

(H. B. 2208)

(No. 12)

(Approved January 20, 2010)

## **AN ACT**

To adopt the “Act to Create the Commonwealth of Puerto Rico Tax Lien”; to create the “Register of the Commonwealth of Puerto Rico Tax Liens”; and to amend Sections 6150 and 6156 of Act No. 120 of October 31, 1994, as amended, known as the “Puerto Rico Internal Revenue Code,” in order to create a lien for taxes owed to the Commonwealth of Puerto Rico on the real property of delinquent taxpayers.

### **STATEMENT OF MOTIVES**

At present, whenever the Secretary of the Treasury, in exercising the powers conferred onto him/her by law, wishes to resort to the seizure and sale of real property to cover the total amount of unpaid taxes owed by a delinquent taxpayer, his/her efforts become hindered or complicated due to the need to identify any specific real property by its cadastral number and registered property description, which includes the number, the ward of location, plot capacity, and boundaries. These steps delay such procedures, since this requires the Government to ascertain whether the registered owner of the property and the taxpayer are the same person, which, in turn, requires a title search or studies to be conducted, and as it turns out, on occasion such properties have been conveyed before procedures could be completed to execute the seizure for taxes as provided in the Puerto Rico Internal Revenue Code.

In order to streamline procedures to record liens against the property of delinquent taxpayers and to maximize the recovery of all kinds of taxes owed to the public treasury, this Act creates a Commonwealth of Puerto Rico lien on any personal or real property owned by such taxpayers, for the amount of unpaid taxes, plus fines, interest, surcharges, and penalties, similar to the lien provided in the United States Internal Revenue Code for Federal taxes.

To such effect, Section 6150 of the Puerto Rico Internal Revenue Code is hereby amended, in order to create such a tax lien, which shall be recordable in the Property Registry. Likewise, Section 6156 of said Code is amended to facilitate the implementation of this Act.

In order to ensure the recording of said lien in the Property Registry, we hereby incorporate these liens of the “Registry of Attachments of Real Property in Favor of the Commonwealth of Puerto Rico” into the Property Registry of Puerto Rico, in which all notices of liens for taxes owed to the Commonwealth of Puerto Rico shall be recorded in accordance with Section 6150 of the Internal Revenue Code, as amended by this Act, as well as their corresponding payment or discharge certificates.

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

Section 1.—Short Title.—This Act shall be known as the “Act to Create the Commonwealth of Puerto Rico Tax Lien.”

Section 6150 of the Internal Revenue Code of 1994, is hereby amended to read as follows:

“Section 6150.—*Tax Lien Certificate.*—Seizure and Sale of Property of Debtor.—

(a) If any person fails or refuses to pay his/her taxes, fees, fines, interest, surcharges and penalties within the period prescribed in this Code, the Secretary shall proceed to collect the delinquent taxes, fines, interest, surcharges and penalties owed to the Department by seizure and sale of that debtor’s property which is not exempted from seizure, as provided hereinafter. Such debt owed on account of unpaid taxes, plus fines, interest, penalties, and fees, shall constitute a Commonwealth of Puerto Rico lien on all real and personal property of the tax debtor. Before seizing and selling the property of said debtor as set forth in this Code, or at the same time the seizure is executed, the Collector may file a Tax Lien Certificate with the Property Registry corresponding to the place of residence of the debtor or to any places in which real property that belongs to the debtor is located. Such Tax Lien Certificate shall include the following information: the name of the delinquent taxpayer and his/her place of residence, if known; the sum total of taxes, fines, interest, surcharges, and penalties owed by such taxpayer; notice serial number; and a statement setting forth that the lien shall be payable to the Commonwealth of Puerto Rico. Such a certificate shall constitute a notice of levy of lien on any and all debtor’s real property located within the territorial bounds of the Property Registry Section in which said certificate is filed, for the sum total of unpaid taxes, plus fines, interest, surcharges, penalties, and fees. A copy of said certificate shall be sent to the debtor as notice, by certified mail with return receipt requested, to his/her last known address. Furthermore, the Secretary is hereby empowered to require from any person holding any property, property rights, credits or moneys payable to the taxpayer for any reason,

including wages, accounts receivable or bank deposits owned by or payable to the taxpayer, which are not exempted from seizure, to withhold from said property or rights the amounts that the Secretary notifies, in order to cover the pending payment of the tax debt.

(b) Any debtor whose personal property has been seized for the collection of taxes may resort to the Court of First Instance within the term fixed in the notice of seizure to contest the same.

(c) The notice and demand made by the Secretary to the person who holds the property or has any obligation to pay any amount of money to the taxpayer on any account, shall constitute a lien on said property or rights, which the depositary shall be bound to withhold until the full amount of the debt is paid to the Secretary. Provided, that the seizure of wages, salaries, accounts receivable, bank deposits or income from any source, belonging or payable to the taxpayer and not exempted from seizure, shall be a continuing preferred lien on such wages, salaries, accounts receivable, bank deposits or income on any account to be earned, until the total amount of the money owed is paid to the Secretary. Any depositary or person who holds money or any other personal property owed or belonging to the taxpayer, who disposes of or permits the disposal of said property or rights, shall be bound to pay the total amount of the value of the property. He/she shall also be bound to pay a special penalty amounting to fifty percent (50%) of the assessed debts, fines, interest, surcharges and penalties owed. However, the amount of this special penalty shall not be creditable to said debt. The person who withholds said goods, rights or properties shall not incur any obligation to the taxpayer, provided he/she does so in compliance with an order of the Secretary to such effect.

(d) Notwithstanding the foregoing, the Secretary may postpone the sale of real property subject to such procedure because of an assessed tax debt, of an elderly taxpayer or one suffering from a terminal illness or one that permanently disables him/her, if he/she presents the medical certificate that so certifies, and the following circumstances concur:

(1) The property in question is the only real property owned by and the permanent residence of the taxpayer; and

(2) The taxpayer does not own sufficient property or income to pay the full amount of the tax debt, nor is it possible for him/her to avail him/herself of a payment plan.

(e) The established term for the cancellation of the entries of seizure for tax debts under the Mortgage and Property Registry Law shall remain suspended until the taxpayer's death or until the condition that warranted the postponement of the sale of the real property ceases to be.

(f) The Secretary shall adopt the rules and regulations necessary to postpone the collection of the tax from the sale of the debtor's real property in the cases provided in subsection (d) of this Section, including the definition of the term 'elderly' and the criteria to determine that a taxpayer does not own sufficient property or income for full payment or a payment plan, according to the Department's experience and the procedures and terms to apply for and grant the postponement of the sale of a property due to the conditions established herein above."

Section 3.—Section 6156 of the Internal Revenue Code of 1994 is hereby amended to read as follows:

“Section 6156.—Registration of Certificate of Seizure or Lien; Personnel to Cooperate with Registrars.—

It shall be the duty of every property registrar, immediately upon the receipt of said certificate of seizure or lien provided in Section 6156 of this Act, to properly register and return it to the corresponding agent within the term of ten (10) days, with a note from the property registrar stating that it has been duly recorded. No fees shall be charged by the property registrar for such service. The Secretary is hereby authorized to appoint the necessary personnel to cooperate with the property registrars in the task of searching in the files of the property registries for the real property seized, in the annotation of the lien certificates or the seizures ordered, and in any other task related to seizure of real property for the collection of assessed debts.”

Section 4.—Inclusion of Commonwealth of Puerto Rico Tax Liens in the “Registry of Attachments of Real Property in Favor of the Commonwealth of Puerto Rico”.—

All Property Registrars shall keep a register of Commonwealth of Puerto Rico tax liens, into which they shall record all certificates of liens for taxes owed to the Commonwealth of Puerto Rico, pursuant to Section 6150 of the Internal Revenue Code, together with their corresponding payment or release certificates. Such register shall be included in the “Registry of Attachments of Real Property in Favor of the Commonwealth of Puerto Rico,” as provided in the Mortgage Law and its Regulations. The entries recorded therein shall be different and separate from seizure entries. The Secretary of Justice may redesign said Register, pursuant to the provisions set forth and the authorities granted in this Act.

Section 5.—Recording of Lien Certificates.—

Whenever a certificate of a Commonwealth of Puerto Rico tax lien is submitted for entry into the corresponding Property Registry, it shall be the duty of the Property Registrar to record the same in the Register of Tax Liens established by virtue of this Act, which certificate shall be recorded within ten (10) days and entered into the index of said ledger. After entry, the certificate shall be returned to the person who submitted the same with a note indicating the book and page into which said certificate was recorded.

Section 6.—Place of Registration; Notice Docket.—

The notices of Commonwealth of Puerto Rico liens referred to in this Act shall be submitted for registration before the Property Registry Section in which the debtor's property is located. After entry, said notices shall be filed under a correlative number in docket to be kept by the Registry, subject to the provisions set forth hereinbelow.

Section 7.—Registration Entries.—

All registration entries shall contain the following information: the name, and if known, the place of residence of the taxpayer, the serial number of the Internal Revenues Collector notice, the date and time of submittal, and the sum total of the tax, plus fines, interest, surcharges, and penalties. Likewise, said register shall have an index listing, in alphabetical order, the taxpayer's name and the page and entry number.

Section 8.—Payment or Lien Release Certificates.—

Payment or Lien Release Certificates issued by the Secretary of the Treasury or his/her delegate shall be submitted at the same Registry in which the corresponding lien was recorded, and the registrar shall cancel the same by making a note on the corresponding checkbox where the lien entry was recorded, stating

the date of its cancellation. Such certifications shall be filed in a docket at the Registry. Any lien notices on file, as well as the corresponding payment or release certificates, may be destroyed pursuant to the provisions of Section 36.5 of the Mortgage Regulations. The Secretary shall issue a contingent lien cancellation when the Department agrees with the taxpayer on a payment plan that requires the sale, mortgage or alienation of the property.

Section 9.—Registrar Certificates Shall Make Reference to Tax Lien Entries.—

Certificates issued by property registrars shall refer to the entries recorded into the book concerning the tax liens established by this Act.

Section 10.—Registrars Shall Not Charge Any Fees.—

Property registrars shall not charge any fees whatsoever either for recording lien documents or for entering their cancellation in the ledgers of the Registry.

Section 11.—Registry Ledgers.—

The Secretary of Justice of Puerto Rico is hereby empowered to redesign the “Registry of Attachments of Real Property in Favor of the Commonwealth of Puerto Rico” in order to incorporate into said register the Commonwealth of Puerto Rico tax liens established by virtue of this Act and to establish the regulations needed to comply with the provisions of this Act, including, but not limited to, regulations which may be necessary to conform Register operations to plans or programs for the automation or digitization of the Puerto Rico Property Registry’s operations.

Section 12.—This Act shall take effect thirty (30) days after its approval, during which term the Property Registrars shall take such measures as necessary in order for the Register created under this Act to be operating.

## CERTIFICATION

I hereby certify to the Secretary of State that the following **Act No. 12 (H. B. 2208)** of the **3<sup>rd</sup> Session of the 16<sup>th</sup> Legislature** of Puerto Rico:

**AN ACT** to adopt the “Act to Create the Commonwealth of Puerto Rico Tax Lien”; to create the “Register of the Commonwealth of Puerto Rico Tax Liens”; and to amend Sections 6150 and 6156 of Act No. 120 of October 31, 1994, as amended, known as the “Puerto Rico Internal Revenue Code,” in order to create a lien for taxes owed to the Commonwealth of Puerto Rico on the real property of delinquent taxpayers.

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

In San Juan, Puerto Rico, on the 18<sup>th</sup> day of February, 2011.

María del Mar Ortiz Rivera, Esq.  
Director