## The Treasury and the economy

By : RAFAEL HERNANDEZ COLON

Volume: 34 | No: 33
Page : 29
Issued : 08/24/2006

The re-election of Gov. Aníbal Acevedo Vilá depends most of all on how the economy is doing in 2008. After the battle over the sales tax and fiscal solvency, La Fortaleza is sending out signals in all directions to the government agencies to get Puerto Rico's economy moving again. One is reminded of a poster in Clinton's campaign headquarters that read: "It's the economy, stupid." But getting government agencies to follow the policies coming out of La Fortaleza is something else. For government agencies have a life of their own. And not only a life but also their own institutional biases and prejudices.

The Treasury Department has set out to undo the incentives provided in Law 212, approved Aug. 29, 2002 for the rehabilitation of our urban centers. These incentives are absolutely necessary to stimulate private investment in the centers. Public investment is not enough to rehabilitate the centers. *Ponce en Marcha*, our most important effort through public investment in rehabilitating urban centers, bears witness to the insufficiency of even substantial public investment. But Treasury is oblivious to this need. The bean counter mentality prevails in that department.

This is not new. Treasury opposed in 1947 the Puerto Rico Industrial Incentives Act proposed by Teodoro Moscoso to launch Bootstrap, our highly successful industrial development program. One would think Treasury would have learned from that experience. The incentives it opposed boosted our economy in such a way that it generated millions and millions of dollars in tax revenues. The revenue lost through the incentives was a pittance when compared with the revenue gained from the economic activity generated by the incentives. But it was not only government revenues that were generated. It was principally Puerto Rico's emergence from underdevelopment: jobs, infrastructure, education, health services, recreation, etc. It was a higher standard of living for all Puerto Ricans.

This lesson has escaped Treasury. Any bill proposing new incentives for whatever purpose will encounter Treasury opposition. And so it was with the bill that became Law 212. The Legislature, however, passed the bill and former Gov. Sila Calderón signed it. Treasury did not give up. It came on with amendments that would have made the law inoperative. The Legislature rejected the ill- conceived amendments, but granted others, including one for a study of the economic activity actually generated by the incentives, to allay Treasury's fears.

Undaunted, Treasury has now come up with regulations to achieve its objective of making the law inoperative. This is most unfortunate because the law has begun to generate a considerable number of projects in urban centers such as San Juan, Ponce and Caguas. Economic activity was acquiring a momentum in our urban centers. Yet, Treasury has brought new projects to a halt.

The scheme Treasury has come up with to undo the law is a monument to bureaucracy's capabilities to thwart the people's will expressed by the Legislature and a governor's efforts for re-election. To undo the law, Treasury focused on the most powerful incentive provided by Law 212, i.e., the incentive for investment in new construction or in substantial improvements in the urban centers. This is a tax credit against the investor's income tax amounting to 75% of the cost of the new construction or of the improvements. The amount of the credit that is not used in one year can be carried over for use during the nine subsequent years.

Law 212 is wise as to how a taxpayer acquires this credit. The taxpayer does not acquire it by the approval of the proposal for incentives or the issuance of building permits. The law requires the project be built, its construction be certified by the proper governmental authority and it should have been built according to the proposal for the incentives. The tax credit is awarded after the economic activity has been generated, thus ensuring the incentive has achieved its purpose by generating new construction or significant improvements in existing buildings.

To nullify the incentive, Treasury has seized upon the word "cost" used in the law, and defined it in a way that makes the law inoperative. Cost, according to the dictionary, is "the price paid to acquire, produce, accomplish or maintain anything." But, according to Treasury, cost means "the cost of development less the market value of the property after construction is terminated." Treasury then goes on to define cost of development as "the amount more than zero resulting from the product of the total of the sum of the amounts for Direct Cost (DC) and Indirect Cost (IC), multiplied by the total of the sum of 1.05 and the result of the division of the total of the sum of the amounts for DC and IC, between two times the sum of the amounts for DC, IC and the market value of the property before commencing construction (MV1); plus MV1. This arcane jargon is represented in the regulations issued by Treasury with the following formula:

Development Cost = (DC + IC) [1.05 + (DC + IC)/2(DC + IC + MV1)] + MV1.

The rule in statutory construction is that a word used in a law must be given its plain and ordinary meaning unless the law provides a special definition for the word. There is absolutely nothing in Law 212 as amended that even suggests the word costs should be given a meaning different from that of ordinary usage. The law provides for just the opposite to Treasury's interpretative construct of the word "costs." It says its provisions "shall be liberally interpreted so as to promote development."

After the construction of a building has been certified, establishing the costs incurred is as simple as adding up the checks properly paid out under the construction contract. A former government official very familiar with Law 212 ran a few hypothetical cases through his computer using the Treasury's formula, and in all of them the "costs" were not only less than the costs in ordinary language, but in one case they were even negative.

Governing is always an ongoing proposition. It is not enough to establish a policy. You must follow through continuously until the task is done. You can safely assume that as orders filter down through the numerous layers of bureaucracy there will be other mindsets consciously or unconsciously adverse to the administration's needs or desires. Gov. Acevedo Vilá would do well in hanging up a poster somewhere in all the agencies whose work bears on the economy, similar to the one Clinton placed in his campaign headquarters.