

(H. B. 3540)

(No. 67)

(Approved July 13, 2007)

AN ACT

To amend Section 27C of Act No. 78 of September 10, 1993, as amended, known as the “Puerto Rico Tourist Development Act of 1993,” in order to allow that real estate investment trusts be participants of the incentives granted under said Act.

STATEMENT OF MOTIVES

In recent years, real estate investment trusts, also known as REITs for its English acronym, have become one of the most favorably received financial instruments. In the United States, the use of REITs has had an exponential growth to the extent that it presently constitutes the principal investment vehicle to channel public capital market investments to real estate investments such as residential, rental, commercial and hotel properties. In Puerto Rico, said investment vehicles had fallen into disuse due to the restrictions imposed by our laws.

In order to promote the creation of real estate investment trusts in Puerto Rico, foster economic activities and the economic development that the same generate through their investments and to further the development of capital markets in Puerto Rico, Act No. 289 of December 26, 2006 (“Act 289”) was recently approved, which amended Act No. 120 of October 31, 1994, as amended, known as the “Puerto Rico Internal Revenue Code of 1994” (“Code”) to update the provisions regarding REITs. Among other things, Act No. 289 broadened the definition of “real property” to include

hotels. The inclusion of hotels in the definition of the term “real property” arose from the commitment of this Legislature with the development of the tourist industry of the Island.

On the other hand, due to the public policy of creating incentives for tourism growth in Puerto Rico, Act No. 78 of September 10, 1993, as amended, known as the Puerto Rico Tourist Development Act of 1993, (Tourist Development Act) was adopted. The Tourist Development Act grants those who avail themselves of its benefits, a series of tax exemptions regarding the payment of license fees, excise tax and other municipal taxes, as well as on the payment of municipal construction excise tax and on the payment of real and personal property municipal and commonwealth tax, among others. However, the Tourist Development Act limits the use thereof in conjunction with other laws that grant tax or economic incentives, when the result of the joint use of the laws is the obtaining of benefits that exceed those that would be individually obtained under any of the laws.

At present, most of the hotels of the Island have availed themselves of the Tourist Development Act. This fact, when combined with the limitation of the Tourist Development Act regarding the use thereof in conjunction with other acts, limits the possible investment of REITs in hotels and undermines the intention of the Legislature to create incentives for tourist development.

For the purpose of harmonizing the Tourist Development Act with the Code and to enable REITs to become a valuable vehicle for the development of the tourist industry of the Island, this Legislature deems it necessary to amend the Tourist Development Act in order to allow that REITs, as an exception, participate in conjunction in the incentives granted by the Tourist Development Act and by Subtitle P of the Code.

BE IT ENACTED BY THE LEGISLATURE OF PUERTO RICO:

Section 1.- Section 27C of Act No. 78 of September 10, 1993, as amended, known as the “Puerto Rico Tourist Development Act of 1993,” is hereby amended to read as follows:

“Section 27C – Interrelationship with other acts

The provisions of this Act shall not be used in conjunction with other economic incentive or tax acts, in such a way that the result of their use in conjunction with other acts shall be the obtaining of tax benefits or of any other nature that exceed the benefits to which they would be entitled under any of the laws individually.

Notwithstanding the abovestated, a real estate investment trust with a valid election under Subchapter P of Act No. 120 of October 31, 1994, as amended, or any analogous preceding or subsequent act, or any corporation, company, partnership, special partnership or legal entity wholly-owned, directly or indirectly by the real estate investment trust, may benefit from the provisions of this Act, with the exception of the benefits provided in paragraph (1) of clause (a) of Section 3 of this Act.”

Section 2.- This Act shall take effect immediately after its approval.

CERTIFICATION

I hereby certify to the Secretary of State that the following Act No. 67 (H.B. 3540) of the 5th Session of the 15th Legislature of Puerto Rico:

AN ACT to amend Section 27C of Act No. 78 of September 10, 1993, as amended, known as the “Puerto Rico Tourist Development Act of 1993,” in order to allow that real estate investment trusts be participants of the incentives granted under said Act,

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

In San Juan, Puerto Rico, today 15th of November of 2007.

Francisco J. Domenech
Director