

(S. B. 2313)

**(No. 20-2012)**

(Approved January 17, 2012)

## **AN ACT**

To establish the “Act to Promote the Export of Services,” in order to provide the adequate environment and opportunities to develop Puerto Rico as an international service center, encourage local professionals to stay and return, and attract foreign capital, thus promoting the economic development and social betterment of Puerto Rico; to add a new Section 61.242 to Act No. 77 of June 19, 1957, as amended, known as the “Insurance Code of Puerto Rico”; and for other purposes.

### **STATEMENT OF MOTIVES**

The export of services is an economic activity that has been identified as key for the economic development and growth of Puerto Rico. Restoring economic growth is one of the main pillars of the Strategic Model for a New Economy (MENE, Spanish acronym), designed by the current administration, which has identified the export of services as key for the sustainable economic growth of the Island. The plan drafted in the MENE seeks to offer incentives for the development of local companies, or companies that wish to establish themselves in the Island, so they can expand their capacity to provide services and thus incorporate Puerto Rico in the best of conditions into the global economy.

Puerto Rico’s best asset is its human resources, that is, our people. Puerto Rico has high quality professionals, technical personnel, advisors, consultants, and service providers whose talent create the perfect framework for providing services from Puerto Rico to other jurisdictions with the highest probability of success. Other jurisdictions, such as Singapore and India, have based their economic development model in sophisticating services for export. Such strategy has

afforded said jurisdictions an important increase in their gross domestic product per capita and in the average salary in the service export sector. To achieve such economic growth, Puerto Rico must create the conditions necessary to increase the percentage that the service sector represents in the gross domestic product, which is approximately 45%, compared to the average level of 70% of the more developed economies.

The need to stimulate the export of services has been recognized in various acts related to industrial incentives, and most recently in Act 73-2008, known as the “Economic Incentives Act for the Development of Puerto Rico.” However, the main focus in terms of the public policy of Act 73-2008, and of previous acts regarding industrial tax incentives, is the promotion of activities related to the manufacturing industry and not necessarily to the export of services. For example, in Act 135-1997, there are currently 178 decrees related to services out of a total of 1,083 decrees, while in Act 73, a total of 44 decrees for services have been granted out of a total of 181 decrees. This means that only 16% and 24% of all the decrees approved under such acts pertain to the service export industry. The remaining 84% and 76%, respectively, correspond to decrees pertaining to the manufacturing industry and to services related to manufacturing.

Although they are much needed legislative initiatives, these acts were designed mainly for another type of industry. Therefore, it is necessary to develop legislation that focuses exclusively and specifically in the export of services within a global economy. The public policy of Puerto Rico to promote the export of services should be focused on providing the tax incentives needed to increase the growth of this service sector of the economy. At the same time, such incentives must favor both a sustainable economic development and the creation of jobs in the Island.

We deem that Puerto Rico is an ideal jurisdiction that can become a great and sophisticated hub for the export of services. The bicultural and bilingual population of the Island and its strategic location serve as a bridge between Latin America and the continental United States. Moreover, 33% of the population has pursued higher education.

To achieve the objectives set forth herein, this Legislative Assembly deems it necessary to promulgate the present “Act to Promote the Export of Services.”

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

**Section 1.—Short Title.—**

This Act shall be known as the “Act to Promote the Export of Services.”

**Section 2.—Statement of Public Policy.—**

It shall be the public policy of the Government of Puerto Rico to foster a service industry geared toward the export of all types of services. Pursuant to said policy, a reduced income tax rate and certain property tax exemptions are hereby established to motivate local service providers to expand their businesses by offering services to clients outside Puerto Rico and to encourage foreign service providers to establish themselves in the Island, thus creating new job opportunities for the local population.

**Section 3.—Definitions.—**

For the purposes of this Act, the following terms, phrases, and words shall have the meaning and scope stated below, except when it is otherwise clearly indicated, and terms used in the singular form shall also include the plural form, and vice versa:

(a) Shares. – Shall mean shares in a corporation, or proprietary interests in a partnership, limited liability company, or other entity.

(b) Decree. – Shall mean a decree approved by the Secretary of the Department of Economic Development and Commerce, pursuant to the provisions

of this Act, and which is in effect in accordance with the rules and conditions that the Secretary may establish.

(c) Entity. – Shall mean any corporation, limited liability company, partnership, or other juridical person.

(d) Affiliated entities. – Shall mean two or more entities of which fifty percent (50%) of the shares or more are directly or indirectly owned by the same natural or juridical person, estate, or trust.

(e) Income derived from the export of services. – Shall mean the net income derived from rendering an eligible service, or from promoter services for an eligible business, calculated pursuant to the Internal Revenue Code for a New Puerto Rico of 2011. In the case of promoter services, the net income derived from promoter services rendered during the twelve (12) month period ending the day before any of the following options occurs first, shall be the only income considered Income from Export of Services:

(i) The beginning of the construction of facilities in Puerto Rico to be used by a new business;

(ii) The beginning of such new business' activities, or

(iii) The acquisition or execution of a contract to acquire or lease facilities in Puerto Rico by such new business.

(f) Eligible business. – Any entity with an office or *bona fide* establishment located in Puerto Rico which carries out, or may carry out, eligible services that are, in turn, considered services for export or promoter services shall be considered an eligible business.

An eligible business that renders eligible services or promoter services may also engage in any other activity, industry, or business insofar as it keeps, at all times, a system of books, records, documentation, accounting, and billing that clearly shows, to the satisfaction of the Secretary of the Treasury, all income, costs,

and expenses incurred while rendering eligible services or promoter services. The activity that consists of rendering services as an employee does not qualify as an eligible business.

An eligible business that has been operating in Puerto Rico before submitting its decree application shall be subject to the limitations regarding base period income established in subsection (c) of Section 4 of this Act.

The Secretary shall establish, through regulations, the circumstances and conditions under which any applicant who receives or has received tax benefits or incentives under Act 73-2008, Act 135-1997, as amended, Act No. 8 of January 24, 1987, as amended, any previous or subsequent tax incentives law, or any other special law of the Government of Puerto Rico that provides benefits or incentives similar to those provided herein, as determined by the Secretary with the advice of the Secretary of the Treasury, may be considered as an eligible business under this Act. Under no circumstance may an applicant be considered an eligible business when claiming tax benefits or incentives in connection with the services covered under this Act.

(g) New business. – An entity that complies with the following parameters:

- (i) Has never carried out a trade or business in Puerto Rico;
- (ii) The trade or business to be carried out in Puerto Rico was not acquired from a business that carried out a trade, business, or activity for profit in Puerto Rico;
- (iii) It is not an affiliate of an entity that carries out or has carried out a trade, business, or activity for profit in Puerto Rico;
- (iv) For a period of two (2) years, counting from the beginning of operations covered under the decree, not more than five percent (5%) of its shares have been owned directly or indirectly by one or more residents of Puerto Rico.

(v) Begins operations in Puerto Rico as a result of promoter services according to the criteria to be determined by the Secretary with the advice of the Secretary of the Treasury through regulations, circular letter, or any other document.

(vi) Shall not engage in the retail sale of items or products; and

(vii) Carries out an activity, trade, or business designated by the Secretary and the Secretary of the Treasury through regulations, circular letter, or any other document.

(h) Connection to Puerto Rico. – Services will be deemed as having a connection to Puerto Rico when they are somehow related to Puerto Rico, including services associated with the following:

(i) Business or profitable activities which have been or will be carried out in Puerto Rico;

(ii) The sale of any property for use, consumption, or disposal in Puerto Rico;

(iii) Advise regarding the laws and regulations of Puerto Rico, procedures and administrative orders of the Government of Puerto Rico, its agencies, public corporations, instrumentalities, and/or municipalities, as well as the precedents of the Courts of Puerto Rico;

(iv) Lobbying with respect to the laws of Puerto Rico, regulations, and other administrative orders. For these purposes, lobbying shall mean any direct or indirect contact with elected officials, employees, or agents of the Government of Puerto Rico, its agencies, instrumentalities, public corporations, or municipalities with the intent of influencing any action or determination of the Government of Puerto Rico, its agencies, instrumentalities, public corporations, or municipalities; or

(v) Any activity, situation, or circumstance that the Secretary, with the advice of the Secretary of the Treasury, designates through regulations or other orders, administrative determination, or circular letter as having a connection to Puerto Rico.

(i) Promoter. – Shall mean an entity that is engaged in rendering promoter services.

(j) Resident of Puerto Rico. – Shall mean an individual who is a resident of Puerto Rico according to Section 1010.01(a)(30) of the Internal Revenue Code for the New Puerto Rico, as amended.

(k) Eligible services. – Eligible services include the following services which are, in turn, considered services for export:

(i) Research and development;

(ii) Advertising and public relations;

(iii) Economic, environmental, technological, scientific, managerial, marketing, human resources, computer, and auditing consulting services;

(iv) Advise on issues related to any trade or business;

(v) Commercial arts and graphic services;

(vi) Drafting of construction plans and engineering, architectural, and project management services;

(vii) Professional services such as legal, tax, and accounting services;

(viii) Centralized management services that include, but are not limited to strategic location, planning, and budgetary services carried out at the headquarters or similar regional offices of an entity engaged in rendering such services;

(ix) Electronic data processing centers;

(x) Computer program development;

(xi) Voice and data telecommunications between persons located outside Puerto Rico;

(xii) Call centers;

(xiii) Shared service centers that include, but are not limited to accounting, finance, tax, auditing, marketing, engineering, quality control, human resources, communications, electronic data processing, and other centralized management services;

(xiv) Storage and distribution centers of companies engaged in the business of transportation of items and products that belong to third parties, known as “hubs”;

(xv) Educational and training services;

(xvi) Hospital and laboratory services;

(xvii) Investment banking and other financial services, including, but not limited to: (a) asset management services; (b) alternative investment management; (c) management of activities related to private capital management; (d) management of hedge funds and high risk funds; (e) management of pools of capital; (f) management of trusts that serve to turn different types of assets into stocks; and (g) management services for escrow accounts, insofar as these services are provided to foreigners.

(xviii) Any other service that the Secretary, with the advice of the Secretary of the Treasury, determines that must be treated as an eligible service for understanding that it is in the best interest and for the social and economic wellbeing of Puerto Rico, taking into account the demand that there may be for such services outside Puerto Rico, the total number of jobs to be created, its payroll, the investment that the proponent would make in Puerto Rico, or any other factor that warrants special consideration.

(j) Promoter services. – Promoter services are those eligible services related to establishing a new business in Puerto Rico and which are designated by the Secretary, with the advice of the Secretary of the Treasury, as services that may be treated as services for exportation regardless of whether these services have a connection to Puerto Rico.

(k) Services for export. – An eligible service may be deemed a service for export when such service is rendered for the benefit of:

- (i) an individual who is not a resident of Puerto Rico; or
  - (ii) a trust whose beneficiaries, trustors, and trustees are not residents in Puerto Rico; or
  - (iii) an estate whose testator, heir, legatee, or executor is not, or in the case of the testator, was a resident of Puerto Rico; or
  - (iv) a foreign entity;
- insofar as the services do not have a connection to Puerto Rico. The Secretary, with the advice of the Secretary of the Treasury, may establish through regulations any other criterion, requirement, or condition for a service to be considered a service for export, taking into consideration the nature of the services rendered, the direct or indirect benefits of such services, and any other pertinent factor to achieve the objectives of this Act.

(l) Other terms. – For the purposes of this Act, “Governor” means the Governor of Puerto Rico; “Secretary” means the Secretary of the Department of Economic Development and Commerce; “Executive Director” means the Executive Director of the Economic Development Company; “Director” means the Director of the Industrial Tax Exemption Office; “Exemption Office” means the Industrial Tax Exemption Office; “Secretary of the Treasury” means the Secretary of the Department of the Treasury; “Code” means the Internal Revenue Code for a New Puerto Rico of 2011, Act No. 1-2011, as amended, or any other subsequent Act that supersedes it.

**Section 4.—Fixed Income Tax Rate.—**

(a) General Rule. – Eligible businesses that hold a decree under this Act shall be subject to a fixed income tax rate of four percent (4%) on income derived from the Export of Services during the term of such decree in lieu of any income tax provided in the Code or in any other law, as provided in this Section, counting from the date of the beginning of operations, as provided under Section 8 of this Act. However, the fixed income tax rate for a taxable year shall be reduced by one percent (1%) when, with the previous approval of the Secretary and the Secretary of the Treasury, the following conditions are met:

(i) More than ninety percent (90%) of all the gross income of the entity that carries out the eligible business and its affiliate entities, is derived from the rendering of services for export, and

(ii) The export services rendered are considered Strategic Services.

The determination of whether certain services constitute strategic services shall be made on the basis of the characteristics, attributes, or special or striking qualities of the service in question that benefit the socioeconomic development of Puerto Rico. In order to determine whether certain services

constitute services of strategic importance, the following factors shall be considered:

- (A) the nature of the services;
- (B) The existence or lack of an industry to render such services in Puerto Rico;
- (C) the importance of the service in the international market;
- (D) the employment of residents of Puerto Rico;
- (E) the nature of the jobs to be created;
- (F) the investment in technology;
- (G) the development of high-level scientific, technological, and managerial skills;
- (H) any other factor that warrants recognizing the service in question as a service of strategic importance, considering that rendering such services in or from Puerto Rico shall result in the Island's best economic and social interest.

(b) Payment of Tax. –

- (i) Except when otherwise provided, the tax imposed in this Section shall be paid in the form and manner provided by the Code for income tax payments, including the requirement to pay the estimated tax under the Code.

(ii) Special Rules for Promoters. –

(A) Except as provided in subsection (B) of this Section, the income, expenses, deductions, and concessions of promoter services shall be reported by the eligible business in the taxable year in which said items are recognized under the Code.

(B) The Secretary of the Treasury may, with the advice of the Secretary, allow through regulations a method to recognize the items described in the preceding subparagraph when the conditions set forth in Section 3(d) of this Act are met after the taxable year in which the income would be otherwise recognized under the Code.

(c) Limitation of Benefits. –

(i) In case that on the filing date of the application for a decree, pursuant to the provisions of this Act, an eligible business was engaged in the activity for which the benefits of this Act are granted, or was engaged in such activity during the three (3) taxable years preceding the date on which the application was filed, called the “Base Period”, the eligible business may enjoy the fixed income tax rate provided in Section 4 only with regards to the increase in the average gross income of the Base Period which shall be denominated “Base Period Income” for the purposes of this paragraph.

(ii) In order to determine Base Period Income, the net income of any business that preceded the applicant business shall be taken into account. For this purpose, “any business that preceded” shall include any operation, activity, trade, or business carried out by another business and which was transferred or otherwise acquired by the applicant business, without taking into consideration if it was operating under another name or owner.

(iii) The income attributable to Base Period Income shall be subject to the income tax rates provided in the Code, except in the case of entities with tax

exemption decrees under Act No. 73-2008 and Act No. 135-1997, in which case the fixed rate that appears in the decree shall apply, and the distribution of the utilities and benefits stemming from such income shall not qualify for the treatment provided in Section 6 of this Act.

**Section 5.—Taxes on Personal or Real Property.—**

(a) In General. –

(i) Except as provided in paragraph (ii) of this subsection, the personal or real property of an eligible business under the provisions of Section 3, subsection (k), paragraphs (viii), (xii), and (xiii) of this Act, used in the operation of the activity covered by a decree, shall enjoy ninety percent (90%) of the exemption on municipal and state taxes during the exemption period set forth in Section 8 of this Act.

(ii) The personal and real property of an eligible business described in Section 3, subsection (k), paragraphs (viii), (xii), and (xiii) of this Act shall be fully exempt from personal and real property taxes during the first five (5) years counting from the date it began operations.

(b) Other Rules. – Taxes on personal and real property shall be appraised, levied, notified, and administered pursuant to Act No. 83-1991, as amended, known as the “Municipal Property Tax Act.”

**Section 6.—Distributions.—**

(a) General Rule. – Shareholders, partners, or members of an eligible business that holds a decree granted under this Act shall not be subject to income tax on distributions of dividends or benefits from utilities and benefits arising from Income from the Export of Services of said eligible business.

Subsequent distributions of utilities and benefits arising from Income from the Export of Services carried out by any entity shall also be exempt from all taxes.

(b) Coordination with the Code. – Distributions described in subsection (a) of this Section shall be excluded from:

(i) the net income subject to the alternate basic tax of an individual for the purposes of Section 1021.02(a)(2) of the Code;

(ii) the alternative minimum net income of a corporation for the purposes of Section 1022.03 (c)(1) of the Code;

(iii) the adjusted net income according to the books of a corporation for the purposes of Section 1022.04(b)(1) of the Code.

(c) Imposition of Exempt Distributions. – Distributions of dividends or benefits made by an eligible business that holds a decree granted under this Act, even after said decree has expired, shall be deemed made from Income derived from the Export of Services if, at the time of the distribution, it does not exceed the undistributed balance of utilities and benefits accrued and arising from Income derived from the Export of Services, unless said eligible business, at the time of the statement, chooses to distribute, totally or partially, the dividend or benefit of other utilities or benefits. The amount, year of accrual, and nature of the distribution made from the utilities and benefits arising from Income from the Export of Services shall be that which is designated by said business, eligible through a notice sent, together with the payment, to shareholders, members, or partners and to the Secretary of the Treasury, in an information statement, not later than February 28 of the year following the distribution.

In the case of corporations, limited liability companies, or partnerships that, on the date of the beginning of operations as eligible businesses, have utilities or benefits accrued, the distribution of dividends or benefits made as of that date shall be deemed to have been made from the undistributed balance of such utilities or benefits, but once such balance is exhausted by such distributions, the provisions of the first paragraph of this subsection shall apply.

**Section 7.—Deductions.—**

(a) Deduction and Net Operating Loss Carryover. –

(i) Deduction for Ongoing Loss Incurred in Activities not Covered by a Decree. – If an eligible business that holds a decree granted under this Act incurs in net operational losses not attributable to the operation covered by the decree, the same shall not be used against income from operations covered by a decree under this Act and shall be governed by the provisions of the Code.

(ii) Deduction for Ongoing Loss Incurred in the Operation of the Eligible Business. – If an eligible business that holds a decree granted under this Act incurs in net operational losses covered by the decree, the same shall only be used against other income from operations covered by a decree under this Act.

(iii) Deduction for Loss Carried Over from Previous Years. – A deduction for loss incurred in previous years shall be granted as provided below:

(A) The excess over losses deductible under paragraph (ii) of this Section shall be carried over against Income from the Export of Services of subsequent taxable years. The losses shall be carried over in the order in which they were incurred.

(B) Once the term of the decree has expired for the purposes of income tax, net losses incurred in the operation covered by the decree, as well as any excess of the deduction allowed under paragraph (ii) of this Section that the eligible business is carrying over as of the date of expiration of said term, may be

deducted against any taxable income in Puerto Rico, subject to the limitations provided in Subtitle A of the Code. Said losses shall be deemed as incurred in the last taxable year in which the eligible business that holds a decree under this Act enjoyed the rate established in Section 4 of this Act, in accordance with the terms of the decree.

(C) The amount of net operational loss to be carried over shall be calculated pursuant to the provisions of Section 1033.14 of the Code.

**Section 8.—Tax Exemption Periods.—**

(a) Exemption. – An eligible business that holds a decree under this Act shall enjoy the benefits of this Act for a period of twenty (20) years.

(b) Fixing of the Dates of the Beginning of Operations and of Exemption Periods.—

(i) For purposes of Section 4 of this Act, the date of the beginning of operations shall be the date in which the eligible business begins conducting the activities covered by the decree, but it shall never be before the date in which an application to avail itself of the benefits of this Act is duly filed.

(ii) For purposes of Section 5 of this Act, the date of the beginning of operations shall be January 1 of the year in which the eligible business begins conducting the activities covered by the decree, but it shall never be before January 1 of the year in which an application to avail itself of the benefits of this Act is duly filed.

(iii) In the case of eligible businesses that hold a decree granted under this Act and which were in operation before applying to avail itself of the benefits of this Act, the date of the beginning of operations related to the activities covered by the decree shall be the date in which an application is filed with the Exemption Office.

(c) Extension of the Decree. – Any eligible business that throughout all its exemption period has met the requirements related to employment, income, investment, or other factors or conditions set forth in the decree, and which proves to the Secretary that the extension of its decree shall be in the best economic and social interest of the People of Puerto Rico, may request to the Secretary an extension of its decree for another ten (10) years, for a total of thirty (30) years. During such extension, the eligible business shall enjoy a fixed income tax rate of four percent (4%).

(i) An application for extension shall be filed with the Secretary not more than twenty four (24) months nor less than six (6) months before the expiration of the decree, and shall include the information required by the Secretary for such purposes through regulations, circular letter, or administrative determination.

(ii) Any eligible business described in Section 5(a) of this Act shall, during the term of the extension(s), enjoy a fifty percent (50%) exemption on the corresponding taxes on personal and real property used in the activities covered by the decree.

## **Section 9.—Procedures.—**

### **(a) Regular Procedure. —**

#### **(i) Applications for Decree. —**

Any person who has established or plans to establish an eligible business in Puerto Rico may request the benefits of this Act to the Secretary by filing the appropriate duly sworn application at the Exemption Office.

At the time of filing the decree application, the Director shall collect the processing fees, which shall be paid with a certified check, money order, or bank check payable to the order of the Secretary of the Treasury. Such fees shall be provided through regulations.

Rights in effect under Act No. 73-2008, as amended, shall continue to be in effect until the first regulation promulgated hereunder is approved.

The Secretary may establish special procedures for decrees covering promoter services through regulations, circular letters, or any administrative pronouncement.

#### **(ii) Interagency Consideration of Applications. —**

(A) Once the Exemption Office receives any application under this Act, the Director shall send a copy of the same, within a period of five (5) business days counted from the filing date of such application, to the Secretary, the Secretary of the Treasury, and the Executive Director. Within twenty (20) days counting from the date in which the application was received, the latter shall file an eligibility report on the activity to be carried out, facts related to the application, and his/her recommendations regarding the granting of such decree, including its terms and conditions. When evaluating the application, the Secretary of the Treasury shall verify the compliance of the shareholders, members, or partners of the applicant business with their tax responsibilities under the Code and the

Internal Revenue Code of 1994, as amended. This verification shall not be necessary in the case of shareholders who are not residents of Puerto Rico or public corporations. Non-compliance with said tax responsibility shall be a basis for the Secretary of the Treasury to not endorse the requesting business' exemption application.

(B) After the Executive Director submits his/her eligibility report and recommendation, the Director shall, within five (5) business days of receiving the necessary documentation to process the case, send copy of the decree project to the Executive Director and the Secretary of the Treasury and to the Municipal Revenue Collection Center if there is no unfavorable recommendation or opposition to the decree project, for its evaluation and recommendation in case that such decree project includes the property tax exemption described in Section 5 of this Act. Any unfavorable recommendation to the decree project shall include the reasons therefor.

The agencies consulted by the Director shall have twenty (20) days to submit their report or recommendation regarding the decree project referred thereto. In case the agency issues a favorable recommendation, or if the Exemption Office does not receive a recommendation in the aforementioned twenty (20)-day term, the decree will be deemed to have received a favorable recommendation, and the Secretary may take the corresponding action with regards to such application.

In case that any agency has an objection to the decree project referred thereto, the Exemption Office shall proceed to consider said objection, as it deems necessary, and shall notify the parties and the corresponding agencies of the administrative action or decree project review it deems pertinent. Once the controversy brought forward is resolved, the Director shall make the

determination he/she deems pertinent and submit the case to the Secretary for his/her final consideration.

(C) In the case of amendments to decrees approved under this Act, the term for the agencies concerned to submit a report or opinion to the Director shall be of fifteen (15) days.

(D) Once the reports are received or the terms to submit such reports have expired, the Director shall submit the decree project and his/her recommendation for the Secretary's consideration within the following five (5) business days.

(E) The Director may rest on the recommendations submitted by those agencies that submit reports or opinions, and may request them to supplement said reports or opinions.

(F) The Secretary shall issue a final determination in writing.

(G) In order to facilitate the administration of this Act, the Secretary may delegate to the Director the duties that, at his/her discretion, he/she deems convenient except for the duty of approving or rejecting decrees.

(iii) Additional Provisions. –

(A) The Exemption Office may require applicants for decree to submit the sworn statements needed to establish the facts stated, required, or pertinent, in order to determine whether such applicant's service operations, or proposed service operations, qualify under the provisions of this Act.

(B) The Director may hold as many public or administrative hearings as deemed necessary to comply with the duties and obligations imposed by this Act. Furthermore, he/she may require applicants to submit the evidence that may justify the requested tax exemption.

The Director or any Special Examiner from the Exemption Office designated by the Director, with the Secretary's approval, may

receive the evidence submitted regarding any decree application, and shall have the authority to summon witnesses and take their statements with regards to the alleged facts, or in any other way related to the requested decree, to take oath of any person that testifies before him/her, and to submit a report to the Secretary on the evidence presented together with his/her recommendations regarding the case.

(C) Any person who makes, or attempts to make, by him/herself or on behalf of another person, a false and fraudulent representation in connection with any application for or granting of a decree, or any violation of the provisions related to preceding businesses, shall be deemed guilty of a third-degree felony and, upon conviction, shall be punished according to the penalty provided for this type of crime in the Penal Code of Puerto Rico, as amended.

It is further provided that, in these cases, the decree shall be revoked retroactively and the concessionaire and shareholders shall be responsible for all taxes that would apply without taking this Act into consideration.

(D) The fees, charges, and penalties provided in paragraph (i) of subsection (a) of this Section shall be covered into a Special Account created to such effects at the Department of the Treasury, with the purpose of defraying the regular operating costs of the Exemption Office.

(E) The Exemption Office shall establish the systems needed to facilitate the filing and electronic submittal of decree applications and related documents, so as to expedite interagency consideration of decree applications and processes in general.

(b) Rejection of Applications. –

(i) Rejection if it is not for the benefit of Puerto Rico. –

(A) The Secretary may reject any application for decree whenever he/she determines that granting a decree would not be in the best economic and social interest of Puerto Rico, after considering any factor that, in his/her judgment warrants such determination, as well as the recommendations of the agencies that submit reports related to tax exemptions.

(B) The petitioner, after being notified of the rejection, may request reconsideration to the Secretary within sixty (60) days after receiving the notice, alleging the facts and arguments regarding his/her application deemed pertinent, including the offer of any consideration to the benefit of Puerto Rico that would make his/her request for reconsideration warranted.

(C) In case that the application is reconsidered, the Secretary may accept any consideration presented on the benefit of Puerto Rico and may require and provide any other term or condition needed to ensure that the granting thereof shall be in the best interest of Puerto Rico and the economic development purposes established in this Act.

(ii) Rejection Due to Conflict with Public Interest. –

The Secretary may reject any decree application if he/she determines that, based on the fact brought to his/her consideration and after the applicant/requestor has had the opportunity to offer a complete presentation of the issues in controversy, the application is in conflict with Puerto Rico's public interest because: (a) the applicant business has not been organized as a permanent *bona fide* business; (b) in view of the moral or financial reputation of the persons who constitute it or the plans and methods to obtain financing for the services to be

rendered, the nature or proposed use of such services, or any other factor that could indicate that there is a reasonable possibility that the granting of a decree would be prejudicial to the economic and social interests of Puerto Rico.

(c) Transfer of Eligible Business. –

(i) General Rule. – The transfer of a decree, or of the shares or any other property interest in an eligible business that holds a decree granted under this Act, requires the prior consent of the Secretary. If the same is carried out without the prior consent of the latter, the decree shall be rendered null as of the date in which the transfer occurred, except in those cases listed in paragraph (ii) of this subsection. However, the Secretary may retroactively approve any transfer carried out without his/her prior consent when, in his/her judgment, the circumstances of the case so warrants, taking into consideration the best interests of Puerto Rico and the economic development purposes of this Act.

(ii) Exceptions. – The following transfers shall be authorized without the need for prior consent:

a. Transfer of property to a decedent's estate or transfer by devise or inheritance;

b. Transfer of stocks or any partner's shares, when said transfer does not directly or indirectly result in a change of ownership or control of an eligible business that holds a decree granted under this Act.

c. Transfer of shares from a corporation that owns or operates an eligible business that holds a decree granted under this Act, when such transfer occurs after the Secretary has determined that any transfer of shares from a specific corporation shall be allowed without his prior consent.

d. Pledge, mortgage, or other guaranty with the purpose of settling a *bona fide* debt. Any transfer in control, title, or interest by virtue of said contract shall be subject to the provisions of subsection (a) of this Section.

e. Transfer by statutory operation, court order, or a bankruptcy judge to a receiver or trustee. Any subsequent transfer to a third-party that is not the previous debtor or has filed for bankruptcy shall be subject to the provisions of subsection (a) of this Section.

f. Transfer of all the assets of an eligible business that holds a decree granted under this Act to a corporation, limited liability company, or partnership that is an affiliated business. For the purposes of this subparagraph, “affiliated businesses” are those businesses whose shareholders, members, and partners own in common eighty percent (80%) or more of the vested Stocks of said eligible business and affiliated business.

(ii) Notice. – An eligible business that holds a decree granted under this Act shall notify any transfer included in the exceptions of the preceding paragraph (i) to the Secretary, Executive Director, Director, and Secretary of the Treasury.

(d) Permissible and Mandatory Revocation Procedures. –

(i) Permissible Revocation. –

(a) When the concessionaire fails to comply with any obligation imposed by this Act or the regulations promulgated thereunder, or by the terms of the decree; or

(b) When the concessionaire fails to comply with his/her tax responsibility under the Code and other tax laws of Puerto Rico.

(ii) Mandatory Revocation. – The Secretary shall revoke any decree granted under this Act when the same has been acquired through fraud and misrepresentation regarding the nature of the eligible business, the nature of the service, or any other facts or circumstances that justified, in whole or in part, the granting of the decree.

In the case of this revocation, all the net income calculated and previously reported as Income from the Export of Services, whether distributed or not, as well as all distributions thereof, shall be subject to the tax imposed by the provisions of the Code. Moreover, the taxpayer shall be deemed to have filed a false or fraudulent return with the intent of evading tax payment and, consequently, shall be subject to the penal provisions of the Code. The tax owed in such cases, as well as unpaid personal and real property taxes subject to the provisions of this Act shall become due and payable as of the date in which they would have been due and payable, if not for the decree, and shall be charged and collected by the Secretary of the Treasury, in accordance with the provisions of the Code and, as applicable, by the Municipal Revenue Collection Center, in accordance with the Property Tax Act.

(e) Procedure. – In case of revocation of a decree granted under this Act, the concessionaire shall have the opportunity to appear and be heard before the Special Examiner of the Exemption Office designated for such purposes, who shall report his/her conclusions and recommendations to the Secretary, with the prior recommendation of the agencies that submit reports on the eligibility of decrees.

#### **Section 10.—Nature of the Decrees.—**

(a) In General. – Decrees granted under this Act shall be deemed as contracts between the eligible business, its shareholders, partners, or owners and the Government of Puerto Rico, and said contract shall be the law binding for both parties. Such contract shall be liberally interpreted, in harmony with the purpose

of this Act to promote the socioeconomic development of Puerto Rico. The Secretary shall have discretion to include, in representation of the Government of Puerto Rico, those terms and conditions that are consistent with the purposes of this Act and that promote the socioeconomic development of Puerto Rico, taking into consideration the nature of the requested petition or action and the related facts and circumstances of each particular case that may be applicable.

(b) Obligation to comply with that stated in the Application. – Any eligible business that holds a decree granted under this Act shall substantially carry out the operations stated in the application, except when the same have been altered through amendments that the Secretary has authorized, at the petitioner's request, pursuant to the provisions of this Act.

(c) Administrative Decisions. – Purpose

(i) All decisions and determinations of the Secretary under this Act regarding the granting of a decree and the content thereof shall be final, and no judicial or administrative review or any recourse shall apply, unless specifically provided otherwise. Once a decree is granted under this Act, no agency, public instrumentality, political subdivision, public corporation, or municipality of the Government of Puerto Rico, except for the Secretary and the Governor, may challenge the legality of such decree or any of its provisions.

(ii) Any concessionaire who is adversely affected or aggrieved by any action taken by the Secretary to revoke or cancel an exemption decree according to paragraph (ii) of subsection (d) of Section 9 of this Act shall be entitled to a judicial review of the same by filing a petition for review before the Court of Appeals of Puerto Rico within thirty (30) days after the final decision or adjudication of the Secretary.

(iii) Any decision or ruling of the Court of Appeals of Puerto Rico shall be subject to review by the Supreme Court of Puerto Rico through *certiorari* requested by any of the parties as provided by law.

**Section 11.—Periodic Reports to the Governor and the Legislative Assembly.—**

(a) In General. – The Secretary, with the advice of the Secretary of the Treasury, the Director of the Exemption Office, and the Executive Director, shall submit an annual report to the Governor and the Legislative Assembly on the economic and financial impact of this Act. Said report shall be submitted within one hundred eighty (180) days after the closing of each fiscal year.

(b) Required Information. – The Secretary shall request the following information from the government agencies, municipalities, or exempt businesses, as applicable, in order to draft the report provided in subsection (a) of this Section:

(i) the number of exemption applications filed and approved, classified by type of eligible service;

(ii) total number of employments and payroll projections of the business that holds a decree under this Act;

(iii) a description of any additional incentive that the exempt business receives;

(iv) total assets, liabilities, and capital of the exempt business;

(v) taxes paid by tax exempt businesses for income;

(vi) municipal tax payments; and

(vii) any other information needed for the report to the Governor and the Legislative Assembly on the scope and effects of the implementation of this Act.

(c) Additional information. – These reports shall include an evaluation of factors that have an effect on the social and economic development of Puerto Rico.

(d) Report of the Secretary of the Treasury. – The Secretary of the Treasury shall submit an annual report to the Legislative Assembly on the tendencies identified on tax payments made by businesses with a decree granted under this Act, compared to the previous year and a projection of the same for the three (3) years following that to which the report corresponds. Said report shall be submitted within one hundred eighty (180) days after the closing of each fiscal year.

(e) Cooperation among agencies. – It shall be the duty of the agencies of the Government of Puerto Rico to furnish the information provided herein to the Secretary. The Secretary may establish, through regulations, the forms and procedures needed to ensure the exchange of information required by this Section.

(f) The Secretary, with the support of the Industrial Development Company, the Department of the Treasury, and the Government Development Bank for Puerto Rico, shall establish an electronic data repository that allows for the accumulation and update of information on businesses that hold a decree under this Act, as well as access by the concerned agencies, taking measures to protect the confidentiality of said information. The information shall be used to oversee compliance with the conditions imposed to businesses that hold a decree under this Act and to develop a promotional intelligence system that allows the Industrial Development Company to identify and opportunely assist financially troubled eligible businesses or those that hold a decree, as well as to establish promotional strategies.

## **Section 12.—Reports Required from Exempt Businesses and their Shareholders or Partners.—**

(a) All eligible businesses that hold a decree granted under this Act shall file an annual income tax return with the Secretary of the Treasury, regardless of

their gross or net income and separate from any other return they are required to file, with regards to the operation covered by the benefits provided by this Act, and in accordance with the Code. The Secretary of the Treasury may share the information thus received with the Secretary and the Executive Director, provided that the confidentiality thereof is protected.

(b) Every shareholder or partner of an eligible business that holds a decree granted under this Act shall file an annual income tax return with the Department of the Treasury, in accordance with the provisions of the Code, provided he/she is required to do so under said Code.

(c) An eligible business that holds a decree granted under this Act shall be required to keep the accounting related to its operations, as well as the necessary records and files, in a separate manner in Puerto Rico, as well as to present and submit those sworn statements and comply with the rules and regulations in effect in order to duly fulfill the purposes of this Act and in order for the Secretary of the Treasury to prescribe, from time to time, the imposition and collection of all types of taxes.

(d) All eligible businesses that hold a decree granted under this Act shall annually file with the Exemption Office an authenticated report containing the signature of the Chair, managing partner, or authorized representative, and a copy for the Secretary, the Secretary of the Treasury, and the Executive Director, not later than thirty (30) days after filing the corresponding income tax return. Said report shall include a list of the facts that reflect compliance with the conditions established in the decree for the tax year that immediately precedes the date of filing, including, but not limited to the following: average number of jobs, services covered by the decree, and any other information that may be required in the form promulgated for such purposes or through regulations. The fees provided through regulations shall be enclosed with the report, to be paid with a money order, bank

check, or certified check payable to the order of the Secretary of the Treasury. The information provided in this annual report shall be used for statistical and economic research purposes, in accordance with the provisions of this Act. Likewise, the Economic Development Department shall conduct a compliance audit every two (2) years regarding the terms and conditions of the decree granted under this Act.

The fees in effect for the annual reports under Act No. 73-2008, as amended, shall apply to the reports to be filed by businesses that are exempt under this Act until the first regulation promulgated under these provisions is approved.

(e) The Director, after being notified by the agency concerned, may impose an administrative fine of ten thousand dollars (\$10,000) to any eligible business that holds a decree under this Act and that fails to file any of the reports required by the Secretary of the Treasury, the Executive Director, or the Director pursuant to the provisions of subsections (a) to (d) of this Section, or that files such reports after their due dates. Collections on account of these fines shall be covered into the Special Fund for the Development of Services for Export and Promotion, established in Section 13 of this Act. Filing an incomplete report shall be deemed as failure to file if the agency concerned notifies the eligible business of any omission in the required report and said business fails to submit the missing information within fifteen (15) days after the notification, or does not reasonably justify the lack thereof.

### **Section 13.—Special Fund for the Development of Services for Export and Promotion.—**

In General. – The Secretary of the Treasury shall establish a special fund, known as the “Special Fund for the Development of Services for Export and Promotion” (“Special Fund”). During the effectiveness of this Act, ten percent (10%) of the revenues arising from the income tax paid by eligible businesses that

hold a decree under this Act shall be covered into said fund. The Special Fund for Economic Development of Act No. 73-2008 shall contribute the amount of five (5) million for the fiscal year in which this Act is approved, and five (5) million for the following fiscal year.

The money of the Special Fund established herein shall be managed by the Secretary and shall be used exclusively for the following purposes:

(a) Provide special incentives to encourage and promote investment and training of eligible businesses.

(b) Provide special incentives that facilitate the establishment of new businesses in Puerto Rico.

(c) Provide special incentives to promoters, in lieu of or in addition to the benefits of a decree under this Act.

(d) Provide special incentives for education and training in areas related to services for exportation.

(e) Hire professionals from the private sector to help the Secretary comply with his/her duty to promote this Act or any other act related to economic development as determined by the Secretary through regulations.

(f) Defray the administrative expenses related to the inspections and audits of this program. This shall include trainings, equipment and the hiring of trained personnel to ensure compliance with this Act.

The Secretary, with the advice of the Executive Director, shall establish through regulations the terms, conditions, eligibility, and criteria to be used in the disbursement of money from the Special Fund. The disbursement of money from the Special Fund shall be subject to the approval of the Executive Director and its Board of Directors.

#### **Section 14.—Regulations under this Act.—**

Within ninety (90) days after this Act takes effect, the Secretary shall, with the advice of the Executive Director and the Secretary of the Treasury, draft the regulations needed to enforce the provisions and purposes 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 “Commonwealth of Puerto Rico Uniform Administrative Procedures Act.”

**Section 15.—Decrees Granted under Industrial or Tax Incentives Laws.—**

(a) The Tax Exemption Office shall not accept new exemption applications from businesses under Section 2(d)(1)(D) (i) of Act No. 73-2008, as amended, as of the date of effectiveness of this Act. Therefore, all decree applications filed as of the date of effectiveness of this Act regarding an eligible service shall be governed by the provisions of this Act. New decree applications for eligible services filed before its effective date, but which have not been granted as of the effective date of this Act, may be processed under this Act, at the option of the applicant, provided the services are considered eligible. Decrees granted under Act No. 173-2008 or similar previous acts shall remain in effect in terms of their respective provisions.

(b) Any natural or juridical person that provides or proposes to provide an eligible service or promoter services, shall be able to apply for a decree in accordance with this Act regardless of the expected volume of such services.

**Section 16.—Application of the Code for a New Puerto Rico.—**

The Code shall apply as a supplement to this Act, provided that its provisions do not contravene the provisions of this Act.

**Section 17.—Severability and Rules of Interpretation in Case of Contravening Laws.—**

If any Section, subsection, paragraph, subparagraph, clause, phrase, or part of this Act is ruled unconstitutional by a Court with competent jurisdiction, the ruling to such effect shall not affect, impair, or invalidate the remainder thereof. The effect of said ruling shall be limited to the Section, subsection, paragraph, subparagraph, clause, phrase, or part thereof that has thus been ruled unconstitutional.

**Section 18.**—A Section 61.242 is hereby added to Act No. 77 of June 19, 1957-98-2011, as amended, known as the “Insurance Code of Puerto Rico,” to read as follows:

**“Section 61.242. – Special Fund for the Development of Services for Export. –**

Ten percent (10%) of the revenues proceeding from the income tax paid by international insurers that hold a decree under this Act shall be covered into the Special Fund for the Development of Services for Export, as created by the “Act to Promote the Export of Services.”

**Section 19.—Effectiveness Clause.—**

This Act shall take effect immediately after its approval. Applications for new decrees shall be accepted until December 31, 2020. The taxes provided by this Act shall remain in effect while the terms of the decrees granted thereunder remain in effect.

## **CERTIFICATION**

I hereby certify to the Secretary of State that the following **Act No. 20-2012 (S. B. 2313)** of the **6<sup>th</sup> Session of the 16<sup>th</sup> Legislature** of Puerto Rico:

**AN ACT** to establish the “Act to Promote the Export of Services,” in order to provide the adequate environment and opportunities to develop Puerto Rico as an international service center, encourage local professionals to stay and return, and attract foreign capital, thus promoting the economic development and social betterment of Puerto Rico; to add a new Section 61.242 to Act No. 77 of June 19, 1957, as amended, known as the “Insurance Code of Puerto Rico”; and for other purposes.

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

In San Juan, Puerto Rico, on the 14<sup>th</sup> day of November, 2012.

María del Mar Ortiz Rivera