(S.B. 1497)
(Conference)
(Reconsidered)

(No. 322)

(Approved November 6, 1999)

AN ACT

To amend clause (2) of subsection (b) of Section 2059 and clauses (1) and (2) of subsection (b) of Section 2068 of Act No. 120 of October 31, 1994, as amended, known as the "Puerto Rico Internal Revenue Code of 1994", in order to amend those Sections of the Code which affect the prices, routes and services provided by an air carrier or affiliate carrier when said affiliate carrier transports goods by air or by motor vehicle.

STATEMENT OF MOTIVES

Act No. 120 of October 31, 1994, as amended, known as the "Puerto Rico Internal Revenue Code of 1994", which contains provisions on the levy and collection of taxes, regulates to a great extent the operations of air or land freight carriers that provide transportation services for those articles brought to Puerto Rico from abroad.

During several investigations conducted during past sessions by various legislative committees, as provided in S.R. 917 and S.R. 1142, air and land freight companies, the Puerto Rico Chamber of Commerce, the Industrialists Association, the Puerto Rico Convention Bureau and the Department of Economic Development of the Government of Puerto Rico, among other entities, presented evidence which dramatically sets forth the fact that the are a large number of laws and administrative regulations in Puerto Rico issued

by various agencies of the Government of Puerto Rico which regulate and/or affect air transportation and freight carriers which render services on our Island and which substantially affect the competitive edge of Puerto Rico within the global market. As a consequence of said laws and regulations, for example, air carriers that render services in Puerto Rico have been forced to alter their rates, routes and services, their uniform billing and collection practices and the manner in which they render certain services, thus creating a *sui generis* situation within our jurisdiction which could well defeat the purpose of those federal laws which seek to foster high quality, efficient and innovative services at the lowest cost for interstate air transportation.

In 1978 the United States Congress approved the Airlines Deregulatory Act which was subsequently substituted by the Federal Aviation Administration Authorization Act of 1994, as amended, and re-codified by the Interstate Commerce Commission Termination Act of 1995. To prevent the sates and territories from thwarting the federal purpose of said legislation to promote efficient and innovative interstate air transportation services of the highest quality at the lowest cost, the Congress promulgated various statutory provisions in order to expressly prohibit the states and territories from promulgating or passing laws or regulations related to the rates, routes or services provided by an air carrier or affiliated carrier when said carrier transports property by plane or motor vehicle.

The express provision that deals with this matter in this Act covers economic matters related to the price, routes and services of the air carrier. The law only preserved for the States (i) the safety regulatory authority, (ii) the authority to regulate land carriers with regard to minimum amounts of financial responsibility (including insurance), and (iii) the transportation of household goods. 49 U.S.C.A. Sec. 41713 (b)(4)(B) (1996).

The Department of the Treasury made available to the Committees on Government and Federal Affairs and on Urban Affairs and Infrastructure during their participation in public hearings, those provisions of the Internal Revenue Code, such as the local surtax system, that have an impact on or in some manner affect air and land carriers, especially as regards their prices, routes and services. In time it was determined that those provisions of the Code are in clear violation of the aforementioned Congressional intent.

Thus, as the Committee on Government and Federal Affairs and the Committee on Urban Affairs and Infrastructure of the Senate of Puerto Rico were able to conclude, the economic activity of our Island depends in great measure in the skill with which the transportation of freight is handled in our ports. Puerto Rico is at a great disadvantage in terms of global competitiveness as regards that industry as compared with not only the States of the Union but also with the rest of the countries of the world.

The considerable extent of the restrictions, requirements and conditions imposed on air freight carriers and their affiliated land freight transportation companies under the existing body of laws of Puerto Rico demands that they alter the uniformity of their services, routes and prices, a fact which in the future may be deemed to represent a conflict with the Federal laws which seek to protect those United States Interstate Commerce essential services.

The approval of this measure is therefore essential in view of the fact that there is a system for the collection of excise taxes that could be said fails to comply with the latest federal requirements that have been established in relation with merchandise air transportation services and that substantially hinders of competitiveness with other States and countries around the world.

This measure furthermore provides the Department of the Treasury with enough time to make those pertinent changes since it shall not be in effect

until June 30, 2001. Complementary legislation would provide the Department of the Treasury with the opportunity to design, develop and implement an excise tax collection mechanism that would allow air cargo carriers to operate in Puerto Rico as provided by the Federal Authorization for Aviation Administration Act of 1994, as amended and re-codified by the Interstate Commerce Commission Termination Act of 1995, especially the statutory provision under Title 49 U.S.C. Sec. 41713(b)(4)(A) (1996).

BE IT ENACTED BY THE LEGISLATURE OF PUERTO RICO:

Section 1.- Paragraph (2) of subsection (b) of Section 2059 of Act No. 120 of October 31, 1994, as amended, is hereby amended to read as follows:

"Section 2059.- License fees for free port shops and maritime carrier businesses

(a) …

(1) …

(2) …

(b) For the purposes of this Section and the provisions applicable to this Part, the following terms shall have the meaning indicated below:

(1) …

(2) "Air, maritime or land carrier" shall mean any person engaged in providing, through payment, services for the transportation of articles proceeding from abroad. These services may include, among others, the grouping or consolidation of shipments and their distribution as well as the responsibility for transporting these from their point of entry to their final destination. However, those air carriers or their affiliated carriers are excluded from this Section and the applicable provisions of this Part when said carriers transport property by airplane or motor vehicle, or on airlines which comply with the definitions of 'air carrier' and 'interstate air

transportation', contained in the Aviation Authorization and Administration Act of 1994, as amended and re-codified by the Interstate Commerce Commission Termination Act of 1994, under Title 49 U.S.C., Section 40102(a)(2) and (a)(25)."

Section 2.- Paragraphs (1) and (2) of subsection (b) of Section 2068 of Act No. 120 of October 31, 1994, as amended, are hereby amended to read as follows:

"Section 2068.- Payment of tax on articles introduced from abroad.

(a) …

(b) The tax on articles introduced from abroad shall be paid at the time established below, according to each particular case:

(1) In the case of an article introduced into Puerto Rico by means other than by mail, air carriers or their affiliated carriers, when said carriers transport property by airplane or motor vehicle, or on airlines which comply with the definitions of 'air carrier' and 'interstate air transportation', contained in the Federal Aviation Authorization and Administration Act of 1994, as amended and re-codified by the Interstate Commerce Commission Termination Act of 1994, under Title 49 U.S.C., Section 40102(a)(2) and (a)(25), or personally, the tax shall be paid before the taxpayer takes possession of the article.

(2) In the case of articles introduced by mail or by air carriers or their affiliated carriers, when said carriers transport property by airplane or motor vehicle, or on airlines which comply with the definitions of 'air carrier' and 'interstate air transportation', contained in the Federal Aviation Authorization and Administration Act of 1994, as amended and re-codified by the Interstate Commerce Commission Termination Act of 1994, under Title 49 U.S.C., Section 40102(a)(2) and (a)(25), or by any person, the

tax shall be paid not later than the second working day following the day on which the taxpayer takes possession of the article. Neither the air carrier nor the airline shall have to make said payment.

The air carrier or the airline shall provide the Secretary of the Treasury with the minimum amount of information agreed to be necessary so that the Secretary may collect the pertinent excise taxes without having to unreasonably interfere in the ordinary course of interstate commerce business.

(3) …"

Section 3.- This Act shall take effect as of June 30, 2001.

CERTIFICATION

I hereby certify to the Secretary of State that the following Act No. 322 (S.B. 1497) (Conference) (Reconsidered) of the 6th Session of the 13th Legislature of Puerto Rico:

AN ACT to amend clause (2) of subsection (b) of Section 2059 and clauses (1) and (2) of subsection (b) of Section 2068 of Act No. 120 of October 31, 1994, as amended, known as the "Puerto Rico Internal Revenue Code of 1994", in order to amend those Sections of the Code which affect the prices, routes and services provided by an air carrier or affiliate carrier when said affiliate carrier transports goods by air or by motor vehicle,

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

In San Juan, Puerto Rico, today 18th of August of 2003.

Elba Rosa Rodríguez-Fuentes
Director