



Moratoriums on Puerto Rico Tax Credits

The “Special Law for the Declaration of a Fiscal Emergency and Establishment of an Integrated Plan for Fiscal Stabilization to Save the Credit of Puerto Rico” – Act No. 7 of March 9, 2009 (“**Act No. 7**”), as amended by Act No. 37 of July 10, 2009 (“**Act No. 37**”) – introduced significant limitations and requirements on the utilization of tax credits that were previously granted, but remained unused as of June 30, 2009, and on the issuance of additional tax credits under most of the various Puerto Rico (“**PR**”) laws that provide for tax credits.

I. MORATORIUM ON GRANTING OF ADDITIONAL TAX CREDITS

Act No. 7 established a Moratorium that prohibits the granting of tax credits after the enactment of Act No. 7 (i.e., March 9, 2009) for taxable years commenced after December 31, 2008 and before January 1, 2012, under the following laws (the “**Suspended Credit Laws**”):

1. Act No. 212 of August 29, 2002 (Articles 4.03(E) and (F) and 4.04 – “**Act No. 212**”), subject to the rules and exceptions adopted by Act No. 37 – **Development of Downtown Urban Areas**.
2. Act No. 46 of January 28, 2000 (Article 14 (a)) – Investment Capital Funds.
3. Act No. 98 of August 10, 2001 (Article 4 (a) and (b)) – Housing Infrastructure Investments.
4. Act No. 183 of December 27, 2001

(Article 17(a)) – Conservation Easements.

5. Act No. 140 of October 4, 2001 (Article 3 (a)), subject to the rules and exceptions adopted by Act No. 37 – Construction and Rehabilitation of Social Interest Rental Housing.
6. Act No. 70 of June 23, 1978 (Article 21 (b)) – Solid Waste Authority.
7. Section 1040E of the PR Internal Revenue Code (“**PR-IRC**”).
8. Act No. 178 of August 12, 2000 (Article 11(a)) – Santurce Theater District.

However, Act No. 37 excluded from the Moratorium on the granting of tax credits those cases that on or before March 9, 2009 had presented to the PR Treasury Department (“**PR Treasury**”), or any other agency that is the final issuer of those credits, a full and completed application for such credits that is in full compliance will all applicable legal, regulatory and administrative requirements (“**Excluded Pending Applications**”).

UNUSED TAX CREDITS ISSUED UNDER VARIOUS PR LAWS MUST BE REPORTED TO THE PR TREASURY (FORM 480.71) BY AUGUST 31, 2009, OTHERWISE THE CREDITS WILL BE CANCELLED. SEE PART III OF THIS ARTICLE

In addition, Act No. 37 excluded from the Moratorium on the granting of tax credits for fiscal years 2009-10, 2010-11 and 2011-12 certain Act No. 212 projects (i.e., Development of Downtown Urban Areas) and social interest construction or rental projects (including facilities for the elderly), whose certificates of eligibility had been filed with the PR Treasury on or before July 10, 2009 (i.e., the enactment date of Act No. 37); provided that, the PR Treasury will only authorize up to \$40 million of these tax credits per year and up to \$15 million of credits per project (“**Grandfathered Credits**”). Once the PR Treasury collects \$690 million of “**Additional Property Taxes**,”¹ there will be no dollar amount limitation on the issuance of Grandfathered Credits, and these may even be granted for taxable years commenced before January 1, 2012. All other credit projects or applications under the Suspended Credit Laws will have to wait until taxable years commenced after December 31, 2011 for such credits to be considered.

II. MORATORIUM ON USE OF TAX CREDITS

Act No. 7 also established a Moratorium that prohibits the use, during taxable years commenced after December 31, 2008 and before January 1, 2012, of tax credits issued before March 9, 2009 under the Suspended Credit Laws.

Grandfathered Credits issued during the fiscal year 2009-10 may be used up to 50% in

taxable years commenced after December 31, 2009 and before January 1, 2011, up to 50% in taxable years commenced after December 31, 2010 and before January 1, 2012, and the remaining balance thereafter. In turn, Grandfathered Credits issued during fiscal year 2010-11 may be used up to 50% in taxable years commenced after December 31, 2010 and before January 1, 2012, up to 50% in taxable years commenced after December 31, 2011 and before January 1, 2013, and the remaining balance thereafter. Apparently, Grandfathered Credits issued in fiscal year 2011-12 may only be used in taxable years commenced after December 31, 2011 (i.e., after termination of the Moratorium).

Tax credits issued as a result of the Excluded Pending Applications will be subject to a use of tax credits Moratorium that will be applicable to taxable years commenced after December 31, 2009 and before January 1, 2012.

The use of tax credits Moratorium is not applicable to: (i) taxpayers that purchased credits issued under the Suspended Credit Laws prior to March 4, 2009 from the person to whom the credits were issued or granted, or (ii) credits issued or granted under the Suspended Credit Laws pursuant to Closing Agreements executed prior to March 4, 2009 with the PR Treasury Secretary. However, if said credits are not reported to the PR Treasury, as described in the following paragraph, they will become worthless.

III. REPORTING ON TAX CREDITS SUBJECT TO

¹“**Additional Property Taxes**” refers to the temporary (i.e., applicable during the PR Government’s 2009-10, 2010-11 and 2011-12 fiscal years) real property tax of .591% per year, that is payable to the PR Treasury on certain residential and commercial real properties. See our Newsletter Article “Alternative Minimum Tax and Additional Property Tax: Recent Puerto Rico Tax Developments” – 2009 Tax06 of August 6, 2009 for a detailed analysis of this tax.

USE MORATORIUM AND OTHER UNUSED TAX CREDITS

Taxpayers that as of June 30, 2009 owned unused credits issued or granted prior to March 9, 2009 under the Suspended Credit Laws, issued thereafter under the Excluded Pending Applications, or tax credits issued under those laws enumerated below (including taxpayers who acquired credits from the person to whom those credits were issued or granted and that were still unused as of June 30, 2009), have to file Form 480.71 with the PR Treasury no later than August 31, 2009.

If these credits are not timely reported on Form 480.71, the credits may not be claimed in taxable years commenced on or after January 1, 2009 (i.e., for all practical purposes they are being cancelled and will become worthless), unless the PR Treasury Secretary determines that there was reasonable cause for failure to timely file such form.

Act No. 7, as amended, and Administrative Determination 09-05 issued on July 13, 2009 by the PR Treasury require that the ownership (as of June 30, 2009) of tax credits that were issued or granted under the following laws also be reported by August 31, 2009 (through Form 480.71), even though these credits are not subject Act No. 7's Moratorium:

1. Act No. 197 of December 14, 2007 (Sections 1040K and 1040L of PR-IRC) –

Acquisition of New and Existing Housing.

2. Act No. 78 of September 10, 1993 – Tourism Development Act.
3. Act No. 362 of December 24, 1999 – Credits for the Development of the Film Industry.
4. Act No. 135 of December 2, 1997 (Section 5(b) – (“**Act No. 135**”) – Credits for the Purchase of PR Manufactured Products.
5. Act No. 109 of August 17, 2001 (Section 5A of Act No. 135) – Credit for Industrial Investments.
6. Section 1040C of PR-IRC – Credit for the Purchase of PR Manufactured Products.
7. Section 1040D of PR-IRC – Credit for purchase of products manufactured in PR for export.
8. Section 1040F of PR-IRC – Credit for increased purchases of PR agricultural products.
9. Act No. 248 of August 10, 2008 (Section 1040J of PR-IRC) – Electric Solar Equipment.
10. Act No. 73 of May 28, 2008 (Sections 5 and 6) – Economic Incentives for the Development of Puerto Rico Act.

The above summary is intended for information purposes only. It cannot be considered a legal opinion, and it does not intend to consider all the tax and legal considerations that could be relevant to any particular person or entity. It should also be noted that the changes discussed herein were recently enacted, and that the PR Treasury has not yet issued regulations, tax forms or interpretative announcements on such changes.

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