



## Tax-free interest from tax-exempt companies

**Puerto Rico Law Number 287 of December 26, 2006, has amended the Internal Revenue Code to exempt from income tax interest paid on debt securities issued by tax-exempt companies.**

### Exempt corporations

New IRC section 1022(b)(4)(R) excludes said interest from its definition of “gross income.”

This new provision benefits purchasers of commercial paper issued by corporations subject to the Tax Incentives Act of 1998, as well as any other similar law, whether previous or subsequent, if not less than 80% of the proceeds of the sale is only and exclusively used in the Puerto Rico-based industry or business of such corporations, within a period of no more than 36 months from the date of the transaction. The issuers may use the sale proceeds in a series of activities, such as acquisition of equipment and financing of inventory.

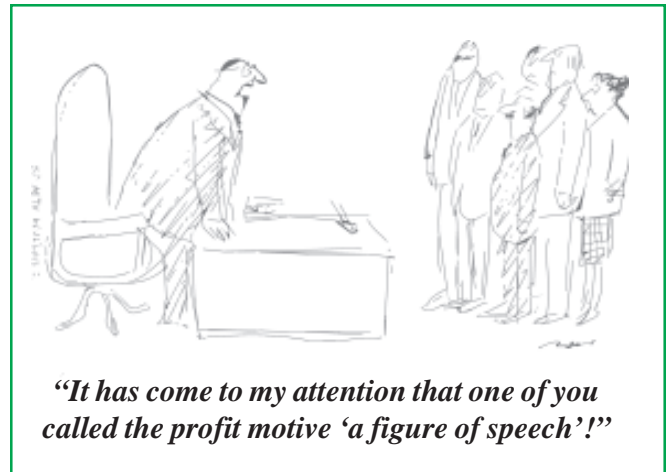
### Purpose

The stated purpose of the amendment is to encourage and increase local financing of the infrastructure and operations of Puerto Rico-based businesses, and to impact positively the economy by assuring that at least 80% of the funds collected will be used locally, which also should result in the creation of new employments.

Law Number 287 became effective on the same date of enactment, i.e., December 26, 2006. ■

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## TAXES

Follow up

## The “IVU” kicks off

**A**fter a year of controversy and much anticipation, last November 15, 2006, the 5.5% Commonwealth sale and use tax, commonly known by its Spanish acronym “IVU,” became effective. So did the authorization to municipalities to impose a 1.5% municipal sale and use tax.



According to the Secretary of the Treasury, the Commonwealth sale and use tax generated approximately \$51 million dollars in its first period—from November 15 to November 30, 2006—exceeding the original estimate of \$50 million.

### Consistency problems

However, the biggest challenge to tax implementation has been achieving consistency. Despite all efforts, the Puerto Rico Mayors’ Association, the Mayors’ Federation, the executive branch and the legislature were unable to reach an agreement regarding the establishment and administration of the municipal tax.

Not all municipalities have enacted municipal ordinances establishing the tax; and some of those that were adopted are inconsistent with—and even contradict—the enabling legislation. This is the result of controversial differences in interpretation of the law, such as whether the municipalities are required to impose the 1.5% rate, if the decision is up to each municipality, or if there is an obligation to impose a municipal sale and use tax at all. As of January 1, 2007:

- 55 municipalities had adopted a 1.5% tax,
- one had adopted a 1% tax and
- 22 had not adopted any.

This situation has created uncertainty and confusion, principally to people engaged in business in more than one municipality.

PUERTO RICO

### BUSINESS LAW DEVELOPMENTS

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## Agreement with Treasury

Seven municipalities (Comerio, Dorado, Fajardo, Humacao, Naguabo, Rincón and Trujillo Alto) have reached an agreement with the Puerto Rico Treasury Department to enact consistent municipal ordinances and establish a 1.5% municipal sale and use tax within their jurisdictions. According to *Internal Revenue Area Informative Bulletin No. 06-14*, all seven have implemented Treasury's *Merchant Registry*, and have accepted that Treasury be the only agency in charge of the issuance of "Registration and Exemption Certificates" thereunder.

## Centralization

They also agreed that the tax bases and exemptions of each municipality follow the pattern of the enabling law. As a result, merchants doing business in one or more of these municipalities charge a total 7% tax (5.5% state tax and 1.5% municipal tax) on all taxable transactions, which is delivered to Treasury.

Treasury is also in charge of administration and enforcement of the municipal tax of said municipalities; and all determinations, circular letters and other administrative pronouncements of the department regarding the Commonwealth tax are also applicable to the municipal tax. ■

# Puerto Rico REIT law relaxed

**A**ct Number 289, enacted on December 26, 2006, has the effect of liberalizing the requirements imposed on Real Estate Investment Trusts by the Puerto Rico Internal Revenue Code. The express purpose of the law is to encourage the use of this type of investment vehicle on the island.

## Hotels and shopping centers

One of the principal changes is an amendment of the code's definition of "real estate," which results in granting REITs authorization to purchase hotels and shopping centers, both of which had previously been without their realm.

Related is the deletion of the limitation that REITs invest only in real estate built or substantially renewed after June 30, 1999.

## Taxes

Also deleted is the provision that used to deprive REITs of a deduction for net losses, as allowed in code § 1023(g).

Finally, the amendment fixes at 10% the tax rate applicable to taxable local REIT distributions.

As conditions to qualify for the tax benefits granted to REITs—both local and those organized in the U.S.—by the code:

- all acquisitions of real estate by REITs must be made after the effective date of Act 289: January 1, 2007, and
- targets of acquisitions (be them of assets or securities) must be limited to:
  - companies that generate income from Puerto Rico sources and are subject to the payment of income tax, and
  - government assets. ■

## ADVERTISING

## New changes to misleading advertising regulation

**O**n October 13, 2006, the Puerto Rico Department of Consumer Affairs promulgated a new set of rules dealing with misleading practices and advertisements—*Regulation Prohibiting Misleading Practices and Advertisements of 2006*—which has been identified as “Regulation No. 7231.”

Following is a summary of the most significant changes:

### Scope of regulation

The scope of the regulation has been amended to clarify that the same applies to both natural and juridical persons (such as corporations and partnerships).

### “Misleading advertisement”

The definition of what constitutes a misleading advertisement has been expanded to include any announcement that purposely fails to include information related to a product, good or service, and as a result prevents the consumer from making informed and intelligent decisions.

### Purchase receipt

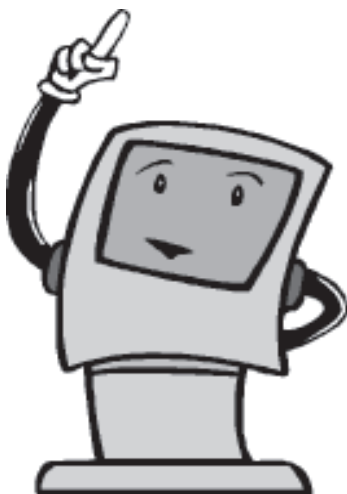
The new regulation defines the term “purchase receipt,” and requires that the same contain at least the following information:

- time and date of the transaction,
- nature of the product or service,
- person or entity that receives payment,
- amount of the payment and
- method of payment used.

### Prohibited acts

The following have been added to the list of actions that constitute misleading practices and advertisements:

- Charge additional amounts for nonexistent services, or services that are considered basic and necessary to the consumer, in order to acquire the product offered.
- Failure to issue to any consumer a purchase receipt printed on non-perishable material that guarantees the preservation of the information for more than one year, or for the term of the warranty, whichever period is longer.



- Failure to issue a written warranty printed on such non-perishable material, again lasting more than one year or for the term of the warranty, whichever is period is longer.

## Advertisement of the price

A new section was added to provide that, in the event that a price scanner shows a different price than the one marked on the product, the consumer be charged the lower.

## Availability of advertised goods

Merchants are required to respond to the anticipated reasonable demand for goods advertised. “Anticipated reasonable demand” is defined as a future projection in the inventory of a specific product, using as a basis for the projection the amount of such goods, or similar goods, sold during previous periods or under similar conditions. Quantities of articles advertised may only be limited if the reduced quantity per store is clearly stated. Stores must have not less than 50 units of each article.

Availability rules do not apply to special sales held on the day after Thanksgiving Day, commonly known as “Black Friday.” However, Black Friday special sales may not include inventory blow-out merchandise, nor sales of out-of-season articles other than Thanksgiving merchandise.

## Rebates

The final price of an article may not be advertised as already including a rebate unless the rebate is effective automatically at the time of payment. Otherwise, the advertisement must separately state the regular price and the amount of the rebate.

## Personal information

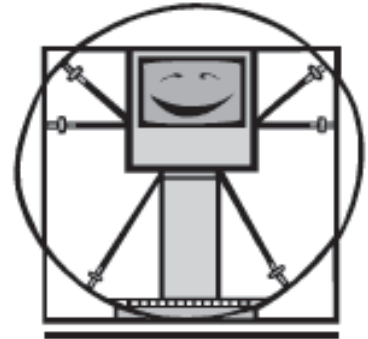
A store may never request the consumer’s Social Security number, except in order to verify credit history.

## Excise tax

Until March 15, 2007, the Department of Consumer Affairs may require merchants that sell, offer, or advertise products or services in connection to which the repealed excise tax has not been excluded from the final sales price, to include in the advertisement or invoice prices before and after the exclusion of the excise tax.

## Tips

The regulation also states that a consumer may object to having tips included as part of the final price in the purchase receipt. Whether or not, and how much, to tip is left exclusively to the consumer. ■



## Tobacco advertising ban proposed

**P**uerto Rico Senate Bill 1819 proposes to ban certain types of tobacco product advertising.

The following would be prohibited, if the bill becomes law:

- ✧ advertising tobacco products on sports uniforms,
- ✧ advertising cigarettes on cigarette vending machines located in commercial establishments attended by persons younger than 18 years.

### Promotions

The bill also prohibits promotion of tobacco products, if the promotion takes the form of a gift, rebate, bonus, or participation in a game, raffle or contest, as well as a product give-away.

### Ads

The size of advertisements for tobacco products may not exceed three feet by three feet. Furthermore, all signs and other ads must contain a warning about the health dangers of smoking and of second-hand smoke. Warnings must occupy 50% of the size of the ad.

### Penalties

The Department of Consumer Affairs would be empowered to implement the law, and impose violation fines ranging from \$5,000 to \$10,000. ■

## Surgeon General Warning: Secondhand Smoke Puts Children At Risk

Last year the Surgeon General of the United States released a major new report on involuntary exposure to secondhand smoke, concluding that secondhand smoke causes disease and death in children and nonsmoking adults. The report finds a causal relationship between secondhand smoke exposure and Sudden Infant Death Syndrome (SIDS), and declares that the home is becoming the predominant location for exposure of children and adults to secondhand smoke.

Source: U.S. Environmental Protection Agency  
<http://www.epa.gov/smokefree>

## Bill to ban use of thermal paper to print warranties

**P**rinting on thermal paper is like writing on the sand: in a short time all that is left is a blank piece of paper.

Puerto Rico Senate Bill 1815 proposes to ban its use for the printing of warranties for products sold and services rendered on the island. Instead, stores and providers must use ink and what it calls “permanent” paper, in order to guarantee preservation of the printed text for not less than either one year or the length of the warranty, whichever term is longer. Then the bill goes on to prohibit the use of thermal paper as such. ■

## Bill would ban trans fats

**Senate Bill 1816 may turn Puerto Rico into trans fat-free territory.**

The bill orders the Puerto Rican government to adopt as a matter of public policy that the use of trans fats for the preparation of food be prohibited in public establishments and mobile units.

The bill’s statement of motives points out that among the five top causes of death in Puerto Rico in the year 2000 were heart disease, cancer, diabetes mellitus, hypertension and vascular diseases, all of which, it adds, are related to bad eating habits. Trans fats cause more damage than saturated fats.

### Examples

The statement of motives also mentions that the city of New York is already taking legal measures to restrict the use of trans fats in restaurants, due to the well-documented connection between heart disease and consumption of the product. Locally, it highlights the private initiative of the *Denny’s* restaurant chain in removing trans fats, as well as public service campaigns carried out by a number of associations. ■

## CONTRACTS

U.S. District Court

# Letter of intent binds the parties to negotiate in good faith

**E**ven though a letter of intent may not be binding with respect to the ultimate obligations that the parties expect to include in the definitive agreement, it does compel good faith negotiations. *WHTV Broadcasting Corp. v. Centennial Communications Corp.*, 2006 U.S. Dist. LEXIS 81738.

## Sale of business

WHTV Broadcasting Corp. and a related not-for-profit company began negotiations to sell stock and assets in Puerto Rico to Centennial Communications Corp. The assets included licenses issued by the Federal Communications Commission for the operation of a wireless “cable television” system. Centennial’s particular interest, as stated in the court opinion, was to acquire so-called “multichannel multipoint distribution service” (or “MMDS”) as a “last mile” solution.

MMDS is what is commonly known as “wireless cable television” because it is normally used to broadcast over the air television programming similar to that usually offered by wired cable providers. The “last mile” is the point of interconnection between the network and a customer that subscribes to the service. This “last mile” was to give Centennial the ability to reach subscribers.

## Letter of intent

The parties executed a letter of intent on November 29, 2000, in which they set forth their mutual goal of carrying out the proposed sale and purchase of the

operation. They also agreed therein to negotiate in good faith and to execute a definitive agreement within a stated period. The letter also indicated that theretofore Centennial had conducted “limited due diligence,” and that the contemplated transaction was conditioned to the purchaser’s satisfaction with the results of a more in-depth examination of the sellers’ affairs. Otherwise, the letter of intent expressly granted Centennial the right to discontinue negotiations.

## Walk away

Even though as late as March 16, 2001, WHTV had asked Centennial in writing to confirm its interest in the acquisition, and thereafter Centennial indeed continued the negotiations and asked WHTV to draft a definitive

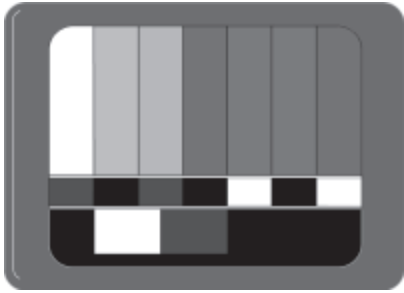
agreement, on April 24 the professed purchaser informed that it would not go ahead with the transaction. It indicated that the conditions of the letter of intent were not met because the due diligence investigation turned out to be adverse.

The plaintiffs sued, claiming breach of contract and bad faith negotiation. Centennial moved for summary judgment in its favor.

## Conditions precedent

No one contested that the proposed transaction was subject to a series of conditions precedent, one of them





being a successful due diligence investigation. Nevertheless, the plaintiffs averred that Centennial had voluntarily prevented said conditions from being fulfilled.

The U.S. District Court for the District of Puerto Rico explained in its opinion that there is a difference between “a fully enforceable contract subject to conditions precedent, and a preliminary contract subject to such conditions.” It called the latter a “means to a contract rather than its end,” quoting from the decision in the celebrated case of *Prime Retail, L.P. v. Caribbean Airport Facilities, Inc.*, 975 F. Supp. 148 (D.P.R. 1997). “In a preliminary contract the parties ‘do not bind themselves to conclude the deal but only to negotiate in good faith toward conclusion within the agreed framework.’” The judge went on to point out clauses in the WHTV-Centennial letter of intent that made it such a preliminary contract, among these:

- ◆ that the parties “will negotiate in good faith a definitive agreement,” and
- ◆ that “the Purchase Price will be adjusted (up or down as applicable) by an amount to be agreed upon.”

## Due diligence

Plus there was also the need for Centennial to be satisfied with its due diligence. The letter did not specify what factors Centennial could take into consideration to determine satisfaction, only that they had to be reasonable. As is to be expected, Centennial called the judge’s attention to a number of reasons why the results of its investigation were not up to standard.

First and foremost were WHTV’s financial problems, which turned out to be greater than expected by the

prospective purchaser. Centennial convinced the judge that the numbers originally provided by the plaintiffs were not accurate. Secondly, but equally as important, was that development of the technology sought by Centennial was not adequate. As to this second point, the court found evidence that WHTV’s equipment turned out not to be viable for the purchaser.

Conclusion: Centennial showed sufficient reasonable grounds to walk away.

But there’s more.

## Good faith negotiations

The judge next examined the Puerto Rico doctrine of *culpa in contraendo*, that is, the legal obligation to negotiate in good faith, which applies to preliminary contracts as well. In short, a party may be liable in damages even in the absence of a binding agreement, if it fails to negotiate in good faith, when the other party has reasonable expectations that an agreement would finally be reached. The following factors may be considered, as listed in the opinion:

- ◆ the development of the negotiations,
- ◆ how they began,
- ◆ their course,
- ◆ the conduct of the parties throughout the negotiations,
- ◆ the stage at which the interruption in negotiations took place, and
- ◆ the parties’ reasonable expectations to form a contract.

The District Court concluded that WHTV indeed presented evidence that Centennial did not alert it of the problems encountered until it had decided to terminate the letter of intent. Instead Centennial continued actively negotiating and encouraging WHTV to draft the definitive agreement. “With this scenario,” wrote the judge, “the entry of summary judgment finding that Centennial at all times acted in good faith and while employing reasonable commercial efforts is inappropriate.” The case continued, albeit limited to the *culpa in contraendo* cause of action. ■

## LITIGATION

U.S. District Court

## Ex-parte attachment ruled to be valid

**U**nder certain circumstances a creditor may benefit from a court order to attach assets, without giving the debtor neither notice nor a hearing. *Citibank v. Allied Management*, 2006 U.S. Dist. LEXIS 93504.

### The facts

Citibank, N.A. lent money to Lincoln Realty, Inc., and received guaranties from the borrower's principals and related companies. In the loan papers Lincoln had agreed to give Citibank a participation in the rental income and sales proceeds of two buildings in the Hato Rey area of San Juan. Lincoln failed to pay, and Citibank sued for breach of contract.

### Attachment

Without Lincoln knowing it, Citibank obtained a court order authorizing it to attach Lincoln and guarantor assets up to \$4,454,827.66. It offered to post a bond for \$222,741.38, which the court accepted. Citibank then proceeded to garnish several bank accounts belonging to the defendants.

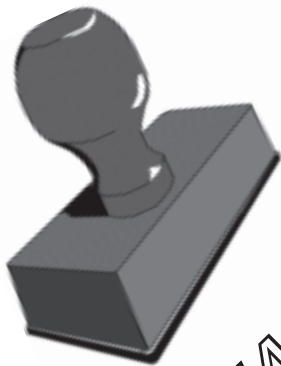
The defendants in turn moved the judge to set aside the garnishments on the grounds that the order had been issued without either notice or hearing, as required by law.

### Criteria

The District Court denied the defendants' motion, although it did decide to schedule a hearing after the fact.

Because federal rules defer to the local jurisdiction's in this area, the federal judge looked at Puerto Rico law and concluded that the general law is that no attachment order may be issued without prior notice and a hearing, except under limited instances, when the hearing may be held after the attachment has been effected. In order to trigger this situation, a plaintiff must show:

- ★ an existing property interest on its part, on the asset to be attached, or
- ★ the existence of extraordinary circumstances, or
- ★ "a probability of prevailing on the merits, through the use of authentic documentary evidence which shows that there is a debt liquid, due, and payable."



**ATTACHED!**

## Property interest

The judge first ruled that Citibank did not have a prior property interest on the assets to be attached. That defendants had executed the guaranties before a notary public, and that the guaranties granted Citibank a right to apply to the payment of their obligations any money in which they had an interest, did not qualify. He quoted from the Puerto Rico Supreme Court case of *Rivera Rodríguez v. Stowell*, 133 D.P.R. 881 (1993), to the effect that a “property interest” exists “when one of the following occurs: mortgages, conditional sales, leasing, and the co-ownership situation that arises in cases involving judicial division of community assets.”



## Extraordinary circumstances

Neither was Citibank able to show the presence of extraordinary circumstances meriting an ex-parte order.

Citibank claimed that some of the guarantor corporations had merged, consolidated or dissolved, but the court did not accept the argument. Extraordinary circumstances are those in which a defendant is going to transfer or encumber property so as to impair the possibility of executing an adverse judgment. The fact that five months later defendants acknowledged that two corporations merged did not meet the criteria.

## Liquid debt

But Citibank’s credit was liquid, due and payable, and documentary evidence showed so, according to the judge. Citibank presented the sworn statement of a person who performed the mathematical computations to determine the amount of the debt claimed, and that was sufficient to comply with the third requirement. Once again the federal District Court reached to Puerto Rico courts, this time the Court of Appeals—*Banco de Desarrollo Económico para PR v. Bay Tex Int’l Corp.*, 2004 WL 3199145. There the attachment order was based on:

- ★ a sworn statement establishing the existence and balance of the debt,
- ★ the loan document and
- ★ a mortgage securing the debt.

The federal District Court found Citibank’s affidavit on the balance of the debt to be enough.

## Subsequent hearing

A subsequent hearing was granted to the defendants because the judge found that the decisions of the Puerto Rico courts suggest that one is constitutionally mandated. ■



## New federal law to fight e-mail spam

**P**ublic Law 109-455, signed by the president on December 22, 2006, bears the descriptive name of “Undertaking Spam, Spyware and Fraud Enforcement with Enforcers Beyond Borders Act of 2006,” and intends to—well, do what it name says it will do.

Before you call learned counsel to inquire, yes, the name is another cute acronym:

Undertaking

Sspam,

Spyware

And

Fraud

Enforcement

With

Enforcers

Beyond Borders

“**US SAFE WEB.**” Get it? [And in case you doubt, the much taunted “USA Patriot Act” is an acronym too!]

### Sharing gossip

If the *USA Patriot Act* gave us “Big Brother,” *US Safe Web* allows him to share all the juicy tidbits with his foreign friends. This latter law specifically authorizes the Federal Trade Commission to share hush-hush information in its files regarding consumer protection matters with foreign governments, who must—needless to say—give their word that they will keep the information confidential. (“Hey, Vincenzo, get a hold of the Web site that this guy has been ogling at—ha, ha! But say you won’t tell anyone—haw, haw!”) The stated purpose of the provision is to assist friendly law enforcers in their fight against Internet fraud, spam, spyware and other maladies. Of course, this will be a share-and-share-alike deal. Big Brother will receive similar gossip from “Fratello Grande.”

Besides sharing information, the FTC is also to conduct investigations to help our neighbors in their efforts. Again, this is to be a bilateral pact.

### Shhh!

The FTC is to keep confidential the data that it receives from foreign countries. According to Congress, public disclosure would thwart sharing. The FTC may even seek a court order to prevent nosey civil righters and other perverts from finding out what is on file. It’s called “protecting the confidentiality of FTC investigations.” But what about, you may be wondering, other laws that actually PROTECT privacy? Remember the *Right to Financial Privacy Act*, the *Electronic Communications Privacy Act* and other misguided legislation? No need to worry about those! *US Safe Web* authorizes the FTC to seek delays of required notifications.

### “¡Odio al chota!”

Protection to whistleblowers (the hated “chota,” in Puerto Rican Spanish) is also afforded. Squealers receive immunity from liability. [One of those got Leonardo Da Vinci in trouble in Renaissance Florence. He was allegedly horsing around with other young men. This being a family newsletter, we are unable to go into further detail.]

### Banks, of course

The FTC has also been prescribed new, improved prying eyeglasses, and may give bank records the once-over in order to track the monetary proceeds of illegal Internet practices. The FTC is expected to trace fund transfers to the bad guys, recover the money and return it to the victims. Don’t you feel safer already?

The FTC may also:

- make criminal referrals,
- freeze foreign assets with the help of the U.S. Department of Justice and
- arrange for staff exchange programs with foreign governments.

## Report to Congress

The FTC is to report back to Congress on how it has used its new powers and how the whole scheme has worked. With a Democrat-controlled Congress in power, hmm . . . ■

U.S. District Court

## Choice of forum clause enforced

**I**n *TAT/ICIB Services, Inc. v. Advance Logistics Group, Inc.*, 2006 U.S. Dist. LEXIS 86927, the federal court in Puerto Rico enforced a contractual provision choosing that all disputes be heard in Marseille.

### Bill of lading

The bill of lading in this action in admiralty to collect tariffs stated that all claims and disputes arising thereunder were to be adjudicated by the *Tribunal de Commerce de Marseille*, “and no other Court shall have jurisdiction with regards to any such action.” That plain language notwithstanding, the plaintiff filed in San Juan, arguing that the choice of the Marseille forum was unreasonable, as all parties had their places of business in Puerto Rico and the acts relevant to the suit took place here.

### District Court disagrees

But the District Court disagreed because both parties were resourceful corporations with similar bargaining power, and they freely selected Marseille.

Also, the bill of lading’s selection of applicable law was France’s. “The French courts are better equipped and in a much better position to apply their laws than the District Court of Puerto Rico.”

The judge dismissed the case. ■

## LABOR UPDATE

## Summary of late-2006 labor laws

**Puerto Rico Business Law Developments** presents short summaries of relevant labor laws enacted by the Commonwealth legislature in September and November of 2006.

### Domestic violence protocol

Law Number 217, of September 29, 2006, requires both public and private sector employers to develop and implement a protocol to manage domestic violence



situations in the workplace. The legislation was motivated by the need to promote the public policy of zero tolerance of domestic violence. The implementation of said protocol intends to provide uniformity with respect to measures and procedures to be followed when an employee, male or female, has been a victim of domestic violence. The law states that taking effective preventive and security measures will enable the adequate handling of cases that may carry over into the workplace.

It is the responsibility of each and every employer in Puerto Rico to comply with the requirement of establishing the protocol, which should include the following minimum requirements:

- ▼ a declaration of public policy,
- ▼ a legal basis,
- ▼ personal duties and
- ▼ uniform procedures to be followed in the handling of such cases.

The Office of the Solicitor of Women will offer the technical counsel necessary for the elaboration and the implementation of these protocols; and the Department of Labor and Human Resources will shoulder the responsibility of enforcing them.

### Social Security number

Public Law Number 207, of September 27, 2006, was enacted to prohibit private employers and public corporations from using employees' Social Security numbers as means of identification. Specifically, no employer in the private sector or public corporation is now allowed to:

- ▼ show or display the Social Security number of any employee (regardless of the position) in identification cards;
- ▼ show or display the Social Security number of any employee in a public place;
- ▼ show or display the Social Security number of any employee in a document for general circulation;
- ▼ show or display the Social Security number of any employee in personnel directories or similar lists, unless the people with access to such directories or lists have restricted access and a legitimate business reason.

These protections may be waived voluntarily, in writing, by the employee, but such waivers may not be required as a condition for employment. If a document with the employee's Social Security number must be made public, the number must be edited out or made illegible. The editing of the number under these conditions will not be considered an alteration of the document.

The prohibitions in this statute are not applicable to legitimate internal procedures, such as those required by law, confirmation of identity, tax purposes or hiring.

The statute became effective immediately, but it grants the Department of Labor a period of six months to promulgate a regulation to supervise compliance. The law also requires the regulation to allow for a period of six

months during which employers are to certify compliance to the Department of Labor, or the creation of a work plan to comply with the statute's requirements.

Failure to comply with this statute, or to protect the confidentiality of the Social Security number, may result in fines of up to \$5,000 per case.

### ***Nursing Mothers in the Workplace***

On November 6, 2006, Law Number 239 was enacted to amend the *Nursing Mothers in the Workplace Act*, entitling a nursing mother to a paid one-hour break



each day for 12 consecutive months, in order to breast-feed her child, or to extract breast milk. The period begins to run when the employee returns from maternity leave. Prior to the enactment of Law Number 239 the maximum paid break was of one half hour on each day, for one year.

Pursuant to the statute, the break can be taken in any of the following ways:

- ▼ the employee can take a full hour,
- ▼ she can divide the break in two periods of 30 minutes each, or
- ▼ she can divide it in three periods of 20 minutes each.

The law also requires employers to make reasonable efforts to provide a room or other location where an employee can feed or extract her milk in privacy.

The statute also provides an annual tax exemption for employers who grant the daily break, equivalent to one month's salary of each benefited employee.

An employer who fails to comply may be held liable for damages equal to three times the employee's daily

salary, multiplied by the amount of the days that the break was denied.

### ***Sexual Harassment in the Workplace***

Law Number 252 was enacted on November 30, 2006, to amend the *Sexual Harassment in the Workplace Act* and prohibit sexual harassment that occurs



through the use of the Internet or other electronic means, including electronic mail. Virtual sexual harassment is a threat to electronic business and to multiple labor-related issues handled through the Internet.

“Virtual sexual harassment” is all communication, conduct or expression that flows by telecommunication media or work tools that use computerized media, that can cause a hostile work environment.

Sexual harassment in employment consists of any type of undesired sexual approach, demand for sexual favors and any other verbal or physical behavior of a sexual nature, or that is reproduced using any means of communication, including the use of multimedia tools through the Internet or by any electronic means, when one or more of the following circumstances occurs:

- ▼ when submission to said conduct becomes, implicitly or explicitly, a term or condition of the person's employment;
- ▼ when submission to or rejection of such conduct by the person becomes the grounds for decisions on the job, or regarding the job, that affect that person;
- ▼ when that conduct has the effect or purpose of interfering unreasonably with the performance of the person's work, or when it creates an intimidating, hostile or offensive working environment. ■

## Federal minimum wage increase

**O**n January 10, 2007, the United States House of Representatives approved a bill that would increase the federal minimum wage to \$7.25 an hour.

The measure, which was under consideration by the Senate at press time, would raise the federal minimum wage floor by \$2.10, from its current \$5.15 an hour, in three steps over 26 months:

- to \$5.85 an hour 60 days after signed into law by the president,
- to \$6.55 an hour a year later and
- to \$7.25 an hour a year after that.

The federal minimum wage is like a national wage floor, though some people can be paid less under certain circumstances. States of the Union and the Commonwealth of Puerto Rico can set minimum wages above the federal level. ■

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