

(S. B. 1126)
(Conference)

(No. 74-2010)

(Approved July10, 2010)

AN ACT

To create the Puerto Rico Tourism Development Act of 2010; amend clause (i) of subparagraph (A) of paragraph (2) of subsection (b) of Section 1011; amend paragraph (5) of subsection (a) of Section 1023; to amend clause (i) of subparagraph (c) of paragraph (23) of Section 1101 and eliminate clause (ii); amend clauses (iv) and (v), renumber clauses (iii), (iv), and (v) as (ii), (iii), and (iv), respectively; and to add a new clause (v) to paragraph (25) of Section 1101; to amend paragraph (1) of subsection (e) of Section 1123; to amend paragraph (7) of subsection (a) of Section 1330; to add a new paragraph (3) to subsection (b) of Section 1330; and to renumber current paragraphs (3) and (4) as (4) and (5), respectively; and to add Section 2019 A to Chapter 3, Subtitle BB of Act No. 120 of October 31, 1994, as amended, known as the “Puerto Rico Internal Revenue Code of 1994”; to amend Section 5.02 of Act No. 83 of August 30, 1991, as amended, known as the “Municipal Property Tax Act of 1991”; to amend subsections (h), (j), and paragraph (4) of subsection (p) of Section 2; to amend subparagraph (F) of paragraph (1) of subsection (a), add subparagraph (1)(G) and renumber current subparagraphs (1)(G) and (1)(H) as (1)(H) and (1)(I), respectively, of subsection (a), and amend paragraph (3) of subsection (a) of Section 3; to amend Section 4, amend subsection (f) of Section 5; to add subsection (f) to Section 6, and add subsection (g) to Section 9 of Act No. 78 of September 10, 1993, as amended, known as the “Puerto Rico Tourist Development Act of 1993”; and to amend subsection (B) of Section 31 of Act No. 272 of September 9, 2003, as amended, known as the “Commonwealth of Puerto Rico Room Occupancy Rate Tax Act”; in order to set forth the public policy to make Puerto Rico a world-class tourist destination, promote the adequate conditions to ensure the continuous development and worldwide competitiveness of Puerto Rico’s hotel industry, to provide the environment for the continuous building of local and foreign capital for investment in tourist projects, temper the incentives offered to the Puerto Rican tourist industry with the evolution of better tourist products, the challenges that we are facing, and the opportunities that today’s world offers, to reduce the high

costs of construction and operation of tourist businesses in Puerto Rico; to impart flexibility on the sources of income that tenant associations that belong to an exempt business might have pursuant to the Puerto Rico Tourist Development Act of 1993 and the Puerto Rico Tourism Development Act of 2010, and the time share and vacation club owners' associations, whose funds shall be used to carry out improvements to such exempt businesses; to exempt individuals from the alternate basic tax on income derived from tourist development; to establish an exemption on the sales and use tax for foreign-flag watercraft, whose owners or holders are not Puerto Rico residents; to extend the tax exemption on real property to lands on which a tourism-related construction is in progress during the exemption period on the construction provided under said Act; and to provide that certain funds collected from the room occupancy rate tax shall be destined to the treasury of the Puerto Rico Tourism Company as of Fiscal Year 2010-2011.

STATEMENT OF MOTIVES

The tourist industry is one of the most important economic activities in the world. Advancements in transportation and communications have stimulated and enabled people to travel and get to know other countries and the attractions they offer. Each country, to a greater or a lesser extent, competes to attract tourists, which has turned tourism into a real global competition.

The tourist industry is very dynamic and is constantly evolving. In order to compete effectively, countries need to keep abreast of changes, make a continuous effort to develop and improve their product, and provide an investment climate that attracts the necessary capital to create and maintain a strong and stable industry. In keeping with the foregoing, it is important for countries that seek to develop a strong and steadfast tourist industry to foster the development of liaisons in the industry that boost the economic activity by promoting the integration of sectors that supply goods and services to tourism-related businesses.

Puerto Rico was one of the first destinations in the Caribbean to recognize tourism's potential as a driving force in economic development. With the importance of tourism as a source of employment in various sectors of the economy and with the conviction that we have the attractions to become a world-class destination, the public policy of the Government of Puerto Rico on tourism changed. Puerto Rico undertook the task of promoting the development of tourist facilities. Act No. 78 of September 10, 1993, as amended, known as the "Puerto Rico Tourist Development Act of 1993," which was approved for this purpose, has been instrumental in the construction and feasibility of multiple tourist facilities oriented toward the development of Puerto Rico's tourist industry. Small and medium business entrepreneurs who own *paradores* and guest houses, as well as tourist complex developments have been able to benefit from the aforementioned Act. However, it should be noted that the incentives granted under the Puerto Rico Tourist Development Act of 1993 have not been modified in about fifteen years. It is therefore necessary, in order to ensure a continuous growth in the tourism sector, to adjust the incentives offered to meet today's challenges such as the significant increase in the competitiveness of other destinations in the Caribbean, and throughout the world, and the difficulties in capital markets which have restricted the availability of financing.

Since 1993, new products and concepts have been created. The market has become segmented to such an extent, that there are highly specialized sectors, to wit: the health or wellness facilities, urban resorts, and sports, nautical, and medical tourism sectors. While large hotel companies have consolidated, there has been an outbreak of new brand names seeking to capture specific segments. Furthermore, new hotel companies have been created, particularly in the luxury market, which seek to attract the wealthy consumer segment that has grown due to the accumulation of wealth worldwide during the 1990s and early this century.

Likewise, Puerto Rico has begun to provide the infrastructure and to promote medical tourism, with the objective to turn it into a substantial component in our tourist industry, thus contributing significantly to our economy as seen in the increase of our gross product and contributing to the creation of jobs. Lastly, investment funds began to envision the industry as an attractive segment and invested billions of dollars in tourist facilities and its complements.

The result of all of this is an industry in full bloom at the international level. It is a sophisticated and complex economic sector.

This “Puerto Rico Tourism Development Act of 2010” responds to strategic decisions on what should be the public policy of Puerto Rico, to wit:

- (a) To make Puerto Rico a world-class tourist destination.
- (b) To ensure adequate conditions for the continuous development and worldwide competitiveness of Puerto Rico’s hotel industry.
- (c) To provide the environment to continuously raise local and foreign capital for investment in tourism projects.
- (d) To improve the incentives offered to the Puerto Rican tourist industry according to the evolution of the best tourist products offered, the challenges faced, and the opportunities offered by today’s world.
- (e) To reduce the high costs of construction and operation of tourism-related businesses in Puerto Rico.
- (f) To take action to reduce energy costs through the various renewable source alternatives.

In consideration of the above, this Act encompasses on the merits of the Puerto Rico Tourist Development Act of 1993 and broadens the definition of eligible business to recognize the importance of the development of new tourist products. Furthermore, the Puerto Rico Tourist Development Act of 1993, as amended, is hereby amended to establish that no new grants shall be granted under

the Puerto Rico Tourist Development Act of 1993 once the Puerto Rico Tourism Development Act of 2010 takes effect.

This Act also has the intent to amend the Puerto Rico Internal Revenue Code of 1994, as amended, for purposes of prescribing the eligibility criteria for special partnership benefits, to establish that the income derived from the operation of casinos in a hotel shall be deemed to be a part of the tourist activity income and that a nautical tourism business shall only have to comply with having 70% of its gross income derive from the operation of the tourist activity as a requirement. The Internal Revenue Code is amended to impart flexibility on the income sources that tenants' associations that belong to an exempt business pursuant to the Puerto Rico Tourist Development Act of 1993 and the Puerto Rico Tourism Development Act of 2010 might have, as well as the associations of owners of timeshares and vacation clubs, whose funds shall be used to make improvements to said exempt businesses. Furthermore, the Internal Revenue Code is amended in order to exempt individuals from the alternate basic tax on income derived from tourism developments. Such amendments to the Code have the purpose of adjusting various provisions contained therein so that they may be consistent with the public policy of the Government of Puerto Rico.

The Internal Revenue Code is also amended to establish an exemption from the sales and use tax on foreign-flag watercraft, whose owners or holders are not residents of Puerto Rico. This amendment has the purpose of fostering the use of marinas in Puerto Rico as a tourist destination for Puerto Rico nonresidents who own and hold a foreign-flag watercraft and thus promote more use of our marinas.

In addition, the Municipal Property Tax Act of 1991 is amended to extend the tax exemption on real property to land plots on which a tourism-related construction is in progress during the exemption period on the construction as provided in said Act.

The Commonwealth of Puerto Rico Room Occupancy Rate Tax Act, as amended, is also amended to provide that the funds collected from such tax shall be destined to the treasury of the Puerto Rico Tourism Company as of Fiscal Year 2010-2011. This amendment shall enable the Tourism Company to have enough funds for the accomplishment of its purposes and the implementation of the public policy set forth by virtue of this Act.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:

Article 1.—The “Puerto Rico Tourism Development Act of 2010” is hereby created to read as follows:

Section 1.—Statement of Public Policy.—

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

- (a) To make Puerto Rico a world-class tourist destination.
- (b) To ensure the adequate conditions for the continuous development and worldwide competitiveness of Puerto Rico’s hotel industry.
- (c) To provide the environment to continuously raise local and foreign capital for investment in tourist projects.
- (d) To adjust the incentives offered to the Puerto Rican tourist industry to the evolution of the best tourist products provided, challenges faced, and the opportunities offered by today’s world.
- (e) To reduce the high costs of construction and operation of tourism-related businesses in Puerto Rico.
- (f) To take action to reduce energy costs through the various renewable source alternatives.

Section 2.—Definitions.—

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

- (a) “Tourist Activity” means:

(1) The ownership and/or administration of:

(A) Hotels, condo hotels, Puerto Rican *paradores*, agri-lodgings, timeshares and vacation clubs; provided, that timeshare and/or vacation club ownership, or both per se, shall not be deemed to be a tourist activity, unless the owner is the creating developer or a successor developer, as such terms are defined in Act No. 252 of December 26, 1995, as amended, known as the “Puerto Rico Timeshare and Vacation Club Act,” and guest houses, excluding the operation of casinos, gambling rooms, and similar activities; or

(B) Theme parks, golf courses operated by or associated with a hotel that is an exempt business under this Act, the Puerto Rico Tourist Development Act of 1993, or any other similar or analogous law, or golf courses located within a tourist destination or resort, tourist marinas, docking facilities for tourists, agritourism, nautical tourism (it being provided, however, that any marinas in the Island Municipalities of Vieques and Culebra shall be deemed to be tourist marinas for purposes of this Act), medical tourism, and other facilities or activities that, due to the special attractive features deriving from their usefulness as a source of active or passive entertainment or amusement, constitute a stimulus to domestic or foreign tourists, and any other tourism sector, insofar as the Director determines that such operation is necessary and convenient for the development of tourism in Puerto Rico; or

(2) The operation of a business engaged in leasing to an exempt business under this Act or the Puerto Rico Tourist Development Act of 1993, of property devoted to an activity covered under paragraphs (1) and (3) of subsection (a) of this Section, except that none of the provisions herein shall apply to contracts known as financial lease contracts. When leasing one or more watercraft to an exempt business described in paragraph (3) of subsection (oo) of this Section, the

sail or motor watercraft must be leased to such exempt business for a total period of not less than six (6) months during each calendar year.

(3) The development and administration of natural resources that are useful as a source of active or passive entertainment or amusement, including, but not limited to, caves, forests, natural reserves, lakes, and canyons, insofar as the Director determines that such development and administration is necessary and convenient for the development of tourism in Puerto Rico.

(b) “Agri-lodgings” means any lodging facility established in an active agricultural livestock business with the purpose of providing lodging to transient visitors, to enjoy contemplating nature and/or participate in activities related to the farming and animal husbandry operation or to handcrafting.

(c) “Agritourism” means the group of activities organized specifically by a bona fide farmer to complement his/her main activity, to which tourists are invited; and these constitute other services for pay.

(d) “Guest House” means any building, a part thereof, or a group of buildings approved by the Puerto Rico Tourism Company, to be operated for tourism purposes; it shall consist of not less than seven (7) rooms for transient guests, and provide administrative staff twenty-four (24) hours a day, a private bathroom per room, and housekeeping service; and it may provide living quarters for its owners or administrators. Such guest houses shall comply with the provisions of the Regulations of the Minimum Requirements for Lodgings and *Paradores* in Puerto Rico, promulgated, implemented, and administered by the Puerto Rico Tourism Company.

(e) “Casino” or “Gambling Room” means a gambling room exploited through a franchise issued pursuant to the terms of Act No. 221 of May 15, 1948, as amended.

(f) “Code” means Act No. 120 of October 31, 1994, as amended, known as the “Puerto Rico Internal Revenue Code of 1994,” or any successor law.

(g) “Puerto Rico Tourism Company” means the public corporation established under Act No. 10 of June 24, 1970, as amended.

(h) “License Grant” means the decree issued pursuant to Section 9(c) of this Act, whereby the Director notifies his/her approval to an application properly filed and the conditions imposed thereon.

(i) “Condo hotel” means the group of units of a building or group of buildings converted to the horizontal property regime or to the regime under the Puerto Rico Condo hotels Act, and which meet the requirements of a hotel; in which not less than fifteen (15) rooms or apartments are devoted to lodging transient persons at all times by means of an integrated leasing program. The term “condo hotel” also includes a group of residential units, in fee simple, within a tourist destination or resort, which also meets all the requirements stated in this subsection.

(j) “Total Project Cost” means all those expenses and disbursements incurred by eligible businesses, including:

(1) All expenses and disbursements incurred by the eligible business on account of:

(i) Salaries paid to its employees, land acquisition, construction, habilitation, and marketing until the opening;

(ii) Pre-opening and opening ceremony expenses; and

(iii) Payroll and marketing expenses during the first twelve (12) months of operation, except that an exempt business that consists of a timeshare or vacation club ownership plan, the promotion, marketing, and sales expenses and disbursements related to the sale of timeshare or vacation club

ownership during the first sixty (60) months after opening all the facilities of said exempt business, are included.

(2) The interest and finance charges (e.g., commitment fees) obtained that has been capitalized during the construction period and during the first twelve (12) months of operation;

(3) Hard and soft construction costs incurred in the substantial extension or renovation of an exempt business;

(4) Expenses related to the purchase of furniture, fixtures, and equipment, as well as operating supplies and equipment during the first twelve (12) months of operation;

(5) Expenses related to the issue of debt to obtain capital for the exempt business;

(6) Any reserve or contingency account required by the “Puerto Rico Tourism Development Fund” or any creditor or financial institution;

(7) Expenses related to the construction and development of infrastructure and utilities necessary for the construction and development of the exempt businesses;

(8) Costs of acquisition or the fair market value, as of the date of the contribution, of facilities used to carry out a tourist activity during a period of thirty-six (36) months prior to the date of acquisition or contribution that meets the renovation and/or extension requirement exceeding one hundred percent (100%) of the purchase price established in subsection (ee) of Section 2 of this Act; and

(9) Any other expense, disbursement, or investment that the Director determines by regulation.

However, the total cost of the Tourism Project shall exclude, as a general rule and except when at the discretion of the Director, the best interests of Puerto Rico require otherwise: (i) the money that has been invested before the effective date of the Act, and (ii) the money that has been invested before holding the pre-application conference, as defined in subsection (ll) of this Section.

Under no circumstance shall the estimate cost of the time invested by the Developer or any stockholder of the Exempt business be considered for the computation of that which constitutes the total cost of the Tourism Project.

(k) “Tourism Investment Credit” It means a credit pursuant to paragraph (1) of subsection (a) of Section 5 of this Act.

(l) “Developer” means the investor or any other natural or juridical person who is affiliated to or is owned or directly or indirectly controlled by said investor, who is directly or indirectly responsible for or participates in the construction, development or administration of the Tourism Project or the exempt business.

(m) “Director” means the Executive Director of the Puerto Rico Tourism Company.

(n) “Tourist Development Income Distribution” means any distribution of dividends or profits of an exempt business or a distribution in liquidation of an exempt business and which consists of tourist development income.

(o) “Eco-techniques” means ecologically responsible design and construction techniques in order to significantly minimize direct or indirect environmental impact and reduce costs, such as, but not limited to, the use of clean technology, solar energy, waste treatment and recycling, production of compost from organic waste, management of waste waters, and alternate water supply for domestic and commercial uses.

(p) “Nautical Tourism Watercraft” means motor or sail watercraft with a capacity to transport six (6) or more passengers, operated by tour companies or available for rental to be destined to nautical tourism activities, including megayachts for tourism purposes, when the Director determines that such operation is convenient for the development of tourism in Puerto Rico.

(q) “Primary Issue or Offering” means the first issue of a security, stock, or share for public sale. Investors that acquire stock in a corporation or shares in a partnership or limited liability company of an underwriter or a public or public-private corporation of the Government of Puerto Rico, who acquired such stock or shares at its primary offering to complete the balance of the capital investment required to close the financing of a tourism project, shall be also deemed as if they had acquired the same in their Primary Issue for purposes of the credits provided in subsection (a) and (e) of Section 5 of this Act.

(r) “Governor” means the Governor of Puerto Rico.

(s) “Hotel” means any building, part thereof, or group of buildings endorsed by the Puerto Rico Tourism Company, to be appropriately devoted in good faith to providing lodging for pay mainly to transient guests, and shall have not less than fifteen (15) rooms to lodge guests. Its facilities shall be operated under sanitation and efficiency norms and conditions that are acceptable to the Puerto Rico Tourism Company.

(t) “Tourist Development Income” means the income of an exempt business from the operation of a tourist activity, and the income from reinvestment in Puerto Rico of the profits of an exempt business obtained from a tourist activity, provided that such reinvestment is a tourist activity. If the exempt business is a hotel, condo hotel, *parador*, or guest house, the exempt income shall include income from:

(1) The room rental and other service charges related to the tourist activity.

(2) The sale of food and beverages.

(3) The operation of retail stores within the physical facilities, but only if such retail stores are owned and operated by the exempt business.

(4) The operation of golf courses and other sports and recreational facilities that are part of the tourist activity of the eligible business.

(5) The leasing of commercial space within the hotel, condo hotel, *parador*, or guest house for the operation of businesses which provide useful services to transient guests.

If the exempt business is a tourist marina, tourist development income shall only be deemed to be such income generated by nautical tourism activities; therefore, the income generated by the services provided to persons who keep their watercraft at the marina permanently for their private use shall not be deemed to be tourist development income.

(u) “Eligible Investment” means:

(1) The amount in cash that has been contributed to an exempt business or eligible business that later receives an exemption grant by law, to be used in a tourist activity in exchange for:

(A) Stock in a corporation, if the exempt business is a corporation, or

(B) The shares or increase in shares in a limited liability company, partnership, or joint venture, or

(C) A unit in a condo hotel, provided such unit is devoted to the integrated leasing program of the condo hotel for a period of ten (10) years and for nine (9) months of each calendar year and the investor owns the unit in fee simple.

(2) The value of land and existing structures contributed to an exempt business or eligible business that later receives an exemption grant under this Act, to be used in a tourist activity in exchange for:

(A) Stock in the corporation, if the exempt business is a corporation, or

(B) Shares or an increase in shares in a limited liability company, partnership, or joint venture, if the exempt business is a limited liability company, partnership, or joint venture. The value of the land or existing structure contributed shall be the fair market value, minus the balance of the mortgages encumbering the land, or the existing structure, at the time of the contribution. The fair market value shall be determined on the basis of an appraisal of such land or existing structure conducted by one or more professional appraisers duly licensed in Puerto Rico. The Director shall approve the determined net value of the land or existing structure before the same is contributed to the exempt business.

(3) Contributions made in cash by a public corporation of the Government of Puerto Rico or any of its subsidiaries in exchange for:

(A) Stock or shares of an exempt business, or in an eligible business that later receives an exemption grant under this Act, that holds such corporations or subsidiaries, or

(B) The subordinate debt of an exempt business or an eligible business that later receives an exemption grant under this Act, with such corporations or subsidiaries.

(4) Loans granted, financing commitments issued, and/or legally enforceable commitments to make capital investments, insofar as these have been made by the Hotel Development Corporation (HDC).

(5) Eligible investments shall only be deemed to be such investments in which all funds are used solely and exclusively for the acquisition of land, structures, construction, and habilitation of the facilities of a new business or for the substantial extension or renovation of the facilities of an existing business, as defined in this Act. Any other investment whose funds are not directly and entirely used for the acquisition, construction, habilitation, or substantial extension or renovation of the facilities of an eligible business, shall be excluded from the definition of eligible investment of this Act. Provided, that the use of funds for the acquisition or construction of or improvements to a watercraft devoted to nautical tourism or small watercraft, jet skis, kayaks, sail boats or other similar motor or non-motor watercraft, shall not be deemed to be a eligible investment. Furthermore, except when, in the discretion of the Director, the best interests of Puerto Rico require otherwise, eligible investments shall only be deemed to be those investments made after the holding of the pre-application conference with the designated officers of the Tourism Company.

In the event that one of the contributions described in paragraph (1) or two (2) of this subsection is made, such contribution shall be deemed to be an eligible investment only if such investment is made during the primary issue of the stock or shares. However, as for exempt businesses, such contributions shall not require the issue of additional stock or shares from investors who at the time of the contribution are stockholders, partners, members, or other owners of the exempt business. In the case of condo hotels, an eligible investment shall be deemed to be that cash contribution for the acquisition of a condo hotel unit acquired from the entity that developed or built the same.

In those cases in which the Developer of a tourism project deems that the eligible business will need to incur cash expenses before the date of closing of the financing for the tourism project and that the contributions to defray such expenses shall be recorded into the exempt business's books as a debt of the business until the financing for the Tourism Project is closed, such contributions shall be deemed to be eligible investments if at the time of closing the financing, the principal of the debt is remitted, except for any interest accrued. Such remission shall be deemed to be a cash contribution in exchange for stock or shares in the exempt business, insofar as the Director agrees to have the aforesaid contributions deemed to be an eligible investment through an exemption grant for the exempt business or an Administrative Determination to that effect;

(v) "Investor" means any person who makes an eligible investment, as defined in subsection (u) of this Section.

(w) "Puerto Rico Condo hotels Act" means Act No. 249 of August 12, 2008, as amended.

(x) "Puerto Rico Tourist Development Act of 1993" means Act No. 78 of September 10, 1993, as amended.

(y) “Municipal License Fees Act” means Act No. 113 of July 10, 1974, as amended.

(z) “Tourist Marina” means a marina that provides areas, services, and docking facilities for: (i) leasing or chartering Nautical Tourism Watercraft, (ii) foreign-flag watercraft, which is owned or held by a Puerto Rico nonresident, or (iii) any other nautical tourist activity, as prescribed by the Tourism Company by regulation.

(aa) “Mega Yachts for Tourist Purposes” means a watercraft with an overall length of eighty (80) feet that qualifies as a nautical tourism watercraft under this Act, dedicated to leisure or recreational activities or educational purposes for tourists for pay in waters in or outside of Puerto Rico. In order for a watercraft to be deemed as eligible, it must: (1) be available in Puerto Rico for such activities during a period of not less than six (6) months every year; and (2) render a quarterly report to the Director which shall contain a register or log of the use of the watercraft that is proof of its use in the tourist activity. The requirement to render a quarterly report shall become due the twentieth (20th) day of the month following the last month of each quarter.

(bb) “Eligible Business” means any new or existing business engaged in a tourist activity not covered by a resolution or tax exemption grant conferred under the Tourist Incentives Act of 1983, as amended, or the Puerto Rico Tourist Development Act of 1993, or which being covered, waives such resolution or exemption grant in favor of a grant under this Act.

(cc) “Exempt Business” means an eligible business that has received a grant under this Act.

(dd) “Existing Business” means a business engaged in a tourist activity at the time of properly filing an application for a grant under this Act or which otherwise does not qualify as a new business under this Act, and which undertakes a substantial extension or renovation of the existing physical facilities to be used in a tourist activity.

(ee) “New Business” means a business not operating at the time of properly filing an application for a grant under this Act and which shall be engaged in a tourist activity using tourist facilities that have not been used in a tourist activity during the period of thirty-six (36) months prior to the date of filing the application. In the case of eligible businesses that shall use physical facilities not used in a tourist activity during a term of not less than eighteen (18) months prior to filing the application, the Executive Director of the Puerto Rico Tourism Company may release them from meeting the aforesaid thirty-six (36) month requirement when, in his/her discretion, the best interests of Puerto Rico so warrant. Likewise, a new business shall also be deemed to be any existing business or structure that, even if devoted to a tourist activity during the aforesaid thirty-six (36) month period to complete the investment, is acquired or contributed to the exempt business in order for the structures that house said business to be submitted to a renovation and/or extension of such magnitude that its cost will exceed one hundred percent (100%) of the business’s price of purchase, or the fair market value on the date of the contribution, insofar as said amount is entirely invested within the thirty-six (36) month period from the date of acquisition or contribution of the same. The Director may extend such thirty-six (36) month term through an order issued by him/her when, in his/her discretion, the best interests of Puerto Rico so require, but never for an additional period greater than thirty-six (36) months. A condo hotel may only qualify as a new business if the aforementioned units have not been previously used and are acquired from the entity that

developed or built the same, except that a unit that has been let by the entity that developed or built the same prior to its initial sale by said entity shall qualify as a new business.

(ff) “Puerto Rican *Paradores*” means any lodging covered under the program sponsored by the Puerto Rico Tourism Company for the establishment of a network of lodging units throughout the entire Commonwealth of Puerto Rico that complies with the provisions of the Regulation of Required Minimum of Lodgings and *Paradores* in Puerto Rico, promulgated, implemented, and administered by said Company.

(gg) “Person” means a corporation, limited liability company, partnership, or any of these that chooses the benefits of Subchapters K or N of Chapter 3 of Subtitle A of the Puerto Rico Internal Revenue Code of 1994, as amended; an individual or group of individuals; a trust or estate.

(hh) “Timeshare and Vacation Club” means any plans with a license issued by the Company pursuant to the provisions of Act No. 252 of December 26, 1995, as amended, better known as the “Timeshare and Vacation Club Act of Puerto Rico.”

(ii) “Integrated Watercraft Leasing Program” means a business engaged in renting to tourists any sail or motor watercraft of an overall length of thirty-two (32) feet or more for leisure or recreation. The Director shall determine by regulation the terms and conditions applicable to said program, which shall require watercraft eligible therefor to be available in Puerto Rico for rental under the program for a period of not less than six (6) months each year.

(jj) “Property Devoted to a Tourist Activity” means:

(1) Real property, including land and improvements devoted to the conduct of a tourist activity; and

(2) Any group of machinery, furniture, permanent on-site personal property, and equipment necessary or convenient for an exempt business in the conduct of a tourist activity, including infrastructure, equipment, and/or furniture used in eco-techniques.

(kk) “Tourism Project” means the physical facilities that shall be devoted to a tourist activity of an exempt business.

(ll) “Pre-application Conference” means the meeting to be held between an applicant and the officers designated by the Tourism Company to present a proposed project, prior to filing an application for a grant under this Act, in which the applicant shall explain and present the merits of the proposed project, its contribution to the development of the tourism industry in Puerto Rico, a description of the tourist activity or activities he/she intends to carry out, the estimate of costs expected to be incurred to develop and build the project, financing sources, and any other information that the Director may require.

(mm) “Secretary” means the Secretary of the Treasury of Puerto Rico.

(nn) “Medical Tourism” means any medical facilities certified and accredited in Puerto Rico that provide lodging services to persons, with the purpose of seeking medical care and treatment.

(oo) “Nautical Tourism” means the group of services to be rendered in contact with water to nautical tourists, which include, but are not limited to:

(1) The lease or charter to tourists of Nautical Tourism Watercraft for leisure or recreation or for educational purposes for tourists, including tours;

(2) The lease of small watercraft, jet skis, kayaks, sail boats or other similar motor or non-motor watercraft, to guests in a hotel, condo hotel,

timeshare or vacation club, or which is located in a tourist destination or resort or in a Tourist Marina or in areas near the aforesaid places, as provided by the Company through regulations; and

(3) The operation of an integrated watercraft leasing program.

Any other term used in this Act that has not been expressly defined herein shall have the same meaning it has in the Puerto Rico Internal Revenue Code.

Section 3.—Exemptions.—

(a) Kinds of Exemptions.—All exempt businesses are hereby exempted from the payment of taxes and levies mentioned in paragraphs (1) through (5) of this subsection:

(1) Income Tax Exemption.—

(A) Exemption and Rates.—

Tourism development income, as well as the dividends or profits distributed by the exempt business to its stockholders, partners, or members, and the distributions of such income made in liquidation, shall be exempt from income taxes pursuant to the following terms and conditions:

(i) For all tourist activities not established in Vieques or Culebra, the exemption percentage on said income shall be of up to ninety percent (90%).

(ii) For all tourist activities established in Vieques and Culebra, the exemption percentage on said income shall be of up to one hundred percent (100%).

(iii) The exemption shall be in effect for a period of ten (10) years and shall begin to govern on the date specified in subsection (b) of this Section.

(B) Stockholder, Partner, or Member of an Exempt Business.—

Distributions of tourist development income by an exempt business, including special partnerships, before the expiration of their grant, to its stockholders, partners, or members, regardless of whether these are corporations, partnerships, or limited liability companies that are or were, in turn, exempt businesses, shall be subject to the income taxes (if any are applicable) only once, which shall be at the time in which the exempt business that generated such tourist development income distributes such income to its stockholders, partners, or shareholders. For purposes of this subsection, the holding of shares in the income of a special partnership attributable to its partners shall not be deemed to be tourist development income. The treatment of tourist development income distributions carried out by an exempt business that is a special partnership shall be governed by the provisions of the Code.

(i) Such distributions shall retain their tourism development income status along with its respective characteristics. Subsequent distributions that have been subject to taxation, made by any corporation or partnership, shall be exempted from any additional taxes.

(ii) In the case of exempt businesses organized as partnerships, joint ventures, or similar entities, composed of various organizations, partnerships, or a combination thereof, the components of such exempt businesses shall be deemed to be businesses that are or were exempted, and therefore, the only tourist development income distributions subject to taxation shall be those made by said components of such exempt businesses.

(iii) The profits made from the sale, exchange, or other disposal of corporate stock, partnership or limited liability company shares, joint venture shares, or, substantially, all assets of such corporations, partnerships, or limited liability companies, or joint ventures that are or have been exempt businesses, and corporate stock or partnership, limited liability companies, or joint

venture shares that are in any way the owners of the aforesaid entities, shall be subject to the provisions of subparagraph (C) of paragraph (1) of subsection (a) of this Section if such sale, exchange or other disposal is conducted, and any subsequent distribution of such profits, be it as dividends or a distribution in liquidation, shall be exempted from any additional taxes.

(C) Sale or Exchange.—

If the sale or exchange of stock or shares in partnerships or limited liability companies, shares in joint ventures, or substantially, all assets devoted to a tourist activity of an exempt business is carried out, and such property continues to be devoted to a tourist activity after such sale for a period of at least twenty-four (24) months:

(i) During the exemption period, the profit or loss resulting from such sale or exchange, which shall be recognized in the same proportion as tourist development income of the exempt business, shall be subject to the payment of income taxes; the basis of such stock, shares or assets involved in the sale or exchange shall be determined, for purposes of establishing profits or losses, pursuant to the applicable provisions of the Code in effect on the date of the sale or exchange.

(ii) After the expiration date of the exemption, only the profits or losses resulting from the sale or exchange of stock or shares shall be recognized in the manner provided in clause (i) of this subparagraph, but only up to the total value of the stock or shares on the books of the corporation, partnership, or limited liability company on the expiration date of the exemption (minus the sum of any exempt distribution received over such stock after said date), minus the basis of such stock. The remainder, if any, of the profits or losses shall be recognized pursuant to the provisions of Subtitle A of the Code. The profits or

losses in the sale or exchange of assets shall be recognized pursuant to the provisions of Subtitle A of the Code.

The requirement of having the property continue to be devoted to a tourist activity for a period of at least twenty-four (24) months shall not apply in those cases in which the sale or exchange involves stock or shares of an investor other than a developer or anyone who exerts any kind of control over the exempt business.

(D) Flexible Tax Exemption.—

Exempt businesses shall be entitled to choose that their tourist development income for a specific taxable year not be covered by the tax exemption provided in paragraph (1) of subsection (a) of Section 3 of this Act, by attaching a notice to that effect to their tax income tax return for such taxable year filed on or before the date provided by the Code to file such return, including any time extension granted by the Secretary for the filing thereof. The exercise of this right by means of such notice shall be irrevocable and binding for the exempt business; provided that the total number of years that an exempt business may enjoy the exemption shall not exceed ten (10) years.

(E) Additional Exemptions.—

Tourist development income shall not be subject to the following income taxes:

(i) Alternative minimum taxes under Section 1017 of the Code;

(ii) The additional tax on corporations and partnerships under Section 1102 of the Code; and

(iii) The alternate basic tax for individuals under Section 1011(b) of the Code or any similar succeeding law.

(F) Tax Rate.—

(i) Applicable Tax Rate.—Except when provided otherwise in this Act, the tax rate applicable to any exempt business shall be that which is in effect at the time of approval of this Act.

(ii) Royalties or Proprietary Rights.—

(1) Taxes on and Withholding of Royalties Paid by an Exempt Business to Corporations, Partnerships, or Limited Liability Companies or Other Foreign Persons not Engaged in Trade or Business in Puerto Rico.—

(a) There shall be imposed, charged, and paid for each taxable year, in lieu of the tax imposed under the Puerto Rico Internal Revenue Code or any similar or succeeding law, on the total amount received as royalties or proprietary rights for the use in Puerto Rico of any intangible property related to the activity exempt under this Act, by all foreign corporations, foreign partnerships, or persons not engaged in trade or business in Puerto Rico, originating exclusively from sources within Puerto Rico, a tax of twelve percent (12%).

(b) All exempt businesses required to pay royalty or proprietary rights to foreign corporations, foreign partnerships, or persons not engaged in trade or business in Puerto Rico for the use in Puerto Rico of intangible property related to the activity exempt under this Act, shall deduct and withhold at the source a tax equal to that which is imposed in item (a) of subclause (1) of this clause.

(2) Any person described below shall pay taxes of two point nine percent (2.9%) on payments received as royalties or proprietary rights for the use in Puerto Rico of any intangible property related to the activity exempt under this Act and which originate from sources within Puerto Rico, in lieu of that which is provided in subclause (1) of this clause.

(a) Any corporation, partnership, limited liability company, or other foreign person not engaged in trade or business in Puerto Rico who directly holds fifty percent (50%) or more of the value of stock or shares in the exempt business; or

(b) Any corporation, partnership, limited liability company, or other foreign person not engaged in trade or business in Puerto Rico who directly or indirectly owns eighty percent (80%) or more of any corporation, partnership, or person described in item (a) of subclause (2) of this clause.

(c) Any foreign corporation, foreign partnership, or person not engaged in trade or business in Puerto Rico directly or indirectly held by eighty percent (80%) or more by a corporation, partnership, or person described in items (a) or (b) of subclause (2) of this clause.

(3) The corresponding tax shall be withheld at the source by an exempt business that makes royalty or proprietary right payments for the use in Puerto Rico of any intangible property related to the activity exempt

under this Act and which originate from sources within Puerto Rico to the persons described in items (a), (b), or (c) of subclause (2) of this clause.

(G) Exemption for Individuals, Estates, Corporations, Partnerships, Limited Liability Companies, and Trusts with Respect to Interest Paid or Credited on Bonuses, Notes, or Other Obligations of Certain Exempt Businesses.—

(i) Exemption.—Any individual, estate, corporation, partnership, limited liability company, or trust shall be exempt from payment of any tax imposed under the Code and any license fees imposed under the Municipal License Fees Act of 1974, as amended, on income from interest, charges, and other credits received with respect to bonuses, notes, or other obligations of an exempt business for the development, construction, or rehabilitation of or improvements to an exempt business under this Act, provided that the funds shall be entirely used in the development, construction, or rehabilitation of or improvements to a exempt business and/or the payment of existing debts of said exempt business, insofar as the funds from these existing debts have been originally used in the development, construction, or rehabilitation or improvements to said exempt business. The expenses incurred by any person who makes an investment as described above shall not be subject to the provisions of Section 1024(a)(5), 1024(a)(11), and 1024(f) of the Code in relation to such investment and the income derived therefrom.

(ii) The proceeds of the bonus, note, or other obligation must be granted directly to an exempt business covered under the Puerto Rico Tourist Development Act of 1993 or this Act.

(H) Deduction and Carry-over of Net Losses.—

(i) If an exempt business incurs a net loss not originating from the operation of a tourist activity, such loss shall be deductible and may be used only against income other than tourist development income and shall be governed by the provisions of the Code.

(ii) If an exempt business incurs a net loss in the conduct of a tourist activity, such loss may be deducted up to an amount equal to the percentage of its tourist development income that would have been taxable.

(iii) A deduction on carry-overs of losses incurred in previous years shall be granted as provided below:

(I) The excess of losses deductible under subparagraph (ii) of this paragraph may be carried over against the deductible portion of the tourist development income pursuant and subject to the limitations provided in said clause. The losses shall be carried over in the order they were incurred.

(II) Any net loss incurred in a year in which the election under subparagraph (D) of this clause is in effect may be carried over only against tourist development income generated by the exempt business in a year in which the election under subparagraph (D) of this clause was made. Losses shall be carried over in the order they were incurred.

(iv) None of the provisions herein shall limit in any way the right under the Code of partners of a special partnership to claim a deduction on their distributable share of the loss incurred by the special partnership against income from other sources subject to the limitations of the Code.

(1) Basis or Adjusted Basis.—For purposes of this Act, except for Section 4(e), any reference to the term “basis” or the phrase “adjusted basis” shall

require the computation of the same as established in Section 1114 or 1347 of Subtitle A of the Code, prior to the adjustments directed under this Act.

(2) Exemption with Respect to Municipal and State Taxes on Real and Personal Property.—Any property devoted to a tourist activity shall enjoy up to a ninety percent (90%) exemption on all municipal and state taxes on real and personal property for a period of ten (10) years, computed from the date prescribed under subsection (b) of this Section.

In case of personal property consisting of equipment and furniture to be used in a lodging facility, except for any commercial unit, and in cases of special timeshare rights, vacation club property rights or lodging, as said terms are defined in Act No. 252 of December 26, 1995, as amended, of a timeshare or vacation club duly licensed by the Company under the provisions of said Act, the personal and/or real property shall enjoy the exemption provided in this clause, regardless of who is the owner of the equipment, furniture and/or real property devoted to a tourist activity. Said exemption shall be effective as long as the exemption grant on the timeshare or vacation club plan is in effect. The Director shall determine by regulation the procedure to claim the aforesaid exemption.

The stock in a corporation or the shares in a partnership or a limited liability company that enjoys an exemption grant under this Act shall not be subject to the payment of property taxes under the Property Tax Act of 1991, as amended, or any analogous succeeding law.

Real and/or personal property taxes shall be assessed, imposed, notified, and administered pursuant to the provisions of the Property Tax Act in effect on the date such tax is assessed and imposed.

(3) Exemption Related to License Fees, Excise Taxes, and Other Municipal Taxes.—

A new business that is an exempt business shall not be subject to the payment of license fees, excise taxes, and other municipal taxes on its tourist development income, transactions, events, or on use, imposed by any ordinance of any municipality, as of the date prescribed pursuant to subsection (b) of this Section. An existing business that is an exempt business shall enjoy up to a ninety percent (90%) exemption on license fees, excise taxes, and other municipal taxes on its tourist development income, transactions, events, or on use, imposed by any ordinance of any municipality as of the date prescribed pursuant to subsection (b) of this Section. The exemption shall be effective for a period of ten (10) years and shall begin on the date specified in subsection (b) of this Section.

Except for the provisions of the Municipal License Fees Act of 1974, as amended, no municipality may impose taxes, fees, licenses, excise taxes, or any other kind of charge based on or related to the stay of a person as a guest in an exempt business.

(4) Exemption Related to Taxes on Use and Consumption Items.—

(A) In General.—Exempt businesses shall enjoy up to a one hundred percent (100%) exemption from the payment of the taxes imposed under Subtitles B and BB of the Code with respect to those items acquired and used by an exempt business in relation to a tourist activity. The exemption shall be in effect for a period of ten (10) years and shall begin on the date specified in subsection (b) of this Section.

In cases of personal property consisting of equipment and furniture to be used in a lodging facility, except for any commercial unit as said terms are defined in Act No. 252 of December 26, 1995, as amended, of a timeshare or vacation club duly licensed by the Company under the provisions of said Act. Personal property shall enjoy the exemption provided in this clause, regardless of who is the owner of the equipment or furniture. Said exemption shall

be effective as long as the exemption grant on the timeshare or vacation club plan is in effect. The Director shall determine by Regulation the procedure to claim the aforesaid exemption.

(B) The exemption provided in this paragraph (4) includes items acquired by a contractor or subcontractor, to be used solely and exclusively by an exempt business in construction works related to a tourist activity of said exempt business.

(C) Exclusions.—The exemption granted under this paragraph (4) shall not apply to items or other property of such a nature that they are part of the inventory proper of the exempt business under Section 1022(c) of Subtitle A of the Code, and which represent property mainly held for sale in the regular conduct of the trade or business; nor shall such exemption apply to the tax on hotel room occupancy imposed under Act No. 272 of September 9, 2003, as amended, known as the “Room Occupancy Rate Tax Act.”

(D) Taxes Paid on Items Sold for Use in a Tourist Activity.—The Secretary shall grant a credit or refund on any tax paid on the sale or on the introduction of items sold to exempt businesses for use in connection with a tourist activity in the manner and with the limitations prescribed in the Code.

(5) Exemption Related to Municipal Excise Taxes on Construction.—

(A) In General.—All exempt businesses and their contractors or subcontractors shall enjoy up to a one hundred percent (100%) exemption on any tax, levy, fee, license, excise tax, rate, or charge for the construction of works to be devoted to a tourist activity within a municipality, imposed by any ordinance of any municipality, as of the date prescribed pursuant to subsection (b) of this Section. The exemption shall be effective for a period of ten (10) years and shall begin on the date specified in subsection (b) of this Section.

Only for purposes of this exemption, any person in charge of carrying out administrative duties and the physical and intellectual work inherent to the construction of a work to be devoted by an exempt business to a tourist activity, and any middleman or chain of middlemen between such person and the exempt business shall be deemed to be a contractor or subcontractor of the exempt business.

(B) Condo Hotels.—In cases of condo hotels, and only for purposes of this exemption, any person in charge of carrying out administrative duties and physical and intellectual work inherent to the construction of a condo hotel, and any middleman between such person and the owner of a condo hotel unit, including the developer of the condo hotel him/herself, when he/she has contracted another for the construction of the condo hotel, shall be deemed to be contractors of an exempt business in terms of each condo hotel unit that meets all the requirements to enjoy the benefits available by law, including, but not limited to, the requirement of devoting the same to an integrated leasing program for at least nine (9) months of the year.

(C) Amount to be Taken as Exemption in the Case of Condo Hotels.—The amount to be taken as an exemption in the case of a condo hotel

pursuant to this paragraph shall be divided and assigned regarding every unit of the condo hotel according to the proportion of the interest of each unit regarding the common elements of the regime, when all of the units of the condo hotel are devoted to a single horizontal property or another regime under the Puerto Rico Condo Hotel Act, or by using any prorating method acceptable to the Director when the units are devoted to more than one horizontal property regime.

The exemption shall be taken in whole for the year in which it is required to meet the tax liability for the construction. However, it shall be understood that taxpayers shall be entitled to take as an exemption a one hundred-twentieth part of the amount available as assigned prorated exemption in relation to each unit during each consecutive month in which said units are devoted from the time of their construction to an integrated leasing program; provided, that the exemption taken at the time of the construction and development of the condo hotel shall be equal to the total amount of exemption, which would be finally obtained on that account in the event that all units of the condo hotel are devoted to an integrated leasing program for at least nine (9) months for each of the first ten (10) years, equal to one hundred twenty (120) months as of the construction of each unit.

Each year, there shall be a reduction of the amount taken by virtue of the exemption that applies in connection with such units:

(i) Acquired during said year from the entity that developed or built them and which have never been used prior to said acquisition for any purpose whatsoever and which are not devoted by the acquirer to an integrated leasing program, within the limit provided by the Director during which said units must be devoted to such a purpose so that they enjoy the benefits of this Act; or

(ii) That during said particular year, they have not met, for the first time, the requirement of being devoted to an integrated leasing program for at least nine (9) months during said year.

The equivalent of that reduction in the amount taken on account of the exemption may be recovered annually by the municipality from the taxpayers. The amount to be recovered annually shall be computed as follows:

First: There shall be taken for each unit that during said year and that, for the first time, did not meet the requirement of being devoted at least nine (9) months to an integrated leasing program, the total portion of the exemption assigned pursuant to this subparagraph, and the same shall be multiplied by a fraction whose numerator shall be equal to the subtraction of one hundred twenty (120) minus the number of consecutive months during which said unit met the requirement of being devoted at least nine (9) months each year to an integrated leasing program, and whose denominator shall be one hundred twenty (120).

Second: The results obtained from the corresponding equations for each unit described in the preceding sentence shall be added, and the final result thereof shall be the total amount of the exemption taken in excess and subject to recovery for said year. Under no circumstance shall any charges, surcharges, penalties, interest, or any other kind of additional fee be imposed or charged regarding any tax, levy, fee, license, excise tax, rate or duty, whose amount is required pursuant to the provisions of this paragraph for reasons arising before or at the time it was determined said exemption is not in order, in whole or in part.

When computing the number of months said unit was devoted for at least nine (9) months each year to an integrated leasing program, the fractions of the months shall be rounded up to the preceding month.

As a condition of the aforesaid exemption, any municipality, with the previous consent of the Director, may require from any taxpayer regarding the tax, levy, fee, license, excise tax, rate or duty on the construction of a condo hotel, or from those persons who have a proprietary interest on said taxpayers, be they entities of any type, a security or bond to ensure the payment of any amount indebted as a tax pursuant to this subparagraph.

The operator of the integrated leasing program of a condo hotel shall submit an annual report to the director of finances of the municipality or municipalities where the condo hotel is located, should said Municipality or Municipalities impose any tax, levy, fee, license, excise tax, rate or duty on the construction of said condo hotel. Said report shall indicate the dates on which participating units began to participate in the program, as well as the date or dates on which one or more units withdrew from the program.

For purposes of this subparagraph, should an investor in a condo hotel fail to meet any requirement established in the grant conferred for such a purpose should the same be revoked for any reason, it shall be deemed that said investor failed to devote the condo hotel unit(s) covered under said grant to an integrated leasing program. The Director shall notify the director of finances of the corresponding municipality, in case an investor has failed to meet any requirement established in his/her grant or if such grant has been revoked.

(D) Administration of the Exemption.—Any dispute regarding the imposition of any tax, levy, fee, license, excise tax, or rate on the construction of works to be devoted to a tourist activity shall be heard by following such procedures as the municipality may establish for such purposes. Likewise, any dispute in terms of the applicability of the aforesaid exemption, including the mechanism to determine the applicable exemption in the case of condo hotels shall be heard before the Puerto Rico Tourism Company by following such procedures

as the Director may establish for such purposes pursuant to this Act and the “Uniform Administrative Procedures Act of the Commonwealth of Puerto Rico.”

(E) Exception.—In the case of condo hotels, it is hereby established as an exception to the condition requiring that, in order to enjoy the exemption of municipal excise taxes on construction, each condo hotel unit must be devoted to an integrated leasing program for ten (10) consecutive years, and nine (9) months a year. In those cases in which the use of the condo hotel project changes and the condo hotel units changes, these are discharged from the integrated leasing program before the term required under this Act, to such effect, insofar as the unit that is an Exempt Business under this Act is immediately devoted to another tourist activity that is an Exempt Business under this Act, for not less than the remaining time from the ten (10) year period under the integrated leasing program. If this condition is not met, the subsequent acquirer of the unit shall be liable for any amount that must be recovered subsequently on account of this tax collected in excess, it being understood that no recovery shall be in order for the years in which the unit belonged to an integrated leasing program and another tourist activity that is an Exempt Business under this Act.

(6) Special Rule; Municipal License Fees; Determination of Business Volume.—Contractors or subcontractors who perform works for an exempt business shall determine their business volume for purposes of municipal license fees, by discounting the payments that they are required to make to subcontractors under the primary contract with the exempt business. Subcontractors who, in turn, use other subcontractors within the same project shall also discount such payments when determining their business volume.

A contractor or subcontractor may discount the payments described in the above paragraph from their corresponding business volumes, only if such contractor or subcontractor certifies to the Director that he/she did not

include in the contract executed for the works to be performed or the services to be rendered in relation to the exempt business, an item equal to the municipal license fee resulting from the business volume discounted pursuant to this paragraph. Any contractor or subcontractor that performs works for an exempt business shall file a copy of any contract related to such works within ten (10) calendar days from its execution with the municipality or municipalities where such works are to be performed, and they shall provide the name, street and mailing address, and employer identification number of all subcontractors. The Director shall provide by regulation:

(A) The requirements and procedures to determine whether the executed contract complies with the provisions of this clause, including the filing of a copy of such contract with the corresponding municipality or municipalities; and

(B) The penalties for noncompliance with the provisions of this clause.

(7) Program of Income Distribution among Condo Hotel Unit Owners and the Operator of an Integrated Leasing Program for such Condo Hotel.—Individual leasing agreements between condo hotel unit owners and the entity engaged in the operation, pursuant to this Act, of the integrated leasing program for such condo hotel, which contain similar terms and conditions, and whose contractors have received a grant pursuant to this Act at the time of entering into such agreements, or which after such agreements, receive a grant pursuant to this Act effective retroactively, be it at the time or prior to entering into such agreements, even if such grants are revoked subsequently for any reason. By virtue of such agreements, such contractors and the operator accept a lease based on a formula contained in such agreements taking into consideration the gross income derived from the lease of all units in the leasing program, the expenses

attributable to such income, and the costs incurred in all units, shall be deemed not to have the effect of constituting between such contractors a partnership or any other kind of legal entity constituted by the contracting parties; and that each contractor continues to be the owner of his/her respective unit. To such effect, it shall also be deemed that:

(A) For income tax purposes, the gross income share attributed to each one of the contractors shall be deemed received by each directly from the condo hotel guest and not from a partnership or any other kind of legal entity constituted by them; and that, likewise, the corresponding related expenses attributed in the same manner shall be incurred directly by each contractor and not by a partnership or any other kind of legal entity constituted by them; provided, that each contractor that is an investor shall enjoy the income tax exemption provided in this Section with respect to his/her distributed net income, whereas those who do not enjoy such exemption shall pay taxes at their applicable tax rate under the Code.

(B) For municipal license fee purposes, the gross income share attributed to each contractor pursuant to the distribution formula accorded in such agreements shall be their business volume to be reported in their annual statement submitted to the corresponding municipality, and that such business volume received by each contractor that is an investor directly from the condo hotel guest and not from a partnership or any other kind of legal entity constituted by them; provided, that each investor shall enjoy the municipal license fee exemption provided in this Section, with respect to their generated gross income, as per such distribution formula, whereas those who do not enjoy such exemption shall pay taxes at their applicable tax rate under the Municipal License Fee Act, as amended; and

(C) For real and personal property tax purposes, condo hotel unit ownership shall be held by such contractors that have invested in condo hotel units, and not by a partnership or any other kind of legal entity constituted by the agreement between them, and that the real and personal property tax shall be imposed with respect to each investor; provided, that each contractor that is an investor shall enjoy the real and personal property tax exemption provided in this Section, with respect to his/her real and personal properties used in a condo hotel, whereas those who do not enjoy such exemption shall pay taxes at their applicable tax rate under any municipal or state tax law or real and personal property tax law.

(8) Exemption Related to the Room Occupancy Rate.—Any amount received by an exempt business for the sale, exchange, transfer, or any other disposition of special timeshare, vacation club and/or lodging rights as said terms are defined in Act No. 252 of December 26, 1995, as amended, of a timeshare or vacation club duly licensed by the Company under the provisions of said Act shall be exempt from payment of the room occupancy rate imposed under Act No. 272 of September 9, 2003, as amended, or any other substitute law.

(b) Beginning of the Exemption.—

(1) The exemptions provided in subsection (a) of this Section shall begin:

(A) With respect to taxes on tourist development income of an exempt business, from the date its tourist activity starts, but never before the due filing date of having duly filed an application to avail itself of the benefits of this Act.

(B) With respect to taxes on real and personal property devoted to a tourist activity of an existing business that is an exempt business, from January 1st of the calendar year during which an application to avail itself of the benefits of this Act has been duly filed with the Director, or in relation to a new

business that is an exempt business, from January 1st of the calendar year in which said business begins its tourist activity.

(C) With respect to license fees, excise taxes, and other municipal taxes, from January 1st or July 1st, whichever is nearest, after the due filing date of having duly filed an application to avail itself of the benefits of this Act.

(D) With respect to the taxes imposed under Subtitles B and BB of the Code, thirty (30) days after having duly filed an application to avail itself of the benefits of this Act, insofar as a bond is posted pursuant to the applicable provisions of the Code, prior to the date chosen to start this exemption, and if the aforementioned application has not been denied. If the application for exemption is denied, the taxes mentioned in this paragraph shall be paid within sixty (60) days from the date of notice of the denial.

(E) With respect to municipal excise taxes on construction, from the date of filing an application to avail itself of the benefits of this Act; provided, that in the case of condo hotels, contractors and subcontractors shall begin to enjoy the exemption from the time the developer files the master grant application in which he/she describes the nature of the project in addition to meeting such additional requirements as the Director may establish for such purposes.

(2) An exempt business shall have the option to postpone each of the starting dates referred to in paragraph (1) of this subsection by notifying the Director and the Secretary to that effect.

Such notices shall be filed on or before the date prescribed by regulation promulgated to such effect. Starting dates may not be postponed for a period greater than thirty-six (36) months following the date established in paragraph (1) of subsection (b) of this Section. The Director shall issue an order

prescribing the start dates of the exemption periods under this Act, according to the application of the exempt business and pursuant to the regulations promulgated for these purposes.

(3) The exemption percentage applicable to each licensee, as well as the conditions under which the grant shall be executed, shall be determined pursuant to the provisions on such matter contained in the regulation to be promulgated under this Act.

(c) Limitations.—None of the provisions contained in subsection (b) of this Section shall confer the right to a refund for duly assessed, imposed, and collected taxes prior to the dates mentioned in subsection (b).

Section 4.—Exemptions; Extension of the Exemption Period.—

Any exempt businesses may apply for an extension of the exemption period approved under this Act for an additional term of ten (10) years by filing an application with the Director in the manner prescribed by the Director, not later than the expiration date set un the Puerto Rico Internal Revenue Code of 1994, as amended, to file their income tax return for the last taxable year within the exemption period, including any time extension granted by the Secretary for the filing thereof.

The Director shall follow the procedures described in Section 9(c) of this Act and determine whether such exemption is essential for the development of the tourist industry, taking into account the facts presented, the nature of the physical facilities, the number of jobs, the total payroll, the total investment, the location of the project, its environmental impact, the reinvestment in the exempt business, whether in whole or in part, of the depreciation taken as a tax deduction, or other factors that, in his/her judgment, warrant such determination.

During the ten (10) year extension granted under this Section, the exemption rates shall be those determined in Section 3 of this Act.

Section 5.—Credits.—

(a) Tourism Investment Credit.—

Subject to the provisions of subsection (c) of this Section, all investors shall be entitled to a tourism investment credit equal to fifty percent (50%) of an eligible investment made after the effective date of this Act, which shall be claimed in two (2) installments: the first half of such credit, in the year in which the exempt business obtained the necessary financing for the total construction of the tourism project, and the balance of such credit, in the following year. All eligible investments made before the due date for filing income tax returns as provided by the Code, including any time extension granted by the Secretary for the filing thereof, shall qualify for the tax credit granted under this Section, in the taxable year for which the aforementioned return is being filed, insofar as such investments meet all the requirements of this Section. Such credit for tourism investment may be applied against any specific tax of the investor pursuant to Subtitle A and/or Subtitle F that apply to Subtitle A of the Code, including the alternative minimum tax under Section 1017, and the alternate tax for individuals under Section 1011(b) of the Code.

(b) Credit Carry-over.—Any tourism investment credit not used in a taxable year may be carried over to subsequent taxable years until it is used in its entirety.

(c) Maximum Amount of Credit.—

(1) Tourist Investment Credit.—

The maximum amount of tourist investment credit for each tourism project that shall be available to investors shall not exceed ten percent (10%) of the total cost of the tourism project, as determined by the Director, or fifty percent (50%) of the cash contributed by investors to the exempt business that

qualifies as an eligible investment with respect to such project in exchange for stock or shares in the exempt business, whichever is less.

(2) Credit Ownership and Distribution.—

The maximum available amount of investment credit shall be distributed among the investors, in the proportions they want. The exempt business shall notify the credit distribution to the Director, the Secretary, and its stockholders and partners on or before the date set in the Code to file the income tax return for the first year of operations of the exempt business, including any time extension granted by the Secretary to file the return. The distribution chosen shall be irrevocable and binding on the exempt business and the investors.

(d) Basis Adjustment and Recovery of Credit.—

(1) The basis of all eligible investments shall be reduced by the amount taken as tourism investment credit, but it may never be reduced to less than zero.

(2) During the term of three (3) years—eight (8) years in the case of special timeshare or vacation club rights projects—from the date of the notice regarding the credit distribution as described in paragraph (2) of subsection (c) of this Section, the exempt business shall render an annual report to the Director and the Secretary with a breakdown of the total sum invested in the tourism project as of the date of such annual report.

(3) Once the three (3) year term has elapsed—eight (8) years in the case of special timeshare or vacation club rights projects—from the date of the notice described in subsection (c) of this Section, the Director shall determine the total investment made by the exempt business in the tourism project. In the event that the credit for tourism investment taken by the investors exceeds the credit for tourism investment computed by the Director, based on the total investment made by the exempt business in the tourism project, such excess shall be owed as income

taxes to be paid by the investors in two installments, starting with the first taxable year following the expiration date of the aforesaid three (3) year period. The Director shall notify the Secretary of any excess of credit taken by the investors.

The three (3) year term may be postponed by the Director by means of an order issued by him/her, but never for an additional period longer than three (3) years.

(4) The provisions on the recovery of tourism investment credit under the above clause (3) shall not apply to investors who are not developers.

(5) As for condo hotels, the operator of the integrated leasing program shall render an annual report to the Director and the Secretary, identifying the units participating in the integrated leasing program. Said report shall indicate the starting dates of participation in the program of participating units, as well as the date or dates on which one or more units were withdrawn from the program.

If any unit is withdrawn from the program before the expiration of the ten (10) year period, the investor shall owe as income taxes an amount equal to the tourism investment credit taken by the investor with respect to said unit, multiplied by a fraction whose denominator shall be ten (10), and whose numerator shall be the balance of the ten (10) year period as required by this Act. The amount owed as income taxes shall be paid in two installments starting with the first taxable year following the date on which the unit is withdrawn from the integrated leasing program.

For purposes of this subparagraph, the fact that an investor in a condo hotel fails to comply with any requirement established in the grant conferred to him/her for such purposes or if such grant is revoked for any reason, it shall be deemed that the investor no longer devoted the condo hotel unit(s) covered under said grant to an integrated leasing program.

Provided, that in those cases in which the unit is withdrawn from the integrated leasing program to be devoted to any other tourist activity that constitutes an exempt business under the Act for a period of not less than the time remaining to complete the ten (10) year period under the integrated leasing program, the recovery of the income tax shall not apply to the investor; if this condition is not complied with, the next acquirer of the unit shall be responsible for any amount that must be subsequently recovered as income taxes taken in excess, provided that recovery for the years in which the unit belonged to an integrated leasing program and another tourist activity that constitutes an Exempt Business under this Act shall not be in order.

(e) Assignment of Credit.—

(1) Tourism Investment Credit.—

After the date of notice of the distribution of the tourism investment credit provided in paragraph (1) of subsection (c) of this Section, the tourism investment credit provided in this Section may be assigned, sold, or otherwise transferred in whole or in part by an investor to any other person; except that the developer of a tourism project may only assign or otherwise transfer the tourism investment credit provided in this Section under such terms and conditions as the Director and the Secretary have approved previously for the case in question. The terms under which the Director and the Secretary shall approve the sale of credits by developers shall include, but not be limited to, the posting of a bond or any other kind of surety, which must be kept in effect until the Director certifies that the construction and development of the entire tourism project has been completed. Whenever they deem necessary, the Director and the Secretary may require that the money generated by the sale of credits be deposited into an escrow account or any other similar instrument, in which case, the surety required shall only cover the difference between the amount of the credits so assigned, sold, or transferred and the amount of money deposited in the aforesaid account.

A tourism project developer who wishes to assign, sell, or transfer his/her tourism investment credit after the construction and development of the entire tourism project has been completed as determined by the Director through a certification to that effect, may carry out such assignment, sale, or transfer without being subject to the limitations of the preceding paragraph.

In the case of investment credit, the eligible investment basis shall be reduced by the value of the assigned tourism investment credit.

(2) The money or the value of the property received in exchange for the tourism investment credit shall be exempt from taxes under the Code up to an amount equal to the amount of the assigned tourism investment credit.

(3) The tourism investment credit may be assigned, sold, or otherwise transferred only by an Investor, except in the following cases:

(A) An Investor may assign, sell, or otherwise transfer a tourism investment credit through a broker-dealer registered as such with the Office of the Commissioner of Financial Institutions in the circumstances to be established by regulation by the Executive Director.

(B) An underwriter who, having acted as such, has acquired a tourism investment credit at the time of closing of the financing of a tourism project may assign, sell, or otherwise transfer any tourism investment credit to a third party. Such assignment, sale, or transfer shall be deemed to be made by an Investor if he/she complies with the requirements established by regulation by the Executive Director.

(C) In the case of a partner who is a member of a special partnership and who is an Investor, and who in order to complete the balance of capital needed for the financing of a tourism project assigns, sells, or otherwise transfers any tourism investment credit acquired through a distribution or transfer of said special partnership at the time of closing the financing for the same tourism project, said assignment, sale, or other transfer of said credits by the partner who is a member of the special partnership shall be deemed to be made by an Investor.

(D) In the event that a pledge is made to the Government Development Bank, to any other agency of the Government of the Commonwealth of Puerto Rico, or to any other lending entity, of the tourism investment credit granted to an Investor for purposes of financing the eligible cost of a tourism project, the creditor of the pledge may sell, assign, or otherwise transfer such

credits acquired by the execution of the pledge to a third party, if such pledge is executable.

(4) The excess of the amount of a tourism investment credit over the money or the value of the property paid by an acquirer of such credit shall not constitute gross income for purposes of the Code.

(5) The following persons shall notify the Secretary of the assignment, sale, or transfer by means of a sworn statement to that effect, to be attached to their income tax return for the year in which the assignment of the tourism investment credit is made:

(A) The Investor who has assigned all or part of his/her tourism investment credit;

(B) The broker-dealer, underwriter, or creditor of the pledge who has assigned all or part of his/her tourism investment credit; and

(C) The acquirer of the tourism investment credit.

The sworn statement shall contain such information as the Secretary may deem pertinent by regulation promulgated to that effect.

Section 6.—Renegotiation of the Exemption Decree.—

(a) Renegotiation.—All eligible businesses exempted under the Tourist Incentives Act of 1983, as amended, or the Puerto Rico Tourist Development Act of 1993, as amended, may apply for the renegotiation of their exemption grant to avail themselves of the benefits granted under this Act:

(1) If they comply with the requirements of this Act, including, but not limited to, the substantial exemption or renovation referred to in subsection (ee) of Section 2 of this Act and any other condition as may be imposed by the Director in the exercise of his/her powers under this Act;

(2) If with the previous favorable recommendation of the Secretary, the Director determines that the renegotiation of such exemption decree shall serve the best social and economic interests of Puerto Rico; and

(3) If there is a waiver so as to revoke the tax exemption grant approved for such eligible business under the Puerto Rico Tourist Development Act of 1993, as amended.

(b) **Effective Term of the Renegotiated Exemption Decree.**—All eligible businesses that have availed themselves of the option under subsection (a) of this Section shall enjoy the benefits of this Act for the period established under this Act.

(c) **Profit Distribution.**—When an eligible business that chose to renegotiate its tax exemption decree or resolution distributes its profits accrued under its previous exemption decree after the effective date of the grant, such distribution shall be made pursuant to the provisions of the exemption grant conferred under the Puerto Rico Tourist Development Act of 1983, as amended, or the Puerto Rico Tourist Development Act of 1993, as amended.

(d) **Distributions in Liquidation.**—All eligible businesses that choose to renegotiate their tax exemption decree or resolution shall pay taxes at the time of their total liquidation with respect to their tourism development income pursuant to the provisions of this Act, and with respect to income accrued before the effective date of the grant pursuant to the provisions of the exemption decree or resolution approved under the Puerto Rico Tourist Development Act of 1983, as amended, or the Puerto Rico Tourist Development Act of 1993, as amended.

(e) **Net Operating Losses.**—All net operating losses sustained by an exempt business during the period that it operated under a tax exemption grant or resolution conferred under the Puerto Rico Tourist Development Act of 1993, as amended, shall be divided into exempt losses and non-exempt losses. After

making this division, non-exempt losses may be used as provided in Section 3(a)(1)(H)(i) of this Act; the exempt losses may be used, as provided in Section 3(a)(1)(H)(ii) and (iii)(I) of this Act. The losses generated in one year in which a choice similar to that which is provided in Section 3(a)(1)(D) of this Act is in effect, such losses may be used as provided in Section 3(a)(1)(H)(iii)(II) of this title.

Section 7.—Transfer of the Exempt Business.—

(a) General Rule.—The transfer of the grant conferred under this Act, or of the stock, shares, property, or under any majority proprietary interest of an exempt business to another person who, in turn, shall continue to engage in the tourist activity to which the exempt business devoted itself previously in a manner substantially similar to that of the exempt business at the time of the transfer, shall require the previous approval of the Director. If such transfer is made without such previous approval, the grant shall be null at the time of the transfer. Notwithstanding the foregoing, the Director may approve any transfer made without his/her approval effective retroactively when, in his/her judgment, the circumstances of the case warrant such approval, taking into account the best interests of Puerto Rico and the tourism development purposes of this Act. All transfer applications under this Section must be approved or denied within sixty (60) days following the date of filing. Any transfer application that is neither approved nor denied within such period shall be deemed to be approved. The denial of a transfer application shall be made in writing and shall also state the reasons for such denial.

(b) Exceptions.—The following transfers shall be authorized without previous consent:

(1) The transfer of the property of a deceased person to his/her estate of the transfer by bequeathal or inheritance;

(2) The transfer of stock or shares of an exempt business when such transfer does not result either directly or indirectly in a change in the command or control of the exempt business;

(3) The pledge or mortgage executed in the regular course of business with the purpose of providing a surety for a bona fide debt. Any transfer of control, ownership, or interest by virtue of such contract shall be subject to the provisions of subsection (a) of this Section.

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

(c) Notice.—All transfers included in the exceptions of subsection (b) of this Section shall be reported by the exempt business to the Director within thirty (30) days from the date the transfer was made.

Section 8.—Denial, Revocation, and Limitation of Benefits.—

(a) Denial and Reconsideration.—The Director may deny any application filed under Section 9 of this Act when he/she determines, in his/her sound judgment and taking into account the facts presented, the nature and condition of the physical facilities, the number of jobs, the total payroll, the total sum of the investment, the project's location, its environmental impact, or other factors that, in his/her judgment, warrant such determination.

The applicant, upon being notified of a denial by virtue of the provisions of this Section, may request the Director to make a first and single reconsideration pursuant to the terms and conditions prescribed by the regulation that the Puerto Rico Tourism Company promulgates to that effect, pursuant to the

provisions of Act No. 170 of August 12, 1988, as amended, known as the “Puerto Rico Uniform Administrative Procedures Act.” When reconsidering the application, the Director may consider any other term or condition that does not exceed the benefits provided in this Act, and which in his/her sound judgment is necessary to serve the best interests of Puerto Rico and to accomplish the tourist development purposes of this Act.

(b) Grounds and Procedures for Revocation.—The Director may impose fines, suspend, or revoke the tax benefits granted under this Act, after allowing the person who enjoys the same to appear and be heard pursuant to the provisions of the Puerto Rico Uniform Administrative Procedures Act. The amounts to be paid in cases in which a fine is imposed, in lieu of the suspension or revocation of the benefits granted, shall be determined by the Director by regulations. The Director may determine that the suspension, revocation, or fine in question shall take effect on the date on which the exempt business is found guilty of the violation on which the determination is grounded, in the following cases:

(1) When the exempt business fails to comply with any of the obligations imposed under this Act, the regulations promulgated thereunder, or the terms contained in its grant, as the case may be.

(2) When the exempt business suspends its operations for more than sixty (60) days without the Director’s authorization. The Director shall grant his/her authorization prior to a suspension for a period greater than sixty (60) days, when such suspension is due to causes beyond the control of the exempt business.

(3) As for hotels, condo hotels, or Puerto Rican *paradores*, when licensees operate the same in violation of the provisions in effect of the Regulation of the Required Minimum of Lodgings and *Paradores* of Puerto Rico. The Director may mitigate this revocation, limiting its effects to the suspension of the benefits of this Act for periods of not less than one (1) year. The suspension

periods shall be taken into account when computing the effective term of the benefits of this Act. Provided, that in the event that a Puerto Rican *parador* is severed from the *parador* program sponsored by the Puerto Rico Tourism Company, the tax exemption and all other benefits enjoyed by such Puerto Rican *parador* shall be suspended for the effective term of severance from the program. A Puerto Rican *parador* which has had its grant revoked may apply for a grant under this Act if it complies with the provisions of Section 6 and with any other applicable requirement of this Act, or which the Director may establish by regulations.

(4) When the benefits of this Act have been obtained through false or fraudulent representations in relation to: the nature of the eligible business, the use to be made of the business's property, or any other fact or circumstance that caused in whole or in part the approval of the grant.

(5) When the exempt business has failed to comply with its payments on the Room Occupancy Rate Tax provided in the Commonwealth of Puerto Rico Room Occupancy Rate Tax three (3) times or more (not to be necessarily consecutive) within a single fiscal year pursuant to the provisions of said Sections.

Section 9.—Administration; Granting of Benefits; Penalties.—

(a) Except as otherwise provided in this Act, the Director shall be in charge of the administration of this Act and exercise the powers and discharge the duties and obligations imposed under this Act. The duties provided in this Act related to income taxes, excise taxes, or the sales and use tax, shall be administered by the Secretary; the duties provided in this Act in relation to municipal license fees shall be administered by the municipalities; and the duties provided in this Act with regard to property taxes shall be administered by the Municipal Revenue

Collection Center (CRIM, Spanish acronym) or by any other government entity as provided by law.

(b) During the effective term of this Act, all other fiscal laws, including, but not limited to, the Tourist Development Act of 1993, the Code, the Municipal License Fees Act, and any laws related to real and personal property taxes shall continue to be in effect with respect to exempt businesses (except when manifestly incompatible with this Act), including, but not limited to, the requirement to file tax returns, to render reports, to pay taxes, to pay the room occupancy rate tax and the procedures related to the assessment, imposition, and collection of levies and taxes. Exempt businesses shall be required to maintain a separate accounting of the tourist activity; provided, further, that the taxes on tourism development income shall be computed separately. The Director is hereby authorized to impose by regulations or otherwise any conditions with respect to the enjoyment of any exemption or benefit under this Act, when such conditions are necessary to ensure the proper compliance with the terms and purposes under which the exemption or benefit is being granted. The requirements imposed by the Director may include, among others: the requirement to file tax return or reports; the keeping of accounting books and records; the furnishing of any document or evidence deemed pertinent to the exemption or benefit; the posting of bonds; the granting of permits to conduct periodical or other inspections; and the previous filing of contracts, orders, or other information related to the permits to acquire, transfer, sell, or introduce exempt items under paragraph (4), subsection (a) of Section 3 of this Act.

(c) Any person who has established or who intends to establish in Puerto Rico an eligible business may file with the Director an application for a grant under this Act. The approval of a grant under this Act shall be conditioned to the presentation to the Director by the eligible business of no outstanding debt

certificates from the Departments of the Treasury and of Labor and Human Resources, the State Insurance Fund, and the Municipal Revenue Collection Center (CRIM). Furthermore, the applicant must provide proof that he/she has no balance pending payment on the Room Occupancy Rate. The eligible business shall submit to the Director any additional documents or permits as the Director may require by regulations.

(1) The applicant shall file his/her application with the Secretary and the Director. The Director shall evaluate the application to determine whether the same includes all documents required under this Act and any additional documents and/or permit as the Director may require by regulation, and he/she shall send notice to the applicant within sixty (60) days after having received the application. In such notice, the Director shall inform the applicant whether his/her application has been duly completed. If the Director determines that the application has not been duly completed, the Director shall include in such notice to the applicant a detailed explanation of the necessary documents and/or permits in order for the application to be deemed to have been properly filed. If the Director fails to send a notice to the applicant within thirty (30) days after the date in which the application was filed with the Director, it shall be understood that the Director has determined that the application has been properly filed.

(2) Once the Director determines that an application has been properly filed under this Act, or if a period of sixty (60) days has elapsed and the Director has failed to send a notice to the applicant, the terms established in this Section shall begin to run.

(3) The Secretary shall evaluate the application to ascertain compliance with the applicable tax laws or any other law that could be under the jurisdiction of the Secretary and he/she shall send his/her recommendation to the Director within sixty (60) days of filing a copy of the application with the

Secretary. If the Secretary fails to submit his/her recommendations to the Director within the sixty (60)-day period as of the date of filing with the Secretary, it shall be deemed that the application has received a favorable recommendation from the Secretary. All unfavorable recommendations of the Secretary shall include the reasons for such recommendation.

(4) Once the favorable recommendation of the Secretary has been received, or the sixty (60) day period has elapsed and the Secretary's recommendation has not been received, the Director shall have sixty (60) days to approve or deny the application. The Director shall issue a final determination in writing within a term not greater than one hundred twenty (120) days after the date on which the application was properly filed. If the application is approved, the Director shall issue a grant specifying the exemptions conferred and the terms and conditions that must be complied with in order to enjoy the grant.

(5) If the Secretary's recommendation is contrary to the decision of the Director, the Director may submit the case to the Governor for his/her evaluation and decision. The Governor's decision shall be subject to the review procedures stated in Section 10 of this Act.

(d) The exemption granted under subsection (c) of this Section is conditioned by the exempt business compliance with the requirements established by regulations by the Puerto Rico Tourism Company. Said regulation shall establish the norms and criteria to require that the exempt business submit a promotion, advertising, and marketing plan of its tourist activities, according to the specific circumstances and needs of the eligible business in question.

(e) Any person who willingly makes or attempts to make on his/her own behalf or on behalf of a third party any false or fraudulent representation in relation to any application for or grant of benefits under this Act shall be deemed to be guilty of a felony and upon conviction, shall be punished by a fine that shall not

exceed ten thousand dollars (\$10,000) or by imprisonment for a term that shall not exceed five (5) years, or both penalties, plus legal costs, in the discretion of the Court.

Section 10.—Administrative Decisions; Purpose.—

(a) Any applicant or licensee adversely affected or aggrieved by any action taken by the Director or the Governor denying a properly filed application for the benefits of this Act or revoking and cancelling a benefit grant pursuant to subsection (b) of Section 8 of this Act, or denying an exempt business transfer applied for under Section 7, shall be entitled to a judicial review of such action as per the terms and conditions established by such regulation as the Director may promulgate to that effect, pursuant to the provisions of Act No. 170 of August 12, 1988, as amended. During the transaction of the judicial review, the Director is authorized, when in his/her judgment, justice demands the postponement of the effective date of any action taken under such conditions as required and to the extent necessary to prevent irreparable harm. When such postponement is requested and the same is denied, the Court before which the review is requested, including the Supreme Court of Puerto Rico by writ of certiorari, as provided further, may decree any necessary and appropriate procedure to postpone the effective date of any action taken by the Director, so as to preserve the status or the rights of the parties until the completion of the review proceedings, after having posted a bond in favor of the Secretary, subject to his/her approval and for the total amount of outstanding taxes, plus interest and penalties, plus interest computed for a period of one year at the prevailing legal rate.

Any decision or judgment of the Court of Appeals of Puerto Rico shall be subject to review by the Supreme Court of Puerto Rico by certiorari requested by any of the parties in the manner provided by law.

Section 11.—Releases.—

(a) Lessees who lease personal property to exempt businesses are hereby released from the requirement of holding a personal property leasing license as defined by Act No. 20 of May 8, 1973, as amended, known as the “Personal Property Leasing Institutions Act.”

(b) Exemption from the Collection of Fees and Tariffs on Public or Private Instruments.—Any deed, petition, or judicial document, whether public or private, related to the registration, recording, release, restriction, constitution, modification, extension, rectification, limitation, creation, or renovation of any real or contractual right with access to the Property Registry and which pertains to real property covered under this Act, shall enjoy a ninety percent (90%) exemption from the payment of: (i) internal revenue, legal aid, or any other stamps required by law or regulation for its execution, issue of any certified copy, whether partial or total, its submittal, registration, and any other operations at the Property Registry; and (ii) tariffs, levies, taxes, and fees for its submittal, registration and any other operations at the Property Registry. The aforementioned exemption is subject to the previous approval of the Director, to be evidenced by a certification issued by the Director to that effect. A certified copy of such certification shall be submitted to the notary public, Registrar, Court, or other government entity before which the benefits of this exemption are to be claimed and the same shall be attached to any document to be submitted at the Property Registry. Such persons and entities are hereby authorized to rely on such certification, which shall be presumed for all legal purposes to be correct and final.

The term “real or contractual right with access to the Property Registry,” as used in the above paragraph, includes all real or personal rights that as an exception have access to the Property Registry, recognized at present or that may be recognized in the future, including, but not limited in any way to: (i) legal, equity, appurtenant easements, or easement in gross; (ii) constitution of horizontal

property regimes, timeshares, or vacation clubs, or condo hotels; (iii) surface and building rights, and any other building record or work completion certification whereby the registration of a building or improvement is requested; (iv) leases; (v) mortgages; (vi) sales; (vii) exchanges; (viii) gifts; (ix) preferential right to repurchase, right of redemption, and ground rent; (x) private waters; (xi) administrative grants; (xii) call option; and (xiii) restrictions on use.

Section 12.—Limited Responsibility.—

Notwithstanding the provisions of the Civil Code pertaining to the obligations of partners toward their parties, any partners or stockholders that constitute a partnership or any other juridical person organized under the laws of Puerto Rico or any other jurisdiction that enjoys an exemption grant under the Puerto Rico Tourism Development Act of 2010 or any analogous successor law, shall not be liable with their personal estate beyond their contribution to the licensee juridical entity for any debts or obligations of the entity, in the event that the assets of the juridical entity are not enough to cover them. Provided, that the aforesaid limited liability shall benefit the partners or stockholders in terms of all the activities of the juridical entity, including, but not limited to: (i) claims arising from tourist activities that gave rise to the aforesaid grant; (ii) activities related to the liquidation and termination of such activity; (iii) activities related to the disposal and transfer of the property used in the same; and (iv) activities related to the operation of any casino operating under a franchise granted pursuant to Act No. 221 of May 15, 1948, as amended. Provided, further, that the limited liability benefit provided herein shall take effect on the date of filing an application for exemption under this Act, and the same shall apply to any cause of action that may arise from the facts transpired, before the juridical entity is dissolved.

Section 13.—Interrelation with Other Laws.—

The provisions of this Act may not be used jointly with other economic or tax incentives laws in such a manner that the joint application of such laws results in the obtainment of tax or other benefits that exceed the benefits to which a party would be entitled under any of the laws applied individually.

Notwithstanding the foregoing, the following situations shall be excepted from this prohibition:

(a) A real estate investment trust with a valid choice under Subchapter P of Chapter 3 of Subtitle A of the Code, or any other previous or succeeding analogue law, or any corporation, limited liability company, partnership, special partnership, or legal entity entirely owned, whether directly or indirectly, by the real estate investment trust, may benefit from the provisions of this Act, except for the benefits provided under paragraph (1) of subsection (a) of Section 3 of this Act.

(b) An exempt business holding a decree under Act No. 73 of May 28, 2008, known as the “Economic Incentives Act for the Development of Puerto Rico,” may choose to benefit alternatively from the provisions of this Act on the part devoted to the generation and sale of solar energy produced by the use of alternative energy sources, such as the wind, sunlight, water, and biomass, among others, for consumption by an exempt business.

Section 14.—Regulations under this Act.—

The Director shall promulgate such regulations as necessary to enforce the provisions and purposes of this Act, including regulations on minimum requirements, in consultation with the Department of Agriculture, in order to grant tax exemptions to agri-lodgings and agritourism activities.

Section 15.—Tourist Development Act of 1993, as amended.—

No decrees shall be granted under the Tourist Development Act of 1993, as amended, after the approval of this Act. Any application for a benefits grant under the Tourist Development Act of 1993, as amended, already filed as of the date of approval of this Act, shall be deemed as filed under this Act, and the applicant shall submit any additional information as necessary to complete an application duly filed under this Act.

Section 16.—Rules of Interpretation of this Act.—

The provisions of this Act shall be interpreted liberally in order to promote the development and implementation of the public policy set forth in its Statement of Motives and its Statement of Public Policy and to carry out any other purposes set forth in this Act.

Section 17.—Nature of Grants.—

The tax exemption and credit grants under this Act shall be deemed to be a contract between the licensee, its stockholders, partners, members, or other entity, and the Government of Puerto Rico, and such contract shall be the law between the parties. Such contract shall be interpreted liberally, consistently with the purpose of this Act of promoting the development of the tourist industry in Puerto Rico pursuant to the public policy set forth.

Section 18.—Severability and Rules of Interpretation in Case of Conflict with Other Laws.—

If any section, subsection, paragraph, subparagraph, clause, phrase, or part of this Act is held unconstitutional by a court with competent jurisdiction, the holding issued to that effect shall not affect, impair, or invalidate the remaining provisions of the Act, and the effect thereof shall be limited to the section, subsection, paragraph, subparagraph, clause, phrase, or part of this Act thus held unconstitutional.

Article 2.—Clause (i) of subparagraph (A) of paragraph (2) of subsection (b) of Section 1011 of Act No. 120 of October 31, 1994, as amended, known as the “Puerto Rico Internal Revenue Code,” is hereby amended to read as follows:

“Section 1011.—Taxes on Individuals.—

...

(b) Alternate Basic Tax on Individuals.—

...

(2) ...

(A) The following shall not apply:

(i) Any income exclusions or exemptions not arising from this Subtitle, notwithstanding the same are granted under special laws, except for those provided in Act No. 225 of December 1, 1995, as amended, known as the

“Puerto Rico Agricultural Incentives Act,” or in Act No. 78 of September 10, 1993, as amended, known as the “Puerto Rico Tourist Development Act of 1993,” or any other successor law, including the law known as the “Puerto Rico Tourism Development Act of 2010,” or
...”

Article 3.—Paragraph (5) of subsection (a) of Section 1023 of Act No. 120 of October 31, 1994, as amended, known as the “Puerto Rico Internal Revenue Code,” is hereby amended to read as follows:

“Section 1023.—Deductions from Gross Income.—

(a) ...

...

(5) ...

(A) ...

(B) Basis of the Partner’s Interest.—

(i) ...

(ii) Special Rules.—Notwithstanding the provisions of the preceding paragraph, for purposes of this clause, the adjusted basis of any partner’s interest in the special partnership shall include debts of a partnership which holds a resolution or grant in effect provided under the Tourist Incentives Act of 1983, as amended, or the Tourist Development Act of 1993, or the Tourism Development Act of 2010, respectively. The increase in the adjusted basis of a partner by his/her distributive share in the debts of the special partnership shall be totally allowed as of the first taxable year of the special partnership, beginning after December 31, 2011;

...”

Article 4.—Clause (i) of subparagraph (c) of paragraph (23) of Section 1101 is hereby amended; clause (ii) is eliminated; clauses (iv) and (v) are amended;

clauses (iii), (iv), and (v) are renumbered as clauses (ii), (iii), and (iv), respectively; and a new clause (v) is added to paragraph (25) of Section 1101 of Act No. 120 of October 31, 1994, as amended, known as the “Puerto Rico Internal Revenue Code,” to read as follows:

“Section 1101.—Tax Exemptions on Corporations.—

(1) ...

...

(23) ...

(A) ...

...

(C) Property owned by the government and used for the benefit of unit residents.

For purposes of this paragraph, the term “properties” includes property owned by the organization, and the property owned in common by organization members.

The provisions of this paragraph shall only apply to those associations that meet the following income, expense, and profit criteria:

(i) Sixty percent (60%) or more of their income for the taxable year must be derived from members’ fees and charges and apportionments of the owners of residential units (tenants’ association) or residences or residential lots (residents’ association), except that such income shall include, in the event that such property is a condominium covered by a tax exemption grant under Act No. 78 of September 10, 1993, or the “Puerto Rico Tourist Development Act” of 1993,

or the “Puerto Rico Tourism Development Act of 2010,” the profits from the sale or lease of the property owned by the association, including common areas (whether general or limited).

...

(25) ...

(i) ...

(ii) At least ninety percent (90%) of their expenses for the taxable year must be attributable to the acquisition, construction, administration, maintenance, and care of the association’s property;

(iii) No portion of the profit derived from the regular course of business of the association and no existing surplus after the liquidation or dissolution of the association may inure to the benefit of any owner, any specific individual, or partner, or any developer or administrating entity;

(iv) The property must be located in Puerto Rico; and

(v) As for Timeshare or Vacation Club Rights Owners’ Associations whose constitutive regime under Act No. 252 of December 26, 1995, as amended, is for a fixed term, such Timeshare or Vacation Club Rights Owners’ Associations shall not, during a period of five (5) years prior to the termination of such regime, impose or levy any fees, charges, or apportionments to owners with the purpose of carrying out capital improvements with a useful life greater than five (5) years.

(26) ...”

Article 5.—Paragraph (1) of subsection (e) of Section 1123 of Act No. 120 of October 31, 1994, as amended, known as the “Puerto Rico Internal Revenue Code,” is hereby amended to read as follows:

“Section 1123.—Income from Sources Inside and Outside Puerto Rico.—

(a) ...

...

(e) Income from Sources Partly Within and Partly Outside of Puerto Rico.—Items of gross income, expenses, losses, and deductions other than those specified in subsections (a) and (c), shall be allocated or apportioned to sources within or outside of Puerto Rico, under rules and regulations prescribed by the Secretary. When items of gross income are separately allocated to sources within Puerto Rico, there shall be deducted, for purposes of computing the net income therefrom, the expenses, losses, or other deductions properly apportioned or allocated thereto and a ratable part of other expenses, losses, or other deductions which cannot definitely be allocated to some item or class of gross income. The remainder, if any, shall be included in full as net income from sources within Puerto Rico.

In the case of gross income derived from sources partly within and partly outside of Puerto Rico, the net income may first be computed by deducting the expenses, losses, or other deductions apportioned or allocated thereto, and a ratable part of any expenses, losses, or other deductions which cannot be definitely allocated to any item or class of gross income; and the portion of such net income attributable to sources within Puerto Rico may be determined by general apportionment processes or formulas prescribed by the Secretary. Gains, profits, and income from:

(1) Transportation or other services rendered partly within and partly outside of Puerto Rico, except for gains, profits, and income derived from the operation of passenger cruise ships by foreign corporations or partnerships that are considered to be totally derived from sources outside of Puerto Rico; or

...”

Article 6.—Paragraph (7) of subsection (a) of Section 1330 of Act No. 120 of October 31, 1994, as amended, known as the “Puerto Rico Internal Revenue Code,” is hereby amended to read as follows:

“Section 1330.—General Rule.—

(a) ...

(1) ...

...

(7) A tourist business, including income from the operation of casinos;

...”

Article 7.—A new paragraph (3) is hereby added to subsection (b) of Section 1330 of Act No. 120 of October 31, 1994, as amended, known as the “Puerto Rico Internal Revenue Code,” and current paragraphs (3) and (4) are renumbered as (4) and (5), respectively, to read as follows:

“Section 1330.—General Rule.—

(a) ...

...

(b) ...

(1) ...

...

(3) Business Engaged in Nautical Tourism.—In the case of a tourism business engaged in nautical tourism that enjoys an exemption as provided in the Tourism Development Act of 2010 or any other successor or similar law, only the satisfaction of the requirement of having at least seventy percent (70%) of its gross income derive from the active conduct of such activity shall be required.

(4) ...

(5) ...

(c) ...
...”

Article 8.—Section 2019A is hereby added to Chapter 3, Subtitle BB of Act No. 120 of October 31, 1994, as amended, known as the “Puerto Rico Internal Revenue Code,” to read as follows:

“Section 2019A.—Exemption for Nonresident Watercraft.—

(a) Exemption.—Watercraft with a foreign flag or documented by the United States Coast Guard that is owned and held by a Puerto Rico nonresident shall be exempted from the sales and use tax provided in this Subtitle.

(b) For purposes of subsection (a) of this Section, a watercraft that is owned or held, or both, by a nonresident corporation, partnership, or limited liability company, shall not be deemed to be eligible for the exemption provided in this Section if one or more Puerto Rico residents jointly hold, either directly or indirectly, fifty percent (50%) or more of the stock or shares of the entity that owns or holds such watercraft. Furthermore, for purposes of subsection (a) of this Section, it shall be understood that bare boats shall be exempted from the sales and use tax; it being provided, however, that the exemption provided above shall not apply to any merchandise within the watercraft.

(c) Stock and Shares Treated as Indirectly Owned.—For purposes of this Section, the following stock or shares in a nonresident corporation, foreign partnership, or limited liability company that owns or holds a watercraft shall be deemed to be indirectly owned by Puerto Rico residents:

(i) Stock or shares of said nonresident corporation, partnership, or limited liability company owned by a Puerto resident corporation, partnership, or limited liability company (“stockholding company”), if the stockholding corporation or partnership owns fifty percent (50%) or more of the value of the stock or shares of the nonresident corporation, partnership, or limited liability company that owns or holds the watercraft; and

(ii) Stock or shares owned by one or more Puerto Rico residents, who jointly hold fifty percent (50%) or more of the value of the stock or shares of the stockholding corporation. For these purposes, such stock or shares in corporations or partnerships directly or indirectly owned through one or more corporations or partnerships or tiered corporations or partnerships as described in this subparagraph (ii), shall be deemed to be held by a Puerto Rico resident.

(d) Nonresident Watercraft.—For purposes of this Section, the term nonresident watercraft means watercraft under a foreign flag or documented by the United States Coast Guard.

Article 9.—Section 5.02 of Act No. 83 of August 30, 1991, as amended, known as the “Municipal Property Tax Act of 1991,” is hereby amended to read as follows:

“Section 5.02.—Buildings under Construction; Equipment and Machinery to be Installed or Used.—

As of the first of July 1991, every building under construction on said date, or whose construction is started after said date shall be exempted from payment of all property taxes imposed. All equipment, material and machinery acquired to be installed or used, and which is installed or used in a building or partly in the lot and partly in said building or exclusively in a lot, shall also be covered by this exemption, but said exemption shall expire as soon as such installation or use is ended and said equipment, material and machinery becomes a part of the job; but

in no case shall this exemption be in effect for more than three (3) years from the date such machinery, material or equipment is available in Puerto Rico for its installation or use in a construction in progress. Provided, that as for businesses exempted under the Puerto Rico Tourism Development Act of 2010 whose property tax exemption period has not started as per the terms of its grant for real property and which submits an application for exemption under this Section, the portion of land in which the construction is being carried out or in which the equipment and machinery is installed or used for the term of the exemption provided in this Section shall also be deemed to be exempted from property taxes.”

Article 10.—Subsections (h), (j), and paragraph (4) of subsection (p) of Section 2 of Act No. 78 of September 10 [sic], as amended, known as the “Tourist Development Act of 1993,” are hereby amended to read as follows:

“Section 2.—Definitions.—

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

(a) ...

...

(h) ‘New Business’.—Means a business that is not operating at the time of an application for a grant under this Chapter is duly filed, and which shall be engaged in a tourist activity using physical facilities that have not been used or which have been used only incidentally in a Tourist Activity for a thirty-six (36) month period prior to the filing date of the application. In the case of those eligible businesses that shall be using physical facilities that have not been used in a tourist activity for a term of not less than eighteen (18) months prior to filing an application, the Executive Director of the Puerto Rico Tourism Company may relieve them from complying with the abovementioned thirty-six (36) month requirement, when in his/her discretion, it is required in the best interests of Puerto

Rico. A new business shall also be considered to be every business that, even if it has been engaged in a tourist activity during the stated thirty-six (36) month period, is acquired for the purpose of submitting the structures that comprise it to a renovation of such extent that its cost exceeds two hundred percent (200%) of the purchase price of said business, provided that said amount is invested in its entirety within the thirty-six (36) month period from the date of its acquisition. A condo hotel shall only qualify as a new business if said units have not been previously used and have been acquired from the developing or building entity.

If as of the effective or starting date of the new Tourism Development Act of 2010, a business has not yet finished a renovation and/or a substantial extension or is yet within the thirty-six (36) month period after the expiration of the initial thirty-six (36) month period referred to in the preceding paragraph, and during said period, said business has continued said renovation and/or substantial extension uninterruptedly, the Director may extend the initial period by an additional term of up to thirty-six (36) months through an order issued by him/her when in his/her discretion, the best interests of Puerto Rico so require; provided, however, that the total sum of the initial period and the discretionary period granted by the Executive Director may never exceed seventy-two (72) months. None of the provisions of this Section may be interpreted as if the Director is being conferred the authority of extending the initial thirty-six (36) month period referred to in the preceding paragraph to a business that, as of the effective or starting date of the new Tourism Development Act of 2010, said initial period and the thirty-six (36) month period following the expiration of such initial period has already elapsed.

(j) 'Tourist Activity' means:

(1) The ownership and administration, or both, of:

(A) Hotels, condo hotels, Puerto Rican *paradores*, agri-lodgings, timeshares and vacation clubs that hold a license issued by the Company pursuant to the provisions of Act No. 252 of December 26, 1995, as amended, better known as the ‘Puerto Rico Timeshare and Vacation Club Act’; provided, that the ownership of a timeshare and/or vacation club, or both in and of themselves, shall not be deemed to be a tourist activity, unless the owner is a creative developer or a successor developer, as such terms are defined in Act No. 252, *supra*, and guest houses, except for the operation of casinos, gambling rooms, and similar activities; or

(B) Theme parks, golf courses operated by or associated with a hotel that is an exempt business under this Act or any other similar law of an analogous nature, or golf courses operated by or associated with a hotel that is an exempt business, a tourist marina (it being provided, however, that any marinas in the Island-Municipalities of Vieques and Culebra shall be deemed to be tourist marinas for the purposes of this Act), certified and accredited medical facilities for medical tourism, facilities in port areas for tourism-related purposes, agritourism, and other facilities that, due to the special attractive features deriving from their usefulness as a source of active or passive entertainment or amusement, constitute a stimulus to domestic or foreign tourists, provided that the Director determines that such operation is necessary and convenient for the development of tourism in Puerto Rico; or

(2) The operation of a business devoted to leasing to an exempt business under this Act, of property devoted to an activity covered under paragraphs (1) and (3) of subsection (j) of this Section, except that none of the provisions herein shall apply to contracts known as financial lease contracts.

(3) The development and administration of natural resources that are useful as a source of active or passive entertainment or amusement, including, but not limited to, caves, forests, natural reserves, lakes, and canyons, provided that the Director determines that such development and administration is necessary and convenient for the development of tourism in Puerto Rico.

...

(k) ...

...

(p) 'Eligible Investment' means:

(1) ...

...

(4) Eligible investments shall only be deemed to be any such investments in which all funds are used solely and exclusively for the acquisition of land, construction, and habilitation of the facilities of a new business or for the substantial extension or renovation of the facilities of an existing business, as defined in this Act. Any other investment, whose funds are not directly and entirely used for the acquisition, construction, habilitation, or substantial extension or renovation of the facilities of an eligible business, shall be excluded from the definition of eligible investment of this Act. Except in those cases in which, in the discretion of the Director, the best interests of Puerto Rico require otherwise, eligible investments shall only be deemed to be those investments made after the holding of the pre-application conference.

(q) ...

...”

Article 11.—Subparagraph (F) of paragraph (1) of subsection (a) is hereby amended; subparagraph (G) is added to paragraph (1); and current subparagraphs (G) and (H) are renamed (H) and (I); and paragraph (3) of subsection (a) is amended in Section 3 of Act No. 78 of September 10, 2003 [sic], as amended, known as the “Puerto Rico Tourist Development Act of 1993.”

(a) ...

(1) ...

(A) ...

...

(F) Tax Rate.—

(i) Applicable Tax Rate.—Except as otherwise provided in this Act, the tax rate applicable to all exempt businesses shall be that which is in effect as of the date of approval of this Act.

(ii) Royalties or Proprietary Rights.—

(1) Taxes on and Withholding of Royalties Paid by an Exempt Business to Corporations, Foreign Partnerships, or Persons not Engaged in Trade or Business in Puerto Rico.—

(a) A twelve percent (12%) tax shall be imposed, charged, and paid for each taxable year, in lieu of the tax imposed under the Puerto Rico Internal Revenue Code or any similar or successor law, on the total amount received as royalties or proprietary rights for the use in Puerto Rico of any intangible property related to the activity exempted under this Act, by any foreign corporation, foreign partnership, or person not engaged in trade or business in Puerto Rico, originating exclusively from sources within Puerto Rico.

(b) All exempt businesses required to make royalty or proprietary right payments to foreign corporations, foreign

partnerships, or persons not engaged in trade or business in Puerto Rico for the use in Puerto Rico of intangible property related to the activity exempted under this Act, shall deduct and withhold at the source a tax equal to that which is imposed under subclause (1)(a).

(2) Any person described below shall pay a two point nine percent (2.9%) tax on payments received as royalties or proprietary rights for the use in Puerto Rico of any intangible property related to the activity exempted under this Act which derive exclusively from sources within Puerto Rico, in lieu of the tax provided under subclause (1).

(a) Any foreign corporation, foreign partnership, or person not engaged in trade or business in Puerto Rico that is a stockholder or has fifty percent (50%) or more direct shares in the exempt business; or

(b) Any foreign corporation, foreign partnership, or person not engaged in trade or business in Puerto Rico that directly or indirectly owns eighty percent (80%) or more of any corporation, partnership, or person described in subclause (2)(a); or

(c) Any foreign corporation, foreign partnership, or person not engaged in trade or business that is directly or indirectly held by eighty percent (80%) or more by a corporation, partnership, or person described in subclauses (2)(a) or (2)(b).

(3) The corresponding taxes shall be withheld at the source by an exempt business that makes payments on account of royalties or proprietary rights for the use in Puerto Rico of any intangible property related to the activity exempted under this Act and which derive exclusively from sources within Puerto Rico, to the persons described in subclauses (2)(a), (2)(b), or (2)(c).

(G) Exemption to Individuals, Decedent's Estates, Corporations, Partnerships, and Trusts with Respect to Interest Paid or Credited on Bonds, Notes, or Other Obligations of Certain Exempt Businesses.—

(i) Exemption.—Any individual, decedent's estate, corporation, partnership, limited liability company, or trust shall be exempted from the payment of any taxes imposed under the Code on income from interest, charges, and other credits received with respect to bonds, notes, or other obligations of an exempt business for the development, construction, or rehabilitation of or improvements to an exempt business under the Puerto Rico Tourist Development Act of 1993, or this Act, provided that such funds are used entirely for the development, construction, or rehabilitation of or improvements to an exempt business and/or the payment of existing debts of said exempt business, insofar as the funds originating from such existing debts have been originally used for the development, construction, or rehabilitation of or improvements to such exempt business.

(ii) The proceeds of the bond, note, or other obligation must be granted directly to an exempt business covered under this Act.

(iii) The exemptions provided in this Section shall only apply to bonds, notes, or other obligations granted after the approval of this Act.

(H) ...

(I) ...

...

(2) ...

(3) Exemption with Respect to License Fees, Excise Taxes, and Other Municipal Taxes.—No new business that is an exempt business shall be subject to license fees, excise taxes, or other municipal taxes on its tourism development income imposed by any ordinance of any municipality, as of the date fixed pursuant to subsection (b) of this Section. An existing business that is an exempt business shall enjoy up to a ninety percent (90%) exemption from license fees, excise taxes, and other municipal taxes on its tourism development income imposed by any ordinance of any municipality, as of the date fixed pursuant to subsection (b) of this Section. The exemption shall be in effect for a period of ten (10) years and shall start on the date specified in subsection (b) of this Section.

The guests of an exempt business shall not be subject to license fees, excise taxes, or other municipal taxes for their stay as a guest in an exempt business.

...”

Article 12.—Section 4 of Act No. 78 of September 10, 1993, as amended, known as the “Puerto Rico Tourist Development Act of 1993,” is hereby amended to read as follows:

“Section 4.—Exemptions; Extension of Exemption Period.—

Any exempt business may apply for an extension of the exemption period approved under this Act for an additional ten (10)-year period, upon filing an application with the Director in the manner prescribed by the Director, not later than the due date set by the Puerto Rico Internal Revenue Code of 1994, as amended, to file its income tax return for the last taxable year within the exemption period, including any time extension granted by the Secretary for the filing thereof.

The Director shall follow the procedures described in Section 9(c) of this Act and shall also determine whether said exemption is essential for the development of the tourist industry taking into account the facts presented, the nature of the physical facilities, the number of jobs, the total payroll, the total investment, the location of the project, its environmental impact, the reinvestment in the exempt business of part or all of the depreciation taken as a tax deduction, or other facts that, in his/her judgment, warrant such determination.

During the ten (10) year extension granted under this Section, the exemption rates shall be those determined in Section 3 of this Act.

No applications for extensions of the exemption period provided in this Act shall be accepted after the effective date of the Puerto Rico Tourism Development Act of 2010.

All applications for extension of the exemption period under this Section that has been filed before the effective date of the Puerto Rico Tourism Development Act of 2010 shall be deemed to be an application filed pursuant to the Puerto Rico Tourism Development Act of 2010. The Director may request additional information regarding such application as he/she may deem pertinent.”

Article 13.—Subsection (f) of Section 5 of Act No. 78 of September 10, 1993, as amended, known as the “Puerto Rico Tourist Development Act of 1993,” is hereby amended to read as follows:

“Section 5.—Credits.—

(a) Kinds of Credit.—

(1) Tourism Investment Credit.—

Subject to the provisions of subsection (c) of this Section, any investor (including a shareholder) shall be entitled to a tourism investment credit equal to fifty percent (50%) of his/her eligible investment made after the effective date of this Act, to be taken in two installments: the first half of said credit in the

year in which the exempt business obtained the necessary financing for the total construction of the tourism project, and the balance of said credit, in the following year. Any eligible investment made prior to the income tax return filing date provided by the Code, including any time extension granted by the Secretary for the filing thereof, shall qualify for the tax credit of this Section in the taxable year for which the aforementioned return is being filed, provided that it meets all of the requirements of this Section. Said tourism investment credit may be applied against any tax of the investor or shareholder, determined under Subtitle A and/or Subtitle F that applies to Subtitle A of the Code , including the alternative minimum tax of Section 1017 and the alternate tax for individuals of Section 1011(b) of the Code.

(b) ...

(c) Maximum Credit Cap.—

(1) Tourism Investment Credit.—

The maximum tourism investment credit cap for each tourism project that shall be available to investors and to shareholders, shall not exceed ten percent (10%) of the total cost of the tourism project, as determined by the Director; or fifty percent (50%) of the cash contributed by the investors to the exempt business that qualifies as an eligible investment with respect to such project in exchange for stock or shares of the exempt business, whichever is less.

(2) Ownership and Distribution of Credits.—

(A) Tourism Investment Credits.—

The maximum amount of tourism investment credit available shall be distributed among investors and shareholders, in the proportions they want. The exempt business shall notify the credit distribution to the Director, the Secretary, and its stockholders and partners on or before the due date set in the Code to file the income tax return for the first year of operations of the exempt

business, including any time extension granted by the Secretary to file the same. The distribution chosen shall be irrevocable and binding on the exempt business, the investors, and the shareholders.

(d) Basis Adjustment and Recovery of Credit.—

(1) Tourism Investment Credit.—

(A) The basis of all eligible investments shall be reduced by the amount taken as tourism investment credit, but it may never be reduced to less than zero.

(B) During the term of three (3) years from the date of the notice regarding the credit distribution as described in subsection (c) of this Section, the exempt business shall render an annual report to the Director and the Secretary with a breakdown of the total sum invested in the tourism project as of the date of said annual report.

(C) Once the three (3) year term has elapsed from the date of the notice described in subsection (c) of this Section, the Director shall determine the total investment made by the exempt business in the tourism project. In the event that the tourism investment credit taken by the investors exceeds the tourism investment credit computed by the Director, based on the total investment made by the exempt business in the tourism project, such excess shall be owed as income taxes to be paid by the investors in two installments, starting with the first taxable year following the expiration date of the aforesaid three (3) year period. The Director shall notify the Secretary of any excess of credit taken by the investors.

The three (3) year term may be postponed by the Director by means of an order issued by him/her, but never for an additional period longer than three (3) years.

(D) The provisions on the recovery of the tourism investment credit under the above subparagraph (C) shall not apply to shareholders or investors who are not developers.

(E) As for condo hotels, the operator of the integrated leasing program shall render an annual report to the Director and the Secretary, identifying the units participating in the integrated leasing program. Said report shall indicate the dates in which participating units enrolled in the program, as well as the date or dates on which one or more units were withdrawn from the program.

If any unit is withdrawn from the program before the expiration of the ten (10) year period, the investor shall owe as income taxes an amount equal to the tourism investment credit taken by the investor with respect to said unit, multiplied by a fraction whose denominator shall be ten (10), and whose numerator shall be the balance of the ten (10) year period as required by this Act. The amount owed as income taxes shall be paid in two installments, starting with the first taxable year following the date on which the unit was withdrawn from the integrated leasing program.

For purposes of this clause, the fact that an investor in a condo hotel fails to comply with any requirement established in the grant conferred to him/her for such purposes or if such grant is revoked for any reason, it shall be deemed that the investor no longer devoted the condo hotel unit(s) covered under said grant to an integrated leasing program.

Provided, that in those cases in which the unit is withdrawn from the integrated leasing program to be devoted to any other tourist activity that constitutes an Exempt Business under the Act for a period of not less than the time remaining to complete the ten (10) year period under the integrated leasing program, the recovery of the income tax shall not apply to the investor; if this condition is not complied with, the next acquirer of the unit shall be responsible for any amount that must be subsequently recovered as income taxes taken in excess, it being understood that recovery for the years in which the unit was enrolled in an integrated leasing program and another tourist activity that constitutes an Exempt Business under this Act shall not be in order.

(e) ...

(f) Assignment of Credit.—

(1) Tourism Investment Credit.—

After the date of notice of the distribution of the tourism investment credit provided in paragraph (1) of subsection (c) of this Section, the tourism investment credit provided in this Section may be assigned, sold, or otherwise transferred in whole or in part by an investor or shareholder to any other person; except that the developer of a tourism project may only assign or otherwise transfer the tourism investment credit provided in this Section under such terms and conditions as the Director and the Secretary have previously approved for the case in question. The terms under which the Director and the Secretary shall approve the sale of credits by developers shall include, but not be limited to, the posting of a bond or any other kind of surety, which must be kept in effect until the Director certifies that the construction and development of the entire tourism project has been completed. Whenever they deem necessary, the Director and the Secretary may require that the money generated by the sale of credits be deposited into an escrow account or any other similar instrument, in which case, the surety

required shall only cover the difference between the amount of the credits so assigned, sold, or transferred and the amount of money deposited in the aforesaid account.

A tourism project developer who wishes to assign, sell, or transfer his/her tourism investment credit after the construction and development of the entire tourism project has been completed as determined by the Director through a certification to that effect, may carry out such assignment, sale, or transfer without being subject to the limitations of the above paragraph.

In the case of investment credit, the eligible investment basis shall be reduced by the value of the assigned tourism investment credit.

(2) The investor or shareholder who has assigned all or part of his/her tourism investment credit, as well as the acquirer of the tourism investment credit, shall notify the Secretary of such assignment through a declaration to that effect which shall be attached to his/her income tax return for the year in which the assignment of the tourism investment credit is carried out. The declaration shall contain any such information as the Secretary may deem pertinent through regulations promulgated to that effect.

(3) The money or the value of the property received in exchange for the tourism investment credit shall be exempted from taxes under the Code up to an amount equal to the amount of the assigned tourism investment credit.

(g) ...

Article 14.—Subsection (f) is hereby added to Section 6 of Act No. 78 of September 10, 1993, as amended, known as the “Puerto Rico Tourist Development Act of 1993,” to read as follows:

“Section 6.—Renegotiation of the Exemption Decree.—

(a) ...

...

(f) Coordination with the Puerto Rico Tourism Development Act of 2010.—

No applications for renegotiation provided in this Act shall be accepted after the effective date of the Puerto Rico Tourism Development Act of 2010.

Any renegotiation application under this Act that has been filed before the effective date of the Puerto Rico Tourism Development Act of 2010 shall be deemed to be an application filed pursuant to the Puerto Rico Tourism Development Act of 2010. The Director may request additional information regarding said application as he/she may deem pertinent.”

Article 15.—Subsection (g) is hereby added to Section 9 of Act No. 78 of September 10, 1993, as amended, known as the “Puerto Rico Tourist Development Act of 1993,” to read as follows:

“Section 9.—Administration; Granting of Benefits; Penalties.—

(a) ...

...

(g) Coordination with the Puerto Rico Tourism Development Act of 2010.—

No applications for renegotiation provided in this Act shall be accepted after the effective date of the Puerto Rico Tourism Development Act of 2010.

Any grant application under this Act that has been filed before the effective date of the Puerto Rico Tourism Development Act of 2010 shall be deemed to be an application filed pursuant to the Puerto Rico Tourism Development Act of 2010. The Director may request additional information regarding said application as he/she may deem pertinent.”

Article 16.—Subsection (B) of Section 31 of Act No. 272 of September 9, 2003, as amended, known as the “Commonwealth of Puerto Rico Room Occupancy Rate Tax Act,” is hereby amended to read as follows:

“Section 31.—Disposition of Funds.—

The Company shall distribute all funds collected from the Tax imposed under Section 24 of this Act, as follows:

A. ...

B. The Company shall make monthly distributions of the excess over the amounts needed for each monthly transfer to the Bank as provided in subsection A of this Section, of the Tax imposed in Section 24 of this Act that is collected each fiscal year, in accordance with the following order of priority:

(i) Two percent (2%) of the total Tax collected shall enter monthly into the general funds of the Company to cover expenses related to the operation, management, and distribution of the Tax collected, or for any other use as determined by the Company.

(ii) Five percent (5%) of the total Tax collected shall be covered monthly into the General Fund of the Department of the Treasury for Fiscal Years 2005-2006 and 2006-2007, into the funds of the National Parks Company for Fiscal Years 2007-2008 and 2008-2009, and into the funds of the Company as of Fiscal Year 2009-2010. As of the year in which the Authority certifies to the Department of the Treasury and to the Company, the commencement of the operation of the Convention Center, and during the ten (10) subsequent years, this

five percent (5%) shall be available to cover any deficit, if any, arising from the operations of the facilities operated by the Convention Center District Authority in a reserve to be maintained by the Company, as provided in paragraph (iv) of this subsection. Provided, however, that for each fiscal year and/or each time the Convention Center District Authority intends to propose a budget which exceeds the deficit of two million five hundred thousand dollars (\$2,500,000), the budget of the Convention Center District Authority shall be presented to the Board of Directors of the Authority, the Board of Directors of the Company, and the Secretary of the Treasury for Fiscal Years 2005-2006 and 2006-2007, and to the Board of Directors of the National Parks Company for Fiscal Years 2007-2008 and 2008-2009 at a meeting held specifically for such a purpose, and to the Board of Directors of the Authority and the Board of Directors of the Company as of Fiscal Year 2010-2011 henceforth. This five percent (5%) shall be available during each fiscal year in a special reserve account maintained by the Company to cover any deficit in excess of two million five hundred thousand dollars (\$2,500,000), arising from the operation of the facilities of the Convention Center District Authority. For each fiscal year, any surplus after covering such operational deficit, if any, shall be released from the special reserve and shall be available for use by the Department of the Treasury for Fiscal Years 2005-2006 and 2006-2007, by the National Parks Company for Fiscal Years 2007-2008 and 2008-2009, and by the Company as of Fiscal Year 2010-2011.

(iii) Nine percent (9%) of the total Tax collected shall be covered monthly into the general funds of the Company to cover the expenses of the Convention Center Bureau. Provided, however, that after Fiscal Year 2003-2004, the amount of the collections on account of the Tax to be remitted by the Company under this clause shall not be less than four million five hundred thousand dollars (\$4,500,000) annually. The Company shall transfer to the Convention Center

Bureau the corresponding amount in monthly installments of three hundred seventy-five thousand dollars (\$375,000). In case the amount deposited for any month is less than three hundred seventy-five thousand dollars (\$375,000), the Company shall correct such deficiency by depositing the funds that become available in subsequent months of the same fiscal year.

(iv) Up to two million five hundred thousand dollars (\$2,500,000) shall be kept available during each fiscal year, in a special reserve account maintained by the Company for the operations of the Convention Center District Authority. Provided, however, that for each fiscal year and/or each time that a modified budget is to be presented, the budget of the Convention Center District Authority shall be presented jointly to the Board of Directors of the Authority and to the Board of Directors of the Puerto Rico Tourism Company, at a meeting held specifically for such a purpose. The Company shall maintain this amount in said reserve in monthly amounts of two hundred eight thousand three hundred thirty-three dollars and thirty-three cents (\$208,333.33). This amount shall be reserved as of the year in which the Authority certifies in writing to the Company that the Convention Center has commenced operations, and for a period of ten (10) years.

(v) The remainder available after the payments provided in subparagraphs (B)(i), (B)(ii), (B)(iii), and (B)(iv) shall be allocated to the Company. The funds appropriated to the Company shall be used by the latter for promoting, marketing, developing and strengthening the tourist industry in Puerto Rico.

The Company shall submit a monthly breakdown of the revenues collected from the Tax to the Authority and the Convention Center Bureau.”

Section 17.—Severability and Rules of Interpretation in Case of Conflict with Other Laws.—

If any article, section, subsection, paragraph, subparagraph, clause, phrase, or part of this Act is held unconstitutional by a court with competent jurisdiction, the judgment pronounced to that effect shall not affect, impair, or invalidate the remaining provisions of this Act. The effects of the holding shall be limited to the article, section, subsection, paragraph, subparagraph, clause, phrase, or part of this Act thus held unconstitutional.

Section 18.—The provisions of this Act shall take effect immediately after their approval.

CERTIFICATION

I hereby certify to the Secretary of State that the following **Act No. 74-2010 (S. B. 1126) (Conference)** of the **3rd Session of the 16th Legislature** of Puerto Rico:

AN ACT to create the Puerto Rico Tourism Development Act of 2010; amend clause (i) of subparagraph (A) of paragraph (2) of subsection (b) of Section 1011; amend paragraph (5) of subsection (a) of Section 1023; to amend clause (i) of subparagraph (c) of paragraph (23) of Section 1101 and eliminate clause (ii); amend clauses (iv) and (v), renumber clauses (iii), (iv), and (v) as (ii), (iii), and (iv), respectively; and to add a new clause (v) to paragraph (25) of Section 1101; to amend paragraph (1) of subsection (e) of Section 1123; to amend paragraph (7) of subsection (a) of Section 1330; to add a new paragraph (3) to subsection (b) of Section 1330; and to renumber current paragraphs (3) and (4) as (4) and (5), respectively; etc.

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

In San Juan, Puerto Rico, on the 13th day of December, 2012.

María del Mar Ortiz Rivera