UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

COORS BREWING COMPANY, Plaintiff, JUAN CARLOS MÉNDEZ TORRES, SECRETARY OF THE TREASURY DEPARTMENT OF THE COMMONWEALTH OF PUERTO RICO, Defendant.	06-2150(HL) Civil No. 06-____ (_____)

COMPLAINT FOR
DECLARATORY AND INJUNCTIVE RELIEF

COMES NOW plaintiff, Coors Brewing Company, by its undersigned counsel, and respectfully states the following as its Complaint against defendant Juan Carlos Méndez Torres, sued in his official capacity as Secretary of the Puerto Rico Treasury Department for declaratory and injunctive relief.

INTRODUCTION

1. This action challenges § 4023 of the Puerto Rico Internal Revenue Code of 1994 ("PRIRC"), as amended by Law 69 of May 30, 2002 (amending also § 4002 of the PRIRC, P.R. LAWS ANN. tit. 13, § 9521), and as further amended by Law 108 of May 6, 2004, P.R. LAWS ANN. tit. 13, § 9574 (hereinafter the "special exemption"), which discriminates against beer produced outside Puerto Rico, in violation of both the United States Constitution and federal law, by creating a tax differential of as much as $1.90 per gallon between the beer produced and sold in Puerto Rico by Cervecería India and beer produced in other states and countries (off-island beer) and sold in Puerto Rico.

2. The purpose and effect of the special exemption was to shield Cervecería India, Puerto Rico's local brewery, from the 2002 50% excise tax increase that affected all other U.S. mainland and foreign brewers with significant sales of beer in Puerto Rico, with the purpose and effect of protecting Cervecería India from interstate competition.

3. As the contemporaneous statements of government officials, legislators, and representatives of Cervecería India made clear, the June 2002 amendment to the special exemption was crafted at the behest of Cervecería India, with the primary purpose of protecting Cervecería India from the effects of the substantial increase in the excise tax on beer also enacted in June 2002.

4. Moreover, when it appeared thereafter that Cervecería India might lose access to the lowest tax rate under the special exemption, a subsequent amendment to the special exemption in 2004 ensured that Cervecería India continued to enjoy the lowest tax rate on the majority of the beer it produced.

5. Under the new excise tax structure, the excise tax on beer other than that produced by Cervecería India rose to $4.05 per gallon. The effect of the special exemption, as amended in 2002 and 2004, was that the burden of the new excise tax on beer fell by design, and in a predictable and disproportionate way, on off-island brewers of beer.

6. The resulting cost differential created by the special exemption allowed Cervecería India to sell its beer at a retail price considerably below that of mainland and foreign brewers.

7. Consequently, Cervecería India's share of the Puerto Rico retail beer market grew from 7% in the fiscal year ended June 30, 2002 to 26% in fiscal year 2005-2006, while, at the same time, off island beer, handicapped by the artificial price differential resulting from the

special exemption, lost a proportionate share of the total retail sales market subject to the excise tax for beer in Puerto Rico.

8. While the excise tax on beer was increased to raise much needed revenue for Puerto Rico, the special tax exemption ensured lower rates for Cervecería India, under which the Government of Puerto Rico appears to have lost the following tax revenue during the past three calendar years:

	Cervecería India Gallons Produced	**Projected Full Excise Tax Revenue at $4.05/gal**	**Actual Excise Tax Revenue Collected Under Exemption**	**Estimated Excise Tax Revenue Lost by Puerto Rico**
FY- 2002-03	10,432,000	$42,249,600	$22,820,240	$19,429,360
FY- 2003-04	11,942,000	$48,365,100	$26,898,760	$21,466,340
FY- 2004-05	14,022,000	$56,789,100	$33,105,780	$23,683,320
FY- 2005-06	15,842,000	$64,160,100	$38,547,580	$25,612,520
			Four-Year Excise Tax Revenue Loss Total	**$90,191,540**

9. Between December 31, 2001 and December 31, 2005, Cervecería India's retained earnings increased by over 93%, to approximately 65 million dollars.

10. This action seeks declaratory and injunctive relief ending the discriminatory special exemption, restoring tax neutrality, and removing artificial cost differentials and barriers to interstate commerce between Cervecería India and off-island producers of beer that sell their product in Puerto Rico.

ALLEGATIONS

11. Plaintiff seeks a declaratory judgment, under 42 U.S.C. § 1983 and 28 U.S.C. § 2201, that the special exemption (§ 4023 of the PRIRC, as amended by Law 69 of May 30, 2002, and as further amended by Law 108 of May 6, 2004) is invalid and unenforceable because

it discriminates against interstate commerce in violation of: (a) Section 3 of the Federal Relations Act, 48 U.S.C. § 741a; and (b) the Commerce Clause of the Constitution of the United States, Art. I, § 8, cl. 3.

12. Facing irreparable injury for which there is no adequate remedy at law, plaintiff seeks an injunction under 28 U.S.C. § 2202: (a) enjoining Secretary Méndez Torres, his agents, and his employees from collecting the excise tax on beer pursuant to the § 4023 special exemption; and (b) ordering Secretary Méndez Torres, his agents, and his employees to collect from all taxpayers, without exception and from the date of this Court's Order, the resulting excise tax under § 4002 of the PRIRC, as amended.

13. Plaintiff does not seek to prevent or to restrain the assessment or collection of the § 4002 excise tax by Puerto Rico, nor will the requested relief reduce or delay Puerto Rico's receipt of any funds payable under that excise tax. On the contrary, invalidation of the amended § 4023 special exemption will increase the total amount of excise tax collected on beer.

THE PARTIES

14. Plaintiff Coors Brewing Company ("Coors") is a corporation, organized under the laws of the State of Colorado in 1990, that maintains its headquarters in Golden, Colorado. Coors produces, markets, and sells high-quality beer for consumption in the United States, including the Commonwealth of Puerto Rico, and select international markets.

15. Defendant Juan Carlos Méndez Torres is the Secretary of the Treasury Department and, as such, is responsible for administration and enforcement of the PRIRC, as amended. He maintains his principal office at Parada 1, Paseo Covadonga, Edificio Intendente Ramírez #10, San Juan, Puerto Rico 00903, and is sued in his official capacity under 42 U.S.C. § 1983 for declaratory and injunctive relief.

16. Secretary Méndez Torres has specific authority under §§ 6145-6149 of the PRIRC, as amended, to enforce the beer excise tax and the special exemption (P.R. LAWS ANN. tit. 13, §§ 8145 and 8149).

17. The Commonwealth officials who enforce Puerto Rico's tax laws and who administer the beer excise tax and the special exemption act under the supervision and control of Secretary Méndez Torres.

SUBJECT MATTER JURISDICTION

18. The Court has jurisdiction under 28 U.S.C. §§ 1331 and 1343(3). Plaintiff does not challenge its own payment of the excise tax, and invalidating the special exemption will increase revenue from the excise tax on beer, rather than interfere with Puerto Rico's receipt of the excise tax. Therefore, neither the Butler Act, 48 U.S.C. § 872, nor the Tax Injunction Act, 28 U.S.C. § 1341, pose any barrier to this Court's jurisdiction.[1]

VENUE

19. Venue is proper in this district under 28 U.S.C. § 1391(b).

FACTUAL AND LEGAL ALLEGATIONS

The Beer Market in Puerto Rico

20. Puerto Rico imposes an "internal revenue tax," or excise tax, on beer, under the PRIRC, as amended.

21. The excise tax is levied on beer produced in Puerto Rico and beer imported into Puerto Rico for sale in the civilian market; beer sold on military reservations is not subject to the excise tax.

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[1] *Hibbs v. Winn*, 542 U.S. 88, 124 S. Ct. 2276 (2004).

22. As of 2001, the volume of beer subject to the excise tax in the Puerto Rico market had been stagnant for over a decade.

23. For the fiscal year July 2001-June 2002, beer subject to the excise tax totaled approximately 64.5 million gallons.

24. In the fiscal year July 2001-June 2002, beer imported from the United States mainland comprised 73% of sales subject to the excise tax.

25. In the fiscal year July 2001-June 2002, over 99% of the mainland beer sold in Puerto Rico that was subject to the excise tax was produced by brewers with an annual production well in excess of 31 million gallons.

26. In the fiscal year July 2001-June 2002, beer imported into Puerto Rico from countries other than the United States ("imported foreign beer") comprised 13.1 million gallons or 20% of sales subject to the excise tax.

27. Over 99% of imported foreign beer sold in Puerto Rico in the fiscal year July 2001-June 2002 and subject to the excise tax was produced by brewers who brewed well in excess of 31 million gallons annually.

28. Locally brewed beer comprised 4.57 million gallons or 7% of beer sales subject to the excise tax in the fiscal year July 2001-June 2002.

29. In the fiscal year July 2001-June 2002, Cervecería India brewed approximately 4.57 million gallons of beer. Accordingly, Cervecería India brewed over 99% of locally brewed beer.

30. No brewer in Puerto Rico produces or has ever produced over 31 million gallons of beer annually.

31. In the fiscal year July 2001-June 2002, the relevant Puerto Rico beer market share measured by volume of beer sold in the Puerto Rico market subject to the excise tax was approximately: Coors (U.S. mainland) – 58%, Heineken (Netherlands) – 19%, Anheuser-Busch (U.S. mainland) – 10%, Cervecería India (Puerto Rico) –7%, Grupo Modelo (Mexico) –3%. Thus, only 3% of beer sold in Puerto Rico subject to the excise tax was produced by brewers other than Coors, Heineken, Anheuser-Busch, Cervecería India, or Grupo Modelo.

32. In the fiscal year July 2001-June 30, 2002, less than 1% of the taxed beer sold in Puerto Rico other than Cervecería India's was produced by brewers who produced less than 31 million gallons annually.

33. No brewer that produced less than 31 million gallons annually, other than Cervecería India, had as much as 0.5% of the Puerto Rico beer market subject to the excise tax in the fiscal year July 2001-June 2002.

The Excise Tax and Special Exemption

34. Section 4002 of the PRIRC in effect prior to June 14, 2002 applied a general excise tax rate of $2.70 per gallon to beer ("the excise tax").

35. In turn, PRIRC § 4023 at that time provided a "special exemption" at a reduced tax rate of $2.15 per gallon for beer produced by companies whose annual production did not exceed 31 million gallons.

36. The only commercially significant producer of beer marketed in Puerto Rico that qualified for the special exemption in 2001 was Cervecería India, a closely-held privately owned corporation.

37. Accordingly, at that time Cervecería India enjoyed a tax advantage of $.55 per gallon over other commercially significant beers.

38. In early 2002, Cervecería India, Inc., located in Mayagüez, Puerto Rico, was Puerto Rico's only commercially significant brewer, and manufactured beer sold under the Medalla Light, India and other trade names.

39. When Coors Light entered the Puerto Rico market in 1991, the excise tax was $2.70 per gallon and the special exemption rate enjoyed by Cervecería India was $2.15 per gallon, for a tax differential of $.55 per gallon.

40. Prior to the entry of Coors Light to the Puerto Rico market, Cervecería India's Medalla Light enjoyed a 26% market share; by the end of June 2002, that share had fallen to 7%.

41. In early 2002, Cervecería India was producing beer at an annual rate of about 5 million gallons, all of which were subject to the special exemption tax advantage of $.55 per gallon over other market competitors.

2002 Amendments to the Excise Tax and Special Exemption

42. In early 2002, the Puerto Rico legislature enacted tax increases to enhance the Puerto Rican Government revenues and reduce budget deficits.

43. House Bill 2244, which would eventually become Law 69 of May 30, 2002, had as its primary stated objective to raise excise taxes on alcoholic beverages to produce increased revenues needed to help balance the Puerto Rican Government's budget for the fiscal year beginning July 1, 2002.

44. As introduced, the bill proposed to increase the § 4002 excise tax on beer by 78%, from $2.70 to $4.80 per gallon, and simultaneously to increase the tax rate under the special exemption by 78%, from $2.15 to $3.83 per gallon.

45. The proposed excise tax increases quickly generated a public debate over threatened effects on Cervecería India.

46. During the first two weeks of March 2002, the Puerto Rican newspapers provided almost daily coverage on an evolving debate among governmental officials and commercial interests on how to protect Cervecería India from perceived consequences of the proposed beer excise tax increase.

47. Cervecería India did not protest the proposed 78% increase in the excise tax on beer produced by other brewers.

48. Instead, beginning in March 2002, Cervecería India executives, and their supporters in local and Commonwealth governments, focused their efforts on fighting the proposed increase in the tax rate under the special exemption.

49. Cervecería India executives, and their supporters in local and Commonwealth governments made statements, as widely reported in the Puerto Rican news media, arguing that the proposed increase in the special exemption tax rate, from $2.15 per gallon to $3.83 per gallon, would force Cervecería India out of business.

50. Speaking during an early March 2002 visit to Mayagüez (where Cervecería India is located), then Secretary of State Ferdinand Mercado said the Governor would consider an alternative tax proposal "as long as it produces enough money."[2] *The San Juan Star* reported that "alternatives are being sought to prevent an adverse effect on Cervecería India in Mayagüez, the only native brewery in the region...."[3]

51. The House Representative from Mayagüez formed a group of Representatives and Senators to identify tax options that "would not prejudice the operations of Cervecería India

[2] "La Fortaleza open to ideas on 'sin taxes,'" *The San Juan Star* (March 4, 2002), at 10.

[3] *Id.*

of Mayagüez."[4] Such initiative would include "evaluation of the actual economic situation of Cervecería India and analysis of the impact that an increase in excise taxes would have on that native enterprise."[5]

52. This group met with the Governor on Monday, March 4, and individual members made statements to the press following that meeting. House Treasury Committee Chair Francisco Zayas-Seijo reported that Governor Calderón appeared "'receptive' to giving some preferential treatment to Cervecería."[6] Deputy-speaker of the House Ferdinand Pérez declared that he favored an exemption from the whole increase.[7]

53. In an interview published on March 12, Governor Calderón remained open to proposals to help the only local brewery, Cervecería India. "As I said in Mayagüez, I am the daughter of an industrial worker. I believe in Puerto Rican capital. I am a farmer's granddaughter. I believe in the Puerto Rican businessman, I view myself as a businessperson. That is my background and my focus. I do not want to be the instrument of anything that would cause harm to Puerto Rican capital."[8]

54. The public debate was thus framed in terms of protecting Puerto Rican interests, specifically Cervecería India.

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[4] Damarys Rivera Vega, "Tomerán medidas para beneficiar a la India," *El San Juan Star* (March 4, 2002), at 8.

[5] *Id.*

[6] Betzaida Ramírez Alers, "Comité evaluará alternatives para India," *El Vocero* (March 5, 2002), at 15.

[7] *Id.*

[8] Antonio R. Gómez, "Un 'Tostón' el presupuesto," *Primera Hora* (March 12, 2002), at 4.

55. Cervecería India Executive Vice President Carmen Amalia Valdés' public statements made clear that Cervecería India wanted a complete exemption from any increase in the beer excise tax.

56. When the House Treasury Committee held an April 8, 2002 hearing on the proposed increases to the excise tax and special exemption, many Cervecería India employees were in attendance to support the testimony of Cervecería India's Executive Vice President and the President of the employees union.

57. Cervecería India's bottom line message at this House Treasury Committee was that there should be no increase in the § 4023 special exemption tax rate applicable to Cervecería India.

58. Cervecería India's spokespersons testified that Cervecería India needed the competitive advantages provided by the special exemption tax rate to permit Cervecería India to maintain and increase its sales, as well as its number of employees.[9]

59. During an April 23, 2002 hearing before the House Treasury Committee, the Mayor of Mayagüez, José Guillermo Rodriguez, testified for Cervecería India and advocated maintaining the special exemption tax rate at $2.15 per gallon.[10]

60. In response to questioning by the House Treasury Committee Chair during an April 23, 2002 public hearing, the spokesperson for the distributors of off-island beers testified

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[9] See, *e.g.*, prepared Testimony of Carmen Amalia Valdés, Cervecería India's Executive Vice President, Before the House of Representatives Treasury Committee During the Public Hearings on the Proposed Tax Increases on Beers Consumed in Puerto Rico, April 8, 2002, at 5-6.

[10] See, *e.g.*, prepared Testimony of Hon. Jose Guillermo Rodriguez before the House of Representatives Treasury Committee Hearing on H.B. 2244, on April 23, 2002, at 3-6.

that an expanded excise tax rate differential favoring Cervecería India, such as discussed at the hearing, would be an extremely powerful weapon in competition with those distributors.[11]

61. House Bill 2244 was reported out of the Treasury Committee on April 30, 2002. The reported version contained the following tax rate scale for the § 4023 special exemption:

up to 5 million gallons	$2.15 per gallon
from 5 to 7 million gallons	$2.99 per gallon
from 7 to 9 million gallons	$3.41 per gallon
9 to 31 million gallons	$3.83 per gallon

62. On May 2, 2002, the beer excise tax bill was considered by the full House of Representatives. The Treasury Committee Chair explained that an accord reached the previous night would result in the excise tax increase being 50% rather than 78%. As a result, the § 4002 excise tax rate on beer for producers of greater than 31 million gallons would become $4.05 per gallon.

63. Shortly thereafter, Representative Carlos Hernández (the leader of the pro-Cervecería Representatives) proposed a package of amendments that substituted a new tax ladder in the special exemption, under which the tax would be:

[11] Hearing Before the House of Representatives Treasury Committee on House Bill 2244, April 23, 2002, at Tr. 196:15-198:11.

under 9 million gallons	$2.15 per gallon
9-10 million gallons	$2.36 per gallon
10-11 million gallons	$2.57 per gallon
11-12 million gallons	$2.78 per gallon
12-31 million gallons	$2.99 per gallon

64. These amendments were approved by the House on a voice vote with no discussion.

65. The resulting tax scale was more favorable to Cervecería India than the one reported by the House Treasury Committee, in that, for example, a qualified brewer could produce up to 9 million gallons annually taxed at the lowest rate (rather than only 5 million).

66. Shortly after the amendments offered by Representative Hernández were approved, the Speaker of the House made a statement addressed to the Mayor of Mayagüez, who was in the chamber, that "we are determined to help the Puerto Rican beer industry, in this case Cervecería India."[12]

67. The Speaker concluded by asserting that the House had acted responsibly "in the search for a solution in the specific case of Cervecería India that permits it to continue operations so that it can increase its production, increase employment because those will translate into increases in tax contributions that this industry eventually will be able to make,"[13] confirming that the compromise was designed to facilitate sales growth and market expansion by Cervecería India.

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[12] House of Representatives Debate on H.B. 2244, May 2, 2002, at Tr. 80:1-3.

[13] *Id. at* Tr. 83:17-24.

68. In response, the Mayor of Mayagüez made a speech on the record restating his concerns related to Cervecería India and thanking the leadership of the different political parties for their response.

69. Later on May 2, 2002, House Bill 2244 was passed by a vote of 29 to 15.

70. The beer excise tax amendment bill, House Bill 2244, was considered by the full Puerto Rican Senate on May 7, 2002.

71. The Senate Treasury Committee Chair explained several accords, including "number one, to reduce or exempt Cervecería India from paying taxes in the amount of $5 million, the formula is increased as production increases from 9 million gallons to 13 million gallons. In that form, Cerveceria remains exempt from the excise tax."[14]

72. That same day, the Senate passed House Bill 2244 by a vote of 17 to 9 (with one Senator absent).

73. On May 30, 2002, the Governor approved House Bill 2244, which then was designated Law 69 of May 30, 2002.

74. The Special Exemption which Cervecería India enjoyed was amended by Law 69 to provide the following sliding rate scale, under which the applicable excise tax rate would vary with the annual volume of beer production:

[14] Discussion of H.B. 2244 During the Senate Session on May 7, 2002 at Tr. 14-15.

Annual Production	§ 4023 Special Exemption Tax Rate	Advantage Per Gallon
under 9 million gallons	$2.15 per gallon	$1.90
9-10 million gallons	$2.36 per gallon	$1.69
10-11 million gallons	$2.57 per gallon	$1.48
11-12 million gallons	$2.78 per gallon	$1.27
12-31 million gallons	$2.99 per gallon	$1.06

75. Under the § 4023 special exemption as amended by Law 69, the differential between the excise tax on beer of $4.05 per gallon and the lowest special exemption tax rate of $2.15 per gallon increased from the pre-passage level of $.55 per gallon to $1.90 per gallon.

76. The amended excise tax and special exemption took effect on June 14, 2002.

77. As of June 14, 2002, the special exemption rates did not apply to beer sold in any commercially significant quantity in Puerto Rico by any brewer other than beer produced by Cervecería India.

78. Between June 14, 2002, and the date of this Complaint, the Puerto Rico Treasury Department has not collected beer excise tax at rates specified by the special exemption with respect to any competitively significant quantities of any beers, other than those brewed by Cervecería India.

Immediate Effect on Off-Island Brewers

79. The off-island brewers of beer sold in Puerto Rico prior to June 14, 2002 included Coors, Heineken, Anheuser-Busch, and Grupo Modelo, each of which produced more than 31 million gallons of beer per year.

80. Between them, these producers held approximately 90% of the taxed Puerto Rico beer market, during the fiscal year July 2001 – June 2002.

81. On June 14, 2002, all beer produced by Coors and other commercially significant off-island brewers became subject to the $4.05 per gallon excise tax.

82. On or after June 14, 2002, no competitively significant quantity of off-island beer sold in Puerto Rico was taxed at the special exemption $2.15 per gallon rate.

83. Subsequent to these measures, the tax differential introduced a retail price differential between the beers of off-island brewers, which were subject to the full increase in the excise tax, and the beers of Cervecería India, which were not.

Effect on Cervecería India, the Only Puerto Rican Brewer

84. Immediately prior to June 14, 2002, Cervecería India produced considerably less than 9 million gallons annually; so its entire production qualified for the $2.15 special exemption tax rate. Its product was the only beer sold in the Puerto Rico market in competitively significant quantities that qualified for the $2.15 special exemption rate.

85. As of June 14, 2002, the rate differential between the amended § 4002 excise tax of $4.05 per gallon and the lowest § 4023 special exemption rate of $2.15 per gallon was $1.90 per gallon. Thus, Cervecería India's beer was taxed at $1.90 per gallon less than the beer produced by all competitively significant off-island brewers serving Puerto Rico.

86. Cervecería India ran a media campaign immediately after passage of the amended excise tax and special exemption, promising that it would not raise its prices for its beers.

87. The ads represented that, "we made a commitment to the Legislature and the people of Puerto Rico not to raise the prices of our beers," and urged wholesalers and merchants "to maintain the current prices."[15]

88. Maintaining the then current prices for Cervecería India beers was commercially practicable, because there had been no change in the excise tax imposed on Cervecería India beers, which remained at $2.15 per gallon.

89. Thus, a 10 oz. can of beer manufactured by Cervecería India generally retailed for considerably less than a 10 oz. can of beer manufactured by Coors or Anheuser-Busch.

90. Not surprisingly, consumers responded to this retail price differential by increasing their purchases of beers produced by Cervecería India and decreasing their purchases of U.S. mainland beers, including those produced by Coors.

91. Medalla Light is Cervecería India's best selling brand. Capitalizing on its lower retail price, the Puerto Rico market share of Medalla Light in the market subject to the excise tax increased from approximately 7% in the July 2001-June 2002 fiscal year to approximately 18% for the July 2002-June 2003 fiscal year. Its production increased from about 4.6 million gallons in the July 2001-June 2002 fiscal year to over 10 million gallons in the July 2002-June 2003 fiscal year.

92. Coors and other off-island brewers lost market share and sales volume in the market subject to the excise tax that matched Cervecería India's gains.

[15] See, *e.g.*, Ad: "Mayorista y Comerciante puertorriqueño: Medalla Light y Cervecería India no subirán de precio. Hicimos un compromiso con la Legislatura y el pueblo de Puerto Rico de no subir los precios de nuestras cervezas. Contamos con Ustedes.," *El Nuevo Dia*, June 4, 2002.

93. In the market not subject to the excise tax, beers sold on military installations, Cervecería India did not enjoy a discriminatory tax advantage of $1.90 per gallon, and did not gain market share.

Subsequent Events

94. The retail price differential favoring Cervecería India beers persisted throughout the fiscal year July 2002-June 2003, and Cervecería India continued to increase its beer sales volume and market share.

95. That increase was matched by an increase in Cervecería India's beer production, which reached approximately 10.4 million gallons for the fiscal year July 2002-June 2003.

96. Therefore, in the fiscal year July 2002-June 2003, Cervecería India's beer production exceeded the 9 million gallon per year upper limit of applicability for the $2.15 per gallon lowest tax rate under the special exemption.

97. The question thus arose of how the special exemption should be applied to production exceeding 9 million gallons annually.

98. Cervecería India would benefit most if it could pay the lowest rate on the first 9 million gallons it produced during each year even though it had produced more than 9 million gallons in the previous year.

99. Cervecería India became concerned that revenue officials would contend that it should pay on all future production the § 4023 special exemption rate applicable to the highest production level reached by Cervecería India during the year being concluded.

100. Under that construction of the statutes, because Cervecería India produced over 10 million gallons in the fiscal year ending June 2003, the first beer produced in July 2003

would be taxed at the $2.57 per gallon rate applicable to production between 10 million and 11 million gallons.

101. At an annual production level of 10.4 million gallons, such interpretation would immediately cost Cervecería India some $4 million in excise taxes, and the difference in tax obligations would increase further if Cervecería India's beer production exceeded 11 million gallons annually.

102. Not having secured assurance that the favorable interpretation would be employed by the Treasury Department, on information and belief, Cervecería India secured a statutory amendment using expedited procedures.

103. Thus, on April 5, 2004, House Bill 4550 was introduced by Representative Carlos Hernández López, the representative from Mayagüez. That same day the bill passed the House, without hearing in committee or floor debate and passed the Senate, also without hearing or floor debate.

104. Representative Carlos Hernández López was a Cervecería India partisan during the 2002 legislative process leading to Law 69.

105. The Governor approved the legislation on May 6, 2004, taking effect immediately as Law 108.

106. Law 108 revised the language of the § 4023 special exemption in a way that made clear that brewers producing less than 31 million gallons of beer in the prior calendar year (which were the brewers that qualified for the special exemption in the next calendar year) were authorized to pay the lowest § 4023 special exemption tax rate ($2.15 per gallon) on the first 9 million gallons of their beer production during the next year.

107. By contrast, brewers who produced over 31 million gallons in the prior year could not invoke the favored rate the next year, even for their first 9 million gallons.

108. Law 108 was enacted to aid Cervecería India.

109. Additionally, Law 108 was enacted with the legislature's knowledge that it would be of no assistance to any brewer other than Cervecería India, since Cervecería India was the only brewer qualifying for the special exemption and having production exceeding 9 million gallons annually.

110. This legislation helped maintain the competitive advantage of Cervecería India, helping it to maintain its lower retail price (as compared with other competitively significant U.S. mainland brewers) in the taxed market.

111. Cervecería India maintained and increased its sales and market share gains following enactment of Law 108, producing approximately 14 million gallons of beer during the fiscal year July 2004-June 2005.

112. Coors and other off-island brewers paying the excise tax rate of $4.05 per gallon continued to have fewer sales and declining market shares in the Puerto Rico market subject to the excise tax.

113. Puerto Rico Treasury Department figures show that in the fiscal year July 2005-June 2006, Cervecería India beer sales had grown to 15.8 million gallons and had captured nearly 26% of the 61.1 million gallon Puerto Rico beer market subject to the excise tax.

114. Sales of beer in the Puerto Rico beer market subject to the excise tax from U.S. mainland brewers fell from 46.9 million gallons in the fiscal year ended June 2002 to 31.7 million gallons in the fiscal year ended June 2006.

115. The beer excise tax structure defined by §§ 4002 and 4023 of the Internal Revenue Code of Puerto Rico of 1994, as amended, again came before the Puerto Rican legislature through House Bill 2193, introduced on December 15, 2005.

116. During hearings before the House Treasury Committee on House Bill 2193 held on April 24, 2006, the president of Cervecería India testified that it was imperative that the excise tax on beer maintain the special exemption and the existing $1.90 per gallon tax rate differential.

117. No brewer that purported to qualify for the special exemption, other than Cervecería India, gave testimony during the 2006 legislative hearings on House Bill 2193 or its Senate counterpart, Senate Bill 1177.

118. The resulting legislation, Law No. 117 of July 4, 2006, contains no amendments to the excise tax on beer or the special exemption.

119. As a result, the § 4002 excise tax and the special exemption remain unchanged.

120. Cervecería India is the only commercially significant brewer of beer sold in the beer market in Puerto Rico subject to the excise tax that continues to enjoy a $1.90 per gallon excise tax advantage on its first 9 million gallons produced annually.

121. Data on beer sales prepared and made public by the Puerto Rico Treasury Department show that, for the fiscal year ended June 2006, Cervecería India produced for sale in the beer market subject to the excise tax in Puerto Rico 15,842,000 gallons of beer, all taxed at the special exemption rates.

122. During the fiscal year ended June 2006, the excise tax imposed on Cervecería India beer averaged $2.43 per gallon (*i.e.*, $38,547,580 divided by 15,842,000 gallons). Thus,

in that year alone, Cervecería India enjoyed an excise tax break of $25,612,520 *vis a vis* the off-island brewers (*i.e.*, 15,842,000 gallons x $4.05 excise tax rate = $64,160,100 less the $38,547,580 reduced tax Cervecería India paid under the special exemption tax rates).

123. During the fiscal year ended June 2006, the excise tax imposed on the beers of Coors and other large off-island brewers was $4.05 or $1.62 per gallon more than the $2.43 average per gallon excise tax imposed on Cervecería India beers.

124. The $1.62 per gallon tax disadvantage imposed on Coors' and other off-island brewers' beers during the fiscal year ended June 2006 posed a commercial burden and barrier to the sale of those beers to customers in Puerto Rico.

125. The retail price differential between the beer produced by Cervecería India and the beer produced by Coors is an artificial price differential attributable to the special exemption and protects Cervecería India from the rigors of competition in interstate commerce.

126. Puerto Rico Treasury Department figures show that sales of beers brewed on the U.S. mainland and sold in the Puerto Rico beer market subject to the excise tax fell from over 46.8 million gallons in the fiscal year ended June 2002 to 31.7 million gallons in the fiscal year ended June 2006. Coors' confidential sales figures show that annual sales of Coors Light in the Puerto Rico beer market subject to the excise tax have fallen many millions of gallons during that same time period.

127. Cervecería India continues to enjoy the benefits of the special exemption during 2006 and Coors continues to face the market burden resulting from the substantial differential between the special exemption excise tax rate and the higher $4.05 per gallon excise tax imposed on its beers.

128. Because Cervecería India beers can be sold at a lower cost as a result of the special exemption tax rate differential, Coors and other off-island brewers have lost substantial sales and market share to Cervecería India and will continue to lose sales and market share to Cervecería India in the future.

129. Coors' past and future sales losses have and will continue to result in economic losses in amounts that cannot readily be quantified, and Coors has no remedy at law for such losses.

130. The 2002 and 2004 amendments to the special exemption were intended to increase the effective excise tax differential in favor of Cervecería India and shield it from the rigors of interstate commercial competition, by keeping its excise tax static in the face of the 50% increase in the excise tax on beer that affected all other commercially significant brewers of beer that sell beer in the Puerto Rico beer market subject to the excise tax.

131. The legislative efforts to preserve Cervecería India and foster its growth in beer sales and market share by creating an artificial cost and price differential between its products and others, and shielding it from the tax increase on beer applicable to every other commercially significant producer of beer sold in the Puerto Rico market subject to the excise tax, constitute economic protectionism.

132. The competitive burden of the 2002 and 2004 amendments to the special exemption--enacted in the face of the 50% increase legislated in the excise tax on beer that affected all other commercially significant brewers that sell beer in the Puerto Rico market subject to the excise tax on beer--has fallen by design, in a predictably disproportionate way, on U.S. mainland brewers.

133. The 2002 and 2004 amendments to the special exemption handicap off-island producers by artificially encouraging production by the local brewer and causing locally produced beer to have a larger share of the beer market in Puerto Rico and U.S. mainland brewers to have a smaller share of the beer market in Puerto Rico.

134. In all of these ways, the 2002 and 2004 amendments to the special exemption treat beer produced in Puerto Rico differently from beer produced in the United States mainland and foreign countries in the levying of taxes, and discriminate against interstate commerce.

COUNT I

(Section 3 of the Federal Relations Act)

135. Plaintiff Coors incorporates each and every preceding allegation as if set forth herein.

136. Section 3 of the Federal Relations Act, 48 U.S.C. § 741a, conferring on the legislature of Puerto Rico specified authority with respect to levying internal-revenue taxes on "articles, goods, wares or merchandise," provides that, "no discrimination [may] be made between the articles imported from the United States or foreign countries and similar articles produced or manufactured in Puerto Rico."

137. The § 4023 special exemption violates Section 3 by discriminating against beer imported from the United States or foreign countries and in favor of beer produced or manufactured in Puerto Rico.

138. Coors is entitled to an injunction: (a) enjoining Secretary Méndez Torres, his agents, and his employees from allowing any taxpayer to pay only the reduced rate of tax specified in the § 4023 special exemption as amended; and (b) ordering Secretary Méndez Torres, his agents, and his employees to collect from all taxpayers, without exception and from

the date of this Court's Order, the resulting rate of the excise tax under § 4002 of the PRIRC, as amended.

139. Coors is entitled to a declaration that the § 4023 special exemption as amended violates the Federal Relations Act and therefore is unenforceable and invalid.

COUNT II

(Commerce Clause of the United States Constitution)

140. Plaintiff Coors incorporates each and every preceding allegation as if set forth herein.

141. Article 1, Section 8, Clause 3 of the United States Constitution expressly authorizes the Congress of the United States to "regulate commerce with foreign nations, and among the several States, and with the Indian tribes." Even where Congress has not legislated, the Commerce Clause confers a right on businesses to engage in interstate trade free from unduly restrictive state regulation. State laws violate the Commerce Clause if they provide for differential treatment of in-state and out-of-state economic interests that benefits the in-state interests and burdens the out-of-state interests. Laws whose purpose or intent is to discriminate in favor of local producers and against out-of-state producers violate the Commerce Clause. Laws that have the effect of discriminating in favor of local producers and discriminating against interstate commerce violate the Commerce Clause. Puerto Rico is subject to the constraints of the dormant Commerce Clause doctrine in the same fashion as the states.

142. The § 4023 special exemption as amended, by intentionally shielding a single in-state brewer from the 2002 50% increase in the excise tax, violates the Commerce Clause because its purpose and/or effect is to discriminate against interstate commerce in favor of Puerto Rico's one competitively significant local brewer, Cervecería India.

143. Coors, whose beer is not eligible for the special exemption, is hindered in competition to serve the Puerto Rico market and suffers economic and competitive injury.

144. Coors has no adequate remedy at law and thus is entitled to an injunction: (a) enjoining Secretary Méndez Torres, his agents, and his employees from allowing any taxpayer to pay only the reduced rate of tax specified in the § 4023 special exemption as amended; and (b) ordering Secretary Méndez Torres, his agents, and his employees to collect from all taxpayers, without exception and from the date of this Court's Order, the resulting excise tax under § 4002 of the PRIRC, as amended.

145. Coors is entitled to a declaration that the § 4023 special exemption as amended is unconstitutional and therefore unenforceable and invalid.

COUNT III

(42 U.S.C. § 1983)

146. Plaintiff Coors incorporates each and every preceding allegation as if set forth herein.

147. Defendant Juan Carlos Méndez Torres is the Secretary of the Treasury Department and a state actor.

148. Secretary Méndez Torres acts under color of state law in the administration and enforcement of the beer excise tax and the special exemption.

149. As set forth in full above, administration and enforcement of the special exemption as amended deprives Coors of rights secured by Section 3 of the Federal Relations Act, 48 U.S.C. § 741a, and Article 1, Section 8, Clause 3 of the United States Constitution.

150. Coors is entitled to a declaration that Secretary Méndez Torres, sued in his official capacity as a state actor acting under color of state law, has deprived Coors of rights

secured by the Constitution and federal law in the administration and enforcement of the § 4023 special exemption as amended, and that the § 4023 special exemption as amended is unenforceable and invalid.

151. Coors is entitled to an injunction: (a) enjoining Secretary Méndez Torres, his agents, and his employees from allowing any taxpayer to pay only the reduced rate of tax specified in the § 4023 special exemption as amended; and (b) ordering Secretary Méndez Torres, his agents, and his employees to collect from all taxpayers, without exception and from the date of this Court's Order, the resulting excise tax under § 4002 of the PRIRC, as amended.

REQUEST FOR RELIEF

WHEREFORE, plaintiff respectfully requests that this Court:

(a) Issue an injunction: (1) enjoining Secretary Méndez Torres, his agents, and employees from allowing any taxpayer to pay only the reduced rate of tax specified in the § 4023 special exemption as amended; and (2) ordering Secretary Méndez Torres, his agents, and his employees to collect from all taxpayers, without exception and from the date of this Court's Order, the resulting excise tax under § 4002 of the PRIRC, as amended;

(b) Issue a declaratory judgment that the § 4023 special exemption as amended violates Section 3 of the Federal Relations Act, 48 U.S.C. § 741a, and the Commerce Clause of the Constitution of the United States;

(c) Award Coors its costs in this action;

(d) Award Coors its attorneys' fees in this action, pursuant to 42 U.S.C. § 1988; and

(e) Award Coors such other relief as is just and proper.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 17th day of November, 2006.

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JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

COORS BREWING COMPANY

(b) County of Residence of First Listed Plaintiff GOLDEN, COLORADO
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number) Pedro A. Jimenez
Adsuar Muñiz Goyco Seda & Perez-Ochoa, P.S.C.
PO Box 70294, San Juan, P.R. 00936 (787)756-9000

DEFENDANTS

JUAN CARLOS MENDEZ TORRES, SECRETARY OF THE TREASURY DEPT. OF THE COMMONWEALTH OF P.R.

County of Residence of First Listed Defendant SAN JUAN, P.RICO
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- XX 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury

PERSONAL INJURY
- ☐ 362 Personal Injury - Med. Malpractice
- ☐ 365 Personal Injury - Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 444 Welfare
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 440 Other Civil Rights

PRISONER PETITIONS
- ☐ 510 Motions to Vacate Sentence

Habeas Corpus:
- ☐ 530 General
- ☐ 535 Death Penalty
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition

FORFEITURE/PENALTY
- ☐ 610 Agriculture
- ☐ 620 Other Food & Drug
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 630 Liquor Laws
- ☐ 640 R.R. & Truck
- ☐ 650 Airline Regs.
- ☐ 660 Occupational Safety/Health
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Mgmt. Relations
- ☐ 730 Labor/Mgmt.Reporting & Disclosure Act
- ☐ 740 Railway Labor Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Empl. Ret. Inc. Security Act

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Sat TV
- ☐ 810 Selective Service
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 875 Customer Challenge 12 USC 3410
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 892 Economic Stabilization Act
- ☐ 893 Environmental Matters
- ☐ 894 Energy Allocation Act
- ☐ 895 Freedom of Information Act
- ☐ 900Appeal of Fee Determination Under Equal Access to Justice
- XX 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing **(Do not cite jurisdictional statutes unless diversity)**: 48 USC sec. 741(a) 28 USC secs 22 01-2202; 42 USC sec. 1983; US Const. Art 1 sec. 8 cl. 3

Brief description of cause: Challenge to sec. 4023 of the P.R. Internal Revenue Code for violation of the Federal Relations Act and Commerce Clause

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND $

CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE ______ DOCKET NUMBER ______

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # ______ AMOUNT ______ APPLYING IFP ______ JUDGE ______ MAG. JUDGE ______