

(Senate Substitute for
H. B. 3268)

(No. 248)

(Approved August 10, 2008)

AN ACT

To add Section 1040J to Subtitle A and to add Section 2514 to Subsection BB of Act No. 120 of October 31, 1994, as amended, known as the “Puerto Rico Internal Revenue Code of 1994,” for the purpose of granting tax incentives for the development of solar power in Puerto Rico; amend Section 5.01(s) of Act No. 83 of August 30, 1991, as amended, known as the “Municipal Property Tax Act of 1991,” for the purpose of adding the use of solar power on the exception provided as well as to the renewable energy collection, storage, generation, distribution, and application equipment introduced to or manufactured in Puerto Rico; and for other purposes.

STATEMENT OF MOTIVES

Sixty-eight (68) percent of the electricity generated in Puerto Rico relies on oil, which makes the Island one of the world jurisdictions that mostly rely on this natural resource. In spite of the efforts made during Governor Pedro Rosselló’s Administration, which reduced such reliance from ninety-eight (98) to sixty-eight (68) percent, with the construction of the EcoEléctrica natural gas plant and the AES carbon plant, which generate 540 megawatts and 454 megawatts of electricity, respectively.

The Puerto Rico 2025 Report, drafted by A.T. Kearny consultants in 2004, commissioned by the Government of Puerto Rico, states that such figure is much higher than that of our economic competitors. Ireland relies on oil to generate twenty (20) percent of its electricity and Costa Rica relies on oil only for one (1) percent. The oil reliance average of Latin American and Caribbean countries is eighteen (18) percent and of the continental United States is only three (3) percent.

Our reliance on oil is even greater than that of Saudi Arabia, which in spite of being an oil producing country it only relies on this precious liquid for sixty-three (63) percent of its electricity.

Puerto Rico's excessive reliance on crude oil makes it subject to the continuous volatile ebb and flow of oil prices, which have been shown throughout the years, if we compare the increase in its cost—from twelve (12) dollars per barrel of crude oil in 1998 to seventy (70) dollars per barrel of crude oil in August 2005. Although financial analysts had forecast that by 2006, the price of the barrel of oil would remain at sixty (60) dollars, the people of Puerto Rico should expect that the raise in the costs of energy shall continue to adversely affect the prices of goods and services. This situation worsens, if we take into account that half of the world's crude oil reserves, which are estimated at 20 billion barrels, has been already used and the remaining supplies are located in places for which the access is difficult, which would require large sums of money for their exploitation. Geologists state that the current consumption of oil worldwide is 27 million barrels of crude oil every year, so the world only has thirty-seven (37) years left of crude oil supply in the known reserves. This situation, coupled with a growth in the global demand and the oscillations in the production of oil by exporting countries, would bring about a never seen before increase in the price of crude oil.

In Puerto Rico, the production and supply of electric power is an essential element for the economic development of the Island and for the improvement of the quality of life of its citizens. Furthermore, such production and supply significantly contributes to the creation of jobs and is vital to promote the investment of capital and the establishment and development of different kinds of industries and businesses. However, our economic development has been threatened by the high costs of electricity paid by the industrial sector of the Island, and the concern as to the energy generation capacity of the PREPA to satisfy future

energy demand. Locally, industries pay thirteen cents per kilowatt on average, while in the continental United States such average is only three (3) cents. The total consumption of electric power in Puerto Rico has increased at a rate of three (3) percent annually since 1990. It is estimated that the demand for electric power in the business sector shall increase at a rate of one point seven (1.7) annually between 2002 and 2025. An increase is also expected in the demand for electricity in the residential sector. At present, an average home, with an estimated 1,689 square feet, uses eight hundred kilowatts per hour (800 kWh). It is estimated that by 2025, the average home will have 1,788 square feet, and will use twenty-five (25) percent more electricity.

Furthermore, the high prices of oil have had a severe impact on the local economy due to a loss of capital, since instead of remaining in the Island to bolster the economic activity it is transferred and bolsters the economies of oil exporting countries. A report drafted by Banco Bilbao Vizcaya Argentaria (BBVA) states that Puerto Rico's economy losses seven hundred fifty million (750,000,000) dollars for every ten (10)-dollar increase per barrel of oil imported to Puerto Rico.

The excessive reliance on oil also raises environmental concerns. The scientific community states that the emissions produced by burning fossil fuels such as oil, carbon, and natural gas to obtain energy contributes to global warming, thus causing the greenhouse effect. This phenomenon prevents the heat of the Sun on Earth from leaving the atmosphere and returning out into the space, causing an increase in temperature, which threatens with altering the balance of the planet's climatic system and would bring about serious consequences to the fauna, the flora, and human beings.

The measures adopted by the Government to address the problems described above are not enough. The efforts made to purchase crude oil from Venezuela would only perpetuate crude oil reliance and export of Puerto Rico's capital. The short-term plan of the PREPA to reduce electricity bills within two and a half years is not effective either. Furthermore, the approval of Act No. 325 of September 16, 2004, had the purpose of promoting the development of renewable energy; however, although commendable, it fell short for lacking adequate and reliable incentives to achieve its purposes.

In order to reduce reliance on oil, its high economic costs and environmental risks, and to address future demand for energy and promote a reduction in electric power bills, it is necessary to offer effective tax incentives for a reasonable period of time. For such reason, this Act grants a tax credit for the purchase and installation of solar-powered equipment in the main residence of the taxpayer equal to 75% of the total cost thereof during the first two years of the effectiveness of this Act. Subsequently, the credit shall be reduced to 50% of the total cost of the equipment during the third and fourth year following the approval of this Act. Lastly, as of the fifth year of the approval of this Act henceforth, the credit shall be 25% of the total cost of the equipment. However, for each fiscal year, the maximum credit amount to be distributed by the Commonwealth of Puerto Rico under this Act shall be five million dollars (\$5,000,000).

In the case of a business, the credit shall be applied at the rates and under the same terms as in the case of individuals, except that the maximum credit amount to be distributed by the Commonwealth of Puerto Rico under this Act shall be fifteen million dollars (\$15,000,000).

This Act also provides that any unused excess of the maximum credit amount to be distributed by the Commonwealth of Puerto Rico to individuals and businesses shall be available to be used in subsequent Fiscal Years up to a maximum of ten million dollars (\$10,000,000), in addition to the balance already available every year.

Furthermore, Act No. 325 of September 16, 2004, which created the Renewable Energy Development Act, sets forth the public policy of the Government of the Commonwealth of Puerto Rico with respect to: (a) stimulating the development of renewable energy and tapping into clean and inextinguishable energy sources; (b) ensuring personal property tax exemption for renewable energy collection, storage, generation, distribution, and application equipment for local use (whether commercial, industrial or domestic); and (c) promoting fiscal incentives such as deductions and/or credits for the development, manufacture, and marketing of renewable energy equipment.

Pursuant to the abovementioned Act, and in order to promote some immediate incentivization, a new Section 2048 was added to Subtitle B of the Code so as to exempt from excise taxes any renewable energy collection, storage, generation, distribution, and application equipment introduced to or manufactured in Puerto Rico. However, Act No. 117 of July 4, 2007, better known as the "Puerto Rico Taxpayers Justice Act," amended Subtitle B of the Code generally and added a new Subtitle BB in the Code whereby general excise taxes were replaced by the sales and use tax in Puerto Rico. However, the public policy already established by the Government of the Commonwealth of Puerto Rico inadvertently failed to exempt such equipment from the said taxes. Therefore, this Act reiterates the commitment of offering incentives and developing renewable energy, seeing as this purpose is highly vested in public interest, while providing for the creation of a

Section that would allow renewable energy collection, storage, generation, distribution, and application equipment introduced to or manufactured in Puerto Rico to be exempted from the sales and use tax.

Finally, this Act amends the Municipal Property Tax Act of 1991, to include in the exemption provided the use of solar energy and renewable energy collection, storage, generation, distribution, and application equipment introduced to or manufactured in Puerto Rico.

BE IT ENACTED BY THE LEGISLATURE OF PUERTO RICO:

Section 1.- Section 1040J is hereby added to Subtitle A of Act No. 120 of October 31, 1994 (Code), as amended, to read as follows:

“Section 1040J.- Tax Credit for the Acquisition and Installation of Solar Powered Equipment.-

- (a) Pursuant to the provisions of subsections (b) and (c) of this Section, a credit shall be granted to any natural or juridical person for the acquisition, manufacture and installation of solar equipment as defined in subsection (d) of this Section.
- (b) Provided, that such credit shall be limited to 75% of the cost of the equipment, including the installation thereof, during Fiscal Years 2007-2008 to 2008-2009. Subsequently, for Fiscal Years 2009-2010 to 2010-2011, the credit to be granted shall be 50% of the cost of the equipment, including the installation thereof. Provided, further, that from Fiscal Year 2011-2012 henceforth, the credit available for distribution shall be limited to 25% of the cost of the equipment, including the installation thereof.
- (c) Maximum Credit Cap per Year – The maximum tax credit amount available during any particular fiscal year of the Commonwealth of Puerto Rico to be distributed under this Act shall be five million dollars

(\$5,000,000) in the case of natural persons, and fifteen million dollars (\$15,000,000) in the case of juridical persons; provided, that for any particular year, the Secretary of the Treasury may authorize an increase of the amount herein provided when the best interests of the Commonwealth of Puerto Rico so warrant.

(d) If during any particular fiscal year, the Secretary of the Treasury does not grant the credits for the total amount allowed he/she may use or roll over to a following fiscal year the remainder of credits not granted in any such particular fiscal year. However, such rollover shall not exceed ten million dollars (\$10,000,000) in any of the particular Fiscal Years.

(e) Definitions.-

1) Solar Powered Equipment – Means any equipment with the capacity of transforming solar energy into usable energy, whether directly or indirectly, including the parts and accessories thereof, insofar as such parts and accessories are necessary for the solar powered equipment to meet such purpose, regardless of whether acquired or manufactured by the person, insofar as such equipment is operating. Furthermore, the equipment shall include a certification indicating that it complies with the standards and specifications established by the Energy Affairs Administration, a certification indicating that the equipment has been installed by a person certified by and registered with the abovementioned government agency, and a certification from the manufacturer or dealer indicating that the equipment is guaranteed for five (5) years or more.

- (f) Proof of Purchase – Any natural or juridical person who claims the credit herein provided shall keep, for a period of six (6) years after claiming such credit in his/her income tax return, the invoices or receipts that contain information regarding the cost of the solar powered equipment, the parts or labor required for its manufacture, and the expenses incurred in the installation thereof; the certification indicating that the solar powered equipment meets the standards and specifications established by the Energy Affairs Administration; the certification indicating that the solar powered equipment has been installed by a person certified by and registered with the abovementioned government agency; and a certification from the manufacturer or dealer indicating that the equipment is guaranteed for five (5) years or more.
- (g) Use and Availability of the Credit – The credit may be used against any tax assessed under Subtitle A of the Code, including the minimum alternative tax and the alternate basic tax. The credit shall be available to be used once the requirements set forth in subsection (i) of this Section are met.
- (h) Rollover of Credit – Any credit not used in a taxable year may be rolled over to any and all of the following ten (10) taxable years.
- (i) Assignment of Credit –
- 1) After the Secretary of the Treasury has issued a certification on the availability of the credit, as provided in subsection (i), the credit may be assigned, sold or otherwise transferred, in whole or in part, by the taxpayer to any other person. Once so transferred, the credit may not be assigned, sold or otherwise transferred. For purposes of this subsection, a change of control as to the person

who holds a credit granted under this Act shall not be deemed to be a transfer of the credit. The transfer of the assets of a deceased person to his/her estate or the transfer by bequest or inheritance shall not be deemed to be a transfer of credit. The above exceptions to the transfer rule shall be reported to the Secretary of the Treasury within thirty (30) days as of the time of the transfer.

- 2) Any person who has assigned, sold or transferred his/her credit in whole or in part, as well as the person acquiring such credit, shall notify the Secretary of the Treasury on the assignment, sale or transfer in a statement to such ends, which shall be attached to the income tax return for the year in which the transfer of the credit is made. The statement shall include: (i) the name, address, and social security number of the assignor; (ii) the name, address, and social security number of the assignee; (iii) the total amount of the credit approved by the Secretary of the Treasury; (iv) the total amount of the credit of the assignor; (v) the total amount of the credit taken and/or assigned by the assignor; (vi) the amount of credit assigned; (vii) date of the assignment and taxable year in which the credit may be claimed, according to the provisions of subsection (b) of this Section; and (viii) consideration given in exchange for the credit.
- 3) The money or value of the property received in exchange for the credit shall be exempted from taxes under this Code, up to an amount equal to that of the credit assigned.
- 4) When the tax credit granted under this Act is assigned, sold or transferred, the difference between the amount of the credit and the

amount paid for the same shall not be deemed to be an income for the purchaser of the credit.

(j) Credit Application.- Any person who wishes to obtain a credit shall request that the Secretary of the Treasury issue a certification under this Act by properly filing an application. The approval of a certification under this Act shall be subject to the presentation of the following documents to the Secretary of the Treasury by the persons requesting the same: (i) a certification indicating that the solar powered equipment meets the standards and specifications established by the Energy Affairs Administration; (ii) a certification indicating that the solar powered equipment has been installed by a person certified by the abovementioned government agency and registered with the Energy Affairs Administration; (iii) a certification from the manufacturer or dealer indicating that the equipment is guaranteed for five (5) years or more; and (iv) no-debt certificates from the Department of the Treasury and the Municipal Revenues Collection Center. In addition, such persons shall submit before the Secretary of the Treasury any additional document and/or permit required by the Secretary by rule or regulation. The certification so issued shall be subject to compliance with the provisions of this subsection.

1) Once the Secretary of the Treasury receives an application duly filed pursuant to the provisions of this Act, the terms established shall begin to count. The Secretary of the Treasury shall evaluate the application to verify compliance with the applicable tax laws or any other law under the jurisdiction of the Secretary.

(j) Any person who wishes to avail him/herself of the benefits of the provisions of this Act, may not avail him/herself of the deductions

provided under subsection (v) and/or subclause (I) of clause (2) of subsection (aa) of Section 1023 of this Code, as it may apply.

(k) Any person who voluntarily makes or tries to make, by him/herself or on behalf of another person, any false or fraudulent representation with regard to any credit application or certification under this Act, shall be guilty of a felony and upon conviction shall be sanctioned by a fine which shall not exceed ten thousand (10,000) dollars or imprisonment for a term that shall not exceed five (5) years, or both sanctions, plus legal costs, in the discretion of the Court.”

Section 2.- Section 2514 is hereby added to Subtitle BB of Act No. 120 of October 31, 1994 (Code), as amended, to read as follows:

“Section 2514.- Exemption for Solar Powered Equipment.-

(a) Solar powered equipment used to produce electric power, including any parts and accessories thereof, provided that the same are necessary for the solar powered equipment to meet its purposes, shall be exempted from the sales and use tax. In order to qualify for this exemption, the dealer or manufacturer shall submit to the Department of the Treasury a certification indicating that the solar powered equipment or the parts and accessories thereof comply with the standards and specifications established by the Energy Affairs Administration, and a certification indicating that the solar powered equipment is guaranteed for five (5) years of more.”

Section 3.- Section 5.01(s) of Act No. 83 of August 30, 1991, as amended, is hereby amended to read as follows:

“Section 5.01.- Property Exempted from Taxation

The following assets shall be exempted from the payment of all personal and real property taxes:

(a) ...

(s) Any solar powered material, equipment or accessory and renewable energy collection, storage, generation, distribution, and application equipment introduced to or manufactured in Puerto Rico, as such equipment is defined in Act No. 325 of September 16, 2004.

(t) ...”

Section 5.- This Act shall take effect immediately after its approval.

CERTIFICATION

I hereby certify to the Secretary of State that the following **Act No. 248 (Senate Substitute for H. B. 3268)** of the **7th Session of the 15th Legislature** of Puerto Rico:

AN ACT to add Section 1040J to Subtitle A and to add Section 2514 to Subsection BB of Act No. 120 of October 31, 1994, as amended, known as the “Puerto Rico Internal Revenue Code of 1994,” for the purpose of granting tax incentives for the development of solar power in Puerto Rico; amend Section 5.01(s) of Act No. 83 of August 30, 1991, as amended, known as the “Municipal Property Tax Act of 1991,” for the purpose of adding the use of solar power on the exception provided as well as to the renewable energy collection, storage, generation, distribution, and application equipment introduced to or manufactured in Puerto Rico; and for other purposes.

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

In San Juan, Puerto Rico, on the 30th day of April of 2010.

Solange I. De Lahongrais, Esq.
Director