereof, organized or not under a common name that has been granted one or two tax exemption decrees but excluding hotels, inns or other special facilities that are tax-exempt businesses under Act No. 52 of June 2, 1983 or Act No. 78 of 1993, as amended.

(d) Eligible Business.—

(1) For the purposes of this Act, the following shall be tax-exempt businesses:

(A) Any industrial unit that is established permanently for the production of any manufactured product at commercial scale.

(B) The provisions of subclause (A) of this subsection notwithstanding, any industrial entity that is established

permanently for the production of a manufactured product at commercial scale that has not been eligible under Section (2)(d)(1) nor considered as a designated article under Section (2)(e) of Act No. 135 of December 2, 1997, as amended, or similar provisions under prior laws shall enjoy the benefits provided in this Act exclusively with respect to their exporting activities, and at the same time, shall be subject to the limitations regarding the determination of industrial development income and to the base period income established in subsections (f) and (g) of Section 3 of this Act.

(C) Any industrial unit that would normally be considered as an eligible business under the preceding clauses, but that because of the competition of other jurisdictions due to low production costs, among other factors, it is not economically feasible to do the entire manufacturing operation in Puerto Rico, and thus it is required that part of the process or elaboration of the product is conducted outside of Puerto Rico.

For the purposes of this subsection, the Secretary of Development, upon endorsement of the Executive Director and the Secretary of the Treasury, may determine that such

industrial unit be considered as an eligible business in consideration of the nature of its facilities, of the investment in the property, machinery and equipment, the number of jobs to be created in Puerto Rico, the amount of the payroll and any other criteria or factors that so warrant it.

(D) Any *bona fide* office, business or establishment with its equipment and machinery, with the capacity and necessary expertise to render a service at commercial scale, provided it complies with one of the following modalities:

(i) The rendering on a commercial scale in Puerto Rico of a designated service, as described in subsection (h) of this Section for foreign markets, including markets in the United States, subject to providing a substantial amount of said service continuously and within a reasonable period of time, as determined through regulations by the Executive Director.

It shall be understood that the service is rendered for foreign markets even when the service is rendered to

another business established in Puerto Rico, which ultimately exports the designated service.

An entity that provides designated service may also render services for the local market provided that it can satisfactorily show to the Secretary of the Treasury the income obtained from sources without Puerto Rico through an accounting method that clearly reflects said income.

(ii) The rendering of a service in Puerto Rico through subcontracting, that is fundamental for the production process of an exempted manufacturing business that belongs to clusters classified as of high economic impact by the Executive Director, upon consultation with the Planning Board, as established in the Promotional Planning Proposal of the Industrial Development Company. The criteria to classify a conglomerate as one of high economic impact shall be established through regulations by the Executive Director.

(iii) The rendering of services in Puerto Rico on a commercial scale and continuously in Puerto Rico to a tax-exempt business as key supplier of said tax-exempt business that is a unit engaged in manufacturing. A supplier shall be considered as a key supplier if his/her services enable the tax-exempt business that is its usual client to devote its activities to the areas of its main competition.

For the purposes of this subclause, key provider services shall be those that are costs directly related to the manufacturing activities of a tax-exempt business, including, among others, the following:

(aa) Specialized storage.

(bb) Inventory management of raw material, material in process, end product and inventory of parts, including receipt, storage and inspection.

(cc) Logistics regarding the distribution of manufactured products and the export of services by tax-exempt businesses, excepting material and

document transportation services provided by businesses devoted mainly to the transportation business to consumers and nonexempt enterprises.

(dd) Insertion and distribution of printed material.

(ee) Digitalization of documents.

(ff) Sterilization of instruments, equipment and clean room garments.

(gg) Quality control and validation of processes, equipment and systems services.

(hh) Rating of equipment, utilities or facilities and calibration and maintenance of equipment.

(ii) Repair and remanufacture of products.

(jj) Project engineering.

(kk) Programming and data system management services.

(ll) Specialized technical training.

(mm) Development and reproduction of educational programs.

(nn) Logistics related to sales functions and purchases such as those pertaining to orders and transportation.

(iv) In the case of the service units described under this subclause, not less than eighty percent (80%) of the employees, technicians and professionals of the service unit shall be residents of Puerto Rico.

(v) In the case of the service units described under this subclause that are operating in Puerto Rico prior to submitting their application, the same shall be subject to the limitations regarding the base period income established in subsection (g) of Section 3 of this Act.

(vi) Legal, accounting or tax consultant services shall not constitute key services.

(E) Property devoted to industrial development.

(F) Animal breeding for experimental use in scientific research, medicine and similar uses.

(G) Research and scientific or industrial development laboratories for the development of new products or industrial

processes, or to improve the same for experimental purposes, clinical, epidemiological and basic science research in mental health projects, scientific investigation of medicines and other similar purposes.

(H) Any business that is devoted to the production, whether on commercial scale or not of energy for consumption in Puerto Rico, through the use of natural gas or coal, or through the use of renewable sources, including but without being limited to: solar energy, wind energy, geothermal energy, ocean thermal energy, ocean kinetic energy, hydroelectric energy, biomass or hydrogen or solid waste, recovery of methane through the use of high technology to produce energy at competitive costs, including but not limited to alternate thermal conversion technology. Three (3) years after the approval of this Act, the energy generated with fossil or nonrenewable resources shall not be eligible. Units in participating public or public-private consortiums whose main objective is that which is mentioned in this clause shall be included in this subclause.

(I) Any of the recycling activities defined hereinafter:

(i) Partial Recycling Activities.—Recycling activities that carry out at least two or more of the following processes: collection, distribution, reconditioning, shredding, pulverization or other physical or chemical process that transforms articles of recyclable materials or recyclable materials as defined in Section 2(O) of Act No. 70 of September 18, 1992, as amended, and recovered in Puerto Rico, in raw material, aggregates for the manufacture of a product, that prepare the material or product for its local sale or use or export, and that locally sell or use or export the material processed or the product for its future use or recycling.

(ii) Total Recycling Activities.—The transformation into commercial articles of recyclable material that has been recovered mainly in Puerto Rico, provided that said activity contributes to the objective of promoting the recycling industry in Puerto Rico.

(J) Planting and harvesting through hydroponics process, as well as the intensive growing of mollusks,

crustaceans, fish or other aquatic organisms through the aquaculture process, the milk pasteurization process and the Agricultural Biotechnology processes provided that these operations are conducted pursuant to the norms and practices approved by the Department of Agriculture of Puerto Rico.

(K) Value added activities pertaining to the operation of the Puerto de las Américas, the port located in the old Roosevelt Roads Base and the ports of Mayagüez, Yabucoa, San Juan, Guayama and any other port designated by the Secretary of Economic Development through regulations or other official communication such as: storage, consolidation of merchandise and dispatch thereof, repacking of consolidated parcels for shipment from said ports, the completion of semi-processed products for delivery to regional markets and any other commercial or service activity related to the administration or management of goods or end, semi-processed or manufactured products that are associated with, are part of, or move through said ports.

(L) Development of licensed or patented programs or software that can be reproduced on a commercial scale.

Provided however, that in the case that said eligible business is operating in Puerto Rico prior to submitting the application, the limitations established in subsection (f) of Section 3 of this Act shall be applicable.

(M) Assembly of equipment to generate energy from renewable sources.

(N) The research, development, manufacture, transportation, launching, operation from Puerto Rico of satellites and service development centers for the processing and storage of data, excluding telephone, radio and television broadcasting operations.

(O) Strategic Projects, as said term is defined in subsection (p) of this Section.

(P) The licensing of intangible property developed or acquired by the tax-exempt business that holds a decree under this Act.

(Q) Any industrial entity that produces purified bottled water that complies with the norms for purified water of the U.S. Food and Drug Administration and the U.S. Pharmacopeia 23<sup>rd</sup> Revision Code, using processes that result in physical and

chemical changes to the original water including reverse osmosis, recovery of reverse osmosis and injection of minerals, among others. Provided however, that these industries shall be eligible only to receive the benefits provided in Section 5 of this Act.

(R) The construction of affordable housing and the planning and development of self-sustaining or partially sustaining communities. For the purposes of this subclause, the term self-sustaining community shall mean the development of housing projects with the capacity to supply their own energy, water and solid waste management needs. For the purposes of this subsection, the term partially sustainable means the development of housing with capacity to supply seventy-five percent (75%) or more (computed on the basis of a daily consumption average of 250 gallons per family) of its water needs, the development of their own sanitary infrastructure, the management of solid waste pursuant to the laws and regulations in effect and the use of alternative energy production techniques to supply at least the common areas of the housing project.

In the case of the construction of affordable or private housing, the prior endorsement of the Department of Housing shall be required. The Department of Housing of Puerto Rico shall consider and make a determination on an application for endorsement filed pursuant to the provisions of this subclause within a term of forty-five days (45) computed as of the date of receipt of the application.

If its determination is not received within the terms provided above, as applicable, said application shall be considered approved.

The alternative energy production equipment shall be certified to such effects and to the effects of its operation in the site installed by an Electrical Engineer or by a Master Electrician, both of whom shall be members of their respective colleges and licensed pursuant to the provisions in the respective laws that regulate the practice of these profession and that have specialized knowledge on the installation of distributed generation equipment based on any type of renewable energy, said professional being registered at the Administration of Energy Affairs of Puerto Rico, accompanied

by a certified copy issued by the College of Engineers and Surveyors of Puerto Rico or by the Puerto Rico Expert Electricians College, as the case may be, and a copy of their license to practice the profession of Electrical Engineer or Expert Electrician. For the duration of the tax benefit, the equipment installed shall be inspected and certified annually by one of the abovementioned professionals and a copy of this certification shall be part of his/her eligible business income statement in order to receive the credits for which they qualify.

(2) Excepting the provisions of Section 13 of this Act on renegotiations and conversions, any applicant who receives tax benefits or incentives under any other special law of the Commonwealth of Puerto Rico that are similar to those provided in this Act, as determined by the Executive Director, shall not be considered as an eligible business under this Act with respect to the activity for which he/she enjoys said tax benefits or incentives.

(e) Production on a Commercial Scale.—

Production for sale in the market in the normal course of business, in quantities and at prices that justify the operation of an eligible business as a running business.

(f) Manufactured Product.—

Shall include products transformed from raw materials into commercial articles, articles designated under preceding tax incentive laws, and any other product with respect to which substantial industrial operations are conducted in Puerto Rico that in the judgment of the Executive Director warrant that they be considered as manufactured products under this Act due to their nature and extension, required technology, the substantial employment provided or any other benefit that the operation represents for the welfare of Puerto Rico.

A tax-exempt business that holds a decree granted under this Act may subcontract the production in Puerto Rico of one or several components or products, or one or more manufacturing processes, or services related to said processes of products covered under their decree or key functions needed for their operation and the subcontractor shall also qualify as a tax-exempt business, provided the Secretary of Development determines that said subcontracting shall result in the best interests of Puerto Rico, in consideration of the factors set forth in the first paragraph of this clause.

(g) Industrial Unit.—

(1) Plant, factory, machinery or set of machinery and equipment with capacity to conduct the main functions used in the

production of a product manufactured on a commercial scale, even when it uses in common with other industrial units, certain facilities of lesser importance such as buildings, power plants, warehouses, conductors of materials or other facilities for productions of lesser importance, or that conduct some industrial operations outside of said industrial unit.

(2) An industrial unit may use in common with other industrial unit facilities of greater importance when the Secretary of Development determines that said use in common is necessary and convenient for the industrial and economic development of Puerto Rico in view of the nature of the operations, of the additional investment and of the number of employments generated.

(3) Any tax-exempt business that holds a decree granted under this Act that establishes an eligible business to manufacture a separate or different from that produced by said tax-exempt business with the machinery and equipment needed for an efficient operation, in addition to any other operation that has enjoyed or that is enjoying an exemption, with an accounting system that clearly reflects the operations of said eligible business in accordance with the generally accepted accounting principles.

(h) Services Designated for Foreign Markets.—

The services designated shall include the following economic activities:

(1) Commercial and mercantile distribution including the export of products manufactured in Puerto Rico.

(2) Investment banking and other financial services including but not limited to services of: (i) asset management; (ii) alternate investment management; (iii) management of private capital investment activities; (iv) management of hedging funds or high risk funds; (v) pools of capital management; (vi) administration of trusts that serve to covert different groups of assets into securities; and (vii) escrow accounts administration services.

(3) Publicity and public relations.

(4) Economic, environmental, technologic, scientific, managerial, marketing, human resources, computer engineering and auditing consulting services.

(5) Commercial arts and graphic services.

(6) Assembling, bottling and packing operations.

(7) Electronic data processing centers.

(8) Port facilities, both air and maritime.

(9) Repair and general maintenance of maritime and air vessels, as well as machinery and equipment including electric, electronic and timepiece equipment.

(10) The production of construction blueprints, as well as engineering and architectural designs and related services.

(11) Marketing centers devoted mainly to promote, through lease fees for services or other type of fees, space and services such as: secretarial, translation and data processing services, communications, marketing, telemarketing and other consulting services for enterprises devoted to or otherwise related to the purchase and export of products or rendering of services to markets outside of Puerto Rico, including export and marketing companies, aggregate and commercial consulates, government agencies responsible for foreign trade, barter and product and services exhibition centers.

(12) Corporate headquarters devoted to rendering centralized managerial services, including the administration or strategic and budgetary planning for affiliated entities.

(13) Companies devoted to international trading companies.

For the purposes of this Section, international trading companies shall mean entities that derive not less than eighty percent (80%) of their gross income:

(A) from the purchase of products manufactured in or outside of Puerto Rico and the resale of such products for their use, consumption or disposition outside of Puerto Rico; and

(B) from commissions derived from the sale of products for their use, consumption or disposition outside of Puerto Rico; provided, that no part of the income derived from the sale or resale of products for their use, consumption or disposition in Puerto Rico shall be deemed to be industrial development income.

(14) The development of general application, licensable custom-made software.

(15) General educational and training services.

(16) Medical hospital care services, including reference laboratory tests and services through telemetry.

(17) Strategic and organizational planning of processes, distribution and logistics.

(18) Shared Services Center.—For purposes of this Section, the term “Shared Services Center” refers to a unit engaged in rendering centralized services in accounting, finances, taxes, auditing, marketing, engineering, quality control, human resources, communications, electronic data processing, and other centralized management services, to affiliated entities.

The Secretary of Development, with the previous favorable recommendation of the Executive Director and the Secretary of the Treasury, may designate, through regulations, other services whose inclusion in this Act is warranted, when he/she determines that such a designation shall serve the best interests and the economic and social well-being of Puerto Rico, in considering the demand that might exist for those services outside of Puerto Rico, the total number of jobs to be created, the payroll, and the investment that the service unit would make in Puerto Rico, or any additional factor for which special consideration is warranted.

(i) Small or Medium Business.—

Any tax-exempt business that holds a decree granted under this Act, which generates an average gross income of less than ten million (10,000,000) dollars during the three (3) preceding taxable years. In order to

determine the annual average gross income, the computation shall include all kinds of income, whether covered or not by an industrial tax exemption decree.

(j) Income from Eligible Investments.—

(1) The interest and dividends on eligible funds invested by the tax-exempt business that holds a decree granted under this Act, in:

(A) loans for the financing of the construction, acquisition or improvements to housing units in Puerto Rico;

(B) loans for the construction, expansion or acquisition of buildings or land, and for the acquisition of machinery and equipment or for operating capital used in tax-exempt businesses. The borrowing tax-exempt business or the borrowing legal entity which is part of a same tax-exempt business shall not qualify for the benefits of this subsection (j) with respect to those investments the same makes, up to the amount of the unpaid balance of its loans for operating capital;

(C) loans for the acquisition of intangible property to be used by tax-exempt businesses in the course of their operations in Puerto Rico, as well as for the financing of activities such as research, experimentation and development of

new products or industrial processes or the improvement thereof, carried out in Puerto Rico;

(D) obligations issued by the Conservation Trust of Puerto Rico and the Housing and Human Development Trust of Puerto Rico, provided that when issuing said obligations, the Secretary of the Treasury has not revoked his/her determination that these are nonprofit trusts, pursuant to the terms and conditions established by the Commissioner;

(E) preferred stocks or capital obligations as authorized by Act No. 55 of May 12, 1933, as amended, known as the “Puerto Rico Banking Law,” as well as capital obligations issued by financial institutions, provided the amount of the capital raised through the preferred stocks or capital obligations issued is invested in Puerto Rico, pursuant to the terms and conditions established by the Commissioner;

(F) obligations issued by any subsidiary of the Farm Credit Banks of Baltimore, or by its successor, AgFirst Farm Credit Bank, engaged in directly or indirectly financing agricultural loans with said funds, as well as farmers in Puerto Rico, including loans to rural residents to finance rural housing;

loans to credit unions owned and controlled by farmers and engaged in the marketing or distribution of agricultural products, the purchase of materials, the rendering of services to agricultural businesses, and the acquisition of loans or discounts on notes already granted;

(G) loans for financing maritime and air operations directly related to commerce and industry in Puerto Rico, including, without it being construed as a limitation, the money used in the construction, acquisition and operation of all kinds of vessels, seacraft or aircraft;

(H) stocks from corporations or shares in partnerships that own or operate tourist businesses exempted under Act No. 78 of September 10, 1993, as amended, known as the “Puerto Rico Tourism Development Act of 1993,” which constitute an eligible investment pursuant to Section 2(n) of said Act;

(I) stocks from corporations or shares in partnerships that are established as Investment Capital Funds under Act No. 3 of October 6, 1987, as amended, known as the “Investment Capital Fund Act of Puerto Rico,” provided the Fund invests at

least twenty percent (20%) of the total contributions received in tourism activities;

(J) loans for the financing of any of the Strategic Projects, as said term is defined in subsection (p) of this Section; and

(K) any other obligations or loans as the Commissioner may designate, with the approval of the public sector members of the Financial Board and the Executive Director. The Commissioner is hereby authorized to issue regulations as necessary for the administration of this subsection, with the approval of the public sector members of the Financial Board and the Executive Director.

(2) The interest on eligible funds deposited or invested by the tax-exempt business that holds a decree granted under this Act, in institutions engaged in the banking business, including the Puerto Rico Economic Development Bank, loan and savings associations, savings banks, securities brokerage firms and other similar institutions conducting business in Puerto Rico, which the Commissioner, with the approval of the public sector members of the Financial Board and the Executive Director, determines to be institutions that are eligible

to receive such eligible funds. The regulations on eligible institutions shall see, among others, to the canalization of funds toward activities that boost production, income and employment in Puerto Rico, such as commercial, industrial, agricultural, construction, or natural resource conservation loans.

(3) The regulations issued under equivalent provisions in preceding laws shall continue to be in effect and apply to investments under this Act, until the Commissioner, with the approval of the Financial Board and the Executive Director, amends or repeals said regulations or issues new regulations specifically for funds invested under this Act.

(4) In the event that the Commissioner determines that an institution is no longer eligible to receive said funds, such a determination shall not prevent the interest earned thereon, invested before the institution lost its eligible status, from continuing to be considered as eligible interest under this Act until the maturity of said investment.

For purposes of this subsection (j), the term “eligible funds” shall include funds generated in the industrial or service activity, covered by the exemption decree under this Act (including taxable

years covered by the option under subsection (b) of Section 10 of this Act) or under similar provisions in preceding tax incentives laws.

(k) **Preceding Tax-Exempt Business.**—

(1) Any business that enjoys or has enjoyed exemption under this Act or under preceding tax incentives laws for carrying out an economic activity that is substantially similar to that which is specified in the decree of a succeeding business; and

(2) Twenty-five percent (25%) or more of its stocks issued and outstanding, or other property interest, is or has been owned by the succeeding business or by any of the stockholders or owners of the succeeding business, who own twenty-five percent (25%) or more of the stocks or other property interest of the succeeding business. This last requirement shall not apply when referring to preceding tax-exempt business in clause (4) of subsection (a) of Section 16 of this Act.

(A) The holding of stocks or other property interest shall be determined pursuant to the rules concerning the holding of corporate stocks or partnership shares under Subtitle A of the Puerto Rico Internal Revenue Code.

(B) If any of the stockholders or owners of a succeeding business is affected by said rules and is able to prove, to the satisfaction of the Secretary of the Treasury, that the capital invested or to be invested in the succeeding business is not directly or indirectly derived from their spouses, straight-line ascendants or descendants, or siblings, but rather, that it is derived from his/her own financial means, such rules shall not apply.

(l) Succeeding Business.—

Any business that obtains a decree under this Act to carry out an economic activity that is substantially similar to that which is specified in the decree of a preceding tax-exempt business.

(m) Industrial Tax Exemption Decree.—

This shall have the same meaning as “exemption decree,” “tax exemption,” or merely, “exemption” or “decree,” which terms may be used indistinctively, as may be convenient, for purposes of illustrating that which the text provides.

(n) Extraordinary Circumstances.—

Any cause of an exceptional nature, such as strikes, wars, actions of Government or of the elements, fires and others, or any other cause beyond the control of the tax-exempt business.

(o) Intangible Property.—

Patents, inventions, formulas, processes, designs, patterns, know-how, copyrights, trade secrets; literary, musical or artistic compositions; trademarks, factory seals, trade names, brand names, franchises, licenses, contracts, methods, programs, systems, procedures, goodwill, campaigns, surveys, studies, trials, projections, estimates, client lists, technical data, or any other similar property.

(p) Strategic Projects.—

The following units participating in public-private consortiums shall be considered to be strategic projects for purposes of this Act:

(1) The cleaning, recovery, conversion and restoration of garbage dumps that have been closed down in Puerto Rico, including activities to recover methane and cleaning aquifers;

(2) the construction of reservoirs and/or dams, including any infrastructure needed for their operation, with the purpose of increasing storage and reserves, and safeguarding the value of water

production by the Aqueduct and Sewer Authority and the production of hydroelectric energy; and for the construction of used water treatment plants;

(3) the construction of power-producing plants that use fuels other than oil and renewable sources. Provided, that as of the third year of the effectiveness of this Act, any plant that applies for the benefits of this Act under clause (3) shall operate on renewable sources, and as of the sixth year of effectiveness of this Act, any plant that starts operations pursuant to the provisions of this clause, must operate on renewable sources; and

(4) the construction of mass transportation systems, including but not limited to railroad mass transportation systems.

(q) Local Investment Business.—

An eligible business of which at least fifty percent (50%) belongs directly to individuals residing in Puerto Rico.

(r) Community Enterprises.—

An organization, corporation, workers' corporation, production cooperative, or business initiative that, in addition of producing goods, has a social and economic impact within the community where the same is located

and which meets the requirements that the Executive Director may establish through regulations.

(s) Definitions of Other Terms.—

For the purposes of this Act, “Governor” means the Governor of the Commonwealth of Puerto Rico; “Secretary of Development” means the Secretary of the Department of Economic Development and Commerce; “Executive Director” means the Executive Director of the Industrial Development Company; “Director” means the Director of the Industrial Tax Exemption Office; “Commissioner” means the Commissioner of Financial Institutions, created by Act No. 4 of October 11, 1985, as amended; “Financial Board” means the Financial Board attached to the Office of the Commissioner of Financial Institutions, created by Act No. 4 of October 11, 1985, as amended; “Tax Exemption Office” means the Industrial Tax Exemption Office; “Puerto Rico Internal Revenue Code” means the Puerto Rico Internal Revenue Code of 1994, Act No. 120 of October 31, 1994, as amended, or any subsequent law which may replace the same; “Federal Internal Revenue Code” means the Federal Internal Revenue Code of 1986, P. L. 99-514, 68A Stat. 3, as amended, or any subsequent law which may replace the same.

(t) Stocks.—Shall mean the stocks in a corporation or interests in a limited-liability company or partnership.

(u) Energy from Renewable Resources.—Shall mean the energy generated from solar, wind, geothermic, ocean thermal, ocean kinetic, or hydroelectric energy, or from biomass, hydrogen, solid waste, and methane recovery, among other similar sources.

(v) Regional Initiatives.—Means alliances between municipalities, businesses established in the region and universities, in order to foster the development of a particular region, being these incorporated as nonprofit entities as authorized under Act No. 81 of August 30, 1991, as amended, better known as “Puerto Rico Autonomous Municipalities Act.” This definition includes the following: Center-Western Technological Initiative (INTECO, Spanish acronym), Northern Technological Initiative (INTENOR, Spanish acronym), Northeastern Technological Initiative (INTENE, Spanish acronym), Southern Integrated Development (DISUR), and the Technological-Economic Corridor (PR-TEC, Spanish acronym). This definition also includes other similar initiatives of municipal governments to incorporate regions and to promote their development through alliances among municipalities, the private business sector and academia.

All other terms employed in this Act, unless specifically provided otherwise, shall have the same meaning they have in the Puerto Rico Internal Revenue Code and the regulations thereunder.

**Section 3.—Tax Rates.—**

(a) Fixed Income Tax Rate.—Tax-exempt businesses that hold a decree under this Act shall be subject to a fixed income tax rate on their net industrial development income during the entire corresponding period of exemption as provided for in this Section, as of the date of starting operations, determined under Section 10 of this Act, in lieu of any other income tax, if any, as provided for in the Puerto Rico Internal Revenue Code or in any other law.

(1) In General.—

The tax-exempt businesses that hold a decree under this Act shall be subject to a fixed income tax rate of four percent (4%) on their net industrial development income, excluding the income derived from the investments described in subsection (j) of Section 2 of this Act. Provided, that the tax-exempt businesses whose royalty payments for the use or privilege to use intangible property in Puerto Rico, made to nonresident persons not engaged in industry or business in Puerto Rico, that are subject to the rate of the taxes withheld at the

source as provided for in clause (4) of subsection (b) of this Section, shall be subject to a fixed income tax rate of eight percent (8%) on their net industrial development income, excluding the income derived from the investments described in subsection (j) of Section 2 of this Act.

(2) Existing Businesses.—

Tax-exempt businesses that have had operations exempted under Act No. 135 of December 2, 1997, as amended, and which have enjoyed a fixed income tax rate not greater than four percent (4%), but of not less than two percent (2%), may enjoy a fixed rate on their net industrial development income under this Act that is equal to the rate levied under said preceding decree, provided the Secretary of Development, with the previous favorable recommendation of the Secretary of the Treasury and the Executive Director, determines that said rate serves to benefit the best economic and social interests of Puerto Rico. The Secretary of Development shall require, save in exceptional cases, that the tax-exempt business maintain an employment level equal to or greater than eighty percent (80%) of its average employment for the three (3) taxable years preceding the date of applying for an exemption under this Act, or he/she may require

that a minimal tax payment be made equal to the average paid in this period. Any exception to these requirements shall have the approval of the Secretary of the Treasury. In order to determine that which constitutes the best interests of Puerto Rico, an analysis should be made of factors such as: the special nature of the business exempted under this Act, the technology used, the substantial employment that the same provides, the location of said business, the potential impact of the contracting of local providers, the convenience of having local supplies of the product, or any other benefit or factor which warrants such a determination.

(3) Novel Pioneering Activity.—

The provisions of clauses (1) and (2) of this subsection notwithstanding, the fixed income tax rate shall be one percent (1%), provided the Secretary of Development, with the previous favorable recommendation of the Secretary of the Treasury and the Executive Director and his/her Board of Directors, determines that the business exempted under this Act shall carry out an economic activity that has not been produced or carried out or conducted in Puerto Rico before the twelve (12) months that end on the date of applying for exemption on the novel pioneering activity, and that the same has special

characteristics, attributes or qualities that would have an impact that would benefit the socioeconomic development of Puerto Rico, including a profile of the jobs to be created for the aforementioned novel pioneering activity.

(A) Determination of Novel Pioneering Activity.—

To determine whether an activity constitutes a novel pioneering economic activity, the Executive Director shall consider the impact that said activity would have on the economy of Puerto Rico, based on priority factors, in particular:

(i) the degree or level of use and integration of research and development activities to be conducted in Puerto Rico;

(ii) the tax impact that the novel pioneering activity might generate in Puerto Rico;

(iii) the nature of the activity;

(iv) the investment of capital to be made in the plant, machinery and equipment;

(v) the singularity of the novel pioneering activity in Puerto Rico for the international market;

(vi) the technological improvements that shall be a part of the operations; and

(vii) any other factor which warrants that the activity be recognized as a novel pioneering activity, seeing as the activity shall serve the best economic and social interests of Puerto Rico.

(B) Economic Activities Created or Developed in Puerto Rico as Intangible Property.—

The provisions of clauses (1), (2) and (3) of this subsection notwithstanding, the fixed income tax rate shall be zero percent (0%) in the case of novel pioneering activities for which the intangible property has been created or developed in Puerto Rico, including but not limited to activities leading to the commercial viability of the product.

(C) Duration of Period.—

The fixed rate that applies by virtue of this clause (3) shall be granted for the term of the decree. The tax-exempt business to which the benefit provided for in this clause has been granted, shall render reports every two (2) years as of the date of effectiveness of its decree, to the Executive Director,

with a copy to the Secretary of Development and the Secretary of the Treasury, attesting that said business has substantially complied with the standards set forth in the decree. The Executive Director shall provide, through regulations, the information to be contained in said reports and shall have the power to conduct investigations and audits as required to ascertain that the tax-exempt business has substantially complied with the standards set forth in the decree.

(4) Any business exempted under this Act, which is located or whose operations are located in a municipality classified as a low industrial development zone or as a medium industrial development zone, pursuant to the provisions in Section 11 of this Act, may reduce the fixed income tax rate established in preceding clauses by an additional point five percent (0.5%). In those cases in which a tax-exempt business that holds a decree granted under this Act maintains operations in more than one industrial zone, said tax-exempt business shall enjoy the reduction provided for in this subsection in relation to the industrial development income attributable to its operations in the low industrial development zone exclusively.

(5) Any tax-exempt business that holds a decree granted under this Act, which is located or whose operations are located in the special development zone constituted by the Municipalities of Vieques and Culebra, shall be totally exempted from the payment of income taxes on the industrial development income derived from said operations during the first ten (10) years of the corresponding period, as provided, and as of the date the operations start as determined under Section 10 of this Act. The remainder of the exemption period of said tax-exempt business shall pay taxes at the fixed income tax rate of two percent (2%) in lieu of any other tax, if any.

(b) Royalties and License Fees.—The provisions of the Puerto Rico Internal Revenue Code notwithstanding, in the case of payments that tax-exempt businesses that hold a decree under this Act have made to corporations, partnerships or nonresident persons not engaged in industry or business in Puerto Rico, for the use or the privilege to use in Puerto Rico intangible property relative to the operation declared to be exempted under this Act, subject to the consideration of said payments as totally derived from sources within Puerto Rico, the following rules shall be observed:

(1) Taxes on Corporations, Foreign Partnerships or Nonresident Persons Not Engaged in Industry or Business in Puerto

Rico.—Levying of Tax.—A twelve-percent (12%) tax shall be levied, collected and paid for each taxable year, in lieu of the tax that Sections 1221 and 1231 of the Puerto Rico Internal Revenue Code levy on the amount of said payments received or implicitly received by any corporation or foreign partnership not engaged in industry or business in Puerto Rico, derived exclusively from sources within Puerto Rico.

(2) Withholding Taxes at the Source in the Case of Corporations and Foreign Partnerships Not Engaged in Industry of Business in Puerto Rico.—Any tax-exempt business that is bound to make payments to nonresident persons for the use in Puerto Rico of intangible property relative to the operation exempted under this Act, shall deduct and withhold at the source a tax equal to that which is levied in clause (1) or (3) of this subsection.

(3) Existing Businesses.—In the case of persons who transfer technology or intangibles to tax-exempt businesses that have had operations exempted under Act No. 135 of December 2, 1997, as amended, and which have been enjoying a rate lesser than twelve percent (12%), the Secretary of Development, with the previous favorable recommendation of the Secretary of the Treasury and the

Executive Director, may authorize the levying of a rate equal to the rate levied under said approved decree, pursuant to Act No. 135 of December 2, 1997, in lieu of the rate provided for in clause (1) of this subsection, provided he/she determines that said reduced tax serves to the benefit of the best economic and social interests of Puerto Rico. The Secretary of Development shall require, save in exceptional cases, that the tax-exempt business maintain an employment level equal to or greater than eighty percent (80%) of its average employment for the three (3) taxable years before the date of applying for an exemption under this Act, and any exception to this employment requirement shall have the approval of the Secretary of the Treasury. In order to determine that which constitutes the best interests of Puerto Rico, an analysis should be made of factors such as: the special nature of the tax-exempt business, the technology used, the substantial employment that the business provides, the location of the business, the possible contracting of local providers, the convenience of having local supplies of the product, or any other benefit or factor which warrants such a determination.

(4) **Alternate Levy.**—The Secretary of Development shall have the authority to allow tax-exempt businesses that make payments

on income considered to be totally derived from sources within Puerto Rico, for being attributable to the use or privilege to use in Puerto Rico, manufacturing intangibles relative to the operation declared to be exempted, such as patents, copyrights, formulas, technical knowledge, and other similar property, to be submitted to the following treatment:

(A) A two-percent (2%) tax shall be levied, collected and paid for each taxable year, in lieu of the tax levied by Sections 1221 and 1231 of the Puerto Rico Internal Revenue Code, on the amount of such payments, received or implicitly received by any corporation or foreign partnership not engaged in industry or business in Puerto Rico, derived from sources within Puerto Rico.

(B) Any tax-exempt business subject to clause (4) of this subsection that is bound to make payments to nonresident persons for the use in Puerto Rico of intangible property relative to the operation declared to be exempted, shall deduct and withhold at the source on said payments, a tax equal to that which is levied in subclause (A) of this clause.

The alternate levy imposed by this paragraph (4) shall be established before the beginning of the term of effectiveness of the tax exemption decree, and shall be irrevocable during the effectiveness of said decree, and be documented as part of the terms and conditions agreed to in the decree. This alternate levy shall not apply to tax-exempt businesses described in clauses (2) and (3) of subsection (a) of this Section 3.

(c) Income from Investments.—

A tax-exempt business that holds a decree granted under this Act shall enjoy a total exemption on the income derived from eligible investments described in subsection (j) of Section 2 of this Act. The expiration, renegotiation or conversion of the decree or other incentives grant of the investing entity or the issuing entity, as the case may be, shall not prevent the income earned from the investment from being treated as eligible investment income under this Act during the remaining period of the investment.

(d) Distribution, Sale or Exchange of Stocks or Assets.—

The stockholders or partners of a corporation or partnership that is a tax-exempt business that holds a decree granted under this Act shall not be subject to the payment of income taxes on dividend distributions or profits

from the industrial development income of said tax-exempt business, or in the case of tax-exempt businesses other than domestic corporations, from dividends or profits from the income derived from sources without Puerto Rico by the tax-exempt business, pursuant to the Puerto Rico Internal Revenue Code.

Subsequent distributions of the industrial development income made by any corporation or partnership shall also be exempted from the payment of any taxes.

The proceeds made in the sale, exchange or other disposition of stocks from corporations or shares in partnerships that have been tax-exempt businesses, shares in joint ventures and similar entities constituted by various corporations, partnerships, individuals or combination thereof, which are or have been tax-exempt businesses, and stocks in corporations or shares in partnerships that are in any way the owners of the entities described above, shall be subject to the provisions of clause (3) of this Section when conducting said sale, exchange or other disposition, and any subsequent distribution of said proceeds, be it as a dividend or as a distribution in liquidation, shall be exempted from the payment of additional taxes.

(2) Ascription of Exempted Distributions.—

The distribution of dividends or profits made by a tax-exempt business that holds a decree granted under this Act, even after its tax exemption decree has expired, shall be deemed to have been made from its industrial development income if, on the date of the distribution, the same does not exceed the undistributed balance of its accrued industrial development income, unless said tax-exempt business, when preparing the informative return, chooses to distribute the dividend or profit, totally or partially derived from other benefits or profits. The amount, the year of accrual, and the nature of the distribution of industrial development income thus made, shall be designated by said tax-exempt business through notice remitted together with the payment thereof to its stockholders or partners and to the Secretary of the Treasury, through an informative return not later than February 28 following the year of the distribution.

In the cases of corporations or partnerships that, on the date of the beginning of operations as tax-exempt businesses, have benefits or profits accrued, the distributions of dividends or profits made as of that date shall be deemed to have been made from the undistributed balance of such benefits and profits, but once the same is used in its

entirety by virtue of such distributions, the provisions of the first clause shall apply.

(3) Sale or Exchange of Stocks or Assets.—

(A) During the Exemption Period.—

The proceeds from the sale or exchange of stocks, or an interest in a partnership, or substantially all assets of a tax-exempt business that holds a decree granted under this Act, made during its exemption period and which would have been subject to income tax under the Puerto Rico Internal Revenue Code, shall be subject to a four-percent (4%) tax on the amount of the proceeds made, if any, in lieu of any other tax levied by said Code. Any loss in the sale or exchange of said stocks or assets shall be recognized pursuant to the provisions of the Puerto Rico Internal Revenue Code.

(B) After the Date of Expiration of the Exemption Period.—The proceeds, in the event that said sale or exchange is conducted after the date of expiration of the exemption, shall be subject to the tax provided for in subclause (A) above, but only up to the amount of the value of the stocks or substantially all the assets in the books of the corporation on the date of

expiration of the exemption period, reduced by the amount of the exempted distributions received from said stocks after said date, minus the base of said stocks or substantially all assets. Any remainder of the proceeds or any loss, if any, shall be recognized pursuant to the provisions of the Puerto Rico Internal Revenue Code in effect on the date of the sale or exchange.

(C) Exempted Exchanges.—The exchanges of stocks which do not result in taxable events for being exempted reorganizations shall be treated pursuant to the provisions of the Puerto Rico Internal Revenue Code in effect on the date of the exchange.

(D) Determination of Bases in the Sale or Exchange of Stocks.—In the sale or exchange, the base of the stocks, interest or assets of businesses exempted under this Act shall be determined pursuant to the applicable provisions of the Puerto Rico Internal Revenue Code in effect at the time of the sale or exchange, increased by the amount of the industrial development income accrued under this Act.

(E) For purposes of this clause (3), the term “substantially all assets” shall mean those assets of the tax-exempt business which represent not less than eighty percent (80%) of the value in the books of the tax-exempt business at the time of the sale.

(F) The Secretary of the Treasury shall establish regulations as necessary to render the provisions of this clause effective.

(4) Liquidation.—

(A) General Rule.—No income taxes shall be levied or collected from the assignor or the assignee in relation to the total liquidation of a tax-exempt business that has obtained a decree under this Act, on or before the expiration of its decree, provided the following requirements are met:

(i) Any property distributed in the liquidation was received by the assignee pursuant to a liquidation plan on or before the date of expiration of the decree; and

(ii) The distribution in liquidation by the assignor, whether all at once or from time to time, was

made by the assignor in cancellation or to totally redeem its capital stock.

The base of the assignee on the property received in liquidation shall be equal to the adjusted base of said tax-exempt business on said property immediately before the liquidation. Furthermore, and for purposes of this Section, a corporation or partnership participating in a partnership that is a tax-exempt business shall be deemed to be, in turn, a tax-exempt business.

(B) Liquidation by Assignors with Revoked Decrees.—If the decree of the assignor were revoked prior to its expiration date pursuant to the provisions in Section 13 in relation to allowable revocations, the surplus accrued over industrial development income on the date the revocation becomes effective, may be transferred to the assignee at any later time, subject to the provisions of subclause (A) of this clause. In cases of mandatory revocations, the surplus accrued shall be subject to the payment of taxes pursuant to the Internal Revenue Code.

(C) Liquidations After the Expiration of the Decree.--After the decree of the assignor has expired, the assignor may transfer to the assignee the surplus accrued over industrial development income earned during the period of effectiveness of the decree, subject to the provisions of subclause (A) of this clause.

(D) Liquidation of Assignors with Exempted and Nonexempt Activities.—In the event that the assignor carries out exempted and nonexempt activities, the assignor may transfer to the assignee the surplus over the industrial development income accrued under this Act and the property devoted to industrial development under this Act as part of its total liquidation, subject to the provisions in subclause (A) of this clause. The accrued surplus over sources other than industrial development income and the property that is not devoted to industrial development, shall be distributed pursuant to the provisions of the Puerto Rico Internal Revenue Code.

(e) Payment of the Tax.—

In the absence of a provision establishing otherwise, the taxes withheld or payable shall be withheld or paid in the form and manner

provided for in the Puerto Rico Internal Revenue Code for the payment of income taxes and withholdings in general.

(f) **Businesses Ineligible Under Preceding Acts.—**

During the first four (4) years of effectiveness of this Act, in the case of businesses that are eligible under Section 2(d)(1)(B) of this Act, engaged in the production of manufactured products or in the rendering of services which have not been eligible for the granting of incentives under Act No. 135 of December 2, 1997, or under preceding tax incentives laws, the fixed rates of income taxes provided for in this Section 3 shall be partially applicable to the industrial development income, as provided below:

(A) Twenty-five percent (25%) of the net industrial development income generated during the first taxable year of the tax-exempt business, shall be subject to the applicable fixed income tax rate as provided for in this Section 3, and the remaining seventy-five percent (75%) of the net industrial development income shall be subject to the payment of taxes pursuant to the applicable rules and rates under the Puerto Rico Internal Revenue Code.

(B) Fifty percent (50%) of the net industrial development income generated during the second taxable year of the tax-exempt business, shall be subject to the applicable fixed income tax rate

provide for in this Section 3, and the remaining fifty percent (50%) of net industrial development income shall be subject to the payment of taxes pursuant to the applicable rules and rates under the Puerto Rico Internal Revenue Code.

(C) Seventy-five percent (75%) of the net industrial development income generated during the third taxable year of the tax-exempt business, shall be subject to the applicable fixed income tax rate provide for in this Section 3, and the remaining twenty-five percent (25%) of net industrial development income shall be subject to the payment of taxes pursuant to the applicable rules and rates under the Puerto Rico Internal Revenue Code.

(D) For the fourth taxable year of the tax-exempt business, the total amount of net industrial development income shall be subject to the applicable fixed income tax rate, as provided for in this Section.

(g) **Limitation on Benefits.**—

(A) In the event that as of the date of applying for incentives, pursuant to the provisions of this Act, an eligible business is engaged in the activity for which the benefits of this Act are granted, the eligible business may enjoy a fixed tax rate on industrial development income as provided for in this Section, only as pertains to the increase

in the net income of said activity that the same generates over the average net income for the last three (3) taxable years preceding the date on which the application is submitted, which is hereby denominated “base period income,” for the purposes of this subsection.

(B) For purposes of determining the base period, the production and sale of any business preceding the applicant business, shall be taken into account. For these purposes, “preceding businesses” shall include any business related to the applicant business, even if not previously exempted, and without considering whether it was operating under another legal name or under other owners.

(C) The income attributable to the base period shall be subject to the income tax rates provided for in the Puerto Rico Internal Revenue Code.

(D) The base period income shall be adjusted, reducing said amount by twenty-five percent (25%) annually, until the same is reduced to zero (0) for the fourth taxable year in which the terms of the decree of business exempted under this Act apply. For these purposes, those years for which the tax-exempt business has made a

choice under subsection (b) of Section 10 of this Act, shall be taken into consideration.

**Section 4.—Special Deductions.—**

(a) Deduction and Carryover of Net Operating Losses.—

(1) Deduction for Current Losses Incurred in Activities Not Covered by an Exemption Decree.—If a tax-exempt business that holds a decree granted under this Act incurs a net loss on operations other than the operation which has been declared exempted under this Act, computed without factoring in the benefit of the deduction provided for in subsection (b) of this Section, the same may be used only against income not covered by an exemption decree and shall be governed by the provisions of the Puerto Rico Internal Revenue Code. The share in losses sustained by special partnerships that own or operate tourist businesses exempted under the “Puerto Rico Tourism Development Act of 1993,” as amended, may be used against income covered by a tax exemption decree issued under this Act or under preceding tax incentives laws.

(2) Deduction for Current Losses Incurred in the Operation of a tax-exempt business.—If a tax-exempt business that holds a decree granted under this Act incurs a net loss in the operation

declared to be exempted under this Act, computed without factoring in the benefit of the special deduction provided for in subsection (b) of this Section, said business may deduct said loss against its industrial development income derived from the operation which incurred the loss or from operations covered by other exemption decrees under this Act or under preceding tax incentives laws.

(3) Deduction for Carryover of Losses from Previous Years.—A deduction for the carryover of losses incurred in previous years shall be granted pursuant to the following provisions:

(A) The excess over the losses deductible under clause (2) of this subsection may be carried over against the industrial development income from subsequent taxable years. Losses shall be carried over in the order these were incurred.

(B) Any net loss incurred in a year in which a choice under subsection (b) of Section 10 is in effect, may be carried over only against industrial development income generated by the tax-exempt business under the decree whereby subsection (b) of Section 10 of this Act was opted for. Losses shall be carried over in the order these were incurred.

(C) Upon expiration of the exemption period for income tax purposes, the net losses incurred in the operation declared to be exempted under this Act, as well as any excess over the deduction allowed under subsection (b) of this Section which is being carried over by the tax-exempt business as of the date of expiration of said period, may be deducted against any income which is taxable in Puerto Rico, subject to the limitations provided for in Subtitle A of the Puerto Rico Internal Revenue Code. Said losses shall be deemed to have been incurred during the last taxable year in which the tax-exempt business that holds a decree under this Act enjoyed exemption from income taxes under the decree.

(D) The amount of the net loss on operations to be carried over shall be computed pursuant to the provisions of Section 1124 of the Puerto Rico Internal Revenue Code, except that in addition to the exceptions, additions and limitations provided for in said Section, the loss shall be adjusted by the income derived from activities which are eligible under subsection (j) of Section 2 of this Act.

(b) Special Deduction for Investment in Buildings, Structures, Machinery, and Equipment.—

Any tax-exempt business that holds a decree granted under this Act shall be given the choice to deduct in the taxable year during which these were incurred, in lieu of any capitalization of expenses required under the Puerto Rico Internal Revenue Code, the total expenses incurred after the date of effectiveness of this Act for the purchase, acquisition or construction of buildings, structures, machinery and equipment, provided said buildings, structures, machinery and equipment: (i) have not been used or depreciated previously by any other business or person in Puerto Rico; and (ii) are used to manufacture the products or to render the services for which the benefits provided for in this Act were granted. The deduction provided for in this subsection shall not be additional to any other deduction provided for by law, but rather, merely an acceleration of the deduction of the aforementioned expenses. Provided, that in the case of machinery or equipment previously used outside of Puerto Rico, but not previously used or depreciated in Puerto Rico, the investment in said machinery and equipment shall qualify for the special deduction provided for in this subsection (b) only if said machinery and equipment still has left, as of the date of its acquisition by the tax-exempt business, at least fifty percent

(50%) of its useful life, determined pursuant to the Puerto Rico Internal Revenue Code. The tax-exempt business that holds a decree granted under this Act may deduct, within the taxable year in which these are incurred, the total amount for expenses incurred after the date of effectiveness of this Act in remodeling or repairing buildings, structures, machinery and equipment, in lieu of any capitalization of expenses required under the Puerto Rico Internal Revenue Code, in the event that said buildings, structures, machinery and equipment have been acquired or built before or after the date of effectiveness of this Act, as well as in the event the same have or have not been used or depreciated by another business or person prior to the acquisition thereof by the tax-exempt business that holds a decree granted under this Act or under preceding tax incentives laws. The amount of the investment that shall be eligible for the special deduction provided for in this subsection in excess of the net industrial development income of the tax-exempt business that holds a decree granted under this Act during the year the investment was made, may be claimed as a deduction in subsequent taxable years, until said excess is depleted. No deduction shall be allowed under this subsection in relation to that portion of the investment pertaining to buildings, structures, machinery and equipment over which the tax-

exempt business claims or has claimed any of the credits provided for in Section 5 or 6 of this Act.

Provided, that the special deduction provided for in this subsection may also be claimed by the tax-exempt business during any year in which the same opts to choose the flexible tax exemption benefit provided for in Section 10(b) of this Act.

**Section 5.—Credits.—**

(a) Credit for Purchasing Products Manufactured in Puerto Rico.—

(1) If a tax-exempt business that holds a decree granted under this Act or under preceding tax incentives laws purchases products manufactured in Puerto Rico, including components and accessories, the same shall be entitled to take a credit against the tax on industrial development income as provided for in subsection (a) of Section 3 of this Act, or against the tax on income under the preceding tax incentives law which applies, to be equal to twenty-five percent (25%) of the purchases of such products, during the taxable year in which the aforementioned credit is taken, up to a maximum of fifty percent (50%) of the aforementioned tax. This credit shall be granted solely for purchasing products manufactured by enterprises that are not related to said tax-exempt business.

(2) In the event that the tax-exempt business that holds a decree granted under this Act or under preceding tax incentives laws, purchases or uses products converted into commercial articles made from recycled materials, or with raw materials derived from materials which have been recycled or collected and/or reconditioned by tax-exempt businesses which have been granted a tax exemption decree under subclause (I) of clause (1) of subsection (d) of Section 2 of this Act or under similar provisions in preceding laws, the credit provided for in the preceding subclause shall be equal to thirty-five percent (35%) of the total of the purchases of such products or of the amount paid for the use thereof, as the case may be, during the taxable year for which the credit is claimed, up to a maximum of fifty percent (50%) of the tax against which said credit is claimed, as provided for in clause (1) of this subsection (a). This credit shall be granted only for purchases of products manufactured by enterprises that are not related to said tax-exempt business.

(3) The credit provided for in this subsection shall be nontransferable, except in the case of an exempted reorganization. The amount of the credit not used by the tax-exempt business within a

taxable year may be carried over to subsequent taxable years, until the same is used in its entirety. This credit shall not generate a refund.

(4) In the case of a tax-exempt business whose decree has been granted under a preceding tax incentives law, the credit provided for in this subsection shall not be available, and no credit whatsoever shall be granted under this subsection for the taxable year, if said tax-exempt business claims any special deduction or credit of an similar nature under said preceding tax incentives law for said taxable year.

(b) Credit for the Creation of Jobs.—

(1) Any tax-exempt business that begins operations after July 1, 2008, shall be granted a credit for each job created during its first year of operations. The amount of this credit shall depend on the industrial development zone where the operations of said tax-exempt business are located, as provided below:

Area	Credit
Vieques and Culebra	\$5,000
Low Industrial Development Zone	\$2,500
Medium Industrial Development Zone	\$1,000
High Industrial Development Zone	\$ 0

(2) In the cases in which a tax-exempt business that holds a decree granted under this Act establishes operations in more than one zone, the amount of the credit shall correspond to the location of the operations where the job which warranted the credit was created.

(3) For purposes of this subsection, the employment of the aforementioned tax-exempt business shall consist of the number of individuals residing in Puerto Rico who work as employees on regular business hours on a full-time basis in the tax-exempt business, but shall not include individuals such as freelance contractors or consultants. The tax-exempt business shall be required to maintain an employment average for each of the three (3) consecutive years following the year in which the credit equal to or greater than the number of jobs that generated the credit was originated. The Secretary of the Treasury shall establish, through regulations, the mechanism for the applicable proportional recovery based on the time elapsed and the employment levels maintained, in the event that said tax-exempt business fails to meet the employment level requirement.

(4) Said tax-exempt business may only claim the credit provided for in this subsection against the tax on industrial development income as provided for in subsection (a) of Section 3 of

this Act. Said credit may not be sold, assigned or transferred, nor may the same create a refund for the tax-exempt business. However, the credit provided for in this subsection which has not been used during the first year of operations may be carried over for a period not to exceed four years as of the first taxable year in which the tax-exempt business generates net income.

(c) Credit for Investment in Research and Development, Clinical Tests, Toxicological Tests, Infrastructure, Renewable Energy, or Intangible Property.—

(1) Any tax-exempt business that holds a decree granted under this Act or under preceding tax incentives laws may claim a credit for investment equal to fifty percent (50%) of the special eligible investment made in Puerto Rico after the date of approval of this Act by said tax-exempt business or by any entity affiliated thereto. Any special eligible investment made before the date of filing the income tax return, as provided for in the Puerto Rico Internal Revenue Code, including any time extension granted by the Secretary of the Treasury for filing said return, shall qualify for the tax credit under this clause in the taxable year for which the aforementioned returned is being filed. Said credit may be applied, at the option of the

tax-exempt business, against the tax on industrial development income as provided for in subsection (a) of Section 3 of this Act or against the tax on income applicable under the preceding tax incentives law under which the tax-exempt business was granted the decree, and/or against the operating costs of the tax-exempt business relative to electric power, water, and sewer systems.

(2) For purposes of the credit provided for in this Section, the term “special eligible investment” means the amount of cash used by the tax-exempt business that holds a decree granted under this Act, or by any entity affiliated to said tax-exempt business, in activities such as research and development, including operating expenses, clinical tests, toxicological tests, infrastructure, renewable energy or copyrights. The term special eligible investment shall include an investment of the tax-exempt business, made with the cash obtained from a loan that is secured by the tax-exempt business itself or by its assets, or by any entity affiliated to the tax-exempt business or by its assets. The Secretary of the Treasury shall establish, through regulations, the costs which shall qualify as special eligible investments.

(3) Use of the Credit.—The tax credit granted by this subsection may be taken in two (2) or more installments: up to fifty percent (50%) of said credit may be taken in the year in which the eligible investment is made, and the balance of said credit, in subsequent years until used in its entirety; provided, that said limitation shall not apply as to operating costs of said tax-exempt business which are related to electric power, water and sewer systems. This credit shall not generate a refund.

(4) Assignment of Credit for Special Eligible Investment.—

(A) The credit for special eligible investment provided for in this subsection may be entirely or partially assigned, sold or otherwise transferred by the tax-exempt business to any other person and shall be governed by the provisions of clauses (1) and (3) of this subsection, except that if the assignor is not a tax-exempt business, the credit against the income tax established in Subtitle A of the Puerto Rico Internal Revenue Code may be used.

(B) The money or the value of the property received in exchange for the credit for investment shall be exempted from the payment of taxes under Subtitle A of the Puerto Rico

Internal Revenue Code, and under the “Municipal License Fees Act,” up to an amount equal to the amount of the credit for investment thus assigned.

(C) The buyers of tax credits for investment shall be exempted from the payment of taxes under Subtitle A of the Puerto Rico Internal Revenue Code for the difference between the amount paid to acquire said credits and the value of the same, and said buyers shall not be subject to the provisions of Chapter I of Subtitle F of the Puerto Rico Internal Revenue Code.

(5) Adjustment to the Base.—The base of any asset for which the credit provided for in this subsection is claimed, shall be reduced by the amount of the credit claimed.

(6) The tax-exempt business may not claim this credit in relation to that portion of the eligible investment over which the same takes or has taken the deduction established in subsection (b) of Section 4 of this Act, or an similar special deduction under preceding tax incentives laws, or over which the same claims or has claimed any of the credits provided for in this Section or in Section 6 of this Act,

or similar special deductions or credits under preceding tax incentives laws. This credit shall not generate a refund.

(7) In the case of a tax-exempt business whose decree has been granted under a preceding tax incentives law, the credit provided for under this subsection shall not be available, and no credit whatsoever shall be granted under this subsection for the taxable year, if said tax-exempt business claims any special deduction or credit of an similar nature under said preceding tax incentives law for said taxable year.

(d) Investment in Machinery and Equipment for the Generation and Efficient Use of Energy.—

(1) Any tax-exempt business that holds a decree granted under this Act or under preceding laws may claim a credit of fifty percent (50%) of its eligible investment made after the date of approval of this Act. Any eligible investment made before the date the income tax return is filed as provided for by the Puerto Rico Internal Revenue Code, including any time extension granted by the Secretary of the Treasury for filing the same, shall qualify for the tax credit provided for in this subsection in the taxable year for which the aforementioned return is being filed. Said credit may be applied, at the

option of the tax-exempt business, against the income tax levied by subsection (a) of Section (3) of this Act or the income tax that apply under said preceding tax incentives laws.

(2) Eligible Investment.—For the purposes of this clause, eligible investment shall mean the amount of cash used for the acquisition of machinery and equipment for the generation of power with fuels other than oil. Provided, that as of the third year of effectiveness of this Act, only the acquisition of machinery and equipment used to generate power from renewable sources shall qualify for this credit. The acquisition by a tax-exempt business that holds a decree granted under this Act or under preceding laws, of this kind of equipment, regardless of whether the equipment shall generate power for sale, whether or not on a commercial scale, or only for the consumption of the tax-exempt business itself, shall qualify as an eligible investment. The term eligible investment shall not include an investment made with the cash obtained from a loan secured by the tax-exempt business itself or by its assets. The Department of the Treasury, together with the Energy Affairs Administration, shall establish through regulations the equipment and machinery that qualifies as an eligible investment.

(3) Maximum Amount of Credit.—

(A) In the case of an eligible investment made by a tax-exempt business that holds a decree granted under this Act or under preceding laws, to generate power for its own consumption, the credit shall not exceed twenty-five percent (25%) of the income tax established in subsection (a) of Section 3 of this Act, or of the income tax that applies under said preceding laws.

(B) In the case of an eligible investment made by a tax-exempt business described in Section 2(d)(1)(H) or an similar Section under preceding tax incentives laws, to establish or make a substantial expansion in its power-generating operation, the maximum amount of tax-exempt credit to be granted shall be eight million (8,000,000) dollars per tax-exempt business, up to a maximum aggregate per fiscal year of twenty million (20,000,000) dollars.

(4) In the case described in subclause (B) of clause (3) of this subsection, the provisions of subsection (d) of Section 6 shall apply. The provisions of subsection (e)(1) of Section 6 shall apply in the case of the credit established in this subsection. For purposes of applying

said provisions, the word “investor” shall be replaced with “tax-exempt business.”

(5) The tax-exempt business may not claim this credit in relation to that portion of the eligible investment over which the same takes or has taken the deduction established in subsection (b) of Section 4 of this Act, or an similar special deduction under preceding tax incentives laws, or over which the same claims or has claimed any of the credits provided for in this Section or in Section 6 of this Act, or similar special deductions or credits under preceding tax incentives laws. This credit shall not generate a refund.

(e) Tax Credit to Reduce the Cost of Electric Power.—

(1) Base Credit.—Any tax-exempt business that is an industrial client of the Electric Power Authority and which holds a decree under this Act or under preceding tax incentives laws, may only take a credit against the income tax under subsection (a) of Section 3 of this Act or against the income tax that applies under preceding tax incentives laws, equal to three percent (3%) of the payments made to the Electric Power Authority for net electric power consumption in relation to the operation of the eligible business during the corresponding taxable year.

(2) Additional Credits.—In addition to the credit provided for in clause (1) of this subsection, the following credits for net electric power consumption shall be granted:

(A) Any tax-exempt business that is an industrial client of the Electric Power Authority and which holds a decree granted under this Act or under preceding laws and which has maintained an average of twenty-five (25) employees or more during the taxable year, may take an additional credit of three point five percent (3.5%) of the payments made to the Electric Power Authority in relation to the operation of the eligible business.

(B) Any tax-exempt business that is an industrial client of the Electric Power Authority and which holds a decree granted under this Act or under preceding laws and which has maintained an average payroll of five hundred thousand (500,000) dollars or more during the taxable year, may take an additional credit of three point five percent (3.5%) of the payments made to the Electric Power Authority in relation to the operation of the eligible business.

(C) Any tax-exempt business that is an industrial client of the Electric Power Authority and which holds a decree granted under this Act or under preceding tax incentives laws and which meets the requirements provided for in subclauses (A) and (B) of this clause within the same taxable year, may claim both tax credits together with the base credit for a maximum annual credit of ten percent (10%) of the payments made to the Electric Power Authority in relation to the operation of the eligible business. The maximum amount of credit to be claimed as of taxable year 2013 shall be reduced by one percent (1%) annually, as follows:

Taxable Year	Maximum Credit to be Claimed
2013	9%
2014	8%
2015	7%
2016	6%
2017	5%

(3) The credits provided for in this subsection shall be nontransferable. However, the amount of the credits for power cost which has not been used during the taxable year in which the same

was originated, may be carried over to subsequent taxable years. Provided, that the amount of credit generated and not used at the closing of Fiscal Year 2017-2018, may only be carried over during the next four (4) taxable years. These credits shall not generate a refund.

(4) The Executive Director of the Electric Power Authority shall issue, by request of said tax-exempt business which is an industrial client of the Electric Power Authority, a certification indicating the total amount paid by said business to said agency for net electric power consumption during the corresponding taxable year.

(5) Effectiveness and Fiscal Provisions.—

The credits provided for in this subsection shall be effective for ten (10) years as of July 1, 2008. During the ten (10) years that the credits are in effect, the maximum to be granted shall be seventy-five million (75,000,000) dollars annually, up to a maximum of six hundred million (600,000,000) dollars, during said ten (10)-year period. Costs relative thereto shall be covered by the General Fund of the Government of Puerto Rico and the Puerto Rico Electric Power Authority in the following proportions:

Fiscal Year	Electric Power Authority	General Fund
2008-2009	---	100%

Fiscal Year	Electric Power Authority	General Fund
2009-2010	4%	96%
2010-2011	8%	92%
2011-2012	12%	88%
2012-2013	16%	84%
2013-2014	20%	80%
2014-2015	35%	65%
2015-2016	50%	50%
2016-2017	65%	35%
2017-2018	80%	20%

(6) The cost for the Electric Power Authority shall be defrayed from reductions in operating costs, increments in efficiency, income generated from wheeling, and reductions in the cost of generating or buying energy, and shall not be defrayed neither directly nor indirectly by the clients of the Electric Power Authority, nor shall it be construed to warrant dismissals or reductions in the payroll, reason for which it is hereby provided that the Electric Power Authority shall not transfer the cost of this credit to its clients. If during the effectiveness of this credit, the average cost of power per

kilowatt were to be reduced to ten (10) cents during a period of two (2) consecutive years, the credit provided for herein shall lapse.

(f) Credit for Investments on Technology Transfers.—

Any tax-exempt business that holds a decree granted under this Act (except for those subject to clause (4) of subsection (b) of Section 3 of this Act or which enjoy the benefit provided for in clause (3) of subsection (b) of Section 3 of this Act), may only take a credit against the fixed tax on industrial development income provided for in subsection (a) of Section 3 of this Act, equal to twelve percent (12%) of the payments made to corporations, partnerships or nonresident persons, for the use or privilege to use in Puerto Rico, intangible property in its exempted operation, provided the income for such payments is derived from sources within Puerto Rico. In the case of tax-exempt businesses that are subject to the alternate levy provided for in clause (4) of subsection (b) of Section 3 of this Act, the percentage applicable for purposes of the preceding sentence shall be two percent (2%). Tax-exempt businesses that have availed themselves of the benefit for existing businesses provided for in clause (3) of subsection (b) of Section 3 of this Act shall not be entitled to claim the credit established herein. The tax credit established in this subsection shall be nontransferable, but may be carried over until used in its entirety. However, said carryover

shall never exceed a period of eight (8) taxable years, counted as of the closing of the taxable year in which the credit was originated. This carryover shall never result in a lesser tax than that provided for in clause (3) of subsection (h) of this Section. This credit shall not be refundable.

(g) Credit for Investment in Strategic Projects.—

(1) Any tax-exempt business that holds a decree granted under this Act or under preceding laws may claim a credit for investment equal to fifty percent (50%) of the eligible investment made in strategic projects in Puerto Rico after the approval of this Act by the tax-exempt business or by any entity affiliated to the tax-exempt business. Any eligible investment made before the date on which the income tax return is to be filed, as provided for in the Puerto Rico Internal Revenue Code, including any time extension granted by the Secretary of the Treasury to file said return, shall qualify for the tax credit of this Section in the taxable year for which the aforementioned return is being filed. Said credit may be applied, at the option of the tax-exempt business, against the fixed tax on industrial development income as provided for in subsection (a) of Section 3 of this Act, or against the income tax that applies under the preceding tax incentive law under which the tax-exempt business was

granted the decree, and/or against the operating costs of the tax-exempt business relative to electric power, water or sewer systems.

(2) For purposes of the credit provided for in this Section, the term “Eligible Investment in Strategic Projects” means the amount in cash obtained from any financing source, used by the tax-exempt business or by any entity affiliated to the tax-exempt business, in activities such as the design, development and construction of reservoirs and/or dams and all infrastructure needed for their operation, as well as all infrastructure needed for the operation of a strategic project. The term eligible investment shall include an investment made with the cash obtained from a loan secured by the tax-exempt business itself or by its assets, or by any entity affiliated to the tax-exempt business or by its assets.

(3) Use of the Credit.—The tax-exempt business may use the credit for eligible investment to pay up to fifty percent (50%) of the amount of the income tax provided for in subsection (a) of Section 3 of this Act, or the income tax that applies under the preceding tax incentives law under which the tax-exempt business was granted the decree for the taxable year of the tax-exempt business. Provided, that

said limitation shall not apply regarding the operating costs of the tax-exempt business relative to electric power, water and sewer systems.

(4) Credit Carryover.—Any credit for eligible investment, including the credit in excess of the percentage established in subsection (a) of this Section 3, which has not been used in a taxable year, may be carried over to subsequent taxable years until it is used in its entirety. This credit shall not generate a refund.

(5) The tax-exempt business may not claim this credit in relation to that portion of the eligible investment in strategic projects over which said business takes or has taken the deduction established in subsection (b) of Section 4 of this Act, or over which said business claims or has claimed any of the credits provided for in this Section or in Section 6 of this Act.

(6) Adjustment to the Base.—The base of any asset for which a credit provided for in this subsection is claimed, shall be reduced by the amount of the credit thus claimed.

(7) Assignment of Credit for Eligible Investment in Strategic Projects.—

(A) The credit for investment provided for in this subsection may be totally or partially assigned, sold or

otherwise transferred by the tax-exempt business to any other person and shall be governed by the provisions of clauses (1) and (3) of this Section, except that if the assignor is not a tax-exempt business, the same may use the credit against the income tax established in Subtitle A of the Puerto Rico Internal Revenue Code.

(B) The money or the value of the property received in exchange for the credit for investment shall be exempted from the payment of taxes under Subtitle A of the Puerto Rico Internal Revenue Code and under the “Municipal License Fees Act,” up to an amount equal to the amount of the credit for investment thus assigned.

(C) The buyers of tax credits for investment shall be exempted from the payment of taxes under Subtitle A of the Puerto Rico Internal Revenue Code, for the difference between the amount paid to acquire said credits and the value of the same, and said buyers shall not be subject to the provisions of Chapter I of Subtitle F of the Puerto Rico Internal Revenue Code.

(D) Adjustment to the Base.—The base of any asset for which claim is made of the credit provided for in this subsection, shall be reduced by the amount of the credit thus assigned.

(h) Application of Credit and Minimal Tax.—

The application of the tax credits established under this Section and in Section 6 of this Act, shall be subject to the following rules:

(1) Tentative Tax.—The tax-exempt business shall initially compute its tax obligation according to the fixed income tax rate that applies pursuant to subsection (a) of Section 3 of this Act.

(2) Application of Credits.—The total of the sum of tax credits granted under Section 6 of this Act and under subsections (a), (b), (c), (d), (e), (f), and (g) of this Section 5, subject to the limitations that apply to each credit claimed by the tax-exempt business, shall be reduced from the tax obligation computed in clause (1) of this subsection (h).

(3) Minimal Tax.—The tax assessed over industrial development income computed after having applied the credits pursuant to clause (2) of this subsection, shall never be less than that amount which, after having been added to the amounts deposited

under subsection (b) of Section 3 in respect of the taxable year, results in:

(A) one percent (1%) of the net industrial development income of the tax-exempt business, for small or medium businesses;

(B) three percent (3%) of the net industrial development income of the tax-exempt business, for local investment businesses;

(C) the fixed income tax rate as provided for in subsection (a) of Section 3 of this Act applicable to the tax-exempt business, multiplied by net industrial development income of the tax-exempt business, without including the income described in subsection (j) of Section 2 of this Act, for all other businesses.

(4) The tax-exempt business that holds a decree granted under this Act, shall pay whichever amount is greater between clause (2) and clause (3) of this subsection (h).

In the cases described in subclauses (A) and (B) of clause (3) of this subsection (h), the minimal tax provided for therein shall cease to apply, and subclause (B) or (C), whichever one applies, shall be applicable, for taxable

years in which the tax-exempt business ceases to qualify as a small or medium business or as a local investment business, as the case may be.

A tax-exempt business that holds a decree granted under a preceding tax incentives act and which claims special deductions or credits under said preceding tax incentives act, may not claim tax credits of an similar nature under Sections 5 and 6 of this Act.

**Section 6.—Credit for Industrial Investment.—**

(a) For the purposes of this Section, the following terms shall have the meaning stated below:

(1) Investor.—

Shall mean any person who makes an eligible investment.

(2) Eligible Investment.—

For the purposes of this subsection, any of the following investments shall be deemed to be an eligible investment:

(A) The amount in cash used for the purchase of the majority (fifty percent (50%) or more) of the equity shares or the operating assets of a tax-exempt business that holds a decree granted under this Act or preceding acts, which is in the process of closing operations in Puerto Rico, in order to continue operating the same, or the cash contributed to said business in

exchange for corporate stocks or equity shares used by the business to: (i) build or make improvements to the physical facilities and (ii) buy machinery and equipment.

(B) The amount in cash contributed in exchange for corporate stocks or equity shares in the establishment of a tax-exempt business that holds a decree granted under this Act or preceding acts, deemed to be a small or medium business pursuant to the provisions of subsection (i) of Section 2 of this Act, which is used by the tax-exempt business to: (i) build or make improvements to the physical facilities and (ii) buy machinery and equipment to be devoted exclusively to industrial development.

The amount in cash thus contributed in exchange for capital stocks or equity shares of a tax-exempt business deemed to be a small or medium business pursuant to the provisions of subsection (i) of Section 2 of this Act, which is used by the tax-exempt business to: (i) build or make improvements to the physical facilities and (ii) buy machinery and equipment to be devoted exclusively to industrial development within a substantial expansion. In order to qualify as a substantial expansion under this clause, the investment shall be equal

to, at least, fifty percent (50%) of the book value of the operating assets of the Tax-exempt business upon the closing of the accounting books for the year before the date of the expansion.

Any other investment which is not directly and totally used for the purposes described in this subsection, shall be excluded from the definition of eligible investment of this Act.

The term eligible investment shall not include an investment made with the cash proceeding from a loan secured by the tax-exempt business itself or by its assets.

(3) Operating Assets.—Means any plot of land, structure, machinery, equipment and intellectual property, such as copyright, patents, trade names and licenses. Accounts receivable, the cash, the goodwill, and the inventory are hereby expressly excluded from this term.

(4) Corporate Stocks or Equity Shares.—The shares of a corporation issued in exchange for a contribution in cash may be common shares, preferred shares, or convertible preferred shares. The contribution in cash made in exchange for shares of a corporation or equity interest with rights so restricted that these constitute no other than a debenture of the corporation.

(b) General Rule.—

(1) Subject to the provisions of clause (2) of this subsection, any investor may claim a credit for industrial investment equal to fifty percent (50%) of his/her eligible investment made after the date of approval of this Act, to be taken in two (2) or more installments: the first half of said credit, in the year in which the eligible investment is completed, and the balance of said credit, in the following years. Any eligible investment made before the date on which the income tax return is to be filed, as provided for in the Puerto Rico Internal Revenue Code, including any time extension granted by the Secretary of the Treasury for the filing thereof, shall qualify for the tax credit of this Section in the taxable year for which the aforementioned return is being filed, provided all requirements set forth under this Section are met. Said credit for industrial investment may only be applied against the tax determined under Subtitle A of the Puerto Rico Internal Revenue Code for the investor, including the alternate minimal tax of Section 1017 and the alternate individual tax of Section 1011(b) of the Puerto Rico Internal Revenue Code. If the investor is a tax-exempt business, the same may claim this credit against the tax levied under subsection (a) of Section 3 of this Act.

(2) Maximum Credit Amount.—The maximum amount of credit for industrial investment shall not exceed eight million (8,000,000) dollars for each tax-exempt business that holds a decree granted under this Act.

(3) The Secretary of the Treasury shall authorize the investment credits claimed by the investors, up to the limit of twenty million (20,000,000) dollars per fiscal year. The preceding notwithstanding, in the event that it were convenient and necessary to serve the best interests of the Government, the Executive Director may request that the Secretary of the Treasury authorize a greater amount of credits during a fiscal year, or an amount exceeding the limit provided for a specific business.

(c) Credit Carryover.—The credit for industrial investment not used in a taxable year may be carried over to subsequent taxable years, until it is used in its entirety.

(d) Any investor interested in requesting an Administrative Determination of the Secretary of the Treasury in order to generate a credit under subsection (a)(2)(A) of this Section, shall first obtain a Certification from the Executive Director by Sworn Statement, attesting that the investment to be made answers to the acquisition of a tax-exempt business in

the process of closing, so as to be able to claim the credit for industrial investment, in order for the latter to determine whether the investment made or to be made qualifies for the tax credit. The Secretary of the Treasury may require, as a condition for his/her endorsement or approval, that the investor post a bond or another form of security in favor of the Secretary of the Treasury in order to respond in the event the credits are revoked.

(e) Adjustment of the Base and Recovery of the Credit for Industrial Investment.—

(1) The base of any eligible investment shall be reduced by the amount taken as credit for industrial investment, but it may never be reduced to an amount of less than zero.

(2) If any tax-exempt business, which originates the credit for industrial investment to generate a credit under subsection (a)(2)(A) of this Section, ceases operations as such before the lapsing of a term of ten (10) years counted as of the date of the eligible investment, the investor shall owe, as income taxes, an amount equal to the credit for industrial investment claimed by such investor, multiplied by a fraction whose denominator shall be ten (10) and whose numerator shall be the balance of the ten (10)-year period as required under this subsection. The amount thus owed as income taxes

shall be paid in two (2) installments, starting in the first taxable year after the date the industrial activity ceases.

(f) Assignment of the Credit for Industrial Investment.—

(1) The credit for industrial investment provided for in this Section may be partially or entirely assigned, sold or otherwise transferred by an investor to any other person.

(2) The base of the eligible investment shall be reduced by the value of the credit for industrial investment thus assigned, sold or otherwise transferred.

(3) The investor who has assigned all or part of his/her credit for industrial investment, as well as the acquirer of the credit for industrial investment, shall notify the Secretary of the assignment through a statement to that effect, which shall be enclosed with his/her income tax return for the year in which the assignment of the credit for industrial investment is made. The statement shall contain the information which the Secretary of the Treasury deems pertinent, through regulations promulgated to that effect.

(4) The money or value of the property received in exchange for the credit for industrial investment, shall be exempted from taxes under Subtitle A of the Puerto Rico Internal Revenue Code, as well as

from any kind of municipal taxes, up to an amount equal to the amount of credit for industrial investment thus assigned.

(5) The buyers of tax credits for industrial investment shall be exempted from taxes under Subtitle A of the Puerto Rico Internal Revenue Code for the difference between the amount paid to acquire such credits and the value thereof.

**Section 7.—Real and Personal Property Taxes.—**

(a) In General.—

(1) The personal property of a tax-exempt business that holds a decree granted under this Act, used in the development, organization, construction, establishment or operation of the activity covered under the decree, shall enjoy a ninety-percent (90%) exemption on municipal and Commonwealth taxes on personal property during the exemption period established in Section 10 of this Act.

(2) The real property of the tax-exempt business that holds a decree granted under this Act, used in its development, organization, construction, establishment or operation, shall enjoy a ninety-percent (90%) exemption on municipal or Commonwealth property taxes during the exemption period established in Section 10 of this Act.

(3) The real property of a tax-exempt business described in Section 2(h)(12) of this Act shall be entirely exempted from property taxes during the first five (5) years as of the date the operations start, to be determined pursuant to the provisions of Section 10 of this Act. Once said period has lapsed, the provisions of the preceding clause shall apply.

(b) Period.—

The real property of a tax-exempt business that holds a decree granted under this Act, shall be entirely exempted during the period authorized under the decree to carry out the construction or establishment of said tax-exempt business and during the first fiscal year of the Government under which the tax-exempt business would have been subject to property taxes for having been in operation as of January 1<sup>st</sup> prior to the beginning of said fiscal year, were it not for the exemption provided herein. Likewise, the real property of said tax-exempt business which is directly related to any expansion of the tax-exempt business, shall be entirely exempted from property taxes during the period authorized under the decree for carrying out the expansion. Once the total exemption period established in this clause expires, the partial exemption provided for in this Section shall begin to apply.

(c) Assessment.—

(1) The real property taxes shall be assessed, levied, notified and administered as provided under Act No. 83 of August 30, 1991, as amended (“Municipal Property Tax Act”). The preceding notwithstanding, a tax-exempt business may opt to avail itself of the self-assessment method provided for in clause (2) of this subsection.

(2) Optional Self-Assessment Method.—

(i) A business that is exempted under this Act or under preceding tax incentives acts, may use the self-assessment method provided for in this clause in order to determine the classification and the real property tax on property which has not been assessed by virtue of the “Municipal Property Tax Act.” In such cases, the tax-exempt business shall comply with the procedures established in the “Municipal Property Tax Act,” provided the same has complied with the notice requirements established under said Act or in the exemption decree.

(ii) The self-assessment method provided for in this clause may be used exclusively for that property which shall be properly deemed to be real property by reason of its use and

location, which is destined for and is used in the development, organization, construction, establishment or operation of the tax-exempt business. Provided, that the method established herein may not be used to appraise plots of land or structures (including real property permanently affixed to a structure and which exclusively serves said structure, such as lighting equipment).

(iii) The appraisal value of the property classified as real property by the tax-exempt business, to be appraised under this clause, shall be equal to thirty-five percent (35%) of the depreciated value in the books of the tax-exempt business. Provided, that said appraised value shall not be less than a certain percent of the cost, computed on the basis of the useful life of the property, as provided below:

Useful life	Cost
2-5 years	25%
6-10 years	17%
11-15 years	15%
16 years or more	10%

(iv) The tax-exempt business shall also enjoy the exemption established in subsection (a) of this Section on the value appraised pursuant to the provisions of subclause (iii) of this clause. Provided, that the provisions of the “Municipal Property Tax Act” shall apply in terms of the rate, date, and method of payment of this tax as if it were a tax assessed under said Act.

(v) Any tax-exempt business that has opted to use the self-assessment method provided for in this clause, shall file a self-assessed real property tax return on or before May 15 of every year, in which it shall identify the property that is to be deemed to be real property, and shall determine its obligation to pay taxes on real property for the fiscal year of the Government, pursuant to the provisions of subclause (iii) of this clause. Provided, that once the tax-exempt business adopts the assessment method provided for in this clause, the same shall file and pay on the date the first return is to be filed, in addition to the tax corresponding to the current fiscal year, the tax corresponding to the preceding four (4) fiscal years, or to the number of years it has been operating, whichever is less. The

tax-exempt business may make the payment corresponding to its tax responsibility for the preceding four (4) fiscal years, or the corresponding number of years, as provided above, in two (2) installments. The first of such payments shall be made when filing the corresponding tax return and the second payment shall be made within six (6) months following the date of filing the first tax return under the option of this method. Within ten (10) work days as of the date on which the tax-exempt business files the tax return provided for in this clause, the Municipal Revenue Collection Center (CRIM, Spanish acronym) shall notify the municipalities concerned of the option of the tax-exempt business to avail itself of the optional self-assessment method.

(vi) Once the property classified and appraised under the optional method provided for in this clause is classified and appraised by the Municipal Revenue Collection Center (“CRIM”) pursuant to the provisions of the “Municipal Property Tax Act” and after having exhausted the review procedures established under said Act, the value of the property of the tax-exempt business shall be that which is established by

the CRIM in lieu of the value determined under the self-assessment method provided for in this clause. In such cases, the tax-exempt business shall comply with the procedures established in the Municipal Property Tax Act. Provided, that the classification and appraisal made by the CRIM pursuant to the aforementioned Act, shall only have a prospective effect, for all legal purposes, for which reason no determination of deficiency shall be made with respect to the method used or the classification of the property as real property for the years in which the optional self-assessment method was used.

(d) The investments that qualify under subsection (j) of Section 2 of this Act shall be entirely exempted from the payment of property taxes.

**Section 8.—Municipal License Fees and Other Municipal Taxes.—**

(a) The tax-exempt businesses that hold a decree granted under this Act shall enjoy a sixty-percent (60%) exemption on municipal license fees, municipal excise taxes and other municipal taxes levied by any municipal ordinance, during the periods provided for in subsection (b) of Section 10 of this Act.

(b) The provisions of subsection (a) of this Section notwithstanding, the following tax-exempt businesses that hold a decree granted under this Act shall enjoy percentage exemptions on municipal license fees, municipal excise taxes and other municipal taxes levied under any municipal ordinance, as provided below:

(1) Businesses exempted under this Act which operate in the special industrial development zone constituted by the municipalities of Vieques and Culebra, shall have a ninety-percent (90%) exemption.

(2) Businesses exempted under this Act which are deemed to be small or medium businesses pursuant to the provisions of subsection (i) of Section 2 of this Act, but only for the period during which they are small or medium businesses, shall have a seventy-five-percent (75%) exemption. In the case of tax-exempt businesses that are small or medium businesses and which have been operating before requesting a decree under this Act, this clause shall only apply to the volume of business in excess of the average volume during the three (3) years preceding the date of the request. The volume of business not covered under this clause shall enjoy a sixty-percent (60%) exemption pursuant to subsection (a) of this Section.

(3) Tax-exempt businesses described in clause (12) of subsection (h) of Section 2 of this Act, shall have a one hundred-percent (100%) exemption during a period of five (5) years as of the date the exemption takes effect.

(c) The portion which is taxable under subsections (a) and (b) of this Section shall be subject, during the term of the decree, to the tax rate in effect as of the date the decree was signed, regardless of any subsequent amendment made to the decree to cover operations of the tax-exempt business in one or various municipalities.

(d) The tax-exempt business that holds a decree granted under this Act shall enjoy total exemption from municipal taxes or municipal license fees applicable to the volume of business of said tax-exempt business during the semester of the fiscal year of the Government during which the tax-exempt business starts operations in any municipality, pursuant to the provisions of the “Municipal License Fee Act of 1974,” as amended. Furthermore, the tax-exempt business that holds a decree granted under this Act shall be totally exempted from municipal taxes or license fees on the volume of business attributable to said municipality during the two (2) semesters of the fiscal year or the fiscal years of the Government following the semester in which the same started operations in said municipality.

(e) Tax-exempt businesses that hold a decree granted under this Act and their contractors and subcontractors shall be totally exempted from any tax, levy, fee, license, excise tax or rate levied by any municipal ordinance on the construction of works to be used by said tax-exempt business within a municipality, without it being understood that said taxes include the municipal license fee levied on the volume of business of the contractor or subcontractor of the tax-exempt business, during the term authorized under the tax exemption decree.

(f) The income derived from the investments that qualify under subsection (j) of Section 2 of this Act, shall be totally exempted from municipal license fees, municipal excise taxes and other municipal taxes.

(g) Any business exempted under this Act or under preceding acts may waive the five-percent (5%) down payment discount benefit provided for in Section 11 of the “Municipal License Fee Act,” and make the total payment of its municipal license fee on the date provided for in said Act. Provided, that in the case of tax-exempt businesses that opt to make the down payment and waive the discount, the period of prescription for the assessment and collection of the license fee levied under the “Municipal License Fee Act” shall be three (3) years as of the date on which the Volume

of Business Statement is submitted, in lieu of the terms provided for in subsections (a) and (b) of Section 19 of the “Municipal License Fee Act.”

(h) In housing projects, municipalities may grant a partial or a total credit for excise taxes on construction, for the total cost of the infrastructure works that comply with self-sustainable or partially-sustainable criteria, as defined in this Act.

**Section 9.—Commonwealth Excise Taxes and Sales and Use Tax.—**

(a) In addition to any other exemption from excise taxes or from the sales and use tax granted under Subtitles B and BB, respectively, of the Puerto Rico Internal Revenue Code, a total exemption from said taxes shall be granted, during the exemption period provided in Section 10 of this Act, the following articles directly or indirectly introduced or acquired by a business that holds a decree granted under this Act.

(1) Any raw material that is to be used in Puerto Rico to manufacture finished products, except for hydraulic concrete, crude oil, partially manufactured products, finished oil products, and finished products from any other hydrocarbon mixture. For the purposes of this subsection and the applicable provisions of Subtitles

B and BB of the Puerto Rico Internal Revenue Code, the term “raw material” shall include:

(A) any product in its natural form, derived from agriculture or from extractive industries;

(B) any by-product, residual product, or partially manufactured or finished product;

(C) sugar by the bushel or in units of fifty (50) pounds or more, to be used exclusively in the manufacturing of products.

(2) The machinery, equipment and accessories thereof used exclusively in the manufacturing process or in the construction or repair of ships, inside or outside the premises of a manufacturing plant, machinery, trucks, or forklifts used exclusively and permanently to transport the raw material within the circuit of the tax-exempt business, machinery, equipment and accessories used to carry out the manufacturing process, or which the tax-exempt business is under the obligation to acquire as required under federal or Commonwealth law or regulations, for the operation of an industrial unit.

The preceding notwithstanding, the exemption shall not cover the machinery, devices, equipment or vehicles used in whole or in part in the administrative or commercial phase of the tax-exempt business, except in those cases in which these are also used in at least ninety percent (90%) of the manufacturing process, or in the construction or repair of ships, in which case, these shall be deemed to be used exclusively in said manufacturing process.

(3) Any machinery and equipment that a tax-exempt business that holds a decree granted under this Act must use to meet environmental, safety and health demands, shall be totally exempted from the payment of Commonwealth excise taxes and of the sales and use tax.

(4) The machinery, equipment, parts and accessories used in laboratories of an experimental or a referential nature.

(5) The machinery, equipment, parts and accessories used in the preliminary region exploration phase geared toward the mineralogical development of Puerto Rico, and the graving docks or shipyards for the construction or repair of ships.

(6) The fuel used by the business exempted under this Act, in the co-generation of electric power for its own use or for use by its affiliates.

(7) Chemical materials used by a tax-exempt business in the treatment of used waters.

(8) Energy-efficient equipment, duly certified by the Energy Affairs Administration.

(b) Exceptions.—The following used and consumption articles used by the tax-exempt business that holds a decree granted under this Act, regardless of the area or premises in which these are located or of their use, shall not be deemed to be raw material, machinery or equipment for the purposes of clauses (1), (2) and (3) of subsection (a) of this Section:

(1) any construction material and pre-fabricated structures;

(2) any electrical material and water pipes fixed into the structures;

(3) the lubricants, fats, waxes and paints not relative to the manufacturing process;

(4) the lighting posts and lighting fixtures installed in parking areas; and

(5) treatment plants and electric sub-stations.

**Section 10.—Tax Exemption Period.—**

(a) Exemption.—

A tax-exempt business that holds a decree granted under this Act shall enjoy exemption from taxes for a period of fifteen (15) years.

(b) Flexible Tax Exemption.—

Tax-exempt businesses that hold a decree granted under this Act shall have the option of choosing the specific taxable years to be covered under their decrees in terms of their industrial development income, provided that they so notify to the Secretary of the Treasury and the Executive Director not later than the date provided by law for filing its income tax return for said taxable year, including the time extensions granted for this purpose. Once said tax-exempt businesses opt for this benefit, their exemption term shall be extended for the number of taxable years in which they have not enjoyed the exemption under their decrees.

(c) Provisions Applicable to Business Tax Exemptions on Property Devoted to Industrial Development.—

(1) The period during which a property devoted to industrial development belonged to any political subdivision, agency or instrumentality of the Government, shall not be deducted from the period referred to in subsection (a) of this Section. Provided, that in

such cases, the property shall be deemed, for the purposes of this Act, as not having been previously devoted to industrial development.

(2) When the tax-exempt business that holds a decree granted under this Act is property devoted to industrial development, the period referred to in subsection (a) of this Section shall not cover those periods in which the property devoted to industrial development is in the market for leasing to a tax-exempt business, or is not occupied, or is leased to a non-exempt business, except as provided further. Said periods shall be computed based on the total period during which the property was at the disposal of a tax-exempt business, provided the total number of years is not greater than the number of years provided under the aforementioned subsection (a) of this Section, and the tax-exempt business that qualifies as property devoted to industrial development gives written notice to the Secretary of the Treasury and the Executive Director of the date on which the property becomes vacant and is re-occupied by another tax-exempt business.

In the event that the exemption of a tax-exempt business that holds a decree as property devoted to industrial development expires while the same is being used under a lease by an exempted

manufacturing business, said tax-exempt business which is property devoted to industrial development may enjoy a fifty-percent (50%) exemption on property taxes while the exempted manufacturing business continues to use said property under lease.

(3) When the tax-exempt business that holds a decree granted under this Act is property devoted to industrial development, the period referred to in subsection (a) of this Section shall continue its normal course, even if the exemption decree of the tax-exempt business using the aforementioned property, as a result of the expiration of its normal period or due to the revocation of its decree, lapses before the exemption period of the property devoted to industrial development, unless, in the event of revocation, it is proven that at the time in which said property was made available to the tax-exempt business, the property owners knew about the facts which caused the later revocation of the decree.

(d) Establishment of Operations in Other Municipalities.—

A tax-exempt business that holds a decree granted under this Act may establish additional industrial units as part of the operations covered by an exemption decree in effect, in the same municipality where the main office is located, or in any other municipality of Puerto Rico, with no need to

request a new exemption decree, provided it notifies the Tax Exemption Office within thirty (30) days as of the beginning of the operations of the additional industrial unit. The additional industrial unit shall enjoy the exemptions and benefits provided for in this Act for the remainder of the exemption period under the decree in effect.

(e) Interruption of the Exemption Period.—

A tax-exempt business that holds a decree granted under this Act, which has ceased operations and which subsequently wishes to resume operations, shall not have the time it was not operating deducted from its corresponding exemption period and may enjoy the remainder of its exemption period, while its tax exemption decree is in effect, provided the Secretary of Development determines that said operations ceased due to justified causes and that the reopening of said tax-exempt business would serve the best social and economic interests of Puerto Rico.

(f) Fixing of the Dates When Operations Start and the Exemption Periods.—

(1) The tax-exempt business that holds a decree granted under this Act may choose the date on which to start operations for purposes of Section 3 of this Act by filing a sworn statement with the Tax Exemption Office, with a copy for the Secretary of the Treasury,

stating the unconditional acceptance of the grant made to the tax-exempt business under this Act. The date on which operations start, for purposes of Section 3 of this Act, may be the date of the first payroll for training or production of the tax-exempt business that holds a decree granted under this Act, or on any other date within a period of two (2) years following the date of the first payroll.

(2) The tax-exempt business that holds a decree granted under this Act may defer the application of the fixed tax rate provided for in Section 3 of this Act for a period not greater than two (2) years from the date operations start as fixed under clause (1) of this subsection (f) of this Section. During the deferral period, said tax-exempt business shall be subject to the tax rate that applies under Subtitle A of the Puerto Rico Internal Revenue Code.

(3) The exemption period provided for in subsection (a) of Section 7 of this Act for real and personal property tax exemption, shall begin on the first day of the fiscal year of the Government of Puerto Rico following the last fiscal year in which the tax-exempt business that holds a decree granted under this Act was totally exempted pursuant to the provisions of subsection (b) of Section 7 of this Act. The partial exemption for said fiscal year shall correspond to

the tax on the property owned by the tax-exempt business as of January 1<sup>st</sup> prior to the beginning of said fiscal year.

(4) The period for the partial exemption provided for in subsection (d) of Section 8 of this Act, for purposes of the exemption on municipal license fees and on any other municipal taxes, shall begin on the first day of the first semester of the fiscal year of the Government of Puerto Rico following the expiration of the period for the total exemption provided for in said subsection. Provided, that in the case of tax-exempt businesses that have been operating on a commercial scale before requesting the benefits of this Act, the date on which operations start, for purposes of municipal license fees, shall be the first day of the semester following the date of filing the application for tax exemption.

(5) In the case of tax-exempt businesses that hold a decree granted under this Act and which have been operating on a commercial scale before applying for the benefits of this Act, the date on which operations start, for purposes of the fixed income tax rate provided for in Section 3 of this Act, shall be the date on which said application is filed with the Tax Exemption Office, but the starting

date may be deferred for a period not greater than two (2) years as of that date.

(6) The tax-exempt business that holds a decree granted under this Act shall start operations on a commercial scale within a term of one (1) year as of the date the grant was signed, the term of which may be deferred at the request of said business when there is a justified cause therefor, but no time extensions shall be granted to delay the date on which operations start for a term greater than five (5) years from the date the grant was approved.

**Section 11.—Industrial Development Zones.—**

(a) In General.—

The Secretary of the Department of Economic Development and Commerce of Puerto Rico, pursuant to the procedure established in subsection (b) of this Section, shall classify the various regions or municipalities of Puerto Rico under one of the following industrial development zones:

High Industrial Development Zone

Medium Industrial Development Zone

Low Industrial Development Zone

Provided, however, that the Municipalities of Vieques and Culebra shall constitute a Special Industrial Development Zone, different from the zones provided for herein.

(b) Procedure and Criteria.—

(1) As of July 1<sup>st</sup>, 2008, the Secretary of Development shall make the classification as provided for in subsection (a) of this Section through an Administrative Order, in consultation with the Executive Director, the Chairperson of the Planning Board and the Secretary of the Treasury. This classification shall be based on the employment level of the municipality or region and on the need for establishing industrial operations for that area in particular. In addition, it shall take into account the nature of the area, the availability of manpower, the existing infrastructure and any other factors which affect the economic and social development of the municipality or region to be classified. The Secretary of Development shall append to the Administrative Order provided for in this subsection, a report which states in detail the specific criteria used to make such classifications.

(2) The Secretary of Development shall make a general revision of the classifications made under subsection (a) of this

Section every five (5) years, to be counted as of the date of the initial classification made under this Section.

(c) Special Designation.—

The provisions of subsection (b) of this Section notwithstanding, the Secretary of Development may, through an Administrative Order and in consultation with the officials referred to in subsection (b) of this Section, reclassify any municipality or geographical area from one zone to another, prior to the general revision required under clause (2) of subsection (b) of this Section, when the factors that justified the inclusion of the municipality or region into the preceding zone have varied substantially. Provided, further, that the Administrative Order through which the special classification provided for in this subsection is made shall indicate the specific criteria which motivated the change in classification.

(d) Special Rules.—

The reclassification of a municipality or geographical area from one zone to another shall not affect the exemption of tax-exempt businesses already established in said municipality or region. However, a business which has applied for a tax exemption decree in order to establish said business in a specific municipality or region, but which has not yet been established, or which has obtained the same before the date on which that

municipality or area had been reclassified from one zone to another, which, as a consequence of the change in designation, renders the business eligible for lesser benefits than those it would have under the former classification, shall be entitled to enjoy the exemption benefits in effect prior to the reclassification if the business is established therein within one (1) year as of the date on which the area was reclassified. For the purposes of this Act, the date of the first payroll for training or production shall be deemed to be the date of the establishment of the business.

(e) Transitory Provisions.—

Until the Secretary of Development makes the initial classification of municipalities and regions in the industrial development zones provided for in this Section, those in effect as of the date of effectiveness of this Act, as established by the provisions of Act No. 135 of December 2, 1997, as amended, shall apply to exemptions granted under this Act. Provided, however, that during said transitory period, municipalities and regions shall keep their current designations as low, medium or high industrial development zones.

**Section 12.—Industrial Tax Exemption Office.—**

(a) In General.—

The Industrial Tax Exemption Office shall be attached to the Department of Economic Development and Commerce. This Office shall be directed and administered by a Director, who shall be appointed by the Secretary of Development. The Director shall exercise the powers inherent to his/her office, appoint the necessary personnel to discharge its functions and comply with the duties and obligations imposed by this Act.

(b) Sworn Statements Required by the Industrial Tax Exemption Office.—

The Tax Exemption Office may require that applicants for tax exemption decrees submit sworn statements as necessary to establish the facts as stated, required or appropriate in order to determine whether the operations or intended operations of the applicant qualify under the provisions of this Act.

(c) Hearings.—

The Director may hold as many public and/or administrative hearings as he/she deems necessary to comply with the duties and obligations imposed by this Act. Furthermore, he/she may compel applicants for tax

exemption decrees to present the proof which might justify the tax exemption requested.

The Director or any Special Examiner of the Tax Exemption Office designated by the Director, with the approval of the Secretary of Development, may receive the proof presented in relation to any application for a decree, and shall have the power to summon witnesses and take their statements with regard to the alleged facts or to facts otherwise related to the decree requested, take the oath of any person testifying before him/her, and shall submit a report to the Secretary of Development with regard to the proof presented, together with his/her recommendations on the case.

(d) Penalties.—

Any person who commits or attempts to commit, *pro se* or on behalf of another person, any false or fraudulent representation in relation to any application for or grant of a tax exemption, or a violation of the provisions relative to preceding or succeeding tax-exempt businesses, shall be deemed to be guilty of a third-degree felony and upon conviction, shall be punished by the penalty provided for this type of crime in the Puerto Rico Penal Code of 2004, as amended.

Furthermore, it is hereby provided that, in these cases, the exemption decree shall be revoked retroactively and that the grantee and/or its

stockholders shall be responsible for all the taxes from which they were partially or totally exempted under this Act.

(e) Special Account of the Industrial Tax Exemption Office.—

The fees, charges and penalties prescribed in subsection (d) of this Section 12 shall be covered into a Special Account created to that effect in the Department of the Treasury, with the purpose of defraying the regular operating expenses of the Tax Exemption Office. Prior to using the resources deposited into the Special Account, the Tax Exemption Office shall annually submit, for the approval of the Office of Management and Budget of the Government, an expense budget chargeable to the funds of the Special Account. The resources of the Special Account destined for defraying regular operating expenses of the Tax Exemption Office may be complemented with appropriations originating from the General Fund of Puerto Rico whenever necessary.

(f) The Tax Exemption Office shall establish the necessary systems to facilitate the electronic transmission and filing of applications for exemption and related documents, in order to expedite the inter-agency consideration of the applications for exemption and the processes in general.

**Section 13.—Procedures.—**

(a) Regular Procedure.—

(1) Applications for Tax Exemption.—

Any person who has established or who intends to establish an eligible business in Puerto Rico may apply to the Secretary of Development for the benefits of this Act by filing the corresponding application, duly sworn before the Tax Exemption Office.

At the time of filing, the Director shall charge fees on account of the corresponding processing, which fees shall be paid by certified check, postal money order or manager's check payable to the Secretary of the Treasury.

The Secretary of Development shall establish through regulations the fees to be charged for processing. Provided, that said regulations shall be revised every three (3) years after their approval.

The fees in effect under Act No. 135 of December 2, 1997, as amended, shall remain in effect until the first regulations are approved under this provision.

(2) Inter-Agency Consideration of Applications.—

(A) Upon receipt of any application under this Act by the Tax Exemption Office, its Director shall remit, within a

period of five (5) days as of the date the application was filed, a copy of said application to the Secretary of the Treasury and to the Executive Director, in order for the latter to render an eligibility report on the activity to be carried out and other facts relative to the application. When evaluating the application, the Secretary of the Treasury shall verify that the stockholders or partners of the business filing the application comply with their tax responsibility under the Puerto Rico Internal Revenue Code. This verification shall not be necessary in the case of stockholders not residing in Puerto Rico or public corporations. Failure to comply with such a tax responsibility shall be sufficient grounds for the Secretary of the Treasury not to endorse the application of the business applying for exemption.

(B) After the Executive Director submits his/her Eligibility Report and recommendations, the Director shall remit a copy of the draft decree within five (5) work days as of the date of receipt of the documents necessary to process the case, to the agencies concerned, including the municipality concerned and the Municipal Revenue Collection Center (CRIM) for its evaluation and recommendation, should no

application of opposition thereto be filed. Any unfavorable recommendation regarding the draft decree shall be accompanied by the reasons therefor.

The agencies and municipalities consulted by the Director shall have thirty (30) days to submit their report or recommendation regarding the draft decree referred to them. In the event the recommendation of the agency or municipality is favorable, or if the same is not received by the Industrial Tax Exemption Office during the aforementioned thirty (30)-day period, it shall be understood that said draft decree has received a favorable recommendation, and the Secretary of Development may take the corresponding action on said application.

In the event that the municipality raises any objection with regard to the draft decree referred thereto, the Industrial Tax Exemption Office shall then give consideration to said objection, as it may believe necessary, reason for which the Tax Exemption Office shall notify the parties and the corresponding agencies, for the administrative action or the revision of the draft decree, as deemed pertinent. Once the controversy thus arisen has been elucidated, the Director shall make the

determination he/she believes to be in order and submit the case to the Secretary of Development for his/her final consideration.

(C) In the event of amendments to grants approved under this Act, the period for the agencies and municipalities concerned to submit a report or opinion to the Director shall be twenty (20) days.

(D) Upon receipt of the reports, or upon expiration of the terms to make such reports, the Director shall submit the draft decree and his/her recommendations for the consideration of the Secretary of Development, within the next five (5) days.

(E) The Director may rely on the recommendations furnished by such agencies or municipalities that render reports or opinions and he/she may request them to supplement the same.

(F) The Secretary of Development shall issue a final determination, in writing, within a term not greater than five (5) days as of the date the draft decree was submitted for his/her consideration.

(G) The Secretary of Development may delegate onto the Director those functions as he/she deems convenient in

his/her discretion, in order to facilitate the administration of this Act, except for the function of approving or denying original tax exemption grants, with the exception of the grants conferred under subsection (b) and subclause (E) of clause (1) of subsection (d) of Section 2 of this Act.

(b) Renegotiations and Conversions.—

(1) Renegotiation of Decrees in Effect.—

(A) Any tax-exempt business that holds a decree granted under this Act or under preceding acts may request that the Secretary of Development consider renegotiating its decree in effect if said tax-exempt business proves that there will be a raise of twenty-five percent (25%) or more in the average employment it has generated for the past three (3) taxable years before the date the application was filed; or that said tax-exempt business shall make a substantial investment in its existing operations which shall help to maintain the economic and labor stability of the industrial unit, and that the same represents an increase of twenty-five percent (25%) or more in the investment in property devoted to industrial development existing as of the date of effectiveness of this Act. If said tax-exempt business

proves to the satisfaction of the Secretary of Development that it is unable to meet the requirements relative to the raise in the average employment or to the increase in investment described above, shall submit the necessary evidence to the Tax Exemption Office. The Secretary of Development, with the prior favorable recommendation of the Secretary of the Treasury and the Executive Director, and with the prior recommendation of the agencies that render reports on tax exemption, may, in his/her discretion, consider the renegotiation, taking into account any other factor or circumstance which reasonably shows that the renegotiation of its decree shall serve the best social and economic interests of Puerto Rico.

For purposes of this Section, the employment of the aforementioned tax-exempt business shall consist of the number of individuals residing in Puerto Rico who work permanently on a full-time basis during regular business hours at the tax-exempt business rendering services as employees, even if they are not directly in the payroll of the tax-exempt business (such as persons provided under manpower leasing contracts, but

shall not include persons such as freelance contractors or consultants).

For purposes of this Section, the investment of the tax-exempt business that holds a decree granted under this Act or under preceding acts, in its existing operations, shall be computed according to the book value of the property devoted to industrial development, factoring in the benefit of admissible depreciation under the straight-line method, taking into account the useful life of said property as determined pursuant to Subtitle A of the Puerto Rico Internal Revenue Code, in lieu of any other accelerated depreciation allowed by law.

Upon agreement to conduct the renegotiation thus requested, the Secretary of Development, with the prior recommendation of the agencies that render reports on tax exemption, shall take into account the number of jobs of the tax-exempt business, the place where it is located, the additional jobs and investment, as well as the remainder of the term of its decree, the tax benefits already enjoyed and its financial capacity, in order for the tax-exempt business to be

able to obtain a new decree with tax benefits adjusted under this Act.

The Secretary of Development shall establish the terms and conditions he/she deems necessary and convenient to better serve the interests of Puerto Rico, within the limits provided for in this Act, and may, in his/her discretion, with the prior recommendation of the agencies that render reports on tax exemption, impose special employment requirements, limit the period and the percentage of the exemption, limit the taxes to be exempted, levy a fixed tax rate on industrial development income greater than that which is provided in subsection (a) of Section 3 of this Act, and require and provide any other term or condition as necessary to suit the industrial and economic purposes proposed under this Act.

When the tax-exempt business that wishes to renegotiate its decree fails to meet the increased job or investment requirements provided for in this subsection, the Secretary of Development may, with the prior favorable recommendation of the Secretary of the Treasury and the Executive Director and of the agencies that render reports on tax exemption, levy a fixed

tax rate on industrial development income which is greater than that which is levied under the tax-exempt business decree.

(B) The Secretary of Development may not grant a fixed tax rate on industrial development income which is less than four percent (4%) without the endorsement of the Secretary of the Treasury. Except in the case of businesses described in clauses (2) through (6) of subsection (a) of Section 3 of this Act, the fixed rate established in renegotiation under clause (1) of subsection (b) of this Section shall only apply with respect to the annual industrial development income, computed under this Act, excluding the income originating from investments described in subsection (j) of Section 2 of this Act, which exceeds the base period income.

For purposes of this clause, “base period income” means the highest number which results from comparing the industrial development income in the last year before the date of applying for the renegotiation, excluding the income originating from the investments described in subsection (j) of Section 2 of the preceding applicable law, with the annual average of industrial development income, computed under the law that applies to

the decree issued under preceding tax incentives laws, but excluding the income originating from the investments described in subsection (j) of Section from said preceding tax incentives laws, for the three (3) taxable years with greater industrial development income (excluding the income originating from the investments described in subsection (j) of Section 2 from said preceding laws) within the five (5) taxable years preceding the date on which renegotiation is applied for under this Section, or the lesser period applicable. In the case of tax-exempt businesses that have been operating for a period of three (3) years or less as of the date the renegotiation is applied for, the base period income shall be the annual industrial development income average, excluding the income originating from the investments described in subsection (j) of Section 2 from said preceding tax incentives laws, earned during said period, computed under the law that applies to the preceding decree.

(C) An amount equal to the base period income shall be taxable each taxable year under the provisions of the decree issued under the preceding law and renegotiated under this

subsection, including, but not limited to, taxes on industrial development profit distributions or dividends and the liquidation tax that applies under said preceding law, for the remainder of the exemption period of the preceding renegotiated decree, provided the industrial development income, excluding income originating from investments as set forth in subsection (j) of Section 2 of this Act for the taxable year, computed under this Act, is greater than the base period income. If the industrial development income, excluding the income originating from investments as set forth in subsection (j) of Section 2 of this Act for any taxable year, computed under this Act, is less than the base period income, the industrial development income shall be computed, excluding the income originating from investments as set forth in subsection (j) of Section 2 of this Act for said taxable year pursuant to the provisions of the law under which the preceding renegotiated decree was approved, and the resulting amount shall be taxable under the provisions of the preceding law, provided the same does not exceed the base period income.

Furthermore, the provisions of the preceding act which applies to the decree renegotiated under this subsection shall apply, for the remainder of the preceding renegotiated decree, over the industrial development income originating from investments as set forth in subsection (j) of Section 2 of this Act (“2(j) income”), up to an amount which does not exceed the 2(j) income of the base period, including, but not limited to, taxes on industrial development profit distributions or dividends and the liquidation tax that apply to distributions of said 2(j) income.

For purposes of this clause, “2(j) income of the base period” means the annual average of industrial development income originating from investments as set forth in subsection (j) of Section 2 of the law that applies to the decree issued under preceding laws, for the three (3) taxable years with the greatest income originating from such 2(j) investments from the five (5) taxable years preceding the date of the application for renegotiation under this Section, or the lesser period that applies. In the case of tax-exempt businesses that have been operating for a period of three (3) years or less on the date of

applying for the renegotiation, the 2(j) income of the base period shall be the annual average of the income originating from said investments, earned during said period, computed under the law that applies to the preceding decree.

Once the exemption period under the preceding decree expires, the fixed rate provided for in clause (1), subsection (a) of this Section shall apply to any industrial development income earned by the tax-exempt business, excluding the income originating from investments as set forth in subsection (j) of Section 2 of this Act, which shall be entirely exempted from taxes.

(D) Tax-exempt businesses that renegotiate their decree under the provisions of this subsection and which, as of the date of renegotiation, were operating under Act No. 135 of December 2, 1997, as amended, or under preceding laws, may distribute the profits accrued before the date of effectiveness of the renegotiation at a later time, but such distributions shall be made according to the tax treatment provided in the decree granted under each of said laws under which such profits were accrued.

(E) Tax-exempt businesses that renegotiate their decrees under this subsection shall pay taxes in total liquidation, as to their industrial development income, pursuant to the tax treatment provided for in each of the laws under which said profits were accrued.

(F) All other terms, conditions and benefits contained in this Act which do not contravene the provisions of this subsection shall be applicable to tax-exempt businesses covered thereunder.

(2) Conversion of Tax-exempt businesses under Preceding Laws.—

Any of the following businesses exempted under preceding laws may apply for coverage under the provisions of this Act, subject to the limitations provided henceforth, provided said business shows that it is complying with all applicable legal provisions. Exemptions granted under converted decrees may not be greater than those provided under this Act.

(A) Tax-exempt businesses that on the date of effectiveness of this Act have not begun operations, may request conversion for the remainder of the period originally

granted, in which case, their exemption shall be adjusted pursuant to the provisions of Sections 3, 7, 8, 9, and 10 of this Act.

(B) Tax-exempt businesses whose decrees were granted on or before January 1, 2008, and which had not been enjoying an exemption prior to that date, except under said decrees, may apply for conversion, in which case their exemption shall be adjusted pursuant to the provisions of Sections 3, 7, 8, 9, and 10 of this Act. The fixed rate under subsection (a) of Section 3 of this Act shall apply to the industrial development income, as provided in subsection (g) of Section 3 of this Act.

(C) The Secretary of Development, with the previous recommendation of the agencies that render reports on tax exemption, when considering any application for conversion under this subsection, shall establish the terms and conditions that he/she deems necessary and convenient to serve the best interests of Puerto Rico, within the limits provided for in this Act, as well as impose special employment requirements, and/or limit the exemption percentage, the taxes to be covered

under the decree, provide a fixed tax rate on industrial development income greater than that which is provided in subsection (a) of Section 3 of this Act, but never greater than seven percent (7%), and/or require and provide any other term or condition as necessary and convenient pursuant to the purposes of this Act.

(D) Tax-exempt businesses that convert their decrees under the provisions of this subsection and which, on the date of effectiveness of the conversion, had been operating under Act No. 135 of December 2, 1997, as amended, may distribute the profits accrued before the date of effectiveness of the conversion at any later time, pursuant to the tax treatment provided for in said Act under which said profits were accrued.

(E) Tax-exempt businesses that have availed themselves of the provisions of this subsection shall pay taxes in total liquidation, as pertains to their industrial development income, pursuant to the tax treatment provided for in each of the laws under which said profits were accrued.

(F) The benefits of this subsection may be applied for within twelve (12) months as of the date of approval of this Act,

and the effectiveness of its provisions may be fixed from the first day of the taxable year in which they apply for the same, but never before July 1, 2008, and until the first day of the next taxable year, at the option of the tax-exempt business.

(G) All other terms, conditions and benefits contained in this Act which do not contravene the provisions of this subsection shall apply to tax-exempt businesses covered thereunder.

(c) Denial of Applications.—

(1) Denial when not Beneficial for Puerto Rico.—The Secretary of Development may deny any application when he/she determines that the grant does not serve the best economic and social interests of Puerto Rico, after considering the nature of the physical facilities, the number of jobs, the total sum of the payroll and the investment, the location of the project, its environmental impact, or other factors that in his/her judgment warrant such a determination, as well as the recommendations of the agencies that render reports on tax exemption.

The applicant, after having been notified of such a denial, may request that the Secretary of Development reconsider, within sixty

(60) days as of the date of receipt of the denial, by presenting the facts and arguments regarding its application that it believes are in order, including the offer of any consideration in benefit of Puerto Rico which it deems warrants its request for reconsideration.

In the event said application is reconsidered, the Secretary of Development may accept any consideration offered in benefit of Puerto Rico and may require and provide other terms or conditions as necessary to ensure that such a grant shall serve the best interests of Puerto Rico and meet the purposes of economic and industrial development intended by this Act.

(2) Denial Due to Contravention of Public Interest or to Replacement of or Competition with Established Businesses.—

The Secretary of Development may deny any application when he/she determines, based on the facts presented for his/her consideration and after the applicant has had the opportunity to offer a complete presentation concerning the issues in controversy, that the application contravenes the public interest of Puerto Rico for any of the following reasons:

(A) The applying business has not been organized as a *bona fide* business of a permanent nature, or in view of the

moral or financial reputation of the persons that constitute the same, the plans or methods to obtain financing for the distribution and sale of the product to be manufactured or the services to be rendered, the nature and intended use of such product or services, or any other factor that might indicate that there is a reasonable possibility that granting the exemption would be harmful to the economic and social interests of Puerto Rico; or

(B) The product to be manufactured by the applicant would replace or compete with a substantial advantage for reason of the benefits provided for in this Act, with products manufactured by industries established in Puerto Rico which are not eligible businesses. The preceding notwithstanding, the Secretary of Development may grant the decree when he/she determines that the applying eligible business shall yield a substantial benefit for the general economy of Puerto Rico, for reason of foreseen increases in production to supply markets outside of Puerto Rico, or to supply an existing substantial demand in Puerto Rico which has not been supplied before, and

in consideration of the investment, the technology and the new employment opportunities involved.

Should a decree be granted to any industry under the circumstances indicated above, the Secretary of Development, by request of the interested party, may also grant decrees to existing industries that manufacture said commercial articles which, in his/her judgment, might sustain substantial harm for reason of the aforementioned replacement or competence.

(d) Tax-Exempt Business Transfer.—

(1) General Rule.—The transfer of a tax exemption grant, or of the stocks, property, or other property interest of a tax-exempt business that holds a decree granted under this Act, shall be previously approved by the Director. If the transfer is carried out without being previously approved, the exemption grant shall be rendered null from the date the transfer took place, except in the cases listed in clause (2) of this subsection. The preceding notwithstanding, the Director may retroactively approve any transfer carried out without his/her previous approval, when in his/her judgment, the circumstances of the case so warrant, taking into consideration the

best interests of Puerto Rico and the economic and industrial development purposes of this Act.

(2) Exceptions.—

The following transfers shall be authorized with no need for previous approval:

(A) The transfer of the assets of a deceased party to his/her inheritable estate or the transfer by bequeathal or inheritance.

(B) The transfer within the provisions of this Act.

(C) The transfer of stocks or any share when such a transfer does not result, directly or indirectly, in a change in the command or control of a tax-exempt business that holds a decree granted under this Act.

(D) The transfer of stocks of a corporation that owns or operates a tax-exempt business that holds a decree granted under this Act, when said transfer takes place after the Executive Director has determined that any transfers of stocks from said corporation shall be allowed without his/her previous approval.

(E) The pledge, mortgage or other surety with the purpose of responding for a *bona fide* debt. Any transfer of control, title or interest by virtue of said contract shall be subject to the provisions of subsection (a) of this Section.

(F) The transfer by operation of law, by a court order or by a bankruptcy judge to a trustee or fiduciary. Any subsequent transfer to a third party other than the aforementioned debtor or the bankrupt him/herself, shall be subject to the provisions of subsection (a) of this Section.

(G) The transfer of all the assets of a tax-exempt business that holds a decree granted under this Act, to an affiliated business. For purposes of this subclause, affiliated businesses are those whose stockholders or partners jointly hold eighty percent (80%) or more of the issued and outstanding shares or stocks with voting rights of said tax-exempt business.

(3) Notice.—

All transfers included in the exceptions of the subsection of this Section shall be notified to the Director by the tax-exempt business that holds a decree granted under this Act, with a copy to the Executive Director and the Secretary of the Treasury, within thirty

(30) days, except those included in subclause (D) of clause (2) which do not turn into a stockholder [*sic*] into a holder of ten percent (10%) or more of the capital issued by the corporation, as well as those included under subclause (G) of clause (2), which shall be notified by the tax-exempt business to the Director, with a copy to the Secretary of the Treasury, prior to the date of the transfer.

(e) Procedures for Allowable and Mandatory Revocation.—

(1) Allowable Revocation.—

(A) When the grantee fails to comply with any of the obligations imposed on him/her by this Act or the regulations thereunder, or by the terms of the exemption decree.

(B) When the grantee fails to begin or fails to complete the construction of the facilities necessary for the manufacture of the products he/she intends to manufacture, or for rendering the services he/she intends to render, or when he/she fails to begin producing said products or rendering said services within the period fixed for those purposes in the decree.

(C) When the grantee fails to produce on a commercial scale or suspends his/her operations for more than thirty (30) days without the express authorization of the Secretary of

Development. The latter may authorize such suspensions for periods greater than thirty (30) days when these are motivated by extraordinary circumstances.

(D) When the grantee fails to comply with his/her tax responsibility under the Puerto Rico Internal Revenue Code and other taxation laws of Puerto Rico.

(2) Mandatory Revocation.—

The Secretary of Development shall revoke any decree granted under this Act when the same has been obtained by means of false or fraudulent representation concerning the nature of the eligible business, or the nature or extension of the manufacturing process or of the production carried out or to be carried out in Puerto Rico, or the use that has been given or that shall be given to the property devoted to industrial development, or any other facts or circumstances which in whole or in part motivated the granting of the decree.

Furthermore, when any person commits, or attempts to commit, *pro se* or on behalf of someone else, a violation of the provisions relative to succeeding businesses or preceding tax-exempt businesses, such an action shall be grounds for revocation under this clause.

In the event of this revocation, all of the computed net income, previously reported as industrial development income, whether distributed or not, as well as all distributions thereof, shall be subject to the taxes levied under the provisions of the Puerto Rico Internal Revenue Code. Furthermore, the taxpayer shall be deemed to have filed a false or fraudulent tax return with the intention of evading payment of taxes, and consequently, shall be subject to the criminal provisions of the Puerto Rico Internal Revenue Code. The taxes owed in such a case, as well as any other taxes that were until then exempted and not paid, shall become due and payable from the date such taxes would have become due and payable were it not for the decree, and shall be assessed and charged by the Secretary of the Treasury, pursuant to the provisions of the Puerto Rico Internal Revenue Code.

(3) Procedure.—

In the event of the revocation of a decree granted under this Act, the grantee shall have the opportunity to appear before and be heard by the Director or any Special Examiner of the Tax Exemption Office designated for such a purpose, who shall report on his/her conclusions and recommendations to the Secretary of Development,

with the prior recommendation of the agencies that render reports on tax exemption.

(f) Limitation of Benefits for Production for Export.—

The Secretary of Development, from time to time and after consultation with the agencies that render reports on tax exemption, may designate from among eligible products, those to which the benefits of this Act shall be granted only on production for export, when he/she determines the existence of the following factors:

(1) That the production of these in Puerto Rico for the local market already meets the existing demand and that the capacity of such local production can meet the demand foreseen for a period of five (5) years; or

(2) That in Puerto Rico there is active competition in the production and marketing of the particular product. Products that although similar in name, appearance and use, are differentiable as to their quality, size, price, or other factors that affect the products' market, and consequently, their demand, shall be deemed to be distinct manufactured products.

When the aforementioned conditions no longer exist, the Secretary of Development, after consultation with the agencies that

render reports on tax exemption applications, may cease the imposition of said limitation or resume its designation when the aforementioned conditions reoccur.

This limitation shall apply to tax exemption applications not granted on the date of effectiveness of said limitation.

**Section 14.—Nature of the Grants.—**

(a) In General.—

The tax exemption grants under this Act shall be deemed to be a contract between the grantee, its stockholders, partners or owners, and the Government of Puerto Rico, and said contract shall govern both parties. Said contract shall be interpreted liberally, consistently with the purpose of this Act of promoting the socioeconomic development of Puerto Rico. The Secretary of Economic Development shall have the discretion of including, on behalf and in representation of the Government of Puerto Rico, those terms and conditions, grants and exemptions, that are consistent with the purpose of this Act and which promote the creation of jobs through the socioeconomic development of Puerto Rico, taking into consideration the nature of the application or action requested, as well as the facts and circumstances relative to each case in particular as these may apply.

(b) Obligation to Comply with Representation in Application.—

All tax-exempt businesses that hold a decree granted under this Act shall carry out their exempted operations substantially as they represented these in their application, except when such operations have been varied by virtue of amendments that, by request of the grantee, the Secretary of Development has authorized pursuant to the provisions of this Act.

(c) Administrative Decisions, Final.—

(1) All decisions and determinations of the Secretary of Development under this Act, as to granting decrees and their contents, shall be final and binding and no judicial or administrative review or other recourse may overturn the same, unless specifically provided for otherwise. Provided, that once a decree has been granted under this Act, no agency, public instrumentality, political subdivision, public corporation or municipality, whether autonomous or not, of the Government of Puerto Rico, other than the Secretary of Development or the Governor, may challenge the legality of such a decree or of any of its provisions.

(2) Any grantee adversely affected or prejudiced by any action taken by the Secretary of Development whereby an exemption decree under clause (2) of subsection (e) of Section 13 of this Act is

being revoked or cancelled, shall be entitled to a judicial review of such an action by presenting a writ for review before the Puerto Rico Court of Appeals within thirty (30) days after the final decision or adjudication of the Secretary of Development. During the processing of such a judicial review, the Secretary of Development is hereby authorized, when in his/her judgment the service of justice so requires, to postpone the date of effectiveness of any action taken by him/her under those conditions that so require and under the circumstances necessary to prevent irreparable damages. When such a postponement is requested and the same is denied, the court before which the review is requested, including the Puerto Rico Supreme Court, through a writ of certiorari, may decree any necessary and appropriate proceeding to postpone the date of effectiveness of any action taken by the Secretary of Development in order to preserve the status or rights of the parties until the completion of the review proceedings, with the prior posting of a bond in favor of the Secretary of the Treasury in the amount of the taxes not paid until then, plus interest and penalties, plus interest computed for a period of one (1) year at the prevailing legal rate.

(3) Any decision or ruling of the Puerto Rico Circuit Court of Appeals shall be subject to review by the Puerto Rico Supreme

Court through certiorari requested by any of the parties as provided for under the law.

**Section 15.—Periodical Reports to the Governor and the Legislature.—**

(a) In General.—Each year, and independent from any other report required by law, the Secretary of Development, in consultation with the Secretary of the Treasury, the Director of the Tax Exemption Office, the Executive Director and the Planning Board, shall render a report to the Governor and the Legislature on the economic and fiscal impact of this Act and of Act No. 135 of December 2, 1997, as amended. Said report shall be submitted within one hundred and eighty (180) days after the closing of each fiscal year.

(b) Information Required.—The Secretary of Development shall request the information provided for hereinbelow from the Government agencies, the municipalities or the tax-exempt businesses, as the case may be, in order to prepare the report provided for in subsection (a) of this Section:

(1) the number of tax exemption applications submitted and approved, classified by kind of business and classification of industrial activity;

(2) the total amount of the investment in machinery and equipment, the number of jobs and the payroll projected by the tax-exempt business;

(3) a description of any additional incentive received by the tax-exempt business, be it funds from the local or the municipal Government;

(4) the total amount of assets, liabilities and capital of the firm;

(5) the taxes paid by the tax-exempt businesses on income, royalties and others, and the use of benefits, such as tax credits and special deductions;

(6) the payment of municipal taxes;

(7) a comparison of the commitments contracted by the tax-exempt businesses in relation to their number of jobs and other conditions established by the decree; and

(8) any other information as necessary to report to the Governor and the Legislature as to the scope and effect of the implementation of this Act.

(c) **Additional Information.**—These reports shall include an evaluation of the factors which influence on the industrial development of

Puerto Rico, such as: the impact of the governmental processing of permits, licenses, authorizations, grants, and the like, and the availability of properties for industrial purposes and skilled labor.

(d) Report by the Secretary of the Treasury.—

Each year, and independent from any other report required by law, the Secretary of the Treasury shall render a report to the Legislature on any trends identified as to the payment of taxes by tax-exempt businesses, as compared to the preceding year, and a projection of such behavior for the three (3) years following the year to which the report corresponds. Said report shall be submitted within one hundred and eighty (180) days after the closing of each fiscal year.

The Department of the Treasury, together with the Industrial Development Company, shall establish questionnaires and regulations as necessary to achieve the objectives of this Section.

(e) Cooperation Among Agencies.—The Government agencies and the municipalities shall provide information as provided for in this Section to the Secretary of Development and the Secretary of the Treasury. The Secretary of Development may establish through regulations the forms and procedures necessary to ensure the exchange of information as required under this Section.

(f) The Secretary of Development, with the assistance of the Industrial Development Company, the Department of the Treasury and the Government Development Bank for Puerto Rico, shall establish an electronic data warehouse which allows for the storage and updating of the information relative to tax-exempt businesses, as well as access by the agencies concerned, taking measures to protect the confidentiality of such information. This information shall be used to oversee compliance with the conditions imposed on tax-exempt businesses and to develop a promotional intelligence system that enables the Industrial Development Company to identify and help in a timely manner those tax-exempt businesses in a precarious situation, as well as to establish promotion strategies.

**Section 16.—Succeeding Business.—**

(a) General Rule.—

A succeeding business may avail itself of the provisions of this Act, provided:

(1) the preceding tax-exempt business has not ceased operations for more than six (6) consecutive months before the succeeding business files the application for exemption, or during the exemption period of the succeeding business, unless such an action is due to extraordinary circumstances.

(2) the preceding tax-exempt business maintains its annual average as to the annual average employment for the three (3) taxable years which end with the closing of its taxable year preceding the filing of the application for exemption by the succeeding business, unless said average cannot be maintained due to extraordinary circumstances.

(3) the number of jobs of the succeeding business, after its first year of operations, is greater than twenty-five percent (25%) of the annual average employment of the preceding business referred to in clause (2), above.

(4) the succeeding business does not use physical facilities, including land, buildings, machinery, equipment, inventory, supplies, trademarks, patents, marketing outlets with a value of fifty thousand (50,000) dollars or more, and have been previously used by a preceding tax-exempt business. The above shall not apply to additions to property devoted to industrial development, even when such additions constitute physical facilities with a value of fifty thousand (50,000) dollars or more and are being or have been used by the main unit or the preceding tax-exempt business. The preceding notwithstanding, the Secretary of Development may determine, with

the previous recommendation of the agencies that render reports on tax exemption, that the use of physical facilities or the acquisition of any industrial unit of a preceding tax-exempt business which is or was operating, serves the best economic and social interests of Puerto Rico, vis-à-vis the nature of such facilities, the total number of jobs, the sum of the payroll, the investment, the location of the project, or other factors which in his/her judgment warrant such a determination.

(b) Exceptions.—

The provisions of subsection (a) of this Section notwithstanding, the conditions thereof shall be deemed to have been met, provided:

(1) The succeeding business assigns to the preceding tax-exempt business, that part of the annual employment as necessary so that the annual employment of the preceding tax-exempt business is maintained, or equals the annual employment that said preceding tax-exempt business should maintain. The assignment provided herein shall not be covered by the decree of the succeeding business, but the latter shall enjoy, with respect to the part so assigned, the benefits provided for in this Act, if any, which the preceding tax-exempt business would enjoy on the same, as if it had been its own annual production. If the exemption period of the preceding tax-exempt

business has expired, the succeeding business shall pay the corresponding taxes on the part of its annual production assigned by the preceding tax-exempt business;

(2) The succeeding business declares as uncovered by its decree, for property tax purposes, that part of its facilities which is necessary in order for the investment in the physical facilities of the preceding tax-exempt business to be maintained or to be equal to the total investment in physical facilities as of the closing of the fiscal year of such a preceding tax-exempt business, prior to the date of filing the application for tax exemption of the succeeding business, minus the depreciation thereof and minus any reduction in the investment in physical facilities that has occurred as of the date on which the provisions of this clause are exercised, as the result of an authorization to use the same under the provisions of clause (4) of subsection (a) of this Section. In cases in which the exemption period of the preceding tax-exempt business has not elapsed, the succeeding business shall enjoy the benefits provided for in this Act which would have been enjoyed by the preceding tax-exempt business, with respect to the part of its investment in said physical facilities which for purposes of this subsection, it declares to be uncovered by its decree,

if the aforementioned facilities had been used in the production of its industrial development income;

(3) The Secretary of Development determines, with the previous recommendation of the agencies that render reports on tax exemption, that the operation of the succeeding business serves the best economic and social interests of Puerto Rico, vis-à-vis the nature of the physical facilities, the number of jobs, the total sum of the payroll, the investment, the location of the project, or any other factors which in his/her judgment warrant such a determination, including the financial situation of the tax-exempt business in particular, and totally or partially relieves from compliance with the provisions of subsection (a) of this Section, being empowered to condition its operations, as convenient or necessary to serve the best interests of Puerto Rico.

**Section 17.—Special Economic Development Fund.—**

In General.—

(a) The Secretary of the Treasury shall establish a special fund, to be denominated “Special Economic Development Fund,” into which five percent (5%) of the amounts collected from the income tax paid by businesses exempted under this Act or under preceding tax incentives laws

in relation to industrial development income, as well as the amounts collected from the payment of withheld taxes concerning royalties relative to operations exempted under this Act or under preceding tax incentives laws, shall be covered during the first four (4) years of effectiveness of this Act. Starting on the fifth year of effectiveness of this Act, seven point five percent (7.5%) of the items provided for above in lieu of five percent (5%) provided for the initial four (4)-year period. Provided, further, that starting on the ninth year of the effectiveness of this Act, ten percent (10%) of the items provided for above shall be covered into the fund, in lieu of seven point five percent (7.5%) as provided above.

The monies of the Special Fund established herein shall be administered by the Executive Director and shall be used exclusively for the following purposes:

- (1) Special incentives for scientific and technical research and the development of new products and industrial processes, which may be carried out, among others, directly or in agreement with government agencies or public and private universities or with any natural or juridical person with knowledge and experience; as well as for the Industrial Incentives Program, administered by the Puerto Rico Industrial Development Company, in support of its industrial

promotion efforts, including the improvement and development of industrial properties.

(2) The development and implementation of special self-employment and microbusiness programs directed to countering the problem of persons or families who, for reason of chronic unemployment or any other considerations, are financially lagging or marginalized and whose rehabilitation requires government action beyond the traditional services of the Executive Branch, in order to integrate them into the modern mainstream of socioeconomic development.

(3) To provide special incentives for the establishment in Puerto Rico of industries with strategic importance for the Government, including the investment of venture capital funds that promote this kind of industry, with the previous authorization of the Economic Development Bank.

(4) To provide special incentives for the acquisition of tax-exempt businesses by their management.

(5) To provide special incentives for the establishment of programs that incentivize and promote investment, technology and skill-building for small and medium businesses.

(6) To provide financial support to community enterprises, as this term is defined in subsection (r) of Section 2 of this Act.

(7) To provide special incentives for the establishment and development of Strategic Projects under this Act.

(8) To provide special incentives for research and development, directed toward bioscience, information technology, biomedicine, and aeronautic engineering.

(9) Twenty percent (20%) of the monies covered into the Special Fund shall be destined to the Science, Technology and Research Trust, created by Act No. 214 of August 18, 2004, of which not less than forty percent (40%) shall be used for research projects conducted in nonprofit private higher-education institutions.

(10) To provide support to entities or programs devoted to furthering the following initiatives:

(A) The establishment of public-accessible Internet networks and other initiatives directed toward bridging the digital divide in Puerto Rico.

(B) The rendering of advisory services in the field of information systems for small and medium businesses.

(C) The establishment of business incubator centers that provide a support structure and an appropriate framework for the establishment and development of new businesses through specialized resources.

(D) The establishment of information system and communications training centers and programs for unemployed persons throughout the Island.

(E) The establishment of educational programs of all levels with an emphasis on languages, science and mathematics.

(11) To support regional initiatives, as defined in subsection (v) of Section 2 of this Act, or to other entities, for the purpose of furthering the development of businesses, research and development, construction, and business incubator operations, and other purposes set forth in this Section.

The Executive Director shall have discretion as necessary and sufficient concerning the use of the monies of the Special Fund, provided such a use leads to the achievement of the objectives set forth above. Likewise, he/she shall establish through regulations, in consultation with the Secretary of Development, the criteria to be used

for the disbursement of the monies of the Special Economic Development Fund established herein. All appropriations of monies from the Special Fund shall be approved by the Board of Directors of the Industrial Development Company.

(b) The Secretary of the Treasury may require that the returns or forms relative to income taxes, to income taxes on the payment of royalties, or to any other in connection with this Act, be filed with two payments (by check, electronic transfer, or others) segregating the part to be covered into the Special Fund as described in this Section and the part corresponding to the General Fund.

**Section 18.—Reports Required from Tax-exempt businesses and Their Stockholders or Partners.—**

(a) Any tax-exempt business that holds a decree granted under this Act shall file with the Secretary of the Treasury an income tax return, regardless of the sum of their gross or net income, separate from any other return which they are for other reasons bound to file in connection with industry operations covered under the benefits provided for in this Act, and pursuant to the Puerto Rico Internal Revenue Code. The Secretary of the Treasury may share with the Industrial Development Company the

information so received, provided the confidentiality of said information is protected.

(b) Any stockholder or partner of a tax-exempt business that holds a decree granted under this Act shall file annually with the Department of the Treasury an income tax return pursuant to the provisions of the Puerto Rico Internal Revenue Code, provided he/she is bound to do so under said Code.

(c) The tax-exempt business that holds a decree granted under this Act shall be bound to keep in Puerto Rico a separate accounting for its operations, as well as records and files as necessary, in addition to making and submitting the sworn statements and complying with the rules and regulations in effect for due compliance of the purposes of this Act and which the Secretary of the Treasury may prescribe from time to time in connection with the levying and collection of any type of taxes.

(d) Any tax-exempt business that holds a decree granted under this Act shall file annually with the Tax Exemption Office, with a copy to the Secretary of the Treasury and to the Executive Director, not later than thirty (30) days as of the date prescribed by law for filing the corresponding income tax return, including time extensions granted for such a purpose, a report authenticated by the signature of the President, managing partner, or

his/her authorized representative. Said report shall contain an account of data showing compliance with the conditions established in the decree for the taxable year immediately preceding the date the same is filed, including, without it being construed as a limitation, the following: average employment, products manufactured or services rendered, as well as any other information that may be required in the form to be adopted for this purpose or as required by Regulations. This report shall enclose the fees provided for through Regulations and these shall be paid by postal money order or cashier's or certified check for three hundred (300) dollars payable to the Secretary of the Treasury. The information furnished in this annual report shall be used for purposes of statistics and economic studies, pursuant to the provisions of this Act. Likewise, the Industrial Development Company shall conduct every two years, at the least, an audit on the compliance of the terms and conditions of the decree granted under this Act.

(e) Any tax-exempt business that holds a decree granted under this Act shall file, after duly completing the same, the reports that the Commissioner may require.

(f) The Director, after being informed by the agency concerned, may impose an administrative fine of ten thousand (10,000) dollars on any tax-exempt business that holds a decree granted under this Act which fails to

file any of the reports required by the Secretary of the Treasury, the Executive Director, the Director or the Commissioner pursuant to the provisions of subsections (a) through (e) of this Section, or which files the same after the deadline. The Tax Exemption Office may bring civil action for collecting said administrative fine before the General Court of First Instance of Puerto Rico, Superior Section, San Juan Part, which shall have exclusive jurisdiction to conduct said proceedings, or which may consider the case for the corresponding sanction pursuant to subclause (A) of clause (1) of subsection (c) of Section 12 of this Act. Filing an incomplete report shall be deemed to be a failure to file the same, if the agency concerned notifies the tax-exempt business of any omission on the report required and said tax-exempt business does not submit the missing information within fifteen (15) days as of the date of such notice, or does not reasonably justify why the same is missing.

**Section 19.—Regulations under this Act.—**

The Secretary of Development shall prepare, in consultation with the Secretary of the Treasury and the Executive Director, those regulations as necessary to render the provisions and purposes of this Act effective. The Secretary of the Treasury shall approve regulations, in consultation with the Secretary of Development and the Executive Director, on matters

concerning the granting and assignment or sale of tax credits under Sections 5 and 6 of this Act. Said regulations shall also be subject to the provisions of Act No. 170 of August 12, 1988, as amended, known as the “Uniform Administrative Procedures Act of the Commonwealth of Puerto Rico.” Except to the extent these are inapplicable or inconsistent with the provisions of this Act, the regulations submitted under Act No. 135 of December 2, 1998, shall continue to be in effect until new regulations are approved. The absence of any of the regulations contemplated by this Act shall not impede the application thereof. Any regulations required or allowed under this Act shall be submitted to the Office of the Clerk of the House of Representatives and to the Office of the Secretary of the Senate of Puerto Rico for their approval. Both Chambers shall consider such regulations within thirty (30) days as of their receipt. In the event that both Chambers fail to make a determination within the terms provided for above, the Regulations shall be deemed to be approved.

**Section 20.—Decrees Granted under Preceding Acts.—**

No new applications for exemption decrees under Act No. 135 of December 2, 1997, as amended, shall be received after the date of effectiveness of this Act. The preceding notwithstanding, the decrees granted thereunder or under similar preceding laws may be amended pursuant to

their respective provisions. The new applications for decrees filed under said Act which have not been granted before the date of effectiveness of this Act may be processed, at the option of the applicant, under the present Act.

**Section 21.—Application of the Puerto Rico Internal Revenue Code.—**

The Puerto Rico Internal Revenue Code shall apply complementarily with this Act to the extent that its provisions do not contravene the provisions of this Act.

Article 2.—Section 1232 (f)(2) of Act No. 120 of October 31, 1994, as amended, known as the Puerto Rico Internal Revenue Code, is hereby amended to read as follows:

“Section 1232.—Tax on Dividend or Profit Distribution Equivalent Amount.—

(a) ...

(f) Limitation.—

(1) ...

(2) Industrial advancement income, industrial development income, tourism development income exempt pursuant to the provisions of the ‘Puerto Rico Tourist Development Act of 1993,’ and income derived by International Banking Entities organized under the

provisions of Act No. 52 of August 11, 1989, the ‘International Banking Center Regulatory Act,’ shall not be subject to the provisions of this Section.”

Article 3.—Subclauses (S) and (T) are hereby added to Section 1022(b)(4) of the Puerto Rico Internal Revenue Code of 1994, as amended, to read as follows:

“Section 1022.—Gross Income.—

(a) ...

(b) ...

(1) ...

(4) ...

(A) ...

(B) ...

...

(S) Loans for Small and Medium Businesses.—the interest on loans of up to two hundred fifty thousand (250,000) dollars in the aggregate per tax-exempt business for small or medium businesses as said term is defined in the ‘Economic Incentives Act for the Development of Puerto Rico’ for their establishment or expansion, provided the loan meets the

requirements established in the Act known as the ‘Community Reinvestment Act of 1977,’ as amended, P. L. 95-128, 91 Stat. 1147, and those requirements that may be established by the Commissioner of Financial Institutions through regulations.

(T) Loans for Capitalization by Small and Medium Businesses.—the interest on loans of up to two hundred fifty thousand (250,000) dollars in the aggregate per tax-exempt business, granted to tax-exempt business stockholders, to be used in the initial capitalization or to meet the subsequent requirement of tax-exempt business capital for small or medium businesses, as said term is defined in Section 2(i) of this the Economic Incentives Act for the Development of Puerto Rico.

...”

Article 4.—Energy Affairs Administration.—

**Section 1.—Creation of the Energy Affairs Administration.—**

(a) The Energy Affairs Administration is hereby created, to be attached to the Department of Economic Development and Commerce of Puerto Rico.

(b) The Secretary of Economic Development and Commerce of Puerto Rico shall have the following authorities:

(1) To appoint the Executive Director of the Energy Affairs Administration, with the approval of the Governor, and make recommendations to the latter as to the remuneration to be received by said officer.

(2) To authorize increases in the capacity for generating electric power in Puerto Rico in excess of two (2) megawatts from nonrenewable sources, using the public policy on energy as a point of reference.

(3) To recommend, develop and implement the public policy on energy for Puerto Rico.

(c) A Committee is hereby created, to be composed by the Secretary of Natural Resources, the Administrator of Energy Affairs, the Natural Resources Administrator, the Executive Director of the Solid Waste Authority and the Secretary of Economic Development, or their authorized representatives, to outline a new plan for the reorganization and transfer of all powers, duties, functions and authorities of the Administration of Energy Affairs. This Committee shall submit a report ninety (90) days after the approval of this Act to both Legislative Chambers. This Reorganization shall contemplate:

(1) The transfer from the Administration of Energy Affairs to the Department of Economic Development, without being limited to, duties, functions, authorities, job positions, properties, equipment, records and documents, funds available, and surpluses from any source, contracts, obligations, exemptions and privileges ensuing from Act No. 128 of June 29, 1977, as amended. This transfer shall be effective not later than September 1, 2008.

(2) The adjustment of the operational structure of the Department of Natural and Environmental Resources, the Natural Resources Administration and the Solid Waste Authority, for the sole purpose of making the necessary changes to transfer the functions of the Administration of Energy Affairs to the Department of Economic Development.

(d) Not later than September 1, 2008, all the functions of the Administration of Energy Affairs of the Department of Natural and Environmental Resources, created under Reorganization Plan No. 1 of December 9, 1993, shall be transferred to the Energy Affairs Administration created herein, together with its funds and appropriations. Said transfer includes the following, without it being construed as a limitation:

(1) All its powers, duties, functions, authorities, job positions; properties, equipment, records and documents; funds available and surpluses from any source; contracts, obligations, exemptions and privileges ensuing from Act No. 128 of June 29, 1977, as amended.

(2) Any regulations that govern the operation of the Puerto Rico Energy Office, in force on the date the transfer authorized in this Act becomes effective. These shall continue to be in effect until they are amended or repealed by the corresponding administrative authority.

(3) The personnel of the Administration of Energy Affairs who on the date of effectiveness of this Act are holding regular jobs with permanent functions within the Career Service, shall be transferred with regular career status. Confidential employees who on that date were entitled to reinstatement, consistent with the applicable provisions of law, shall be transferred with confidential status and shall remain in their job positions with such a status until the appointing authority reinstates them into the career status. As to transitory employees who as of that date were entitled to permanency, pursuant to the provisions of Act No. 56 of August 16, 1989, as

amended, the corresponding procedures shall continue to run their course. Likewise, any collective bargaining agreement in effect shall prevail until its expiration date.

(e) In addition to the functions hereby transferred from the Administration of Energy Affairs of the Department of Natural and Environmental Resources, the Energy Affairs Administration shall have the following functions:

(1) To implement the final report, to be submitted by a Wheeling Committee, created in subsection (e) of this Section, establishing the wheeling procedure in Puerto Rico as provided for in Article 4 of this Act, as well as any other initiative that fosters the reduction in energy costs and maximizes energy efficiency.

(2) To determine, approve and establish, if no agreement exists between the parties, the rates that the tax-exempt businesses described in Section 2(d)(1)(H) of this Act shall pay to the Electric Power Authority for wheeling.

(3) To establish and approve regulations to discharge its functions.

(4) To determine, approve and establish, if no agreement exists between the parties, the rates that the Electric Power Authority

shall pay for the purchase of energy on a commercial scale to the tax-exempt businesses described in Section 2(d)(1)(H) of this Act.

(5) To impose fees on applications filed for the purchase of plant power for up to one thousand (1,000) dollars per megawatt/hour.

(f) The Wheeling Committee is hereby created, to be attached to the Energy Affairs Administration. The Committee shall be composed of seven (7) members, including the following: one (1) representative of the Department of Economic Development and Commerce of Puerto Rico, one (1) representative of the Department of Consumer Affairs, one (1) representative of the Department of the Treasury, one (1) representative of the Electric Power Authority, one (1) representative of the Energy Affairs Administration, and two (2) members of the private sector, to be appointed by the Governor. The Chairperson of the Committee herein created shall be appointed by the Governor of Puerto Rico from among the public sector members.

The Executive Director of the Energy Affairs Administration may delegate onto the Committee, through regulations, any of the functions provided for in subsection (e) of this Section.

**Section 2.—Wheeling.—**

(a) It shall be the public policy of the Government of Puerto Rico to establish aggressive strategies to achieve efficiency in the generation, transmission and distribution of electric power, in order to ensure its availability and supply at a competitive cost.

(b) The Electric Power Authority is hereby directed, within a nondeferrable term which shall expire on January 2, 2010, to identify and implement a system which enables tax-exempt businesses described in Section 2(d)(1)(H) of the “Economic Incentives Act for the Development of Puerto Rico” or similar provisions in preceding incentives laws, to contract the sale of electric power from other entities through the wheeling service.

(c) When establishing the wheeling service provided for in this Article, the Electric Power Authority shall consider the following factors, among others:

(1) The state of the transmission and distribution infrastructure, the loss of energy relative with this phase of the operation, and its cost. The Electric Power Authority shall prepare a plan (or revise the plan it has already prepared, if any) on or before May 1, 2009, in order to strengthen said infrastructure and minimize such losses. Consideration shall be given to the best practices of other

jurisdictions that have implemented this procedure and the convenience of applying the same in Puerto Rico.

(2) The criteria that shall be considered when determining the fees to be charged for the transmission and distribution service, so that the cost may be kept at a reasonable level in order to enable this procedure to be feasible, to promote the generation of energy and the competitiveness of Puerto Rico in the cost and availability of this service, while safeguarding the best interests of the Puerto Rican People, including the distance between the producer and the user of energy.

(3) The reasonable conditions which shall be established in order to guarantee the protection and the adequate and efficient maintenance of the transmission and distribution infrastructure.

(4) In the event that the Electric Power Authority is unable to reach an agreement with an energy producer in terms of the costs, terms or other conditions relative to the wheeling service within a term of sixty (60) calendar days as of the date of filing the application, the Executive Director of the Energy Affairs Administration shall appoint an arbitrator to decide on the controversy between the parties. The arbitrator in the procedure provided for herein shall issue his/her

determination abiding by the law within sixty (60) days as of the date on which the arbitration procedure began. Said term may be extended for an additional term of up to thirty (30) days by agreement of the parties. The expenses relative to the arbitration procedure provided for herein shall be equally defrayed by the parties.

**Section 3.—Purchase of Energy.—**

(a) Tax-exempt businesses that hold a decree granted under this Act, which establish an electric transmission and distribution system and an electricity feedback system with the Electric Power Authority through the installation of electric solar equipment, windmills, or any other source of renewable energy capable of producing electric power, pursuant to Act No. 114 of 2007, as to the net metering program and the applicable federal regulations, shall elucidate any controversy that may arise pursuant to that which is established herein.

(b) Should a controversy arise between the producer and the buyer of energy, as to the costs, terms or other conditions relative to the purchase of energy by the Electric Power Authority from producers of energy on a commercial scale which are tax-exempt businesses, within a term of sixty (60) calendar days as of the date of filing the application, the Executive Director of the Energy Affairs Administration shall appoint an arbitrator to

decide on the controversy between the parties. The arbitrator in the procedure provided for herein shall issue his/her determination within sixty (60) days as of the date on which the arbitration procedure began. Said term may be extended for an additional term of up to thirty (30) days by agreement of the parties. The expenses relative to the arbitration procedure provided for herein shall be equally defrayed by the parties.

Article 5.—Severability and Rules for Construction When Other Laws Contravene.—

Should any Section, subsection, clause, subclause, paragraph, phrase or part of this Act be found to be unconstitutional by a court with competent jurisdiction, the ruling pronounced to that effect shall not affect, impair or invalidate the remainder of the Act, being the effects thereof limited to the Section, subsection, clause, subclause, paragraph, phrase or part of this Act which was thus found to be unconstitutional.

Article 6.—Effectiveness Clause.—

This Act shall take effect July 1, 2008.

## CERTIFICATION

I hereby certify to the Secretary of State that the following Act No. 73 (H.B. 4350) of the 7<sup>th</sup> Session of the 15<sup>th</sup> Legislature of Puerto Rico:

**AN ACT** to establish the “Economic Incentives Act for the Development of Puerto Rico,” in order to provide the adequate environment and opportunities to continue developing a local industry; to offer an attractive tax proposal to attract direct foreign investment and to promote economic development and social betterment in Puerto Rico; to add subclause (S) and subclause (T) to Section 1022 (b)(4); to amend Section 1232(f)(2) of the Puerto Rico Internal Revenue Code of 1994; and to create the Energy Affairs Administration,

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

In San Juan, Puerto Rico, today 18<sup>th</sup> of June of 2008.

Francisco J. Domenech  
Director