

## LAW

Approved in Jan. 17, 2012

To establish the “Law to Promote the Export of Services” for the purposes of promoting the environment and the adequate opportunities to develop Puerto Rico as an international service center, promote the retention and return of local professionals and attract foreign capital, promoting in this way the economic development and social improvement of Puerto Rico; to add a new article 61.242 to the Num. 77 Law of June 19, 1957, as amended, known as “Insurance Code of Puerto Rico”; and for other purposes.

## STATEMENT OF PURPOSE

The export of services is an economic activity that has been identified as one of Puerto Rico’s key elements for economic growth and development of. The restoration of economic growth is part of one of the fundamental pillars of the Strategic Model for a New Economy SMNE [*MENE in Spanish*], designed by the current administration that has identified the export of services as a cornerstone to the economic growth and sustainable development of the island. The plan outlined in the SMNE aims to encourage development of those local companies, or those that want to establish themselves on the island so they can expand their capacity to export services and place Puerto Rico in optimal conditions on the global economy.

The Puerto Rico's greatest asset is the human resource, our people. Puerto Rico has high quality professionals, technicians, advisers, consultants and service providers, whose talents are the perfect frame from Puerto Rico to offer its services to other jurisdictions with the best guarantee of success. Other jurisdictions such as Singapore and India have based their model of economic development in the sophistication of services for exportations. This strategy has enabled in those jurisdictions significant growth to their domestic product per capita, and an increase in the average wage in the export services sector. To achieve economic growth, Puerto Rico must create the conditions necessary to increase the current weight of its services sector over its gross domestic product, which is around 45%, up to average levels of 70% that have better developed economies.

The need to stimulate the export of services has been recognized in various industrial tax incentives laws, and the most recent expression of this is found in Law 73-2008, known as the "Economic Incentives for the Development of Puerto Rico Law. However, the main focus of public policy of Law 73-2008, and earlier industrial tax incentives laws, is the promotion of activities associated with the manufacturing industry, and not necessarily to the export of services. Proof of this is that under the 135-1997 Law there are currently 178 services decrees of a total of 1,083 decrees, while under Law 73 a total of 44 services have been awarded from a total of 181 decrees. This means that only 16% and 24% of the total approved decrees under such laws belong to the exportation services industry. The remaining 84% and 76% respectively correspond to decrees for the manufacturing industry and services related to manufacturing.

Even though these legislative initiatives are more than necessary, the way in which these laws were designed primarily serve other industries. Therefore, it is necessary to develop legislation aimed exclusively and specifically to the export of services in a globalized economy. The public policy that Puerto Rico should have to promote the export of services has to be focused on the tax incentives needed to develop the growing weight of services sector in its economy. In turn, these incentives should promote sustainable economic development and jobs creation on the Island.

We consider Puerto Rico as an ideal jurisdiction to become a major and sophisticated export axis of export services. The island has a bicultural and bilingual population, and a strategic location that serves as a bridge between Latin America and the continental United States. In addition, 33% of the population is college educated.

To achieve the objectives described herein, this Legislature deems it necessary to enact this "Law to Promote the Export of Services"

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

**Article 1. - Abbreviated Title .-**

This Law shall be known as the "Law for Promotion of Export of Services"

**Article 2 .- Statement of Public Policy .-**

Is declared public policy of the Government of Puerto Rico to promote a service industry that leads to the export of all kinds of services. Under that policy, we establish a reduced income tax rate and certain exemptions from property tax to encourage local service providers that seek the expansion of their business by offering their services to customers who are located outside of Puerto Rico, as well as to encourage foreign service providers to settle in Puerto Rico, thus creating new employment opportunities for our local population.

**Article 3.- Definitions**

For purposes of this Law, the following terms, phrases and words shall have the meaning and scope expressed on the following (except where it clearly states the contrary, and the terms used in singular will include the plural and vice-versa):

- (a) Stocks. - Means stocks of a corporation, or other proprietary interest in a partnership, limited liability company, or other entity.
- (b) Decree .- Means an approved decree by the Secretary of the Department of Economic Development and Commerce, under the provisions of this Law, and that is effective according to the rules and conditions that may be established by the Secretary.
- (c) Entity.- Means any corporation, limited liability company, partnership or other legal entity.
- (d) Affiliated Entities.- Means two or more entities where fifty percent (50%) or more of the stocks of these entities is directly or indirectly owned by the same natural person or legal entity, estate, or trust.

- (e) **Income from Export of Services** .- Means the net income derived from the provision of an eligible service or service by an eligible business promoter, computed in accordance with the Internal Revenue Code for a New Puerto Rico of 2011. In the case of promoter services, it will only be considered Income for Export Services the net income from promoter services, rendered during a twelve (12) month period that ends the day before of what occurs first among the following alternatives:
- (i) The commencement of facilities construction in Puerto Rico to be used by a new business;
  - (ii) The commencement of new business activities, or
  - (iii) The acquisition or granting of a contract to purchase facilities or leasing of facilities in Puerto Rico by the new business.
- (f) **Eligible Business** .- It is considered an eligible business any entity with a "bona fide" office or establishment located in Puerto Rico, carrying or that can carry out eligible services, which in turn, are considered export services or promoter services .

An eligible business that carries eligible services or developer services may also be engaged in any other activity or industry or business, provided that at all times it maintains a system of books, records, documentation, accounting and billing, which clearly demonstrates to the satisfaction of the Secretary of Treasury, revenues, costs and expenses incurred in the provision of eligible services or developer services. The activity that involves the provision of 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 request will be subject to limitations relating to the income of the base period established in paragraph (c) of Article 4 of this Law.

The Secretary shall establish by regulation the circumstances and conditions under which a business may be considered as an eligible business under this Law, any applicant who receives or has received tax benefits under Law 73-2008, Law 135-1997, as amended, the Law No. 8 of January 24, 1987, as amended, any other tax incentives Law before or after, or any other special Law of the Government of Puerto Rico that provides benefits or tax incentives similar to those provided in this Law as determined by the Secretary, in consultation with the Secretary of the Treasury. Under no circumstances an applicant may be considered an eligible business when claiming benefits or tax incentives in respect of the services sheltered under this Law.

- (g) **New Business** .- An entity that complies with the following parameters:
- (i) Has never conducted an industry or business in Puerto Rico;
  - (ii) The industry or business to be conducted in Puerto Rico was not acquired in a business that was conducting a trade or business or activity for the production of income in Puerto Rico.

- (iii) It is not an affiliate of an entity that carries or has carried out a trade or business or activity for the production of income in Puerto Rico.
  - (iv) During the period of two (2) years, counted from the beginning of the operations covered by the decree, no more than five (5) percent of its stocks are owned directly or indirectly by one or more residents of Puerto Rico;
  - (v) Begins operations in Puerto Rico, as a result of developer services, according to the criteria to be determined by the Secretary, in consultation with the Secretary of the Treasury, by regulation, circular letter or other statement;
  - (vi) Will not engage in the retail sale of products or articles; and
  - (vii) Carries out an activity, business or industry appointed by the Secretary and the Secretary of the Treasury, by regulation, circular letter or any other statement.
- (h) Link with Puerto Rico. - It will be considered that services have a link to Puerto Rico when they have some relationship with Puerto Rico, including the services related to:
- (i) Business Activities or for the production of income that have been or will be conducted in Puerto Rico;
  - (ii) The sale of any property for the use, consumption or disposition in Puerto Rico;
  - (iii) Assessment on laws and regulations of Puerto Rico, as well as procedures or administrative pronouncements of the Government of Puerto Rico, its agencies, public corporations, instrumentalities and / or municipalities, and judicial precedents of the courts of Puerto Rico;
  - (iv) Lobbying Puerto Rico Laws, regulations and other administrative pronouncements. For these purposes, lobbying means 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 purpose of attempting to influence any action or determination by the Government of Puerto Rico , its agencies, instrumentalities, public corporations or municipalities, or
  - (v) Any other activity, situation or circumstance that the Secretary in consultation with the Secretary of the Treasury appoints by regulation or other ruling, administrative determination or circular letter that is related to Puerto Rico.
- (i) Promoter. - Means any entity that is dedicated to provide promoter services.

(j) Resident of Puerto Rico. Means an individual who is a resident of Puerto Rico, pursuant to Section 1010 (a) of the Internal Revenue Code for a New Puerto Rico, as amended.

(k) Eligible Services.- Eligible services include the following services, in turn, to be considered services for export:

- (i) Research and development;
- (ii) Advertising and public relations;
- (iii) Economic consulting, environmental, technological, scientific, managerial, marketing, human resources, data, and auditing;
- (iv) Advice on matters relating to any other business;
- (v) Commercial art and graphics services;
- (vi) Production of construction drawings, engineering and architecture, and project management;
- (vii) Professional services such as legal, tax, and accounting;
- (viii) Management centralized services that include, but are not limited to, services of strategic direction, planning and budgeting, which are carried by the central company ("headquarters") or similar regional offices by an entity that is engaged in the provision of these services;
- (ix) Center for electronic data processing;
- (x) Development of computer programs;
- (xi) Voice and data telecommunication between persons located outside of Puerto Rico;
- (xii) Call Center ("call centers");
- (xiii) Shared Services Center ("shared services") including but not limited to, accounting, finance, taxes, auditing, marketing, engineering, quality control, human resources, communications, electronic data processing, and other centralized management services;
- (xiv) Storage and distribution centers for companies engaged in the business of products transportation and articles belonging to a third party (known in English as "hubs");
- (xv) Educational and training services;
- (xvi) Hospital and laboratory services;
- (xvii) Investment banking and other financial services, including but not limited to the following services: (a) asset management, (b) management of alternative investments, (c) management of activities related to private equity investments (d) management of covering funds or hedge funds,

(e) dealing with "pools of capital"; (f) trusts administration that serve to transform in profits different groups of assets, and (g) management services of escrow accounts, as long as such services are provided to foreign individuals.

(xviii) Any other service that the Secretary, in consultation with the Secretary of the Treasury, determines to be treated as an eligible service on the grounds that such treatment is in the best interest and for the economic and social welfare in Puerto Rico, taking into consideration that there may be demand for such services outside of Puerto Rico, the total number of jobs to be created, their payroll, the investment that the promoter would do in Puerto Rico, or any other factor that deserves special consideration.

(j) .- Promoter Services.- Promoter services are those eligible services related to the establishment of a new business in Puerto Rico. They will be designated by the Secretary, in consultation with the Secretary of the Treasury, as services that can be treated as services for export, whether or not those services have a link with Puerto Rico.

(k) Export Services .- An eligible service will be considered for export when the service is provided for the benefit of:

- (i) an individual who is not a resident in Puerto Rico, or
- (ii) a trust whose beneficiary (ies), trustee (s), and settler (s) are not residents in Puerto Rico, or
- (iii) an inheritance whose deceased, heir(s), legatee(s), or trustee(s) are not, or, in the case of the deceased, had been a resident of Puerto Rico, or
- (iv) a foreign entity;

as long as that the services do not have a nexus with Puerto Rico. The Secretary, in consultation with the Secretary of the Treasury may establish by regulation, any other criterion, requirement or condition for which a service is considered a service for export, taking into consideration the nature of the services provided, direct or indirect benefits of the services and any other factors that are relevant to achieving the objectives of this Law.

(l) Other terms .- For purposes of this law, "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 Industrial Development Company, "Director" means the Director of the Industrial Tax Exemption Office, " Secretary of Treasury " means the Secretary of the Treasury Department, "Code" means the Internal Revenue Code for a New Puerto Rico of 2011, Law 1-2011, as amended, or any subsequent law that replaces it.

#### **Article 4. - Fixed Income Tax Rate**

(a) General Rule. - Eligible businesses that hold a decree under this Law, shall be subject, in lieu of any other income tax provided by the Code or any other law, at a fixed income tax rate of four percent (4%) on its Export Services Income generated during the entire period of the decree, as provided in this Article. This will be effective from the date of commencement of operations, as determined under Article 8 of this Law. However, the fixed rate of income tax for a taxable year shall be reduced by one percent (1%), once the following conditions are met, and prior to the approval of the Secretary and the Secretary of the Treasury:

- (i) More than ninety percent (90%) of all gross income of the entity that holds the eligible business and its affiliates is derived from the provision of services for export, and
- (ii) Services provided for export are considered Strategic Services.

The determination of whether certain services are strategic services will be taken, based on the characteristics, attributes, or special and impressive qualities from the service in question, for the benefit of the socio-economic development of Puerto Rico. To determine whether certain services are services of strategic importance the following factors will be considered:

- (A) Nature of services;
- (B) the existence or absence of an industry for the provision of such services in Puerto Rico;
- (C) the importance of the service to the international market;
- (D) the employment of residents of Puerto Rico;
- (E) the nature of jobs to be created;
- (F) the investment in technology;
- (G) the development of high levels of scientific , technological and managerial skills, and
- (H) any other factor that merits recognizing the service in question as a service of strategic importance, in view that the provision of services in, or from, Puerto Rico will result in the better economic and social interests of Puerto Rico.

#### **(b) Payment of Contribution**

- (i) In the absence of provision to the contrary, the tax imposed by this section shall be paid in the form and manner as the Code provides for the payment of income taxes, 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, revenues, expenses, deductions, and promoter services concessions should be reported by the eligible

business in the taxable year in which such items are recognized under the Code.

- (B) In consultation with the Secretary, the Secretary of the Treasury may allow by regulation, a method for recognition of the items described in the previous section. This will be for cases in which the conditions set forth in Article 3 (d) of this Law are met after the taxable year in which the income would otherwise be recognized under the Code.

(c) Limitation of Benefits. -

- (i) In the event that the date of filing the application for a decree, in accordance with the provisions of this Law, an eligible business is dedicated to the activity for which the benefits of this Law are granted or has been dedicated to that activity at any time during the period of three (3) tax years preceding the date of filing the application, which is called "Base Period", the eligible business will enjoy the fixed income tax rate provided in Section 4, only in terms of the net income increase of said activity that is generated over the average net income of the Base Period which is called "The Base Period Income" for purposes of this section.
- (ii) For the purposes of determining the Base Period Income is taken into account the net income of any predecessor business of applicant's business. For these purposes, "predecessor business" shall include any operation, activity, industry or business conducted by another business that has been transferred, or otherwise acquired by the applicant business, and regardless of whether it was operating under another legal name or under other owners.
- (iii) The income attributable to Base Period Income will be subject to the income tax rates stated in the Code, except in the case of institutions with tax exemption decrees under Law 135-1997 and Law 73-2008, in which case it will apply the flat rate established in the decree. However, the distribution of profits and benefits arising from such income will not qualify for the treatment provisions in Article 6 of this Law.

**Article 5. - Taxes on Real Estate and Personal Property**

(a) In General. -

- (i) Except as provided in paragraph (ii) of this section, movable and immovable property of an eligible business covered under the provisions of Article 3, paragraph (k), sub paragraphs (viii), (xii), and (xiii) of this Law, used in the operation of the activity covered under the decree, will enjoy a ninety percent (90%) exemption on state and municipal taxes during the period of the exemption provided in Article 8 of this Law

(ii) Movable and immovable property of an eligible business described in Article 3, paragraph (k), clauses (viii), (xii), and (xiii) of the Law will be fully exempt from movable and immovable property tax during the first five (5) years from the commencement of operations.

(b) Other rules. – Taxes on real estate shall be assessed, levied, notified, and administered as provided by Law 83-1991, as amended, known as "Municipal Tax Law on the Property."

**Article 6. - Distributions. -**

(a) General Rule .- The shareholders, partners or members of an eligible business that holds a decree granted under this Law, shall not be subject to income tax on dividends or utility benefits and benefits from Export Services Earnings of such eligible business.

Subsequent distributions of earnings and profits from the export earnings of Services performed by any entity shall also be exempted from all taxation.

(b) Coordination with the Code. - The distributions described in paragraph (a) of this Article shall be excluded from:

- (i) Net Income subject to alternate basic tax of an individual, for purposes of Section 1021.02 (a) (2) of the Code;
- (ii) the alternative minimum net income of a corporation, for purposes of Section 1022.03 (c) (1) of the Code, and
- (iii) the adjusted net income in the books of a corporation, for purposes of Section 1022.04 (c) (1) of the Code.

c) Exempt Distributions Imputation. - The distribution of dividends or profits that shall make an eligible business that holds a decree granted under this Law, even after the expiration of the decree, is considered a Service Export Income if at the distribution date the said distribution does not exceed the undistributed balance from accumulated utilities and benefits from the Export Service Income, unless the eligible business at the time of the declaration chooses to distribute the dividend or benefit wholly or partly from other profits or benefits. The amount, accumulation year, and the character of distribution of profits from the Export Service Income will be designated by the eligible business by notice sent in conjunction with payment to its shareholders, members or partners, and to the Secretary of the Treasury, through Disclosure Statement, no later than February 28 following the year of distribution.

In the case of corporations, limited liability companies or companies that on the date of commencement of operations as eligible businesses have accumulated earnings or profits, the distributions of dividends or profits to be made after that date will be considered made from the undistributed balance of such earnings or profits, but once it is unavailable by virtue of such distributions, the provisions of the first paragraph of this section will apply.

## **Article 7. - Deductions**

### Deduction and Carryover of Net Operating Losses

- (i) **Current Deduction for Losses Incurred in Activities not Covered by a Decree.**- If an eligible business that holds a decree granted under this Law incurs a net operating loss that is not attributable to the operation covered by the decree, the same cannot be used against income from operations covered by a decree under this Law , and shall be governed by the provisions of the Code.
- (ii) **Current Loss Deduction Incurred in the Operation of the Eligible Business.** - If an eligible business that holds a decree granted under this Law commits a net loss in the operation covered by the decree, the same can only be used against other income from operations covered by a decree under this Law.
- (iii) **Carryover Deduction for Losses from Previous Years.** - A deduction for carryover losses incurred in previous years will be granted, as provided below:
  - (A) The excess of loss deductible under paragraph (ii) of this Article may be drawn against the Service Export Earnings from subsequent taxable years. The losses will be carried over in the order in which they were incurred.
  - (B) Once the period of the decree has expired for income tax purposes, the net loss incurred in the operation covered by the decree, as well as any excess of the deduction allowed under paragraph (ii) of this section that is dragging the eligible business at the date of expiration of that period, may be deducted against any taxable income in Puerto Rico, subject to the limitations provided in Subtitle A of the Code. Such losses are considered as incurred in the last contributive year in which the eligible business that has a decree under this Law enjoyed the rate of Article 4 of this Law, pursuant to the terms of the decree.
  - (C) The amount of net operating loss to be carried shall be computed under the provisions of Section 1033.14 of the Code.

## **Article 8.- Tax Exemption Period**

- (a) **Exemption.** - An eligible business that holds a decree granted under this Law, will enjoy the benefits of this Law for a period of twenty (20) years.
- (b) **Setting of the Dates of Commencement of operations and the Exemption Period**
  - (i) The date of commencement of operations for purposes of Article 4 of this Law will be to from the date in which the eligible business starts activities covered by

the decree, but not before the date of the due filing of an application to receive the benefits of this Law

- (ii) The date of commencement of operations for purposes of Article 5 of this Law shall be from January first of the year in which the eligible business start Activities covered by the decree, but not before January first of the year in which occurs due filing of an application to receive the benefits of this Law
  - (iii) For eligible businesses that hold a decree granted under this Law and which have been operating before the benefits claim under this Law, the date of commencement of operations on the Activities covered by the decree shall be the date of filing an application with the Office of Exemption.
- (c) Decree Extension - Any eligible business that, through the period of its exemption has met the requirements of employment, income, investment or other factors or conditions set forth in the decree, and demonstrates the Secretary that the extension of his decree is in the best economic and social interests of the people of Puerto Rico, may request to the Secretary an extension of his decree for ten (10) additional years for a total of thirty (30) years. During this extension the eligible business will enjoy a fixed income tax rate of a four (4%) percent.
- (i) A request for extension is submitted to the Secretary no more than twenty four (24) months and no less than six (6) months before the expiration of the decree, and shall include the information required for this purpose by the Secretary by regulation, circular letter or administrative determination.
  - (ii) An eligible business described in Article 5 (a) of this Law shall enjoy during the term of the extensions of fifty percent (50%) exemption on the corresponding taxes on the real and personal property used in Activities covered by the decree.

## **Article 9. - Procedures. -**

### **(a) Ordinary Procedure .-**

#### **(i) Decree Applications.-**

Any person who has established or proposes to establish an eligible business in Puerto Rico, may request the Secretary the benefits of this Law by presenting the corresponding application duly sworn to the Office of Exemption .

Upon the filing of a decree, the Director will charge the fees for the relevant procedures, which will be paid by certified check, money order payable to the Secretary of the Treasury. Such rights shall be provided by Regulation.

Existing rights under Law 73-2008, as amended, will continue in effect until the approval of the first regulations under this provision.

The Secretary may establish special procedures for decrees, covering promoter services, through regulations, circular letter or any other administrative proceeding.

(ii) Interagency Consideration of the Applications.-

(A) Upon receiving any application under this Law by the Office of Exemption, the Director will send within a period of five (5) working days, counted from the date of filing of the application, a copy thereof to the Secretary of the Treasury and the Executive Director, for this last to submit an eligibility report within twenty (20) days, counted from receipt of the request on the activity to be conducted, facts relating to the application, and its recommendation regarding the granting of a decree, including terms and conditions. When evaluating the application, the Secretary of the Treasury will monitor the fulfillment of the shareholders, members or partners of the applicant business regarding the tax liability under the Code and the Internal Revenue Code of 1994, as amended. This verification is not required in the case of non-resident shareholders of Puerto Rico or public corporations. The lack of compliance of such tax liability will be the base for the Secretary of the Treasury not to endorse the request of the applicant business.

(B) After the Executive Director submits the report of eligibility and recommendation, the Director shall send a copy of the decree project within five (5) working days of having received the necessary documentation to process the case, the Executive Director and Secretary of the Treasury and Municipal Revenue Collection Center, in cases where the decree project includes tax exemption on the property described in Article 5 of this Law, for evaluation and recommendation, if it does not exist any unfavorable recommendation or opposition to the request. Any unfavorable recommendation about the decree project, will have to be accompanied by the reasons for it.

The Agencies consulted by the Director will have twenty (20) days to file a report or recommendation regarding the submitted decree project . Should the agency's recommendation be favorable, or the same is not received by the Office of Exemption during the before mentioned termination of twenty (20) days, it will be assumed that such decree project has received a favorable recommendation and the Secretary will take the corresponding action on such request.

In the event that any agency lifted a objection with relation to the referred decree project, and the Office of Exemption will consider such objection as necessary, and the Exemption Office shall notify the parties and at the corresponding agencies the administrative action or the revision of the decree project as it sees pertinent Project. Once the stated controversy is clarified, the Director will make the pertinent determination and will file the case to the Secretary for final

consideration.

- (C) In case of amendments to approved decrees, under this Law, the concerned agencies should submit a report or opinion with the Director within fifteen (15) working days.
  - (D) Once the reports are received, or the terms to submit such reports have expired, the Director should submit the decree project and its recommendations, for the Secretary's consideration within five (5) working days.
  - (E) The Director may rest in the provided recommendations from those agencies that submit reports or opinions and can request them to supplement such reports or opinions.
  - (F) The Secretary should submit a final determination in writing.
  - (G) The Secretary can delegate to the Director the functions that in his (her) discretion deems convenient so as to facilitate the administration of this Law, except for duties of approval or rejection of decrees.
- (iii) Additional Provisions
- (A) The Exemption Office can request decree applicants to provide the necessary sworn statements to establish the exposed, required, or appropriate facts with the purpose of determining if the service operations or service operations proposals of the applicant qualify under the provisions of this Law.
  - (B) The Director can call as many public or administrative hearings he deems necessary in order to comply with the duties and obligations impose by this Law. Also can request the decree applicants the introduction of evidence that can justify the tax exemption requested.

The Director or any other Special Examiner from the Office of Exemption, appointed by the Director with the approval of the Secretary , can receive the presented evidence related to any decree request and will have the authority to summon witnesses and take their statements with respect to the alleged facts, or in any other form related with the applicant's decree, take oath to any person who declares before him, and render a report to the Secretary with respect to the presented evidence, as well as his recommendations on the case.

- (C) Any person who commits or tries to commit by itself or in the name of other person, a false or fraudulent representation related to any request or concession of

a decree, or any infringement related to a previous business will be considered guilty of a third degree felony and, if convicted, will be punished according to the Puerto Rico Penal Code, as amended,

It is also provided that in these cases the decree will be revoked retroactively and the concessioner and its shareholders will be responsible for all applicable taxes without taking into consideration this Law.

- (D) The rights, charges, and penalties described in clause (i) , paragraph (a) of this Article, will be part of a Special Account created to those effects by the Department of the Treasury, with the purpose of covering the ordinary expenses of operations in the Exemption Office.
- (E) The Exemption Office will establish the necessary systems to facilitate the electronic presentation and transmission of decree applications and related documentation so the interagency consideration can be shortened as well as the general processes.

(b) Denial of Applications.-

- (i) Denial if it does not benefit to Puerto Rico.-
  - (A) The Secretary can deny any request when he determines that the concession of a decree is not in the best economic and social interests of Puerto Rico, after considering any other factor that in his judgment justifies such determination, as well as the recommendations of the agencies that provide reports on tax exemption.
  - (B) The petitioner, after being notified of the denial, can apply for a reconsideration with the Secretary within sixty (60) days after receiving the notification presenting the facts and arguments with respect to his request that deems appropriate to do, including an offer of any consideration that benefits Puerto Rico that he believes is worth to be its reconsidered.
  - (C) In case the application is reconsidered, the Secretary may accept any consideration offered that benefits Puerto Rico , and can request and dispose of other term or condition that deems necessary to make sure that such concession will be in the interest of Puerto Rico and for the purposes of the economic development that this Law propose.

## (ii) Denial for Public Interest Conflict

The Secretary may deny any application when he deems necessary, based on the presented facts to his consideration and after the applicant has had the opportunity to offer a complete presentation regarding the controversial points, that the request in conflict with the public interest of Puerto Rico because: (a) the business of the applicant has not been organized as “bona fide” with permanent character; (b) In view of the moral or financial reputation of the persons involved, plans and methods to obtain financing for the services to be rendered, the nature or proposed use of such services, or any other factor which indicates that can exist a reasonable possibility that the concession of a decree will result in detriment of the economic and social interests of Puerto Rico

## (c) Transferring of Eligible Business

- (i) General Rule.-The transfer of a decree or the stocks or other property interest on an eligible business that holds a decree provided under this Law, should be approved by the Secretary previously. If the same will take place without previous authorization, the decree will be cancelled from the date in which the transferring occurred, except on the cases numbered in clause (ii) of this paragraph. However, the Secretary may retroactively approve any transfer made without previous authorization when by judging the merits of the circumstances of the case, taking into consideration the best interest of Puerto Rico and the purposes of economic development of this Law.
- (ii) Exceptions.-The following transfers will be authorized without previous consent:
  - a. The assets transfer of a deceased to the heirs or transfer by legacy or inheritance.
  - b. The transfer of stocks or any social participation as long as that transference does no result directly or indirectly in a change in the control of an eligible business that holds a decree conceded under this Law.
  - c. The transfer of stocks of a corporation that holds or runs an eligible business with a decree granted under this Law, when the same had occurred after the Secretary has determined that any transfer of stocks of a corporation will be allowed without his previous consent.
  - d. The pledge, mortgage, or other warranty with the purpose of responding to a “bona fide” debt .Any transfer of control, title or interest under contract terms, will be subjected to the dispositions of clause (a) of this Article.

- e. The transfer by law ordered by the court or bankruptcy judge executor or official. Any subsequent transfer to a third person who is not the same debtor, will be subjected to incise (a) of this Article.
  - f. The transfer of all the assets of an eligible business that holds a decree given under this Law, to a corporation, limited liability company, or society that is an affiliated business. For this paragraph's purposes, affiliated businesses are those which shareholder, members or associates possess in common the eighty percent (80%) or more of the stocks with the right to vote of such eligible business and affiliate business.
- (ii) Notification. -All transfers included in the exceptions in subsection (i) above will be reported to the Secretary, Executive Director, Director and Secretary of the Treasury by the eligible business that holds a decree under this Law.
- (d) Procedures for permissible and mandatory revocation
- (i) Allowable Revocation
    - (a) When a grantee does not meet any of the obligations that have been imposed by this Law or its regulations or the terms of the decree, or
    - (b) When the grantee fails to meet its tax liability under the Code and other tax laws of Puerto Rico.
  - (ii) Mandatory revocation. – The Secretary shall revoke any order issued under this Law when the same has been obtained by false or fraudulent representations about the nature of the eligible business or the nature of the decree.

In the case of this revocation, all the computed net income previously reported as Income from Services Export, whether has been or not distributed, as well as all distributions thereof, will be subject to the taxes imposed under the provisions of the Code. The taxpayer will also be considered to have filed a false or fraudulent return with intent to avoid payment of taxes and therefore would be subject to the criminal provisions of the Code. The tax due in this case, as well as the contributions on the movable and immovable property until then, subject to the provisions of this Law and not paid, will be due and payable from the date such taxes would have expired and who have been paid unless by decree, and will be charged and collected by the Secretary of the Treasury, according to the provisions of the Code and, as applicable, by the Municipal Collection Center, according to the Law on Property Taxes.

- (e) Procedure .- In cases of revocation of a decree granted under this Law, the dealer will have the opportunity to appear and be heard before the Director or any Special Examiner from the Exemption Office designated for this purpose, who will report his (her) findings and recommendations to the Secretary, upon the recommendation of the agencies that issue reports of eligibility of decree.

**Article 10 .- Nature of Decrees .-**

- (a) In General .- The decrees under this Law will be considered as a contract between the eligible business, its shareholders, partners or owners and the Government of Puerto Rico. Such agreement shall be law between the parties and must be construed liberally, so it can be consonant with the purpose of the Law of promoting the socio-economic development of Puerto Rico. The Secretary has the discretion to include, in representation of the Government of Puerto Rico, those terms and conditions that are consistent with the purpose of this Law and that promote economic development of Puerto Rico, taking into consideration the nature of the request or action requested, so as the facts and circumstances relating to each particular case which may be applicable.
- (b) The Obligation to Comply with the Request Submitted. - All eligible business that holds a decree granted under this Law, to carry out its operations essentially as presented in the request, except where these have been varied by amendments, at the request of the grantee, the Secretary will agree to authorize by the provisions of this Law
- (c) Administrative Decisions - Purpose .-
  - (i) All decisions and determinations of the Secretary under this Law, as to the granting of the decree and its contents are final and no legal or administrative review or other resource will proceed against them, unless specifically provided otherwise. Once a decree is granted under this Law, any agency, instrumentality, public, political subdivision, public corporation or a municipality of the Puerto Rico Government other than the Secretary or the Governor, may challenge the legality of the decree or any of its provisions.
  - (ii) Any licensee adversely affected or aggrieved by any action taken by the Secretary revoking or canceling an order of exemption in accordance with the subsection (ii) of paragraph (d) of Article 9 of this Law, shall be entitled to judicial review thereof by the presentation of an appeal before the Court of Appeals of Puerto Rico, within thirty (30) days after the decision or final adjudication of the Secretary.

- (iii) Any decision or ruling by the Court of Appeals of Puerto Rico is subject to review by the Supreme Court of Puerto Rico through certiorari, as requested by either party in the manner provided by law.

**Article 11 .- Periodic Reports to the Governor and the Legislature .-**

- (a) In General .- , The Secretary, in consultation with the Secretary of the Treasury, the Exemption Office Director and the Executive Director submit a report to the Governor and the Legislature on the economic and fiscal impact of this law every year. Such report shall be submitted within one hundred and eighty (180) days after the closing of each fiscal year.
- (b) Information Required .- The Secretary shall request the following information available to government agencies, municipalities or exempted businesses, as applicable, for the purpose of making the report available in paragraph (a) of this Article :
- i. the number of waiver requests submitted and approved, and classified by type of eligible service;
  - ii. total employment and payroll projected by the business with the decree under this Law;
  - iii. a description of any additional incentive received by the exempted business;
  - iv. total assets, liabilities and capital of the exempted business;
  - v. contributions paid by exempted businesses by way of income;
  - vi. payments of municipal taxes; and
  - vii. any other information necessary to inform the Governor and the Legislature the scope and effects of the implementation of this Law.
- (c) Additional Information. - These reports should include an assessment of factors affecting the social and economic development of Puerto Rico.
- (d) Report by the Secretary of the Treasury.-Every year the Secretary of the Treasury must submit a report to the Legislature about the trends identified in the payment of taxes by businesses with a decree under this Law. This report must include a comparison against the previous year and a projection of such behavior for the next three (3) years following the date corresponding to the report. Such report shall be submitted within one hundred and eighty (180) days after the closing of each fiscal year.
- (e) Cooperation among agencies. - It shall be the obligation of the Puerto Rico government agencies to provide the information posted in this Article to the Secretary. By regulation, the Secretary could establish the forms and processes necessary to ensure the exchange of information required by this Article.
- (f) The Secretary with the support of the Industrial Development Company, the Department of Treasury and the Government Development Bank for Puerto Rico will establish an electronic data repository that allows the accumulation

and updating of the information about the businesses with decrees under this Law, as well as access by the related agencies, taking measures to protect the confidentiality of such information. The information will be used to monitor compliance of the imposed conditions on business with decrees under this Law and develop a promotional intelligence system that will allow the Development Company identify and assist in a timely manner eligible businesses, or with decree in a precarious situation, as well as to establish promotional strategies.

**Article 12. - Required Reports for exempt businesses and their shareholders or partners. –**

- (a) Any eligible businesses that hold a decree granted under this Law will file on a yearly basis an income tax return form to the Secretary of the Treasury, regardless of the amount of their gross or net income, separate from any other form that is required to render in relation to the operations covered by the benefits provided in this Law and in accordance with the Code. The Secretary of the Treasury may share with the Secretary and the Executive Director the information received as long as it protects the confidentiality of such information.
- (b) Any shareholder or partner of an eligible business that holds a decree granted under this Law shall file with the Department of the Treasury an income tax return form every year in accordance with the provisions of the Code, provided that under this Code he or she would have an obligation to do so.
- (c) The eligible business that holds a decree granted under this Law will be required to separately keep in Puerto Rico the finances related to their operations, as well as the files and records that are needed, in addition to provide and submit those sworn statements and comply with the rules and regulations in place for the due fulfillment of the purposes of this Law, and that the Secretary of the Treasury may prescribe from time to time, regarding the imposition and collection of all kinds of taxes.
- (d) Any eligible business that holds a decree granted under this Law shall annually file in the Exemption Office the appropriate form of income taxes, an authenticated report with the signature of the President, managing partner, or his authorized representative. A copy should be handed in to the Secretary, the Secretary of the Treasury and the Executive Director, no later than thirty (30) days after filing. The report must contain a data relationship that reflects compliance with the established conditions in the decree for the taxable year, immediately prior to the filing date including, but without being inferred as a limitation, the following: average employment, covered services by the decree, and any other information that may be required in the form enacted for these purposes or as required by regulation. This report must be accompanied by the rights provided per regulation, and the same shall be paid with a money order or certified check, payable to the Secretary of the Treasury. The information provided in this annual report will be used for purposes of statistics and economic studies, as required under this Law. Likewise, the Department of Economic Development will perform a compliance audit every two (2) years in regards to the terms and conditions of the decree granted under this Law.

The existing rights for annual reports under the Law 73-2008, as amended, will apply to the reports to be filed by the exempted businesses under this Law until the approval of the first regulation under this provision.

- (e) After being informed by the agency concerned, the Director may impose an administrative fine of ten thousand dollars (\$ 10,000), to any eligible business that holds a decree granted under this Law and ceases to file any of the reports file that the Secretary of the Treasury, the Secretary, the Executive Director or the Director may require, pursuant to the provisions of paragraphs (a) through (d) of this Article, or who files the same after the due date. The revenues from these fines will be deposited into the Export Development and Promotion Services Special Fund, established in Article 13 of this Law. An incomplete filing shall be considered not filed, if the concerned agency notifies the eligible business of any omission in the required report and said eligible business fails to submit the missing information within fifteen (15) days of being notified, or not reasonably justifies the reason why it is missing.

### **Article 13.-Special Fund for Export Development and Promotion Services**

In General.- The Secretary of the Treasury will establish a special fund called the "Special Fund for Export Development and Promotion Services " ("Special Fund") During the term of this Law, the Special Fund will deposit ten percent (10%) of the collections, from the income tax to paid by the eligible businesses with a decree under this Law. The Special Fund for Economic Development of Law 73-2008 will contribute the amount of five (5) million on the fiscal year this Law is approved, and five (5) million for the subsequent fiscal year.

The Special Fund monies herein established will be administered by the Secretary and shall be used exclusively for the following purposes:

- (a) To provide special incentives to encourage and promote investment and training of eligible businesses.
- (b) Provide special incentives that will facilitate the establishment of new businesses in Puerto Rico.
- (c) Provide special incentives to promoters, instead of or in addition to the benefits of a decree under this Law
- (d) Provide special incentives for education and training in areas related to export services.
- (e) Hire private sector professionals to assist the Secretary in complying with its duty to promote this Law or any other law related to the economic development that the Secretary determines by regulation.
- (f) To cover administrative costs related to inspections and audits of this program. This will include training, equipment and trained personnel recruitment to ensure compliance with this Law.

The Secretary, in consultation with the Executive Director, will establish, by regulation, the terms, conditions, eligibility and criteria to be used for disbursement of monies from

the Special Fund. The disbursement of monies from the Special Fund will be subject to approval by the Executive Director and his Board of Directors.

**Article 14.- Regulations Under this Law**

In consultation with the Executive Director and the Secretary of the Treasury, the Secretary will prepare, those regulations necessary to implement the provisions and purposes of this Law within ninety (90) days from the date of enactment of this Law. Such regulations will also be subject to the provisions of Law No. 170 of August 12, 1988, as amended, known as the "Commonwealth of Puerto Rico Uniform Administrative Procedure Act."

**Article 15. -Decrees granted under the Industrial or Tax Incentives Laws.-**

- (a) The Tax Exemption Office will not receive new business requests for exemption under Section 2 (d) (1) (D) (i) of Law 73-2008, as amended, after the effective date of this Law. Therefore any decree request filed after the effective date of this Law, in relation to an eligible service shall be governed by the provisions of this Law. Requests filed for new decrees before the effective date on eligible services which have not been granted to the effective date of this Law, may be processed under this Law as desired by the applicant, as long as they are considered eligible businesses. The issued decrees under the 73-2008 Law, or similar laws above, will remain in effect in their respective provisions.
- (b) Any natural or legal person who provides or proposes to provide an eligible service or promoter service may request a decree in accordance with this Law, regardless of the expected volume for such services.

**Article 16.-Application of a Code for a New Puerto Rico.-**

The code will be applied as a supplement to this Law to the extent that its provisions are not in conflict with the provisions of this Law.

**Article 17.-Severability and Rules of Interpretation in Case of Other Laws conflicting .-**

If any section, subsection, paragraph, portion, clause, phrase or part of this Law is declared unconstitutional by a court of competent jurisdiction, the judgment to that effect will not affect, impair or invalidate the remainder of this Law, leaving its effects limited to the section, subsection, paragraph, portion, clause, phrase or part to be declared unconstitutional.

**Article 18.-**Article 61 242 is added to the No. 77 Law of June 19, 1957 - 98 - 2011, as amended, known as "the Insurance Code of Puerto Rico", and it reads as follows:

**"Article 61,242 .- Special Fund for the Development of Export Services.**

Ten percent (10%) of the revenues from the income tax to pay international insurers with a decree under this Law, will be transferred to the Special Fund for the

Development of Export Services, as created by the "Law for Promotion of Export of Services".

**Article 19.-Effectiveness Clause**

This Law will become effective immediately after its approval. Applications for new decrees will be received until December 31, 2020. The tax impositions provided by this Law will remain in effective during the term in which the provided decrees remain in effect.