

(H. B. 3820)  
(Conference)

**(No. 272)**

(Approved September 9, 2003)

## **AN ACT**

To transfer the responsibilities and obligations to impose, fix, determine, assess, collect, enforce, distribute, regulate, investigate and sanction the tax on the room occupancy rate from the Department of the Treasury to the Puerto Rico Tourism Company; to establish a new formula for the distribution of the funds collected on account of the room occupancy rate; to eliminate all sections in the Internal Revenue Code referring to the room occupancy rate that are inconsistent with the provisions of this Act; to amend subsection (b) of Section 8 of Act No. 78 of September 10, 1993, as amended; to amend subsections (b) and (c) of Section 9 of Act No. 78 of September 10, 1993, as amended; to amend subsection (b) of Section 3 of Act No. 221 of May 15, 1948, as amended; to add a subsection (q) to Section 5 of Act No. 10 of June 18, 1970, as amended.

## **STATEMENT OF MOTIVES**

Act No. 120 of October 31, 1994, as amended, known as the “Puerto Rico Internal Revenue Code of 1994” (the “Code”), provides for all matters concerning the tax on the room occupancy rate (the “Tax”) imposed on hotels, condohotels, apartment hotels, all inclusive hotels, hostelries, guesthouses, inns, short-term rentals and motels (collectively, the “Lodgings”). Over the past years, the Tax has proven to be a stable and secure source of revenues. Notwithstanding the foregoing and considering the significant increase in available rooms, the revenues derived under this scheme have not significantly increased in these past years. It should be noted that in these past years, the revenues generated in the collection of the Tax has fluctuated as follows:

1996-97	\$30.8 Million
1997-98	39.1 Million
1998-99	40.7 Million
1999-00	38.4 Million
2000-01	46.5 Million
2001-02	38.4 Million

The Puerto Rico Tourism Company (the “Company”) has taken upon itself the task to review the compliance by the Lodgings with the payment of the Tax. The scope of the review conducted by the Company has included a review of the compliance of the thirty-eight (38) largest hotels of Puerto Rico, as well as some inns, motels and small hostelries. The objective of these reviews was to examine the Tax payments made by the Lodgings during the past five (5) years. The Company also verified that the Department of the Treasury (the “Department”) had recognized the Lodgings’ Tax payments and included it in the transfers of the funds the Department is obligated to make for the Company’s benefit.

The Tax payment review revealed that over the past years, there has been a confusion regarding the imposition, enforcement and collection of the Tax, specifically in the processing of the codes that identify the type of tax the hotelier was charged, in the data entry performed at collection centers, in the transmittal and transfer of funds in favor of the Company and with respect to tax evasion by some Lodgings. It has likewise become evident that the supervision of the Tax does not constitute a priority within the Department’s wide range of responsibilities and ministerial duties.

In order to continue with the development of the tourism industry in our Island, it is essential that the Company exercise a more prominent role in the collection and supervision of what represents one of its principal sources of revenue, so that it may continue with its ministerial role to promote Puerto Rico as

the premier tourism destination in the Caribbean. It is incontrovertible that the room occupancy rate is the best way to achieve the reinvestment of revenues generated by the tourism industry in the development of this important sector of our economy.

It is well known that the tourism industry plays a significant role in the economic development of Puerto Rico. The Commonwealth of Puerto Rico recognizes the need to continue strengthening this sector so that it may provide new revenue alternatives for our Island. The Puerto Rico Convention Center District Authority (the "Authority") was created because the government anticipated the need to articulate a strategy that would permit the development of a district composed of a convention center, hotels, office space, restaurants, retail commercial establishments and other commercial developments. One of the principal attractions of this District (the "District") would be the inauguration of a convention center that would accommodate conventions, exhibitions, fairs and conferences which would represent thousands of additional visitors participating in such events that, in turn, would result in a new boost to the Puerto Rican economy. However, the lack of adequate facilities suitable for this purpose had been a factor that for years limited the ability of the government and the Convention Bureau to materialize initiatives such as the District that were geared to identify new revenue sources from the tourism sector of our economy. To the extent that the Commonwealth of Puerto Rico stimulates the development of new markets, it will increase the feasibility of opening doors for new investors and promote the expansion of new employment sources that will, in turn, result in the betterment of our people's welfare.

Act No. 299 of September 1, 2000, introduced an amendment to the Code with the purpose of modifying the formula established for the distribution of the revenues obtained from Tax payments. The new formula was established in order

to facilitate the distribution of a portion of the revenues received from the tourism industry on account of the Tax payments to the Authority in order to cover the construction and development costs of the Puerto Rico Convention Center and its infrastructure. However, the projected costs to finance the construction of the Convention Center demonstrate that the current distribution of the revenues collected from room occupancy rates is insufficient to cover the debt associated with its construction. Therefore, it is imperative to define a new formula for the distribution of the revenues collected on account of the Tax.

In addition to the stated above, another of the objectives of Act No. 299 was to protect the tourism industry by expressly defining and establishing what would be deemed rate subject to the room occupancy tax. This was done to prevent uncertainty among hoteliers as to when the obligation arises to charge their guests the tax on room occupancy rate; specifically in those cases where the room occupancy rate is not paid in cash, but in any other form of payment including, without limitation, the rendering of services of any kind or nature by the room occupants. This legislation recognizes and maintains such objective.

The Commonwealth of Puerto Rico recognizes that the Company, as the public instrumentality responsible for tourism development in Puerto Rico, is the entity that can more efficiently assign the moneys generated by the Tax. In an effort to complement the principal objective of Act No. 299, to strengthen tourism development in Puerto Rico, maximize the economic benefit that Puerto Rico receives from every tourist who visits the Island each year and generate new employment sources for Puerto Ricans, this measure proposes the transfer, from the Department to the Company, of the responsibilities and obligations to impose, fix, determine, assess, collect, enforce, distribute, regulate, investigate and sanction the Tax and the definition of a new formula for the distribution of the revenues collected on account of the Tax.

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

## Section 1.-Title

This Act shall be known as the “Commonwealth of Puerto Rico Room Occupancy Rate Tax Act” (the “Act”).

## Section 2.-Definitions

For purposes of this Act, the following terms shall be defined as follows:

- (1) Entry - means the Taxpayer Deficiency or Debt as determined by the Company once it has been registered in the Company’s accounting system.
- (2) Supplementary Short-Term Lodging - means every building or part of a building leased for a period of less than ninety (90) days, devoted to the lodging of people by means of payment, which building or part thereof is not a hotel, condohotel, all-inclusive hotel, motel, inn, hostelry, guesthouse and/or apartment hotel. Said term shall include, without limitation, houses, apartments, cabins and villas.
- (3) Compulsory Procedure - means the procedure the Company may use to compel the payment of the Tax or the fulfillment of any other obligation including, without limitation, the filing of a civil action, the entry of an attachment order and/or the sale of the debtor Taxpayer’s property.
- (4) Audit - means the procedure by which the Company shall have the power to inspect the accounting books and the procedures of a Lodging, such inspection to be carried out by a trained accountant, as defined in subsection (20) of this Section, in order to verify the precision and integrity of the same.

- (5) Authority - means the Puerto Rico Convention Center District Authority, a public corporation of the Commonwealth of Puerto Rico created by Act No. 351 of September 2, 2000, as amended, known as the “Puerto Rico Convention Center District Act.”
- (6) Bank - means the Government Development Bank for Puerto Rico, a public corporation of the Commonwealth of Puerto Rico created by Act No. 17 of September 23, 1948, as amended.
- (7) Guesthouse - means every furnished building or part of a building, devoted to the lodging of persons for a fee, with or without meals, which building or part of a building is not a hotel, condohotel, motel or apartment hotel. The term guesthouse shall include, without limitation, a residential club, a furnished guesthouse, a boarding house or a private club.
- (8) Room Occupancy Rate - means the rate collected or charged by a Hotelier for the occupancy of any room of a Lodging, valued in terms of money, whether received in cash or otherwise, including, without limitation, all the income in cash, manager’s check or credit. The definition of Room Occupancy Rate shall include, without limitation, the money received by the Lodging on account of Paid but Unused Rooms, Room Penalties and any other charge, rate or additional tax (“fees,” “resort fees” and/or “taxes”) that a Hotelier charges for a stay in a Lodging.
- (9) Rate for Paid but Unused Room - means the rate that shall be charged by a Hotelier when an occupant does not appear to claim his reservation to occupy the room.
- (10) Center - means the Puerto Rico Convention Center which shall be developed and operated in the real property owned or leased

by the Authority, or by the people or entities designated by the Authority, and which shall be suitable for the following purposes and events: congresses, conventions, conferences, trade shows, exhibitions, meetings and other business, entertainment, public assemblies, social, cultural, historic and scientific events.

- (11) Room Cost - means a reasonable estimate of the operating costs of the occupied room.
- (12) Company - means the Puerto Rico Tourism Company, a public corporation of the Commonwealth of Puerto Rico created by Act No. 10 of June 18, 1970, as amended.
- (13) Taxpayer - means an Hotelier who is obligated to charge, retain and pay the Tax.
- (14) Declaration - means the Tax form that shall be completed and filed by the Taxpayer and includes any tax return, declaration, schedule or list, and any amendment or supplement to the same.
- (15) Deficiency - means a Debt, minus the amount paid by the Taxpayer.
- (16) Debt - means the Room Occupancy Rate multiplied by the percentage rate of the applicable Tax for the period of occupancy plus any fines, penalties, surcharges or interests owed by the Hotelier.
- (17) Director - means the Executive Director of the Puerto Rico Tourism Company.
- (18) Mathematical or Clerical Error - means:
  - i an error in the addition, subtraction, multiplication or division that appears in the Declaration;

- ii an entry of an item that is inconsistent with another entry of the same item of a Declaration;
  - iii any omission of information that must be included in the Declaration to evidence an entry in the same;
  - iv an entry in the Declaration of a deduction or credit that exceeds the imposed or authorized statutory limit.
- (19) Room - means a room or lodging of any type in any part or section of a Lodging that is offered or is available for use or possession for any purpose.
- (20) Hotelier - means any natural or juridical person that operates a Lodging in Puerto Rico including, without limitation, the owner, agent, proprietor, operator, lessee, mortgagor sublessee or the holder of the same. For purposes of this Act, the term agent shall include those individuals including, without limitation, real estate brokers that collect the rent on account of a Supplementary Short-Term Lodging for the lodging of guests.
- (21) Lodging - means every furnished building, commonly used and maintained open for the lodging of guests by means of payment of a rental rate, which derives its revenues from the rental of rooms, and that within its offerings provides rental rates computed daily, weekly, fractionally or by a global rent on account of an all-inclusive concept. The term Lodging shall also include hotels, condohotels, all-inclusive hotels, motels, inns, short-term rentals, hostelries, guesthouses, apartment hotels and recreational facilities operated by the agencies or instrumentalities of the Commonwealth of Puerto Rico.

- (22) All-Inclusive Hotel - means every furnished building, commonly used and maintained for the lodging of guests by means of payment of a rental rate, which derives its revenues from the rental of rooms and within its offerings, solely provides a global and grouped rental Rate, computed daily or weekly, based on the rental of rooms, the complementary services and the food and beverages.
- (23) Tax - means the Tax set forth in Section 24 of this Act, unless otherwise provided in this Act.
- (24) Bureau - means the Puerto Rico Convention Bureau, the principal nonprofit organization in Puerto Rico devoted primarily and officially to the promotion of Puerto Rico as a destination for the holding of meetings, conventions, congresses, commercial fairs, sporting events and every type of group event.
- (25) Notification - means the written communication sent by the Company to the Taxpayer informing a Deficiency or Debt on account of the Tax.
- (26) Taxpayer Identification Number - means the number the Company shall assign to the Lodging, and that must be used by said Lodging in the Declaration, as shall be established by this Act or the regulations approved hereunder.
- (27) Occupancy - means the period during which a guest uses or possesses, or has the right to use or possess, any room or rooms of a Lodging, or the right to use or possess the services and facilities appertaining to the use or possession of a room.

- (28) Guest - means every person who, by means of payment of a Rate and by virtue of any lease, concession, permit, right of access, license or under any other agreement or otherwise, uses, possesses, has the right to use or possess a room.
- (29) Room Penalty - means every Rate per room charged by a Lodging's Hotelier for the unused rooms in a contract that requires, as a condition to its perfection, the use of a minimum number of rooms.
- (30) Review - means the procedure through which the Company shall have the power to examine the accounting books of a Lodging as defined in subsection (21) of this Section, the purpose of which is to verify the accuracy of the information the Taxpayer provided.
- (31) Rate - means the rate charged by a Lodging in daily, weekly, fractional or monthly form, on account of the Room Occupancy Rate and/or any other charge on account of the occupancy of a room, based on a nominal amount expressed in dollars or a percentage rate. Said concept shall include the global and grouped rate charged by an All-Inclusive Hotel.
- (32) Daily Average Rate - means the daily average of a room, measured during a one (1) month period.
- (33) Assessment - means the procedure through which the Company may determine the amount owed by the Taxpayer for a Debt or Deficiency.

### Section 3.-General Powers of the Company

For purposes of the application and administration of this Act, and in addition to any other duties and powers established hereunder, the Company shall have the power to:

- A. Determine, assess, impose, collect, enforce, regulate and distribute the Tax.
- B. The Company shall have the power to enforce, regulate, investigate, intervene and sanction the persons subject to the provisions of this Act.
- C. The Company shall have the power to impose administrative fines and other sanctions under this Act.
- D. The Company shall have the power to conduct investigations and interventions; to require any type of information necessary for the adequate performance of its powers; to direct or petition the courts to order that activities or acts that attempt against the purposes of this Act be ceased; to impose and direct payment of costs, expenses and attorney fees, as well as the payment of costs and fees for other professional and consultative services incurred in the investigation, hearings and procedures conducted before the Company and to direct the performance of any act in compliance with the provisions of this Act.
- E. Examine any records, documents, premises, real estate or any other material related with transactions, business, or activities subject to the tax including, without limitation, folios, accounting books, bank statements, income tax returns, room revenue reports and financial statements; provided, however, that for the Company to examine the income tax returns filed by

the taxpayers with the Department of the Treasury, the Company must comply with the requirements established by the Secretary of the Treasury in the applicable regulations. Every person in charge of any establishment, premises, real estate or object subject to examination or investigation shall facilitate any examination the Company requires. When the owner or person in charge of an establishment, premises, real estate or object subject to examination or investigation is not present, this fact will not constitute sufficient cause to prevent said examination.

- F. Require and review the payment and adequacy of the bonds to be provided by the Taxpayers pursuant to the provisions of this Act and the regulations approved thereunder.
- G. Retain for a period of time as shall be necessary, any documents obtained or provided in accordance with this Act for use of the same in any investigation or proceeding that may affect the Company, pursuant to the provisions of this Act or the regulations approved thereunder.
- H. Certify Declarations, tax returns or other documents related to the administration and application of this Act.
- I. Draft, approve and adopt any rules and regulations necessary for the administration and application of this Act, pursuant to the provisions of Act No. 170 of August 12, 1988, as amended, known as the “Uniform Administrative Procedure Act.”
- J. Delegate on any official, officer or employee of the Company those faculties and duties considered necessary and convenient to carry out any function or authority this Act confers.

- K. Appoint examining officials to conduct administrative hearings, who shall have the power to issue orders and resolutions. The functions and adjudicative procedures applicable to these examiners shall be established by the Company through regulation approved for said purposes.

#### Section 4.-Organizational Structure

- A. The Executive Director of the Company may establish the internal organizational structure deemed adequate regarding the Tax on the Room Occupancy Rate and shall have discretion to designate the different work areas, as well as in the operation, quasi-legislative and adjudicative phases.
- B. The Executive Director of the Company may appoint the officers and employees deemed necessary for the faithful compliance of the provisions of this Act.
- C. In order to attain the objectives of this Act, the Company may subcontract the persons or services it deems necessary.

#### Section 5.-Authority to Inspect

Authorized officials and employees of the Company are hereby authorized to intervene and/or summon to appear before the Company any person who violates any provision of this Act or the regulations approved thereunder.

#### Section 6.-Authority to Initiate Legal Proceedings

The Puerto Rico Tourism Company shall be authorized to initiate any legal proceeding necessary for the collection of the Tax.

#### Section 7.-Authority to Approve Regulations

The Company shall have the power to adopt the regulations that it deems necessary for the implementation of this Act, and the same shall have the force of law. Said regulations shall become effective upon compliance with the applicable

provisions of Act No. 170 of August 12, 1988, as amended, known as the “Uniform Administrative Procedures Act.”

#### Section 8.-Authority to Require Bonds

The Company may require Taxpayers to file credible evidence that they have posted a bond to guarantee timely payment of the obligations imposed by this Act. The bond shall be required in the amount the Company deems reasonably necessary to guarantee payment of the Tax and whatever surcharges, interests, penalties, or administrative fines are imposed on such Tax as a result of violations to the provisions of this Act and/or its regulations.

#### Section 9.-Examination of accounts, registries, books, and premises

The Company, through its officials and employees, shall have the right to inspect and review all the information, accounts, registries, entries, and documents related to the payments to be made by the Hoteliers with respect to the Tax and the distribution of such funds. The Company may enter and examine the premises and documents of any Taxpayer. The Company shall also be able to require, access, and/or use any information or document in the possession of any instrumentality of the Commonwealth of Puerto Rico or political subdivision thereof.

#### Section 10.-Audits

The Company shall have the power to carry out audits to supervise compliance with this Act and the regulations approved thereunder related to the payments of the Room Occupancy Rate made by the Hoteliers.

#### Section 11.-Reports

The Company may require of every Taxpayer the filing of the audited financial reports it deems necessary in pursuing the purposes of this Act.

#### Section 12.-General Investigative Powers

- A. The Company shall have the power and authority to summon and interview witnesses, administer oaths, take statements or

compel the presentation of books, papers, and documents that it deems necessary and pertinent, in any proceeding that it may hold for the purpose of exercising its powers and duties.

- B. The Company may order the Taxpayers to pay for the expenses, costs, and fees for professional and consulting services incurred in the investigations, studies, hearing, or any other proceeding held by the Company relating to the provisions of this Act.
- C. The Company may order any Taxpayer to pay any other expense caused by temerity that the Company is forced to incur due to noncompliance with or violation of this legislation.

#### Section 13.-Complaints before the Company

The Company, on its own initiative, or any person, government instrumentality, agency, business, or private enterprise that complains of some act or omission carried out or proposed to be carried out by a Taxpayer in violation of any provision of this Act, regulation, or order of the Company, may file a complaint before the Company through a written application. The Company shall establish the procedures for the filing of complaints through regulations approved to such effect.

#### Section 14.-Adjudicative Proceedings

In the exercise of the duties and powers imposed by this Act and conferred upon the Company, the Company may hold public hearings, summon witnesses, issue orders, resolutions, and decisions and perform any other function of a quasi-judicial character that may be necessary to implement the provisions of this Act.

The Company shall have the authority to hold adjudicative hearings to consider complaints against any Taxpayer, on its own behalf or by petition of an interested party as provided for in this Act, and may impose sanctions and/or fines in accordance with the regulations promulgated to these effects.

On its own behalf, or in representation of the person who initiated the claim or complaint, the Company shall have the authority to investigate, issue summonses, require documents that it deems pertinent, and settle claims when a Taxpayer has:

- (1) omitted to take an action required by some provision of this Act or of any regulation approved pursuant to the same; or
- (2) performed an action against that established in a provision contained in this Act or in any regulation approved hereunder.

#### Section 15.-Due Process of Law

The Company shall establish, through regulations, the provisions to be followed in adjudicative proceedings. Every Taxpayer is hereby conceded and guaranteed the due process of law pursuant to Act No. 170 of August 12, 1988, as amended, known as the "Uniform Administrative Procedures Act," in every appeal for administrative or judicial review of the orders and/or resolutions issued by the Company in the exercise of the powers conferred upon it by this Act.

#### Section 16.-Contempt; Refusal to Act

If any person summoned to appear before the Company fails to obey such summons, or if upon appearing before the Company refuses to take an oath, furnish information, testify or answer any pertinent question, or present any pertinent document when so ordered by the Company, the Company may invoke the aid of the Court of First Instance to compel the appearance, testimony, and presentation of documents.

Any person who fails or refuses to appear and testify, neglects any legitimate request, or refuses to present books, papers, and documents, if it were within their power to do so, in compliance with a validly issued notice or summons by the Company, or any person who conducts himself in a disorderly or disrespectful manner before the Tourism Company or any of its officials or employees presiding

over a hearing or investigation, shall be guilty of a misdemeanor, and, if convicted, punished by a maximum fine of five thousand (5,000) dollars, at the discretion of the sentencing court.

#### Section 17.-Burden of Proof

When a hearing is held for a violation of any provision of this Act or any regulation or order from the Company, the burden of proof shall rest on the Taxpayer.

#### Section 18.-Authority to Sanction, Impose, and Collect Fines

The Company is hereby authorized to impose sanctions and administrative fines for infractions to the provisions of this Act and to the regulations approved thereunder, committed by the Taxpayers; as well as the penalties contained in Sections 45, 46, 47, and 48 of this Act. The Company may establish, through regulations, the applicable sanctions which shall be proportionate to the infraction involved.

The Company may, when the provisions of this Act are infringed, impose the administrative fine, penalty, surcharge, or sanction that, in accordance with the Act or Regulation, corresponds or permanently suspend or revoke the promotional and tax benefits granted by the Company.

The infraction of any provision of this Act or of the regulations approved thereunder may entail the permanent revocation of such benefits, as the case may be, as well as the subsequent ineligibility of the Taxpayer to qualify for the promotional benefits and the tax benefits that the Company grants pursuant to Act No. 78 of September 10, 1993, as amended, known as "Puerto Rico Tourism Development Act of 1993."

An action against a Taxpayer in accordance with the provisions of this Act shall not prevent the Company from taking any other additional action authorized by this Act or the regulations approved thereunder.

#### Section 19.-Criminal Penalties for Infractions

Any Taxpayer who infringes any provision of this Act or its Regulation, omits, neglects, or refuses to obey, observe, or comply with any order, resolution, rule, or decision of the Company, fails to comply with a sentence from any court, incites, helps to infringe, omits, neglects, or fails to comply with the provisions of this Act, shall be guilty of a misdemeanor, with a maximum fine of up to five thousand (5,000) dollars at the discretion of the sentencing court.

An action against a Taxpayer pursuant to the provisions of this Act shall not prevent the Company from taking any other additional action authorized by this Act or the regulations approved thereunder.

#### Section 20.-Criminal Penalty for Noncompliance with the Payment of the Tax

In those cases in which a person collects the Tax but fails to remit to the Company the corresponding payment with respect to the same within the period provided by this Act or the regulations approved thereunder, thus misappropriating public property or funds belonging to the Commonwealth of Puerto Rico or its public corporations, such person shall be guilty of the felony of aggravated misappropriation, punishable by imprisonment for a fixed term of ten (10) years.

An action against a Taxpayer pursuant to the provisions of this Act shall not prevent the Company, from taking any other additional action authorized by this Act or the regulations approved thereunder.

#### Section 21.-Additional Penalty for Violation of Orders

Every time a provision of this Act, rule, order, or decision of the Company, or a sentence from a court is violated shall constitute a separate and different offense.

#### Section 22.-Judicial Action

The Company shall refer to and petition the Secretary of the Department of Justice to initiate, on behalf of the Commonwealth of Puerto Rico, those criminal proceedings that may be necessary to punish the acts committed in violation of the provisions of this Act.

#### Section 23.-Enumeration of Powers does not Imply a Limitation of the Same

The enumeration of the powers conferred to the Company by virtue of this Act shall not be construed as a limitation of its powers for the effective pursuit of the objectives established in the same.

#### Section 24.-Tax

- A. The Tax shall be a mathematical calculation resulting from the multiplication of the rate provided by subsection B of this Section by the Room Occupancy Rate, and the Period of occupation of the room.
- B. The Company shall levy, charge, and collect a general Tax of nine percent (9%) over the Occupancy Rate. When dealing with Lodgings authorized by the Commissioner of Financial Institutions to operate casinos, the Tax shall be equal to eleven percent (11%). When dealing with Lodgings authorized by the Company to operate as Inns, the Tax shall be equal to seven percent (7%). Motels shall pay a tax of nine percent (9%) when such rates exceed five (5) dollars daily. In the case of an All-Inclusive Hotel, as defined in subsection (22) of Section 2, the Tax shall be equal to five percent (5%) of the global and grouped charge that guests are charged. In the case of Supplementary Short Term Lodging, the Tax shall be equal to seven percent (7%). In the case of recreational facilities

operated by agencies or instrumentalities of the Commonwealth of Puerto Rico, the Tax shall be equal to five percent (5%).

- C. With the exception of the rates charged by an All-Inclusive Hotel, when the Room Occupancy Rates is grouped with the cost of meals or other services that are complementary to the room and that, in reality, should not be subject to payment of the Tax, the Company may use as its basis the total Room Occupancy Rate collected by the Hotelier to determine the Tax to be paid. In case the Hotelier does not provide a trustworthy breakdown of the reasonable cost of each and every one of the services rendered, the Company may calculate and apply the same on the basis of the greater of the Average Rate, the Room Cost, or the cost of such services using as a basis the experience in the industry.
- D. The Tax shall be applicable when a Lodging provides a room free of charge to any player and/or any visitor to any casino for the benefit or promotion of such casino, regardless whether or not the Lodging directly bills the proprietor and/or owner of the gambling hall. The Company may calculate and apply the Occupancy Rate on the basis of the greater of the Average Rate, the Room Cost, or the cost of such services using as a basis the experience in the industry.
- E. Any agency or instrumentality of the Commonwealth of Puerto Rico that is a proprietor and operator of any Lodging shall not be exempt from the provisions of this Act.
- F. The Tax shall not be applicable to rooms occupied by members of the artistic or technical personnel of cinematography

companies that use the facilities of a Lodging as a result of the production of a film project for distribution in movie theaters, television, or cable television systems. The exemption established herein shall be solely applicable when, at the time of liquidating charges billed with respect to the occupation of the room, the members of the artistic or technical personnel of cinematography companies present to the Hotelier a certification duly issued by the Company.

- G. The Tax levied in this Section shall not be applicable to the sums paid for the acquisition of timeshare rights or for the maintenance of properties covered by owners of timeshare or vacation club rights, constituted as a special type of property rights pursuant to Act No. 252 of December 26, 1995, as amended. For purposes of this subsection, lease contracts registered in the Property Registry shall not be considered a special type of property right.
- H. With the exception of Section 3 of this Act, no Hotelier may levy or charge its guests charges denominated as a “contribution,” “right,” “tax,” or “rate” that would otherwise indicate or lead to the belief that such charge is established by the Commonwealth of Puerto Rico when the charge has not been levied nor will be charged by the Commonwealth of Puerto Rico. The Hotelier shall be responsible for breaking down such charges in paragraphs in the bills, separate and independent from the charge with respect to the Tax. The Company may impose such sanction it deems necessary including, without limitation, the imposition of penalties,

administrative fines, the permanent suspension or revocation of the promotional benefits granted by the Company, or the suspension or revocation of the tax exemption decree granted by the Company in accordance with Act No. 78 of September, 10, 1993, as amended, to any Hotelier who violates the provisions of this Section. If deemed proper, the Company may charge the Tax over these charges.

Section 25.-Obligation of Guest

The Tax levied in Section 24 of this Act shall be paid by the Guest at the time of paying the Room Occupancy Rate to the Hotelier.

Section 26.-Tax Identification Number

Every Lodging subject to the provisions of this Act shall apply for and obtain a Tax Identification Number from the Company, and for this purpose shall follow the procedures adopted by the Company through regulation approved to such effect.

Section 27.-Responsibility of the Hotelier to Collect and Remit the Tax to the Company

- A. Every Hotelier shall be obligated to collect, withhold, and remit to the Company the Tax established by Section 24 of this Act.
- B. Every Hotelier shall pay a bond to guarantee timely payment of the Tax and other surcharges, interests, penalties, or administrative fines imposed on it as a result of violations of the provisions of this Act and/or its regulations.
- C. The payment of the bond as a guarantee of payment, shall be in the amount and pursuant to the terms established by the Company through regulation approved to such effect. Such bond shall be paid at the Company by means of a cash deposit,

letter of credit, or through a company duly authorized to do business to post bonds pursuant to the laws of the Commonwealth of Puerto Rico.

- D. The Hotelier's omission or noncompliance with the payment of the bond within the term required by the Company shall entail the imposition of administrative fines, surcharges, penalties, and the suspension or revocation of the promotional or tax benefits granted by the Company.
- E. The Company may withhold from Lodgings that operate casinos, the proportion of the proceeds for slot machines that corresponds monthly to the concessionaire of a license to operate casinos under the "Games of Chance Act," for the sole purpose of liquidating any debt that the concessionaire has accumulated and is pending payment, with respect to the Tax.

Section 28.-Term to Remit the Tax and the Declarations to the Company

- A. Term – Every Hotelier that, in accordance with Section 27 of this Act, is obligated to collect and withhold the Tax shall remit the total amount of Tax collected during the period between the first and last day of each month to the Company every month. This remittance shall be made no later than the tenth (10<sup>th</sup>) day of the month following the collection of such Tax.
- B. Declaration – Every Hotelier shall be required to declare its revenues with respect to the Room Occupancy Rate using the Declaration provided by the Company for this purpose. The revenues with respect to Room Occupancy Rate shall be declared on a monthly basis on or before the tenth (10<sup>th</sup>) day of the month following the collection of such Tax. The

Declaration shall accompany the monthly amount referred to in the previous Section.

- C. Receipt – A Hotelier that makes a payment to the Company for Tax, or any penalties, fines, surcharges, or interests, shall have the right to petition the Company for a formal, written, or printed receipt for the amount corresponding to the payment.

Section 29.-Manner in Which to Make a Payment of the Tax

- A. The Tax established by this Act shall be paid by means of postal or bank money order, check, cashier's check, cash, electronic transfer, or any other form of payment that the Company authorizes.
- B. The Company, through regulation, shall establish the place and procedures applicable to the payment.

Section 30.-Responsibility of the Hotelier

If the Hotelier, in violation of the provisions of this Act, fails to make the required withholding, the Company shall have the power to charge the Hotelier the amount that should have been collected and withheld by it, as calculated through the mechanisms provided in this Act.

Section 31.-Disposition of Funds

For the 2003-2004 fiscal year and subsequent fiscal years, the Company shall distribute all funds collected from the Tax imposed under Section 24 of this Act, as follows:

- A. Before the beginning of each fiscal year, the Bank shall determine and certify to the Company and to the Authority, the amount necessary for the Authority to make, during such fiscal year and the first day of the following fiscal year: (i) full and timely payment, or the amortization of the principal and interest

on the obligations incurred by the Authority with the Bank or the bonds, notes or other obligations issued, assumed or incurred by the Authority, pursuant to Act No. 142 of October 4, 2001, as amended, with the prior written authorization of the Company, to exclusively carry out the development and construction of a new convention center and its related infrastructure; (ii) full and timely payment of the obligations of the Authority under any Bond Related Financing Agreement, as this term is defined at the end of this subsection (A), entered into by the Authority with the prior written authorization of the Company; (iii) the deposits required to replenish any reserves established to ensure the payment of the principal and the interest on such bonds, notes and other obligations issued, assumed or incurred by the Authority, or obligations under any Bond Related Financing Agreement; and (iv) any other expenses incurred in connection with the issuance of such bonds, notes or other obligations assumed or incurred by the Authority, or with any other Bond Related Financing Agreement. The prior written approval of the Company shall specifically authorize the amortization schedule of the principal of the bonds, notes or other obligations to be issued, assumed or incurred by the Authority and the final terms and conditions of any Bond Related Financing Agreement to be entered into by the Authority. The sum determined and certified by the Bank, as indicated above, shall be deposited in a special account to be maintained by the Bank in the name of the Authority for the benefit of the bondholders, noteholders or the holders of other

obligations of the Authority or for the benefit of the other contracting parties under any Bond Related Financing Agreement. The Bank shall transfer the amounts deposited in such special account to the trustees of the bondholders, noteholders or the holders of other obligations of the Authority or to the other contracting parties under any Bond Related Financing Agreement, in accordance with the written instructions provided to the Bank by the Authority.

Each fiscal year, the Company shall transfer to the Bank, for deposit in such special account, the sum established in the immediately preceding paragraph through monthly transfers, commencing on the month immediately succeeding the month in which this Act is enacted and on the first month of every succeeding fiscal year, of an amount equal to one tenth (1/10) of the amount determined and certified by the Bank as necessary for the payments to which the first part of this subsection refers; provided, however, that for the fiscal year in which this Act is enacted, the amount of each monthly transfer shall be a fraction, determined by dividing the number one (1) by the number of months remaining in such fiscal year after the month in which this Act is enacted, of the amount determined and certified by the Bank as necessary for the payments to which the immediately preceding paragraph refers. Provided, further, that if in any given month of the fiscal year, the funds collected by reason of such Tax are not sufficient to comply with the monthly transfers provided herein, the Company shall correct such a deficiency by transferring to the Bank, for

deposit in such special account, the amount of such deficiency using to cover such deficiency, the excess of the Tax collected in subsequent months over the amount to be deposited monthly in such subsequent months in accordance with the first sentence of this paragraph. Each month, after making the transfer of monies to the Bank as provided in this subsection, the Company shall distribute any remaining amount as established in subsection (B) of this Section.

The Authority is hereby authorized, with the prior written consent of the Company, to pledge or otherwise encumber the revenues product of the fixed Tax collected which is to be deposited in a special account as required by the first paragraph of subsection (A) of this Section, as security for the payment of the principal and interest on the bonds, notes or other obligations issued, assumed or incurred by the Authority, as described in the first paragraph of subsection (A), or for the payment of its obligations under any Bond Related Financing Agreement, as described in said paragraph. Such a pledge or obligation shall be subject to the provisions of Section 8 of Article VI of the Constitution of the Commonwealth of Puerto Rico. The product of the collection of the Tax shall be used solely for the payment of the interest and the amortization of the public debt, as provided in Section 8 of Article VI of the Constitution of the Commonwealth of Puerto Rico, but only to the degree to which the other available resources to which reference is made in said Section are insufficient for such purposes. Otherwise, the product of said collection, in the

amount necessary, shall be used solely for the payment of the principal and interest on the bonds, notes or other obligations and the obligations under any Bond Related Financing Agreement contemplated herein, and to comply with any stipulations agreed to with the bondholders, noteholders or holders of other obligations or the providers under Bond Related Financing Agreements.

In case the total product of the Tax presently assigned or to be assigned in the future to the Authority, in accordance with this subsection (A), is used to service payments of the public debt and applied to cover the deficiencies in the amounts needed to make such payments, the amounts of this Tax used to cover said deficiency shall be reimbursed to the Authority out of the first revenues received in the next fiscal year or subsequent fiscal years by the Commonwealth of Puerto Rico proceeding from any remaining portion of the Tax then in effect, subject to the provisions of Section 8 of Article VI, of the Constitution of the Commonwealth of Puerto Rico.

The Commonwealth of Puerto Rico hereby agrees and makes a commitment with any person, firm or corporation or with any agency of the United States of America or of any state or the Government of the Commonwealth of Puerto Rico, who subscribes or acquires bonds, notes or other obligations, or enters into Bond Related Financing Agreements for the payment of which the product of the Tax is pledged, as authorized by this Section, that it will: (i) not reduce such Tax and not decrease its rates, as fixed in Section 24 in effect as of

the date of approval of this Act, (ii) not eliminate or reduce the Tax to an amount lower than that established in Section 24, or eliminate or reduce the rates of the Tax fixed in Section 24, (iii) make sure that the amounts that must be deposited in the special account as provided in this subsection (A), are deposited in such special account as provided in this Section, and (iv) not alter or limit the rights acquired hereby by the Authority to encumber or pledge the collections from the Tax required to be deposited in the special account according to the first paragraph of this subsection (A) and comply with the terms of any agreement entered into with, or for the benefit of the bondholders, noteholders or holders of other obligations of the Authority or the other subscribing parties under any Bond Related Financing Agreement, until such time as such bonds, notes or other obligations issued, assumed or incurred at any time, including the interest thereon and any obligation under any Bond Related Financing Agreement, have been paid in full. The Authority, as an agent of the Commonwealth of Puerto Rico, is hereby authorized to include the commitment and agreement with the Commonwealth of Puerto Rico, as set forth in this paragraph, in any contract with the bondholders, noteholders or the holders of other obligations of the Authority or any subscriber of a Bond Related Financing Agreement. For purposes of this subsection (A), a “Bond Related Financing Agreement” means any interest rate exchange agreement or similar agreement, any bond insurance policy, letter of credit or

other credit enhancement, liquidity agreement or similar agreements, arrangements or contracts.

- 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 the Tax fixed in Section 24 of this Act, that is collected each fiscal year, in accordance with the following order of priority:
- i. two (2) percent 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 (5) percent of the total Tax collected shall enter monthly into the General Fund of the Department of the Treasury. 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 exclusively from the operations of the Convention Center in excess of the reserves of two million five hundred thousand (2,500,000) dollars 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 intends to propose a budget which exceeds the deficit of two million five hundred thousand (2,500,000) dollars,

the budget of the Convention Center shall be presented jointly to the Board of Directors of the Authority, to the Board of Directors of the Company and to the Secretary of the Treasury or his delegate at a meeting held specifically for such a purpose. This five (5) percent shall be available during each fiscal year in a special reserve account maintained by the Company to cover any deficit in excess of the two million five hundred thousand (2,500,000) dollars, arising exclusively from the operation of the Convention Center. 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.

- iii. nine (9) percent 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 the fiscal year 2003-2004, the amount of the collections on account of the Tax to be remitted by the Company under this subsection shall not be less than four million five hundred thousand (4,500,000) dollars annually. The Company shall transfer to the Convention Center Bureau the corresponding amount in monthly installments of three hundred seventy-five thousand (375,000) dollars. In case the amount deposited for any month is less than three hundred seventy-five thousand (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 (2,500,000) dollars shall be kept available during each fiscal year, in a special reserve account maintained by the Company, to cover any deficit arising exclusively from the operations of the Puerto Rico Convention Center. 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 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. 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 Company. 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.

In case the operational deficit of the Convention Center exceeds the amount of two million five hundred thousand (2,500,000) dollar to be reserved by the Company for such a purpose, said deficit shall be

corrected through the five (5) percent given to the Department of the Treasury, as provided in paragraph (ii) of this subsection. Provided, however, that upon detection of any deficit arising exclusively from the operations of the Convention Center, and before utilizing the mechanism set forth in paragraphs (ii) and (iv) of Section 31, the Authority shall first utilize any excess in possession of the Authority and any surplus that on account of previous collections of the Tax, the Company shall transfer to the Authority, at the time of approval of this Act. The Authority, when requiring that the Company and/or the Department of the Treasury cover the deficit arising exclusively from the operations of the Convention Center, as provided in paragraph (ii) of this subsection, shall present clear justification of the causes and the reasons for this insufficiency, including, but not limited to, showing that any surplus of funds of the Authority were utilized, as provided in Section 4.01(6) of Act No. 351 of September 2, 2000, as amended, also known as the "Puerto Rico Convention Center District Act." The justification shall be presented and carefully examined by both Boards of Directors at a meeting specifically held for such a purpose.

- v. The remainder available after the payments provided in subsections (B)(i), (B)(ii) and (B)(iv), will be assigned to the Company. The funds appropriated to the Company shall be used by the latter for promoting, marketing,

developing and strengthening the tourism industry in Puerto Rico.

The Company shall submit to the Authority and to the Convention Center Bureau a monthly statement itemizing the collections on account of the Tax.

Section 32.-Assessment Procedure

- A. The Company shall have the power to initiate a proceeding to determine the Debt or Deficiency of a Taxpayer on account of the Tax or of any surcharges, administrative fees and penalties, and which should be paid to the Company.
- B. The Assessment may be initiated by the Company, among other instances, when a Taxpayer has failed to make any monthly payment on account of the Tax, or to comply with its obligation to present the Declaration required by law, when there is a Deficiency in the payment made or when there is a Deficiency attributable to a Mathematical or Clerical Error of the Taxpayer.
- C. The Company may conduct the Assessment by calculating the greater amount of the Average Rate, the Room Cost or the cost of such services on the basis the industry practice and multiplying it by the percentage of the Tax applicable to a Lodging and the occupancy period.
- D. The Company shall notify the Taxpayer if, due to a Mathematical or Clerical Error evident from the face of the Declaration, it owes a Tax in excess of what is disclosed in such Declaration. Any notification under this Section shall specify the nature of the alleged error and the reasons for it.
- E. A Taxpayer will not have a right to appear before the Company for a notification based on a Mathematical or Clerical Error.

### Section 33.-Notification

- A. In the case that any Taxpayer has incurred a Debt or Deficiency with respect to the Tax imposed by this Act, the Company shall notify the Taxpayer of such Deficiency by certified mail with return receipt requested.
- B. The Notification with respect to a Tax will be sufficient for purposes of this Act if mailed by certified mail with return receipt requested to the Taxpayer to its last known address, even when such Taxpayer had died or is legally handicapped, or in the case of a corporation or a partnership, even when they no longer have legal existence.
- C. The Company shall have the right to make an Entry to commence a Distraint Procedure, and/or to present an action against the bond or surety given by the Taxpayer, if the Deficiency is not paid by the Taxpayer within the term allowed for in the notification to make the payment or appear before the Company.
- D. If once the Company has commenced an action against the bond or surety, a portion of the Debt or Deficiency not covered by the bond or surety remains outstanding, any uncovered portion shall be paid by the Taxpayer upon request by the Company. The Taxpayer shall, in addition, pay the interest associated with such Deficiency, computed at ten percent annually from the date of the Entry to the date of total payment.

### Section 34.-Taxpayer's Rights Upon Notifications

- A. Any Taxpayer who disagrees, in whole or in part, with the notified Deficiency, with the exception of those Taxpayers who

are notified of a Deficiency based on a Mathematical or Clerical Error, may request an administrative hearing in accordance with the adjudicative procedures established by the Company through regulation approved to such effect. Provided, however, that the Taxpayer shall pay the portion of the Deficiency with which it agrees.

- B. Any Taxpayer who disagrees with the Order or final Resolution of the Agency, may request review of the same, pursuant to the provisions of Act No. 170 of August 12, 1998, as amended, known as the “Uniform Administrative Procedure Act,” and Act No. 1 of July 28, 1994, as amended, known as the “Puerto Rico Judiciary Act.”
- C. The Company shall not make an Entry, nor commence or conduct a Distraint Procedure, nor present an action against the bond or surety provided by the Taxpayer until the expiration of the term provided to the Taxpayer to appear before the Company or, if the Taxpayer appeared before the Company, until a Resolution or Order issued by the Company or by any court with jurisdiction becomes final.

#### Section 35.-Jurisdiction and Powers of an Examining Official and the General Court of Justice

The Examining Official or the General Court of Justice shall have the power to redetermine the correct amount of a Debt or Deficiency, even if the amount so determined is higher than the original amount of the Deficiency notified by the Company, and to determine the payment of any corresponding additional amount such as interests, as long as the Company establishes a claim to such effect at any time before the issuance of a Resolution or Order.

When considering a Debt or Deficiency with respect to any taxable year, the Examining Official or the General Court of Justice may consider such facts related to the Tax for other taxable years as may be necessary to correctly determine the amount of such Debt or Deficiency. However, in doing so, they shall not have the power to determine if a Tax for any other taxable year has been overpaid or underpaid.

Section 36.-Entry, Administrative Collection, or Bond or Surety by reason of Tax in Jeopardy

- A. If the Company believes that the collection of a Debt or Deficiency is in jeopardy, the Company may, without prior notice to the Taxpayer, proceed immediately with the Entry, commence a Distraint Procedure, or present an action against the bond or surety provided by the Taxpayer, notwithstanding the provisions of Section 32 of this Act.
- B. If the Company shall take action under subsection (A) of this Section, without prior notice to the Taxpayer, the Company shall, within the twenty (20) days following the date of such action, notify the Taxpayer of the Debt or Deficiency in accordance with, and subject to, the provisions of Section 33 of this Act.
- C. If once the Company has commenced an action against the bond or surety, a portion of the Debt or Deficiency not covered by the bond or surety remains outstanding, any uncovered portion shall be paid by the Taxpayer upon request by the Company. The Taxpayer shall, in addition, pay the interests related to such Deficiency, computed at ten percent annually from the date of the Entry to the date of its payment in full.

- D. If under subsection (A) of this Section, the Company notified a Taxpayer after taking action in accordance with subsection (A) of this Section, the rights of the Taxpayer, as set forth in Section 33 of this Act, shall not be affected.

#### Section 37.-Bankruptcy and Receivership

- A. Immediate Assessment – The adjudication in favor of a Taxpayer in a bankruptcy proceeding or the appointment of a trustee in a judicial proceeding, requires that any Deficiency in the determination of the Tax (and any related amount) determined by the Company for such Taxpayer be assessed immediately, notwithstanding the provisions of Sections 32 and 33 of this Act. In such cases, the trustee shall notify the Company in writing of the adjudication of the bankruptcy or the receivership. The term to conduct the assessment shall be suspended for the period commencing with the adjudication of the Bankruptcy, or since the beginning of the receivership, and extending for thirty (30) days following the date in which the trustee's notification was received by the Company. Claims for Deficiencies in the determination of the Tax (and any related amounts) may be presented, before the court in which the bankruptcy or receivership is being heard.
- B. Unpaid Claims – Any portion of a claim allowed in a bankruptcy proceeding or receivership that is not paid, shall be paid by the Taxpayer, upon notification and request by the Company, after the determination of such proceeding, and may be collected by means of a Distraint Procedure within a period

of ten (10) years after the termination of the bankruptcy proceeding or receivership.

Section 38.-Statute of Limitations for Assessment

Considering that the Hotelier becomes a collection agent for the Commonwealth of Puerto Rico, the Company shall not be subject to any statute of limitations to conduct an Assessment of a particular Debt or Deficiency.

Section 39.-Statute of Limitations for Collection

- A. If the Company shall have conducted an Assessment which reflects that a Taxpayer has a Deficiency or Debt, the Tax may be collected through a Distraint Procedure, provided that it is commenced: (a) within a period of ten (10) years following the date of the Assessment; or (b) before the expiration of any period, in excess of the ten (10) year period agreed in writing by the Company and the Taxpayers. The period agreed on in the manner described above may be extended by subsequent written agreements entered into before the expiration of the period previously agreed on.
- B. Notwithstanding the provisions of Act No. 230 of July 23, 1974, as amended, also known as the "Commonwealth of Puerto Rico Accounting Act," the Company shall proceed to eliminate Taxpayers' records and shall be prescribed from collecting the debts imposed by this Act or prior Acts when ten (10) years have passed since the date of the Assessment or since the expiration of any period agreed on between the Company and the Taxpayer. Provided, that, any interruption of such period shall be taken into consideration, for purposes of the determination of the statute of limitations.

#### Section 40.-Tolling the Statute of Limitations

The statute of limitations provided by Section 39 of this Act shall be interrupted with respect to any Debt or Deficiency, for the period during which the Company is impeded from commencing a Distraint Procedure, and, in every case, if they appeal to any of the Courts of Puerto Rico, until the court's decision is final and firm and for the subsequent sixty (60) days.

#### Section 41.-Credits for Tax Paid in Excess

- A. Credits - Every Taxpayer who believes he/she has wrongly paid or been charged a Debt or Deficiency with respect to the Tax, shall be able to request in writing to the Company that the payment paid in excess be credited to the future amounts to be paid with respect to the Tax. In relation to any payment in excess of that owed, the Company shall certify the excess to the Taxpayer as a credit for the following month's payment.
- B. The Taxpayer shall request such credit within the term and in accordance with the procedures established by the Company through regulation approved to such effect.
- C. The Company may, on its own initiative, determine that the Taxpayer has made an excess payment with respect to the Tax, and concede them a credit of any amount that in its judgment was paid wrongly or in excess of the amount owed. In relation to any payment in excess to that owed, the Company shall certify the excess to the Taxpayer as a credit for the next month's payment.
- D. When the Company approves an application for credit, or when the Company itself determines that the Taxpayer has made a payment in excess of that owed, it shall investigate if the

Taxpayer has any enforceable Debt or Deficiency pursuant to this Act, in which case the Company shall credit to such debt the amount that, as a credit, would have corresponded to the Taxpayer with respect to payments in excess of that owed.

- E. If a claim for credit filed by a Taxpayer were denied in whole or in part by the Company, the Company shall notify the Taxpayer of its decision by certified mail with return receipt requested. The Taxpayer may appeal such denial following the adjudicative procedure that may be approved by the Company.
- F. When the Company adjudicates or grants credits that do not correspond, the Company may reconsider the case and reinstate the Tax rejecting the credit and notifying the Taxpayer of a Debt or Deficiency in the form and pursuant to the procedure established in Section 32 of this Act.
- G. The Company may adopt those regulations it deems necessary and convenient to comply with the procedures provided in this Section.

#### Section 42.-Statute of Limitations

A Taxpayer shall not have the right to apply nor obtain a credit unless the Taxpayer files an application for credit with the Company within the term of four (4) years from the date on which the Taxpayer presents a Declaration along with the corresponding payment or within the term of three (3) years from the date on which the Tax was paid, if a Declaration was not filed. In case the Taxpayer presents a Declaration prior to making the corresponding payment, said term of three (3) years shall begin on the date on which the payment was made.

Section 43.-Payment in Excess Determined by an Examining Official or a Court with Jurisdiction

If an Examining Official or a Court with jurisdiction were to determine that no Debt or Deficiency existed in the payment made by the Taxpayer; that a Taxpayer has made a payment in excess of the Tax corresponding to the taxable year in which the Company determined the Deficiency and/or that a Deficiency exists but the Taxpayer made a payment in excess of the Tax corresponding to the taxable year, the Examining Official or the Court shall have the power to determine the sum of the excess payment, which should be credited to the Taxpayer when the Court's decision becomes final and firm. The credit will be denied unless the Examining Official or the Court with Jurisdiction expressly determines in their decision that the Taxpayer filed an application for credit before the Puerto Rico Tourism Company:

1. within the term of four (4) years from the date in which the Taxpayer presented a Declaration along with the corresponding payment; or
2. within the term of three (3) years from the date in which the Tax was paid, if a Declaration was not filed;
3. in case the Taxpayer presents a Declaration prior to making a corresponding payment, said term of three (3) years shall begin on the date on which payment was made.

Section 44.-Statute of Limitations for Requesting Credits on the Taxes Paid for Exempt Room Occupancy Rates

Any Taxpayer interested in receiving a credit for a Tax paid under any room occupancy rate exemption authorized by the provisions of this Act, shall submit a petition of credit supplemented by the appropriate documents within one hundred eighty (180) days following the date the Taxpayer paid the Tax.

Section 45.-Penalties in general

Any person obligated under this Act to retain and pay the Tax, submit a Declaration, preserve any evidence or document, or supply any information for the purpose of calculation, assessment or collection of any Tax, and voluntarily or involuntarily fails to comply with said obligation shall be subject to the penalties, charges, or fines as indicated in Sections 46, 47, 48, and 49 of this Act.

Section 46.-Additional Charges

- A. Interest- When the Taxpayer does not pay the Tax levied by this Act, on or before the due date for payment, the Company as part of the Tax, shall collect an interest on the unpaid amount, at a ten (10) percent annual rate, from the due date of the payment until the date of the final payment.
- B. Charges- In every case where the imposition of interest applies pursuant to the preceding subsection A, the Company may additionally collect the following charges:
  - i. For a payment delay of thirty (30) days or less, the Taxpayer may be imposed a charge equivalent to five (5) percent of the principal;
  - ii. For a payment delay in excess of thirty (30) days, the Taxpayer may be levy a charge equivalent to ten (10) percent of the principal in addition to the allowed five (5) percent of subsection B(i).

#### Section 47.-Failure to submit the Declaration

If any person fails to submit the Declaration required by this Act during the prescribed term, an additional fine in the amount of five hundred (500) dollars, for each infraction may be imposed on the Taxpayer, which shall be paid as part of the Tax, in addition to any other penalties, charges or interests that are levied pursuant to this Act. It shall be understood that every day the infraction endures shall be considered a separate violation up to a maximum of twenty five thousand (25,000) dollars.

#### Section 48.-Administrative Fine for Submittal of False Documents

Any Taxpayer who submits to the Company documents, which are not authentic or where the amounts represented are incorrect or false in relation with the received Room Occupancy Rate, may be subject to an administrative fine in the amount of five hundred (500) dollars for each infraction, in addition to the Tax and applicable charges and interest. Also, the Company may suspend or revoke the promotional and tax benefits granted by the Company. It shall be understood that every day the infraction endures shall be considered a separate violation up to a maximum of twenty five thousand (25,000) dollars.

In any situation where a Taxpayer demonstrates contempt in the performance or continuing performance of acts for which an administrative fine was imposed or contempt in the noncompliance with any order or resolution issued by the Company, at its discretion, may levy an administrative fine up to a maximum of one thousand (1,000) dollars for each infraction. Also, the Company may suspend or revoke the promotional and tax benefits granted by the Company. It shall be understood that every day that the infraction endures shall be considered a separate violation up to a maximum of fifty thousand (50,000) dollars.

#### Section 49.-Administrative Fine for Submittal of False Documents

- A. When a Taxpayer does not comply with its obligation to pay the Tax, any Debt, Deficiency or any interest, fine, charge or penalty levied by the Company, during three or more times (not necessarily consecutive) during the same fiscal year, the Company may suspend and/or revoke the Taxpayer's benefits granted under Act No. 78 of September 10, 1993, as amended. It may also suspend or revoke any other tax and/or promotional benefit granted by the Company.
- B. Those Taxpayers to whom subsection A of this Section is applicable shall be granted and guaranteed due process pursuant to the provisions of this Act.
- C. Once the Debt has been satisfied, the Taxpayer to whom the tax benefits were revoked may initiate the process indicated in Act No. 78 of September 10, 1993, as amended, to request and enjoy tax benefits. The request will be processed pursuant to the procedures established by Act No. 78, *supra*, for the processing of new petitions. The Company shall have full discretion in the evaluation of said petition.
- D. When the tax benefits have been suspended for lack of payment of the Tax, the ten (10) year term renewable for an additional ten (10) year term provided by Act No. 78 of September 10, 1993, as amended, shall be understood to continue during the suspension term. The Company shall establish by regulation approved to such effect, the provisions that regulate the revocation or suspension of the tax benefits.

Section 50.-Penalties typified as crime

In relation with any activity in the exercise of this Act that involves any activity typified by the Commonwealth of Puerto Rico Penal Code including, without limitation, crimes against public service, public revenue and public faith, it shall be the Company's responsibility to refer said activity to the Secretary of the Department of Justice so he/she may conduct, in the name of the Commonwealth of Puerto Rico, the criminal proceedings that may be necessary to punish the committed acts.

#### Section 51.-Payment Commitment

(a) The Director is empowered to formalize with the Taxpayer a written payment agreement whereby the he/she can commit to waive any Tax due including, without limitation, civil or criminal penalties, interests, fines, or charges applicable to a specific situation pursuant to any Tax prior to its referral to the Department of Justice for the formulation of charges.

1. General Requirements- Any payment commitment pursuant to the provisions of this Section shall be authorized by the Director, or his/her authorized representative, who shall justify the reasons for the concession of the payment commitment and shall provide the following information:

- (a) amount of Tax due;
- (b) amount of interest, charges, fines, or additional penalties pursuant to the Tax due;
- (c) amount to be actually paid, pursuant to terms of the payment commitment;
- (d) financial analysis of the Taxpayer's situation that demonstrates that the Taxpayer has the payment

capacity with respect to the present payment that shall be paid pursuant to the payment commitment; and  
(e) any other document or evidence that shall be required by the Director, pursuant to any rule or regulation approved by him/her.

2. In the absence of Resources- If the Taxpayer does not possess and/or presents sufficient resources for the payment of the Tax and the applicable fines, charges, interests or penalties, the Director, or his/her authorized representative, shall evaluate and determine if the payment commitment is an appropriate method for the Debt or Deficiency collection, in the absence of resources to guarantee its collection.

#### Section 52.-Confidentiality of the Declaration and other documents

- A. The Declaration submitted pursuant to the provisions of this Act is a public document. Notwithstanding, and except as provided in this Section, it may only be inspected by a third party pursuant to the rules and regulations adopted by the Company. The Company may require that, as a minimum inspection requirement, the petitioner be an interested party.
- B. No Company official or employee shall divulge or provide under any circumstance, except as stated in this Act, the information provided by the Declaration, books, records, or other documents submitted by the Taxpayer, nor shall it permit the examination or inspection of them by a person that is not legally authorized.

### Section 53.-Requirement to preserve and provide documents

- A. The Company shall establish, by means of regulation, the norms for the conservation by the Hotelier of reports, dockets, records, declarations, statistics or any other document related to the Tax.
- B. Any report, docket, record, declaration, statistic or any other document related to the Tax fixed pursuant to this Act or to the Room Occupancy Rate shall be preserved by the Hotelier for a term not less than ten (10) years beginning from the date of the Tax Assessment.
- C. When such documents are being reviewed, audited, intervened with or examined by the Company at the time the ten (10) year period expires, the Taxpayer shall assure its preservation for the additional time necessary for the Company to finalize the review, audit, examination or intervention.

### Section 54. - Tax Collection

Within a term that shall not exceed the date of performance of the transfer provided in this Act, the Secretary of the Treasury shall review the registries at the Department of the Treasury, with regard to the Lodgings subject to the Tax, and shall apply or credit the deposits pending registration. Similarly, the Secretary of the Treasury shall adjust said registries in relation to any error detected during the process or transaction related to the Tax collection that has not been accounted for. Once this has been accomplished, the Secretary of the Treasury shall transfer to the Company the Lodging registry related to the Tax, the registry of all account receivables and the complete files of all pending transactions, which, once they are processed, could change the accounts receivable. The Company shall carry out all

acts necessary to conclude the collection process of the transactions pending payment.

Section 55. - Transfer

Pursuant to this Act, all the powers, duties and obligations vested on the Department of the Treasury by law or regulation, in relation with the responsibility to impose, fix, sanction, determine, assess, collect, enforce, distribute, regulate and investigate the Tax shall be transferred to the Company.

Similarly, the Department of the Treasury shall transfer to the Company all programs, funds, files, archives and any others, related to the duties of assessing, determining, imposing, levying, collecting, investigating, enforcing and distributing the Tax that are necessary to achieve the purposes of this Act.

Section 56.-Administrative Determinations, Final Agreements, and Agreements currently in effect pursuant to the Internal Revenue Code

No provision in this Act shall be interpreted as altering, modifying or invalidating any agreement, claim or contract granted by the Department of the Treasury under the Internal Revenue Code, in relation to any tax event occurring prior to this Act's effective date.

Section 57.-Administrative Determinations effective under the Internal Revenue Code

The administrative determinations issued by the Secretary of the Treasury prior to the effectiveness of this Act related to the Tax shall not be applicable to future tax events that occur after this Act's effective date. Notwithstanding the above, the administrative determinations issued by the Secretary of the Treasury prior to this Act's effective date, and in relation with tax events that occurred prior to this Act's effective date, shall be final and firm even for periods, if any, after this new Act becomes effective.

Section 58. - Final Agreements entered into under the Internal Revenue Code

The final agreements entered into by and between a Taxpayer and the Secretary of the Treasury prior to the effectiveness of this Act, and under the provisions of the Internal Revenue Code, shall not apply to future tax events occurring after this Act's effective date. Notwithstanding the above, the final agreements entered into by the Secretary of the Treasury prior to the effective date of this Act, and with regard to taxable events that occurred prior to this Act's effective date, shall be final and binding, even if they cover periods, if any, after this new Act becomes effective.

Section 59.-Actions pending final resolution

Any action, proceeding, litigation or claim related to the imposition, assessment, levying, collection, enforcement, regulation, investigation, sanction, and distribution of the Tax pending before the Department of the Treasury or any court on this Act's effective date, shall continue to be processed by the Department of the Treasury until its final and firm determination under the applicable laws and regulations effective when said procedures, actions, litigations or claims were filed.

Section 60.-Interpretations of Law

- A. The Company may issue administrative determinations to clarify and interpret provisions of this Act and the regulations approved pursuant there to, in accordance with its purposes and objectives established herein and with the public policy of the Commonwealth of Puerto Rico.
- B. No provision in this Act shall be interpreted as a restriction or limitation to the general or inherent powers of the Company.

Section 61. - Personnel in charge of Compliance with this Act

The Company, its officials, and employees shall be attentive to the compliance of the provisions of this Act.

Section 62. - By this Act, Section 2051 of Act No. 120 of October 31, 1994, as amended, is hereby eliminated.

Section 63. - Paragraph (6) is hereby eliminated and paragraphs (7), (8), (9), and (11) are respectively renumbered to (6), (7), (8), and (9) of Section 2084 of Act No. 120 of October 31, 1994, as amended.

Section 64. - Subsection (b) of Section 8 of Act No. 78 of September 10, 1993, as amended, is hereby amended to read as follows:

“Section 8. - Denial, revocation and limitation of benefits pursuant to this Act

(a)...

(b) Basis and Procedures for Revocation.- The Director may impose fines, suspend and/or revoke the tax benefits granted ... The amounts to be paid in those cases in which a fine is imposed in lieu of a suspension or revocation ... The Director may determine that the suspension, revocation and/or fine in question shall be effective from the date the exempted business is found guilty of the violation upon which the determination is based, in the following cases:

(1)...

(5) When the exempt business has failed to comply with the Tax payment related to the Room Occupancy Rate as provided by the ‘Commonwealth of Puerto Rico Room Occupancy Rate Tax Act,’ in three or more occurrences

(not necessarily consecutive) during a fiscal year, in compliance the provisions of said Act.”

Section 65. - Subsections (b) and (c) of Section 9 of Act No. 78 of September 10, 1993, as amended, are hereby amended to read as follows:

“Section 9. - Administration; Granting of benefits; penalties

- (a) ...
- (b) During the effectiveness of this Act, all other fiscal laws, including, but without being limited to, the Puerto Rico Industrial Incentive Acts, Puerto Rico Tourist Incentive Act of 1983, Excise Tax Act of Puerto Rico, Income Tax Act, Puerto Rico Internal Revenue Code of 1994, as amended, Municipal License Act, and the laws regarding taxes on real and personal property, shall continue in effect with regard to exempted businesses (except when it is manifestly incompatible with this Act), including, but without being limited to, the obligation to file returns, submit reports, pay taxes, pay the Tax on the Room Occupancy Rate and the procedures related to assessment, levying and collection of levies and taxes.  
...
- (c) Any person, who has established or intends to establish an eligible business in Puerto Rico, may request the Director for a concession hereunder through the due filing of a petition. The approval of a concession under this chapter shall be conditioned to the presentation to the Director, by the eligible business of negative-debt certificates from the Departments of the Treasury and of Labor and Human Resources, the State Insurance Fund

and the Municipal Revenues Collection Center (Spanish Acronym: C.R.I.M.). In addition, the petitioner shall prove that it has no balance due in relation to the Tax on the Room Occupancy Rate. The eligible business shall submit to the Director any additional document and/or permit that the Director may require by regulations. The exempted businesses described in Section 6(a) of this Act, shall also file the accrediting certificate mentioned in Section 6(a)(3) of this Act.

...”

Section 66. - Subsection (b) of Section 3 of Act No. 221 of May 15, 1948, as amended, is hereby amended to read as follows:

“Section 3. - Games of chance in licensed gambling rooms, authorized  
- Qualifications for licenses

(a) ...

(b) It is hereby provided that the slot machines authorized in Section 2 of this Act shall be located and operated by the Tourism Company or by a holder of a game of chance license authorized by law to operate in Puerto Rico. The holder of a games of chance license under this Section may install and operate, or allow the Tourism Company to operate machines in their gambling halls, in exchange for a share of the profits of the operator, as provided in Section 5 of this Act, and subject to the payment of the license fees established in Section 7 of this Act. The share of the profits corresponding to the holder of a license to operate a gambling hall shall be sent by the Tourism

Company to the Secretary of the Treasury during the term that may be necessary to pay off any tax debt already assessed and due for collection at the internal revenue offices, which the holder of a license to operate a gambling hall may have pending. In addition, the share of the profits from the slot machines corresponding to the holder of a license to operate a gambling hall may be withheld by the Company to pay any debt that the operator has accumulated, and pending payment, in regards to the Tax on the Room Occupancy Rates.

...”

Section 67. - Subsection (q) of Section 5 of Act No. 10 of June 18, 1970, as amended, is hereby added to read as follows:

“Section 5. - Rights, powers and duties

The Company shall have and exercise the rights, duties, and powers, which may be necessary or convenient to promote, develop, and improve the tourist industry, including, but without limiting, the following:

(a) . . .

(q) Impose, determine, fix, assess, collect, enforce, distribute, regulate, investigate, intervene, and sanction the Tax on the Room Occupancy Rate.”

Section 68. - Severability of provisions

Should any paragraph, subsection, Section or part of this Act is found to be unconstitutional by a competent court, a judgment thus pronounced shall not affect, prejudice, nor invalidate the remainder of this Act. The effect of said judgment

shall be limited to the paragraph, subsection, section or part thereof that was thus declared to be unconstitutional.

Section 69. - Effectiveness

This Act shall take effect one hundred and eighty (180) days after its approval, except for the provisions of Section 31, which shall become effective as of July 1, 2003.

**CERTIFICATION**

I hereby certify to the Secretary of State that the following Act No. 272 (H.B. 3820) (Conference) of the 5<sup>th</sup> Session of the 14<sup>th</sup> Legislature of Puerto Rico:

**AN ACT** to transfer the responsibilities and obligations to impose, fix, determine, assess, collect, enforce, distribute, regulate, investigate and sanction the tax on the room occupancy rate from the Department of the Treasury to the Puerto Rico Tourism Company; to establish a new formula for the distribution of the funds collected on account of the room occupancy rate; to eliminate all sections in the Internal Revenue Code referring to the room occupancy rate that are inconsistent with the provisions of this Act; to amend subsection (b) of Section 8 of Act No. 78 of September 10, 1993, as amended; to amend subsections (b) and (c) of Section 9 of Act No. 78 of September 10, 1993, as amended; to amend subsection (b) of Section 3 of Act No. 221 of May 15, 1948, as amended; to add a subsection (q) to Section 5 of Act No. 10 of June 18, 1970, as amended,

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

In San Juan, Puerto Rico, today 25<sup>th</sup> of August of 2005.

Francisco J. Domenech  
Director

