

**COMMONWEALTH OF PUERTO RICO  
DEPARTMENT OF THE TREASURY**

Regulation to implement the provisions of Subtitle BB - Sales and Use Tax of Act No. 120 of October 31, 1994, as amended, known as the "Puerto Rico Internal Revenue Code of 1994", enacted pursuant to Section 2303 of the Code, which authorizes the Secretary of the Treasury to adopt the Regulations regarding the imposition, exemption, interpretation, administration, and collection of the sales and use tax; and to repeal Regulation No. 7201 of August 18, 2006 and Regulation No. 7230 of October 13, 2006.

**PREAMBLE**

Subtitle BB of the Puerto Rico Internal Revenue Code of 1994, as amended (Code), was added by Act No. 117 of July 4, 2006 (Act No. 117). Subtitle BB of the Code introduces a Sales and Use Tax (SUT) to Puerto Rico. The sales tax shall be collected and remitted to the Secretary of the Treasury (Secretary) by merchants who sell taxable items. On the other hand, the use tax shall be paid and remitted to the Secretary by any person who uses, consumes, or stores taxable items in Puerto Rico.

This Regulation includes the provisions of Subtitle BB of the Code and other additional provisions of the Code and provides, with the greatest possible level of detail, practical explanations and examples of transactions with the purpose of lending certainty regarding the application of the SUT. This Regulation does not intend to provide answers for every possible situation that could cause the responsibility to collect or pay the SUT. On some occasions, the Regulation's purpose shall be to give a clear indication of the criteria that shall be considered upon evaluation of the application of the SUT to certain transactions or industries.

The Statement of Motives of Act No. 117 provides that "it is necessary to state that, by establishing a SUT like the one proposed herein, the path is opened for the possibility of participating in the future in what is known as the 'Streamlined Sales and Use Tax Agreement'. Said agreement consists of a multi-jurisdiction pact between the states of the United States of America that arises from the observed increase in remote sales, such as catalog or Internet sales. The agreement promotes interstate cooperation for the collection of retail sales taxes originating from sellers residing outside the state."

The purpose of the aforementioned Streamlined Sales and Use Tax Agreement (SSUTA) is to solve many of the problems that, for decades, have been affecting the United States interstate commerce, which is subject to: (i) different jurisdictions responsible for administering the collection of taxes; (ii) lack of uniformity in tax bases; (iii) lack of uniformity in tax base items' definitions; (iv) decentralized registration systems; (v) several different state and local tax rates; (vi) lack of uniformity in the rules for determining the source of income; (vii) complexity in the administration of tax exemptions; (viii) complexity in the administration of different compliance rules; and (ix) complexity in tax remittance frequency.

The wording of Subtitle BB of the Code assumes a modern approach and follows the pattern provided by the SSUTA, both in the organization of its provisions, and in its technical language and basic purposes. However, the participation of the Commonwealth of Puerto Rico in the SSUTA will depend on the administration of all the sales taxes applicable in our jurisdiction being in substantial compliance with said agreement. The provisions of Subtitle BB of the Code and this Regulation have been designed to prevent the SUT from suffering the traditional complexities of sales and use tax systems, as described above, and their provisions, as appropriate, shall be interpreted so that the Commonwealth of Puerto Rico is not excluded from participating in such agreement in the future. This arrangement shall also allow the use of official interpretations or pronouncements regarding similar provisions of the SSUTA, or of state statutes, in interpreting the SUT.

## **CHAPTER I GENERAL PROVISIONS**

The definitions, words, terms, and phrases, as defined and used in this Regulation, shall be only for the purposes of this Regulation, of Subtitle BB of the Code, and of Sections 6188 and 6189 of the Code, unless it is specifically indicated or clearly derived from context.

### Articles 2301-1 to 2901-4

"Article 2301-1.- Definitions.- Subtitle BB of the Code emphasizes the definitions of the concepts that are essential to its implementation. In general, the paragraphs define concepts in their general form or application, and the subparagraphs and clauses may provide exceptions to said general application. Except when otherwise provided,

the analysis of exclusions shall be done individually. The fact that a product or item does not fall under an exclusion of a defined term shall not necessarily mean that such product or item shall be considered part of said defined term. Therefore, it shall be necessary to analyze the rest of the exclusions and definitions included in this Regulation to determine the proper classification.

(a) Foods and food ingredients.- (1) Substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, which are sold for ingestion by humans, and are commonly consumed for their taste or nutritional value, including spices and food seasonings. It shall be presumed that such substances are always acquired to be eaten or ingested by humans, although the purchaser may acquire them for other purposes. The nutrition facts labels, or those that list the ingredients of a product, whether or not they are required by law, will not be the determining factor for a product to be considered food or food ingredients, although they help in the determination. Likewise, the fact that a product can be ingested and acquired for its good taste, will not determine if it will be considered as food and food ingredients.

The provisions of this subparagraph (1) are illustrated with the following examples:

Example 1: Ice, although it may be acquired to keep other products cold, shall be presumed to be acquired for consumption and, therefore, shall be considered food and food ingredients.

Example 2: Pumpkins, although they may be acquired to be carved and used for decoration, shall be presumed to be acquired for consumption and, therefore, shall be considered food and food ingredients unless they are already carved and decorated when sold.

Example 3: Cough lozenges, toothpaste, or the liquids or mint strips used to help eliminate bad breath, although they are ingested and may be acquired for their good taste, shall not be considered foods and food ingredients.

(2) The term "foods and food ingredients" shall exclude the products listed below:

(i) diet supplements, as such term is defined in paragraph (qq) of this article ;

(ii) alcoholic beverages .- Regardless of what is established in Subtitle D of the Code, the term "alcoholic beverages" means beverages that are suitable for human consumption, which contain at least one-half (1/2) of one (1) percent of alcohol by volume, and which are meant to be sold as liquids to be ingested. In the case of beverages that contain or exceed the alcohol by volume limit indicated above, but whose purpose is not to be sold as alcoholic beverages, as indicated on their label or other promotional document, they shall not be considered alcoholic beverages for the purposes of this exclusion.

The provisions of this clause (ii) are illustrated with the following example:

Example: "A" acquires vanilla extract and wine that is clearly labeled as cooking wine. Each of these products contains more than one-half (1/2) of one (1) percent of alcohol by volume. Neither one of these products shall be considered alcoholic beverages, regardless of whether they could be considered as such under Subtitle D of the Code. In this case, both products shall be considered foods and food ingredients.

(iii) tobacco, as such term is defined in paragraph (ss) of this article, and the products derived from it;

(iv) candy, as such term is defined in paragraph (o) of this article;

(v) pastry shop items.- The term "pastry shop items" means any confection or combination of flour, sugar, or other products to produce, among others, cakes or pies, turnovers, donuts, tarts, biscuits, bagels, croissants, danish, and cookies or crackers. The term "pastry shop items" shall exclude foods commonly known as "bakery items", which are made exclusively of flour mixed with water and salt which, after it is kneaded and fermented by the yeast, is oven-baked in different forms and sizes (as, for example, bread and soda crackers), except when these foods are combined with other ingredients such as cinnamon, raisins, nuts, and fruits, among others. A pastry shop item shall be considered as such regardless of its state, whether it is frozen, refrigerated, uncooked, or cooked.

The provisions of this clause (v) are illustrated with the following examples:

Example 1: Mr. "P" purchased sliced bread and fruit bread in convenience store "Q". The fruit bread shall be considered a pastry shop item, while the sliced bread is a bakery item and is excluded from said definition, and is considered food and food

ingredient.

Example 2: Mrs. "S" visits pastry shop "R" every morning. "R" has eating utensils and napkins available for its customers. "S" buys French bread and raisin nut bread. The raisin nut bread shall be considered a pastry shop item. In this case, the French bread shall be considered prepared food. To determine whether a food is prepared food, the three factors included in paragraph (b) of this article shall be considered and, as indicated in subparagraph (3) of said paragraph, French bread shall be considered prepared food because "R" has eating utensils and napkins available for its customers.

Example 3: Mrs. "T" purchased a loaf of French bread at bakery "P". "P" does not have eating utensils or napkins available for its customers. The loaf of French bread shall be considered a food and food ingredient.

(vi) carbonated beverages.- The term "carbonated beverages" means carbonated drinks or sodas, as well as the extracts or syrups used in soda fountains (fountain syrups) which are used as mixers to prepare them, except for malt; and

(vii) prepared foods, as such term is defined in paragraph (b) of this article.

(b) Prepared foods.- To determine if a food is considered prepared food, the three factors listed below shall be considered. They shall be applied hierarchically. First, it shall be determined if the food is a prepared food in accordance with subparagraph (1). If, in accordance with subparagraph (1), it cannot be determined whether a food is a prepared food, then the rest of the subparagraphs shall be considered in their respective order. Prepared foods are:

(1) foods sold hot or heated by the seller. The term "hot" means any temperature that is higher than the room temperature of the establishment where the foods are sold.

The provisions of this subparagraph (1) are illustrated with the following examples:

Example 1: A purchaser acquires a frozen pizza at a fast food establishment. The seller heats the pizza before giving it to the purchaser. Said pizza shall be considered prepared food.

Example 2: The same facts as in Example 1, except that the purchaser, after paying for the pizza, heats it in a microwave oven provided by the seller. This pizza shall not be considered prepared food under subparagraph (1) of this paragraph. However, the determination of whether or not a food is prepared food shall consider the three factors included in this paragraph (b) and, as indicated below, said pizza shall be considered prepared food under subparagraph (3) of this paragraph if the establishment where the product is sold normally has eating utensils available for consumers;

(2) two or more foods or food ingredients that are mixed or combined by the seller to be sold as only one item or product. This subparagraph excludes foods that are merely cut, repackaged, or pasteurized by the seller, and eggs, fish, beef, poultry, and foods that contain said foods uncooked and require cooking by the consumer, as recommended by the Food and Drug Administration in Chapter 3, part 401.11 of the Food Code, to prevent food-borne diseases.

The provisions of this subparagraph (2) are illustrated with the following examples:

Example 1: A seller, upon request of a purchaser, prepares a ham and cheese sandwich with salad on whole wheat bread. Said sandwich shall be considered prepared food.

Example 2: A purchaser acquires a can of spaghetti and meatballs from the canned goods section of a supermarket. Said can was mixed and prepared by a third party, not by the supermarket. Hence, it shall not be considered prepared food.

Example 3: A purchaser acquires a pound of ham cut in slices and packaged by the meat department of a supermarket. Said pound of ham was only sliced by the merchant and shall not be considered prepared food.

Example 4: A purchaser acquires a ham and cheese-stuffed chicken breast that was prepared in the meat department of a supermarket, and is uncooked. Said chicken breast requires cooking by the purchaser and, therefore, shall not be considered prepared food; or

(3) foods sold with eating utensils, including plates, knives, forks, spoons, glasses, cups, napkins, or straws. The term "plate" does not include a container or package used to carry the food. A food shall be considered sold with eating utensils

when the seller normally has utensils available in the establishment for consumers or purchasers to use.

The provisions of this subparagraph (3) are illustrated with the following examples:

Example 1: A purchaser acquires a coleslaw salad, a chicken breast, and a soda at a fast food establishment that normally has a counter with eating utensils and napkins available for consumers to use. Said salad was not mixed by the seller, and is not served hot. However, the salad, as well as the chicken breast, shall be considered prepared food because the establishment has eating utensils and napkins available for the consumer.

Example 2: A purchaser acquires fruits and vegetables in the supermarket's fruit and vegetable section. Said fruits and vegetables shall not be considered prepared foods merely because the "deli" section of said supermarket has eating utensils available for consumers to use.

Example 3: A purchaser acquires a carton of milk, a bottle of water, and sliced bread at a gas station's convenience store. Said products shall not be considered prepared foods under subparagraph (3) of this paragraph merely because the gas station's convenience store has eating utensils available for consumers to use.

(c) Storing or storage.- The concept of storing or storage, for the purposes of the use tax provided in Section 2402 of the Code, includes keeping or retaining tangible personal property in Puerto Rico, to be used or consumed in Puerto Rico, or for any purpose, excluding the inventory of raw materials and of merchandise for sale during the ordinary course of business in Puerto Rico or abroad. The term "storing or storage" excludes the aging of distilled spirits under control of the Commonwealth of Puerto Rico, performed in accordance with the provisions of Subtitle D of the Code. Also, said term does not include keeping or retaining in Puerto Rico tangible personal property acquired before November 15, 2006, and which has been subject to payment of the general excise tax provided in Section 2015(a) of the Code, even if such property is going to be used or consumed in Puerto Rico by the person keeping or retaining it, provided that it is not part of the inventory of raw materials and merchandise for sale during the ordinary course of business.

The provisions of this paragraph (c) are illustrated with the following examples:

Example 1: A corporation acquires spare parts for its machinery from a seller located outside Puerto Rico, and stores them in Puerto Rico before using them. Said storage of parts shall be considered storage for the purposes of the tax imposed in Section 2402 of the Code.

Example 2: A household appliances store acquires refrigerators and stores them until it sells them in the ordinary course of its business. Said storage of inventory for sale during the ordinary course of business shall not be considered storage.

(d) Taxable year.- The calendar year, or the person's fiscal year. The person shall use the same taxable year to determine his or her tax liability under all the provisions of the Code. A person shall not have one taxable year for income tax purposes and another taxable year for the SUT. Therefore, a change in the year for income tax purposes will constitute a change in the taxable year for the SUT.

(e) Item.- Any object, artifact, good, or thing, regardless of its shape, matter, or essence, and regardless of its name. The term "item" may be used in Subtitle BB of the Code and this Regulation as a synonym for the term "product."

(f) Lease or rental.- (1) Any transfer of possession or control of tangible personal property or real property for a fixed or undetermined term, in exchange for cause or consideration. A lease or rental may include future options to purchase or an extension of its term. The term "lease or rental" shall include payment for the use of a property leased or rented by an entity regulated by the Commissioner of Financial Institutions.

(2) The term "lease or rental" does not include:

(i) the transfer of possession or control of property under a security or financing agreement that requires the transfer of title upon completion of the required payments.

The provisions of this clause (i) are illustrated with the following example:

Example: An individual acquires an automobile and finances the purchase through a conventional auto loan. Once the individual has complied with all the required payments during the complete loan term, and it is settled, the title deed of the automobile will be conveyed from the lending financial institution to the individual. Said



transaction shall not be considered a lease or rental;

(ii) the transfer of possession or control of property under an agreement that requires the transfer of title upon completion of required payments, and the purchase option price does not exceed the greater of one hundred (100) dollars or one (1) percent of the total required payment.

The provisions of this clause (ii) are illustrated with the following example:

Example: An individual leases an automobile from a financial institution for a predetermined term and, upon completion of the required payments, has the option of acquiring the automobile's title by paying one (1) dollar. Said transaction shall not be considered a lease or rental, it shall be considered a financing;

(iii) providing tangible personal property along with an operator for a fixed or undetermined period. A condition of this exclusion is that the operator is needed for the equipment to perform as designed. For the purposes of this clause, an operator must provide other services in addition to maintaining, inspecting, or installing the tangible personal property for its use.

This clause requires that both conditions be met. The first condition requires that the operator be needed for the equipment to perform as designed. The equipment may not be used if it is not operated by the lessor or its representative. The second condition establishes that the operator shall provide other services apart from the maintenance, inspection, or installation of equipment. If both conditions are met, the transaction shall not be considered a lease or rental; it shall be considered another type of service.

The provisions of this clause (iii) are illustrated with the following example:

Example: An individual rents a special digger for a period of one (1) week to excavate a pit where he will install a swimming pool in his home. Said digger must be operated by a representative of the lessor. Therefore, this transaction shall not be considered a rental, but another type of service;

(iv) lease or rental of properties subject to the Room Occupancy Tax established by the Puerto Rico Tourism Company, including hotels, condohotels, apartment hotels, all-inclusive hotels, small hotels, guesthouses, motels, and short-term supplementary boarding, as such terms are defined in Article 2 of Act No. 272 of September 9, 2003, as amended;

(v) lease or rental of properties owned by the Puerto Rico Industrial Development Company or its succeeding entity; and

(vi) financial lease or rental that constitutes a sale pursuant to paragraph (ww) of this article, and the financial leases or rentals that comply with the requirements set forth in Section 1(c) of Act No. 76 of August 13, 1994, as amended.

In short, for a transaction to be considered a lease or rental, the following shall occur: a transfer of possession or control of a property and a payment for cause or consideration by the lessee to the lessor. In a lease or rental, there cannot be a transfer of title of the property that is supposed to be leased or rented.

(3) As established in paragraphs (ww) and (xx) of this article, certain transfers of possession or control of tangible personal property or real property considered lease or rental under this paragraph shall be susceptible to "sale" or "retail sale", as the corresponding payments are made. On the other hand, as established in paragraph (pp) of this article, certain transfers of possession or control of tangible personal property or real property, whether or not they are considered lease or rental under this paragraph, shall be considered services rendered. The consideration of these transactions as sale or services rendered shall not affect the classification of said transactions as lease or rental in accordance with the provisions of this paragraph.

(4) For the purposes of this paragraph, the term "lease or rental" shall not be used in reference to the generally accepted accounting principles.

(g) Reserved

(h) Reserved

(i) Delivery charges.- Charges made by the seller of tangible personal property for the handling and delivery of tangible personal property to a location designated by the purchaser of tangible personal property, including, but not limited to, transportation, shipping, postage, handling, and packaging.

If the shipment consists of taxable tangible personal property only, the delivery charge shall be included as part of the sales price. However, if the shipment consists of exempt tangible personal property only, then the delivery charge shall not be part of the sales price.

In the case of a combination of exempt tangible personal property and taxable tangible personal property, the seller shall include the delivery charges in the sales price. However, the seller may, insofar as possible, allocate the delivery charges between the taxable tangible personal property and the exempt tangible personal property by using:

(1) a percentage based on the total sales price of the taxable personal property compared to the total sales price of all the tangible personal property included in the shipment; or

(2) a percentage based on the total weight of the taxable tangible personal property compared to the total weight of all the tangible personal property included in the shipment.

Once the charges are allocated to the taxable tangible personal property and the exempt tangible personal property, the seller shall include in the sales price the percentage of the delivery charge corresponding to the taxable tangible personal property. The percentage of charges allocated to the exempt tangible personal property shall not be part of the sales price. The seller may use any of the two aforementioned criteria to allocate the delivery charges between the taxable and exempt tangible personal property provided that, once the criterion to be used is chosen, it is applied consistently for such ends.

(j) Merchant or retailer.- (1) In general.- Every person in the business of selling taxable items in Puerto Rico shall be considered a merchant. Also, any person who, in the ordinary course of business, has the obligation to file Form AS 2915.1, Sales and Use Tax Monthly Return (Monthly Return), to comply with the obligation to either collect and remit the sales tax, or to pay the use tax (monthly or with a different periodicity), as provided in Sections 2404, 2405, and 2604 of the Code, shall be considered a merchant. For these purposes, any natural or juridical person who wishes to carry out or carries out business of any kind in Puerto Rico shall be considered a merchant.

(2) Multilevel marketer.- Subject to compliance with the provisions of this subparagraph, every person who sells tangible personal property through a network of independent distributors who resell such tangible personal property to a user in Puerto

Rico, or for the personal or commercial use of said independent distributors, shall be considered a merchant. The type of person who carries out business in the above described manner shall be named, for the purposes of this Regulation, a multilevel marketer.

For the purposes of this subparagraph, the term "independent distributor" means both an individual who acquires from a multilevel marketer tangible personal property to be sold to a consumer in Puerto Rico, using as a base the sales price suggested by the multilevel marketer from which the property was acquired, and an individual who is authorized to sell tangible personal property from a multilevel marketer to a consumer in Puerto Rico, using as a base the sales price suggested by the multilevel marketer.

A multilevel marketer may request from the Secretary, subject to the terms and conditions set forth herein, that the independent distributors who are part of his or her sales network not be considered merchants for the purposes of collection and remittance of the SUT. If such request is granted, none of the independent distributors of the multilevel marketer shall be considered a merchant merely for being part of a distribution network of said multilevel marketer. If such request is not granted, each independent distributor of a multilevel marketer shall be considered a merchant.

An independent distributor of a multilevel marketer can be, at the same time, a merchant registered in the Merchants' Registry and the titleholder of a Certificate of Exemption, enabling him or her to issue a Certificate for Exempt Purchases in the purchase of tangible personal property for resale. However, the multilevel marketer who obtains an agreement with the Secretary by virtue of this subparagraph shall consistently and uniformly apply the provisions for the payment and report of the SUT for the sales made to all its independent distributors.

The determination that a multilevel or direct sales business may remit the SUT in representation of its independent distributors shall be made through the presentation of a closing agreement with the Secretary, pursuant to the provisions of Section 6126 of the Code, in which the following shall be established:

(i) the multilevel marketer shall be considered a merchant for the purposes of Subtitle BB of the Code and shall be registered in the Merchant's Registry, as provided in Article 2801(a)-1 of this Regulation. The independent distributors shall not be

considered merchants and shall not have the obligation to register in the Merchant's Registry because of the sales of tangible personal property of the multilevel marketer.

(ii) the obligation to collect the sales tax shall fall on the multilevel marketer, and not on the independent distributors, as provided in Article 2405-1 of this Regulation. The multilevel marketer shall collect the SUT over the suggested sales price of the taxable item, as provided in Article 2401-1 of this Regulation;

(iii) the multilevel marketer shall comply with the obligation to file the Monthly Return and, as may be the case, the Sales and Use Tax Annual Return (Annual Return), as provided in Articles 2602(a)-1 and 2603-1 of this Regulation, respectively;

(iv) the obligation to remit the sales tax and the use tax, as such term is defined in paragraph (vv) of this article, to the Secretary, shall fall on the multilevel marketer, and not on the independent distributors, as provided in Article 2604-1 of this Regulation.

(v) the multilevel marketer shall be entitled to claim the credits, refunds, and deductions provided in Articles 2701(a)-1 to 2705-1 of this Regulation, as applicable, whenever:

(A) there is a return of tangible personal property either to the multilevel marketer directly, or to the independent distributor;

(B) an account receivable becomes a bad debt;

(C) the SUT is paid incorrectly or in excess; or

(D) any other event occurs which requires an adjustment, as set forth in the closing agreement with the Secretary;

(vi) the multilevel marketer shall provide to its independent distributors a letter or certification identifying them as independent distributors of the multilevel marketer authorized to collect the sales tax for every sale of tangible personal property to a final consumer;

(vii) at the Secretary's request, the multilevel marketer shall provide a list of all the independent distributors whose sales are covered by the terms of the agreement between the multilevel marketer and the Secretary, including the name, address, and social security number of each one of them; and

(viii) the multilevel marketer shall provide any other information that the Secretary may request to that effect.

Said closing agreement shall be requested by letter addressed to the Assistant Secretary for Internal Revenue Area, which shall be accompanied by a draft of the requested agreement and the complementary documents required herein.

(3) Sales representatives, factory representatives, or commission agents.- Sales representatives, factory representatives, or commission agents shall be considered merchants. For these purposes, a sales representative, factory representative, or commission agent is an independent businessperson who establishes an agency agreement with a principal or grantor, is granted (exclusively or not) a sales territory or market within Puerto Rico, and solicits business or carries out business transactions in the name of such principal. In general, a sales representative, factory representative, or commission agent promises to make a reasonable effort and to act with due diligence in creating or developing a favorable market for the products sold by the principal, directed at capturing clientele to offer a product or service marketed by him or her in Puerto Rico, in exchange for payment of a previously agreed commission or remuneration.

(4) Nexus.- The factors indicated below shall be considered to determine whether a person is considered to be in the business of selling taxable items in the Commonwealth of Puerto Rico or not; in other words, if there is a nexus between a merchant and the Commonwealth of Puerto Rico. These criteria shall be equally applicable when determining if there is a nexus between a merchant and a municipality. In such case, the determination shall be made by substituting the phrase "Puerto Rico" with "municipality", as required. The existence of a nexus with the Commonwealth of Puerto Rico or a municipality is one criterion (the other one being the source of income of the transaction) of the two-prong test to determine the obligation of said merchant to collect the SUT at the state level, as established by Subtitle BB of the Code, or the municipal level, as authorized by Sections 6188 and 6189 of the Code, and required by a municipal ordinance approved to that effect.

To determine if a nexus has been created with Puerto Rico, sufficient to require compliance with the provisions of Subtitle BB of the Code, the following factors shall be considered:

- (i) if the merchant has establishments or offices in Puerto Rico;
  - (ii) if the merchant has employees, agents, or representatives in Puerto Rico, who solicit business or carry out business transactions in the name of said retail seller;
  - (iii) if the merchant owns tangible personal property or real property in Puerto Rico;
  - (iv) if the merchant creates a nexus with Puerto Rico in any way, including, but not limited to the execution of purchase contracts in Puerto Rico, direct marketing or purchases by mail, radio, distribution of unsolicited catalogs, through computers, television, or any other electronic means, or advertisements in magazines or newspapers, or other means;
  - (v) if there is an agreement or reciprocity with another jurisdiction of the United States, and said jurisdiction uses its taxing authority and its jurisdiction over the merchant in support of Puerto Rico's authority;
  - (vi) if the merchant accepts, expressly or implicitly, the tax levied by Subtitle BB of the Code; and
  - (vii) if the merchant has sufficient connection, or a relationship, with Puerto Rico or its residents of some sort, but not those described in clauses (i) through (vi), with the purpose or objective of creating a sufficient nexus with Puerto Rico to impose on the merchant the responsibility of collecting the SUT.
- (k) Purchaser.- A person who acquires a taxable item.
- (l) Consumption.- The concept of consumption, for the purposes of the use tax provided in Section 2402 of the Code, consists in the loss of tangible personal property, except for raw materials, because of its deterioration or wear and tear. The term includes the removal from inventory of tangible personal property acquired for resale for situations such as deterioration or wear and tear, and situations that are not:
- (1) the sale, as such term is defined in paragraph (ww) of this article;
  - (2) the situations described in subparagraphs (2) and (5) of paragraph (vv) of this article; and
  - (3) the involuntary conversion of tangible personal property due to hurricanes, earthquakes, fires, landslides, floods, or other acts of God, or as a result of vandalism or malicious damage where there is no guilt or negligence of the taxpayer, as evidenced by a

complaint or claim filed to such effect, stating the damages caused.

All the tangible personal property that is consumed shall be subject to the use tax established in Section 2402 of the Code, using fifty (50) percent of the sales price of such tangible personal property as a base.

The provisions of this paragraph (l) are illustrated with the following example:

Example: An auto parts seller acquired parts for resale five (5) years ago for a total price of five thousand (5,000) dollars. The seller had to dispose of one fourth (1/4) of the parts because they were rusty. That disposal was not carried out because of any of the situations described in subparagraphs (2) and (5) of paragraph (vv) of this article. Said parts shall be considered consumed by the seller and shall be subject to the use tax. The seller shall use a base of six hundred twenty-five (625) dollars  $((5,000 \div 4) \times 0.50)$  to compute the SUT.

(m) Department.- The Department of the Treasury.

(n) Admission fees.- (1) Includes the amount of money paid for:

(i) admitting one person or vehicle with people inside it into any place of entertainment, sports, or recreation;

(ii) the privilege of entering or remaining in any place of entertainment, sports, or recreation, including, but not limited to movie theaters, theaters, open theaters, shows, exhibitions, games, races, or any place where the fee is charged through the sale of tickets, entrance fees, seat charges, charges for exclusive area, season tickets fees, participation charges, or other charges;

(iii) the receipt of any thing of a measured value in the admission or entrance or duration of stay or accommodation in any location of an exhibition, entertainment, sport, or recreation; and

(iv) the fees and charges paid to private clubs and membership clubs that provide recreation facilities, including, but not limited to golf, tennis, swimming, sailing, athletic canoeing, exercise and physical exercise facilities, except those that do not operate for profit, and the exercise facilities property of, or operated by, any hospital.

The provisions of this clause (v) are illustrated with the following example:

Example: Mr. "V" is a member of museum "G". "G" is a nonprofit organization with income tax exemption pursuant to the provisions of Section 1101 of the Code. The



annual fee that "V" pays to "G" shall not be considered an admission fee.

Any merchant who is a promoter of public events, as such term is defined in Act No. 182 of September 3, 1996, as amended, and its corresponding regulation, who sells any of the admission fees set forth in clauses (i), (ii), and (iii) of this subparagraph, shall notify to the Public Events Promoter Services Office (OSPEP, its Spanish acronym), no less than ten (10) days before the day when ticket sales begin, the date, time, and place where the public event will take place. Likewise, the merchant shall have the obligation to submit to such Office the total issuance of tickets to be used at said public event for inspection and approval.

(2) The term "admission fees" excludes the following:

(i) the amount of money paid to admit one person or vehicle to the collective transportation systems provided by the Commonwealth of Puerto Rico, such as the Metropolitan Bus Authority, the Ports Authority, the Department of Transportation and Public Works, or by their operators or subcontractors, including persons certified by the Commonwealth of Puerto Rico, its agencies or instrumentalities, to offer such services. In accordance with this provision, the services that may be considered auxiliary to the services of the Metropolitan Bus Authority, such as the services of taxis, shopping cars, or common carriers duly authorized by the Commonwealth of Puerto Rico, shall be excluded from the term admission fees;

(ii) the fees charged by the ticket office or for ticket services. The ticket service fees that are not included in the admission fees stated on an admission ticket, shall be identified separately on the ticket as taxable services; and

(iii) the portion of the entrance price of an admission fee which may be considered a donation or charitable gift. In accordance with clause (iv) of subparagraph (2) of paragraph (ww) of this article, except when previously authorized by the Secretary, the portion of the entrance price that can be attributed to a donation or charitable gift shall be presumed to not exceed seventy-five (75) percent of the entrance price for such event.

(o) Candy.- A preparation of sugar, honey, and any other natural or artificial sweetener combined with chocolates, fruits, nuts, or other ingredients or flavorings used to create bars, drops, or pieces. The term "candy" shall not include a preparation

containing flour that requires no refrigeration. The fact that an item is not considered candy shall not necessarily mean that the item is considered food and food ingredient. It shall be necessary to analyze the rest of the definitions included in this article to determine the proper classification.

The provisions of this paragraph (o) are illustrated with the following examples:

Example 1: A chocolate bar that contains a cookie and requires no refrigeration shall not be considered candy, it shall be considered a pastry shop item.

Example 2: A chocolate bar with nuts shall be considered candy.

(p) Reserved

(q) In Puerto Rico.- Within the territorial boundaries of the Commonwealth of Puerto Rico, including the navigable waters that extend twelve (12) nautical miles from the coastal limits of the Commonwealth of Puerto Rico, as provided by Presidential Proclamation No. 5928 of September 27, 1998.

(r) State.- Any state of the United States, the District of Columbia, or a possession of the United States.

(s) Commonwealth of Puerto Rico.- Departments, agencies, administrations, bureaus, boards, commissions, offices, public corporations, public instrumentalities, and municipalities of the Commonwealth of Puerto Rico, including the Legislative Branch and the Judicial Branch. In addition, as established in Act No. 104 of June 29, 1955, as amended, known as the "Act on Claims and Suits against the Commonwealth," the term "Commonwealth of Puerto Rico" shall include any official, agent, or employee of the State, or any other person while acting in his or her official capacity, and within the scope of his or her duties, position, or employment. The agents or persons operating or acting in the name or on behalf of the Commonwealth of Puerto Rico, excluding its officials and employees, shall request and obtain from the Secretary a certification identifying them as such.

(t) Sales tax.- The tax levied by Subtitle BB of the Code for the sale, use, consumption, or storage of a taxable item in Puerto Rico. This term, insofar as it is not incompatible with the text of the provisions of the Code or this Regulation, shall include the use tax.

(u) Use tax.- The tax levied by Subtitle BB of the Code for the use, consumption, or storage of a taxable item.

(v) Machinery and equipment used in manufacturing.- The term "machinery and equipment used in manufacturing" shall include:

(1) machinery and equipment, accessories, and spare parts used exclusively in the manufacturing process, or in the construction or repair of vessels inside or outside the premises of a manufacturing plant. The phrase "used exclusively in the manufacturing process, or in the construction or repair of vessels" does not include machinery, apparatus, equipment, or vehicles used in all or in part of the administrative or commercial division of the industry. However, in cases where they are also used in at least ninety (90) percent of the manufacturing process, or in the construction or repair of vessels, they shall be considered to be "used exclusively in the manufacturing process, or in the construction or repair of vessels". The phrase "outside the premises of a manufacturing plant" shall only apply to the repair of vessels;

(2) machinery, trucks, or hoists used exclusively and permanently in the transportation of raw materials inside the manufacturing plant's circuit;

(3) all machinery, equipment, accessories, and spare parts used to perform the manufacturing process, or which the manufacturing plant has to acquire in compliance with a federal or state law or regulation in order to operate a manufacturing plant;

(4) all the equipment and machinery required to comply with environmental, safety, and health requirements; and

(5) the fuel used by the manufacturing plant in the cogeneration of electrical power, as well as the chemical materials used by the manufacturing plant for the treatment of used waters.

(w) Vending machine.- A machine, operated by coins, bills, credit or debit cards, tokens, coupons, or a similar device, in which tangible personal property is sold. The term "vending machine" includes, but is not limited to, machines that sell foods, carbonated beverages, alcoholic beverages, and cigarettes.

Coin or token-operated machines that require a license in accordance with Subtitle B of the Code, except for cigarette vending machines, because these sell

tangible personal property, shall not be considered vending machines.

(x) Tangible advertising material.- Includes displays, containers for displays, brochures, catalogs, price lists, point of sale advertising, technical manuals, marketing material, and any type of promotional item commonly meant for advertising, promotional, or marketing purposes, such as T-shirts, caps, sweatshirts, mugs, pens, key chains, calendars, commercial flyers, and note pads, among others.

(y) Raw material.- Any product in its natural form that is derived from agriculture or extraction industries, by-product, residual product, or partially elaborated or finished good, to be transformed or integrated by a manufacturing plant into finished goods different from the product considered raw material, or used in the manufacturing process of such products, including, but not limited to, the electrical power production process.

The phrase "used in the manufacturing process of such products" includes the packaging materials used in the manufacturing process, such as pallets, trays, cartons, bottles, containers, adhesive, metallic, or plastic tapes used exclusively in the manufacturing process, among others. Also, in the case of plants that manufacture clothing, the following packaging materials shall be considered raw materials: plastic or wire hangers, pins, safety pins, paper or cardboard dividers, plastic or paper bags, size tags, among others.

(z) Wholesaler.- Any person who sells taxable items consisting of tangible personal property to merchants for resale.

(aa) Medicaments.- The term "medicaments" may be used in Subtitle BB of the Code and this Regulation as a synonym for the term "medicines". Medicament means a compound, substance, or preparation, and any component of the compound, substance, or preparation:

(1) recognized in the "United States Pharmacopeia", in the "Homeopathic Pharmacopeia of the United States", or in the "National Formulary"; or

(2) meant to be used in the diagnosis, cure, mitigation, treatment, or prevention of diseases; or

(3) intended to affect the structure or any function of the body.

Dietary supplements, alcoholic beverages, and foods and food ingredients shall not be considered medicaments. The foods used in an enteral feeding shall be considered medicaments.

(bb) Business.- (1) Any activity that any person carries out with the intention of deriving income or benefits, direct or indirectly, for profit or not for profit. For the purposes of this paragraph, the phrase "intention of deriving income or benefits" shall be understood to include the intention to operate any type of entity without creating an operational deficit. The term "business" is not limited to the sale or rental of tangible personal property, or the sale of taxable services, admission fees, and bundled transactions.

(2) A person who has sold taxable items occasionally or sporadically shall not be considered to be engaged in business for the purposes of the SUT. An occasional or sporadic sale occurs when the person is not engaged in a trade or business in Puerto Rico, but performs one or several taxable item sales transactions that are insufficient in number, scope, magnitude, or character to have the obligation to register in the Merchant's Registry established in Section 2801 of the Code. An occasional or sporadic sale is also considered to occur when the seller, even if he or she is a merchant engaged in a trade or business in Puerto Rico, is not engaged in the business of selling said taxable items in the ordinary course of his or her business.

To determine that a sale is occasional or sporadic, the following factors shall be considered, none of which shall be the determining factor by itself:

(i) the number of transactions made by the person in a twelve (12) month period;

(ii) the scope or magnitude of the transactions made by the person. This shall be evaluated, among others, by the frequency or time proximity with which the transactions are made and their monetary value; and

(iii) the nature of the transactions made by the person. This shall be evaluated considering the relationship between the potentially occasional or sporadic sale and the person's regular activities.

The provisions of this subparagraph (2) are illustrated with the following examples:

Example 1: A homemaker sells a sofa to her neighbor. The homemaker had acquired the sofa to use it at home, and she is not engaged in the trade or business of selling furniture. Therefore, this sale shall be considered an occasional or sporadic sale.

Example 2: An insurance company sells a used computer to a college student. The insurance company had acquired the computer to use it in its business, and it is not engaged in the trade or business of selling computers. Therefore, this sale shall be considered an occasional or sporadic sale.

Example 3: A musical instrument store sells only one grand piano during the year. Since said piano was acquired for resale, and said store is engaged in the trade or business of selling musical instruments, this sale shall not be considered an occasional or sporadic sale.

(cc) Operator.- Any person who owns one or more vending machines with the purpose of generating sales from them, and who replenishes the tangible personal property inventory to be sold in said machine, and removes or credits the funds received, or originating from, the sales of said vending machine.

(dd) Taxable item.- Tangible personal property, taxable services, admission fees, and bundled transactions.

The term "taxable item" excludes:

(1) any activity or plan in which there is a payment or a promise of payment in exchange for the opportunity to participate for a prize through chance or luck, including bets, raffles, bingos, or any type of legally authorized private or public lottery, such as "Lotería Tradicional", "Lotería Electrónica", and all other lotteries managed or authorized by the Commonwealth of Puerto Rico;

(2) the payment of maintenance fees made by residents to a residents association or a titleholders' association;

(3) the payment of fees made by individuals to:

(i) a professional association, business league, chambers of commerce, real estate boards, or boards of trade;

- (ii) a labor union, association, or brotherhood; and
- (iii) to private clubs and membership clubs except those described in clause (iv) of subparagraph (1) of paragraph (n) of this article;
- (4) the stamps issued by professional associations;
- (5) the stamps issued by the Commonwealth of Puerto Rico and the Federal Government;
- (6) those items which, pursuant to Section 2406 of the Code and Article 2406-1 of this Regulation, have had the tax included in the sales price, so that the SUT is not levied over said total price;
- (7) air and maritime transportation tickets for passengers; and
- (8) human blood, tissues, and organs.

The provisions of this paragraph (dd) are illustrated with the following examples:

Example 1: Developer "A" sold a residence to family "B". Since real property is not a taxable item for the purposes of Subtitle BB of the Code, the sale of the residence by "A" to "B" shall not be subject to the SUT.

Example 2: Company "C" sells pre-designed homes. It sold to family "D" the architectural plans and construction materials to build a residence. The sale of the construction materials by "C" to "D" shall be considered a sale of tangible personal property. On the other hand, the sale of the architectural plans shall be considered a sale of a service, and shall be subject to the provisions related to taxable services, as such term is defined in paragraph (pp) of this article.

(ee) Person.- An individual, partnership, joint venture, association, corporation, limited liability company, limited liability partnership, estate, trust, trustee, union or other entity, employee-owned corporation, or a group or combination acting as a unit. It also includes any government and its political subdivisions, municipalities, state agencies, bureaus or departments, and public corporations.

(ff) Manufacturing plant.- Shall include every plant that assembles or integrates tangible personal property, or that transforms raw materials into finished goods that are substantially different from their original condition, including printing companies. The form or composition of the raw material used in the manufacturing process shall undergo a substantial physical change in order for the facility to be

considered a manufacturing plant.

Likewise, every company subject to any Puerto Rico tax or industrial incentive legislation that has been or is effective, or which replaces it, shall be considered a manufacturing plant.

(gg) Purchase price.- Means the same as sales price.

(hh) Sales price.- (1) The total amount of consideration paid in cash, credit, property, or service, in a sale of taxable items. In the case that the consideration is paid with tangible personal property, the sales price shall be the market value of the property used as payment at the time of the transaction. On the other hand, in the case that the consideration is paid with services, the sales price shall be the price that the merchant would charge for his or her services in the ordinary course of business. The sales price shall include the following:

(i) the cost of the property sold, including excise taxes and taxes levied by the Code on such property;

(ii) the cost of materials, labor and service, interest, losses, transportation, taxes, and any other cost incurred by the seller;

(iii) the charges billed by the seller for any service needed to complete the sale, other than delivery charges;

(iv) delivery charges attributed to the taxable tangible personal property, in accordance with paragraph (i) of this article ;

(v) installation charges;

(vi) the value of exempt personal property given to the purchaser, when taxable and exempt tangible personal property have been sold in a bundled transaction, as said term is defined in paragraph (uu) of this article; and

(vii) gratuities and other charges made by a merchant as part of the sales price of the taxable item. Gratuities and other charges related to the sale of taxable items shall only be included in the sales price when they are obligatory.

The provisions of this clause (vii) are illustrated with the following examples:

Example 1: A group of four (4) people had lunch at a restaurant and included a voluntary gratuity of fifteen (15) percent in the check. This voluntary gratuity shall not be included in the sales price.



Example 2: Restaurant "R" included in the check of a party of four (4) an obligatory gratuity of fifteen (15) percent. Since the gratuity was automatically imposed and reflected on the check, it shall be included in the sales price.

(2) Sales price shall exclude the following items:

(i) the discounts allowed by the seller and used by the purchaser at the time of sale, including cash discounts, coupons, rebates, or any other mechanism that reduces the sales price, except those through which the seller receives a rebate from a third party. It shall be considered that the seller receives a rebate from a third party if the following requirements are met:

(A) the seller receives consideration from a third party and said consideration is directly related to a sales price reduction;

(B) the seller has the obligation to pass the sales price reduction on to the purchaser;

(C) the amount of the consideration is fixed and determinable at the time of the sale to the purchaser; and

(D) one of the following criteria is met:

(I) the purchaser presents to the seller a coupon, certificate or other document issued by a third party, to claim a discount, and said third party shall reimburse to the seller the value or amount represented by said document;

(II) the purchaser identifies him or herself to the seller as a member of a group or organization entitled to a price reduction or discount; or

(III) the price reduction or discount is separated and identified separately as a third party discount on the invoice, or on the coupon, certificate or other document presented by the purchaser.

The provisions of this clause (i) are illustrated with the following examples:

Example 1: Purchaser "C" acquires from seller "V" a computer whose regular price is eight hundred (800) dollars, but which was on sale at a special price of seven hundred (700) dollars. "C" does not give "V" a coupon, certificate or other document to claim the discount. The sales receipt for this transaction shall reflect a sales price of seven hundred (700) dollars and a SUT of thirty-eight (38) dollars and fifty (50) cents.

Example 2: The same facts as in Example 1, except that "C" presents to "V" a coupon for one hundred (100) dollars at the time of acquiring the computer. "V" will not receive a discount from a third party. The sales receipt for this transaction shall reflect a sales price of seven hundred (700) dollars and a SUT of thirty-eight (38) dollars and fifty (50) cents.

Example 3: The same facts as in Example 2, except that "V" will receive a one hundred (100) dollar from the computer's manufacturer. The sales receipt for this transaction shall reflect a sales price of eight hundred (800) dollars and a SUT of forty-four (44) dollars. The sales price shall be satisfied by the presentation of the one hundred (100) dollar coupon and seven hundred forty-four (744) dollars in cash or another payment method acceptable to the seller.

Example 4: Seller "V" offers a ten (10) percent discount to the members of professional association "A". Each member shall present his or her "A" membership card to claim the discount. If "A" reimburses "V" for the discount given to each member of the professional association, the sales price shall not be reduced by the amount of the discount. On the other hand, if "A" does not reimburse "V" for the discount given to each member of the professional association, then the sales price shall be reduced by the amount of the discount.

Example 5: Seller "V" offers to the general public a discount card through which the purchaser becomes a "preferred customer". The purchaser presents this card at the moment of buying and receives certain discounts. The discounts are itemized in the sales receipt given to the purchaser. "V" does not receive any rebates from manufacturers or third persons. The sales price, for SUT purposes, shall be reduced by such discounts.

Example 6: The same facts as in Example 5, except that the seller receives a rebate as a result of agreements with various manufacturers. The sales price, for SUT purposes, shall not be reduced by such discounts.

(ii) the interest and finance charges, if they are shown separately in the invoice or any similar document given to the purchaser;

(iii) any tax or charge levied by law directly on the consumer, if the amount is shown separately in the invoice or any similar document given to the purchaser,

including 911 emergency service charges, and charges related to the Universal Service Fund, which are shown on some telecommunications invoices. Also, the taxes billed to a consumer as part of a "roaming" charge when the consumer is outside the local service area, shall not be included in the sales price.

On the other hand, any tax levied on the seller, such as property tax, shall be included in the sales price, as indicated in clause (ii) of subparagraph (1) of this paragraph, even if the seller chooses to identify said tax or charge separately in the invoice given to the purchaser;

(iv) the value assigned to the goods received by the merchant in "trade-in" as credit or partial payment of the taxable item's sales price.

The provisions of this clause (iv) are illustrated with the following example:

Example: Purchaser "C" gives seller "V" a used computer as a trade-in for the purchase of a new computer priced at one thousand (1,000) dollars. "V" assigns a value of two hundred (200) dollars to the computer received in trade-in. The sales receipt for this transaction shall reflect a sales price of eight hundred (800) dollars and a SUT of forty-four (44) dollars.

If "V" subsequently sells the computer received in trade-in for two-hundred and fifty (250) dollars, the sales price of said computer, for SUT purposes, shall be two-hundred and fifty (250) dollars; and

(v) all the services that are part of the sale, such as warranty service and extended warranty service, insofar as they are considered insurance under paragraph (pp)(2)(vii) of this article. The fact that a service is not included in the sales price does not mean that it is not a taxable service.

The provisions of this clause (v) are illustrated with the following examples:

Example 1: "A" purchases a computer with a one-year factory warranty for parts and labor. Six (6) months after the purchase, the computer broke down. Company "B", located in Puerto Rico, provides the manufacturer's warranty services. "B" does not resell parts. "B" provides "A" repair services valued at three hundred (300) dollars (two hundred (200) dollars for parts and one hundred (100) dollars for labor), which were not invoiced to "A".

"A" shall not be subject to pay the SUT for the parts and labor. In addition, "B" shall not be subject to pay the use tax either, because it already paid it when it purchased the parts.

Example 2: The same facts as in Example 1, except that "B" is a reseller of parts. "A" shall not be subject to pay the SUT for the parts and labor. However, "B" shall be subject to the use tax for the parts, because it acquired them for resale, but used them in the repair services that it rendered.

Example 3: "C" purchased an automobile with a five (5) year factory warranty that covers parts. Two (2) years after the date of purchase, one of the window's motor broke. Company "D", which is located in Puerto Rico, provides the manufacturer's warranty services. "D" does not resell parts. "D" provides "C" repair services valued at four hundred (400) dollars (three hundred (300) dollars for parts and one hundred (100) dollars for labor). "D" charges "C" one hundred (100) dollars for labor.

"C" shall only be subject to pay the SUT for the labor. On the other hand, "D" shall not be subject to pay the SUT, because it already paid it when it purchased the parts.

(ii) Computer software.- A set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task or function. The term "computer software" refers to prewritten computer software which is not designed and developed by the author or creator following the specifications of a particular purchaser. If a computer program is substantially modified to the specifications of a particular purchaser, and the modification is invoiced separately, then said modification shall not be considered computer software.

(jj) Tangible personal property.- An item or personal property that can be seen, weighed, measured, felt, or touched, or that is, in any other manner, susceptible to the senses, or that is susceptible to appropriation, regardless of the means of delivery or transfer.

The provisions of this paragraph (jj) are illustrated with the following examples:

Example 1: Professor "C" acquired several books, including an audio book, in bookstore "D". "C" also downloaded a book from a web page. Both the books acquired by "C" at the bookstore and the book downloaded from a web page shall be considered

tangible personal property.

Example 2: Mrs. "E" acquired several music records through a catalog. "E" also downloaded several songs from a web page. Both the music records acquired through a catalog and the songs downloaded from the web page shall be considered tangible personal property.

(1) The term "tangible personal property" includes, but is not limited to:

(i) computer software, as such term is defined in paragraph (ii) of this article;

(ii) prepaid calling cards, including the purchase of additional minutes to recharge such cards;

(iii) prepaid cellular phones; and

(iv) motorcycles.

(2) The term "tangible personal property" excludes the following:

(i) money or money equivalents, stocks, bonds, notes, bills, mortgages, insurances, securities, or other obligations;

(ii) automobiles, truck tractors, buses, and trucks, as such terms are defined in Section 2011 of the Code;

(iii) intangibles;

(iv) gasoline, aviation fuel, gas oil, diesel oil, crude oil, partially-processed and finished products derived from oil, and any other hydrocarbon mixture, such as propane, butane, ethane, ethylene, propylene, butylene, and any combination thereof. However, partially-processed and finished products derived from oil that are not commonly identified as oil products after they are finished, shall be considered tangible personal property.

The provisions of this clause (iv) are illustrated with the following example:

Example: Construction Company "C" acquired asphalt to use it in a road construction. Said transaction shall be considered a purchase of tangible personal property. The asphalt, although it is a product derived from oil, shall be considered tangible personal property because, after it is finished, it is not identified as a product derived from oil;

(v) the electricity generated by the Puerto Rico Electric Power Authority or any other electricity-generating entity; and

(vi) the water sold as part of the ordinary aqueduct and sewer service, supplied through the pipes or cistern trucks of the Puerto Rico Aqueduct and Sewer Authority, or any other entity authorized to supply water.

(kk) Real property.- The land, subsoil, projection, buildings, objects, machinery, equipment, and devices attached to the building or the land in a way which indicates permanency. For these purposes, the objects, machinery, equipment, devices, and plants permanently attached to the building, and which can not be separated from the building without destroying or damaging the structure or property, shall be considered buildings. The term "real property" is synonymous with real estate and immovable goods.

The provisions of this paragraph (kk) are illustrated with the following examples:

Example 1: Company "X" purchased an elevator to install it in "X's" headquarters building. The purchase of this elevator shall be considered a purchase of tangible personal property by "X" because, at the time of the purchase, the elevator was not attached to the building. Once the elevator is installed and attached to the building, then it shall be considered part of the real property.

Example 2: Company "W" acquired a building that had four (4) elevators already installed. The purchase of this building, including the elevators, shall be considered a purchase of real property by "W".

(ll) Prosthesis.- (1) A replacement, corrective, or supportive device, including its repair and replacement parts, used over, on, or inside the body to:

- (i) artificially replace a missing portion of the body;
- (ii) prevent or correct physical deformities or malfunctions; or
- (iii) support a weak or deformed portion of the body.

(2) Subject to what is established in subparagraph (1), the term "prosthesis" shall include the following:

- (i) frames and corrective lenses for eyeglasses;
- (ii) items worn upon their person by the deaf, blind, or maimed to supplement the deficiencies of such persons;

(iii) items expressly designed to supplement the physical or physiological deficiencies of persons who are crippled, blind, disabled, cardiac patients, deaf, mute,

deaf-mute, and maimed;

- (iv) corrective contact lenses; and
- (v) dental prostheses, such as braces, dental bridges, and others.

The provisions of this paragraph (II) are illustrated with the following examples:

Example 1: Doctor "D" prescribes to patient "P" contact lenses that will help with his visual problems. Such contact lenses shall be considered prostheses.

Example 2: Mrs. "S" acquires non-prescription color contact lenses at an optical shop. Such contact lenses shall not be considered prostheses.

Example 3: "B" fractured his ankle playing basketball. "B" acquires a pair of crutches to help him walk. Such crutches shall not be considered prostheses.

Example 4: Mrs. "S's" daughter suffers from diabetes. "S" acquires a machine to measure her daughter's blood sugar levels at home, so she can determine if she needs to inject her with insulin. Such machine shall not be considered a prosthesis.

(mm) Telecommunications services.- (1) The term "telecommunications services" shall include the following services:

(i) the transmission or conveyance through electronic means of voice, video, audio, or any other type of information or signal to a fixed point, or between two fixed points;

(ii) the 800 number calls that allow a user to call to one point without any charges. This service is usually marketed under the toll free numbers "800", "855", "866", "877" and "888", and any other number designated by the Federal Telecommunications Commission;

(iii) the 900 number calls that allow the subscribers of the service to call and receive a prerecorded message or live service. Charges for this service do not include collection services provided by the seller of the telecommunications services to the subscriber, and charges for any goods or services sold to the person who makes the call. The 900 numbers service is typically marketed under the name "900" and any other subsequent number designated by the Federal Telecommunications Commission;

(iv) fixed wireless services that provide the transmission of radio waves between two fixed points;

(v) payment for the use of beepers or paging services that allow the transmission of coded messages with the purpose of activating a beeper or paging service. Said transmission could include messages or sounds;

(vi) prepaid calling services that allow exclusive access to telecommunications services that have been paid for in advance for the origination of calls using an access number or code, whether manually or electronically dialed, and which are sold in units or for their monetary value, which decreases by use. As provided in paragraph (jj) of this article, prepaid calling cards shall be considered tangible personal property.

(vii) prepaid wireless calling services which allow the right to use the prepaid wireless telecommunication services that are sold in units or for their monetary value, which decreases by use. As provided in paragraph (jj) of this article, prepaid cellular phones shall be considered tangible personal property;

(viii) private communication services that entitle the subscriber to exclusive or priority access or use of a communications channel or group of channels between two points;

(ix) calls generated through coin operated telephones that provide coin operated telephone services;

(x) other value added data management services, excluding voice transmission, in which computer applications are used to act on the data content, form, or codification of information for purposes other than the transmission or conveyance of said information; and

(xi) mobile wireless transmission services.

(2) The term "telecommunications services" shall exclude the services or charges listed below. The fact that a service or charge does not qualify under one of these exclusions shall not necessarily mean that such service or charge is considered a telecommunications service. Likewise, the fact that a service or charge is not considered a telecommunications service shall not necessarily mean that such service is not taxable. Therefore, it shall be necessary to analyze the rest of the definitions included in this article to determine the proper classification. The term "telecommunications service" shall exclude the following:



(i) processing of data or information that allows the generation, acquisition, storage, processing, retrieval, and delivery of information through an electronic transmission to a purchaser, when the main objective of such transaction is the acquisition by said purchaser of the information thus managed or processed;

(ii) installation and maintenance of wiring or equipment in the client's facilities;

(iii) tangible personal property use charges;

(iv) advertising, including, but not limited to, the yellow pages of the phone book;

(v) billing and collection to third persons;

(vi) Internet access, including access through digital lines (Digital Subscriber Line or DSL). Internet access charges shall not be considered telecommunications services or any other type of taxable service;

(vii) audio or video programming services for radio or television programs, regardless of the means, including transmission, conveyance and routing of such services;

(viii) incidental services, as such term is defined in subparagraph (3) of this paragraph;

(ix) digital sale or transfer of products, including software, music, video, and reading material, among others;

(x) service charges required by any local or federal law, as such term is defined in subparagraph (4) of this paragraph; and

(xi) services provided to other telecommunications companies.

(3) Incidental services are those services associated to providing telecommunications services, including the following services:

(i) conference calls (conference bridging services) in which two or more parties participate in a joint video or voice transmission, and which may include providing a connection phone number. Conference calling services do not include the telecommunications services used to access the conference call;

(ii) detailed billing (detailed telecommunications billing service) to provide details or information related to the calls made from a telephone number, and other details related to the telephone bill;

(iii) telephone directory (directory assistance) in which the user is provided with the telephone number or the address of a specific location;

(iv) vertical service, in which the user is provided with one or more advanced service options, such as caller identification (caller id), management of multiple calls, among others; and

(v) message retrieval (voice mail service) in which the user may receive, store, and send messages. Message retrieval services do not include any vertical services required from the subscriber in order to use the message retrieval service.

(4) The term "service charges required by any local or federal law" shall include the following:

(i) 911 emergency services; and

(ii) universal service fund.

(nn) Designated professional services.- All the services rendered by the following professionals, when such professionals are regulated by Examining Boards assigned to the Puerto Rico State Department, or by the Supreme Court of Puerto Rico, as applicable:

(1) agronomists;

(2) architects and landscape architects;

(3) Certified Public Accountants;

(4) realtors, sellers, and real estate companies;

(5) professional draftspersons;

(6) professional real estate evaluators;

(7) geologists;

(8) engineers and surveyors; and

(9) attorneys.

When the designated professional services are provided by a company or firm, it shall first be determined whether or not such company or firm is commonly considered to be comprised of one of the professional categories mentioned above in order to determine whether or not it provides a designated professional service.

The provisions of this paragraph (nn) are illustrated with the following examples:

Example 1: Attorney "X" billed her client "Z" for legal representation at an administrative hearing before an agency, for the research and writing of a legal memorandum, for the service of making various copies of the memorandum, for the service of translation of the memorandum, and for the service of transcribing the deposition given by a witness. All the services provided by "X" shall be considered designated professional services.

Example 2: Citizen "Y" hires the services of a licensed electrician. Even though said licensed electrician has a license registered with the Examining Board of Licensed Electricians of the Puerto Rico State Department, the services provided by said electrician shall not be considered designated professional services.

Example 3: Engineer "J" provides construction services to "V". "J" has a PhD in civil engineering, but does not have a license registered with the Examining Board of Engineers and Surveyors of the Puerto Rico State Department. The services provided by "J" shall not be considered designated professional services.

Example 4: The firm "ABC" is engaged in the trade or business of providing accounting and payroll services. Although some of the employees of "ABC" are certified public accountants, "ABC" is not a certified public accountants firm. Therefore, the services provided by "ABC" shall not be considered designated professional services.

Example 5: The law offices of "XYZ" are engaged in the trade or business of providing legal services. Although some of the employees of "XYZ" are not attorneys under the regulations of the Supreme Court of Puerto Rico, "XYZ" is commonly considered a law office under the regulations of the Supreme Court of Puerto Rico. Therefore, the services provided by "XYZ" shall be considered designated professional services.

(oo) Cable or satellite television services.- Means video programming distribution by cable or satellite, including the installation, rental, or sale of related equipment.

(pp) Taxable services.- (1) All services rendered to any person, including, but not limited to:

(i) storage of tangible personal property, excluding motor vehicles and all types of foods.

The provisions of this clause (i) are illustrated with the following examples:

Example 1: Citizen "A" stores his furniture in a mini-storage facility property of company "B", while he remodels his residence. The storage services that "B" provides to "A" are considered taxable services.

Example 2: Motor vehicle dealer "J" stored a vehicle fleet in a warehouse property of company "K". The storage services provided by "K" to "J" are not considered taxable services.

Example 3: Supermarket "R" stores some of its products from the meat department in freezers property of "S". The storage services provided by "S" to "R" shall not be considered taxable services.

(ii) lease or rental, or transfer of possession or control of property when:

(A) said property is conveyed together with an operator for a fixed or indeterminate period, as provided in paragraph (f)(2)(iii) of this article; or

(B) it transfers to the lessee the possession or control of tangible personal or real property temporarily without contemplating to later sell such property to the lessee (i.e., that it does not contain an option to purchase); or

(C) it allows the return of the possession or control of the tangible personal or real property without facing a penalty for the cancellation of the contract; or

(D) the risk of losing such property remains with the lessor, and he or she is required to keep such property duly insured and free of encumbrances.

The provisions of this clause (ii) are illustrated with the following examples:

Example 1: Attorney "C" rented a mailbox at a private postal services establishment to receive his personal mail. The mailbox rental for personal use is considered a taxable service.

Example 2: Engineer "D" rented a beach apartment for six (6) months for his personal use. Such rental does not contemplate the later sale of the real property, allows for the return of possession or control of the property without any penalties, and keeps the risk of loss of property with the lessor. Therefore, such rental is considered a taxable service because the apartment is not the main residence of "D";

- (iii) computer programming, including modifications to prewritten software;
- (iv) installation of tangible personal property by the seller or a third person;

The provisions of this clause (iv) are illustrated with the following examples:

Example 1: Citizen "F" took his automobile to an auto parts and installation shop to buy four new tires and have them installed. The shop billed him separately for the cost of the four tires and for the installation service. The sale of the four tires is considered a sale of tangible personal property and the installation service is considered a taxable service.

Example 2: Citizen "G" acquired an air conditioning unit for his residence at a home appliance store. "G" hired a refrigeration technician to install the unit at his residence. The refrigeration technician used his materials and tools to install the unit and billed "G" for such labor. The installation services rendered by the refrigeration technician are considered taxable services.

- (v) repair of tangible personal property;

The provisions of this clause (v) are illustrated with the following examples:

Example: Citizen "H" took his automobile to an auto body shop to repair the driver-side door, which had been damaged in an accident. The body shop worker used materials, paint, tools, and provided labor to repair the door, then billed "H" for the work done. The automobile repair is considered a taxable service.

(vi) telecommunications services, as such term is defined in paragraph (mm) of this article; and

(vii) cable or satellite television services, as such term is defined in paragraph (oo) of this article.

(2) The term "taxable services" shall exclude the following:

(i) services rendered to:

(A) a person engaged in a trade or business or carrying out activities for the production of income; or

(B) a person not engaged in a trade or business or carrying out activities for the production of income when, under a warranty or extended warranty contract, a person engaged in trade or business is legally liable for providing such service to the person who receives it.

For said services not to be considered taxable services, the following requirements shall be met:

(I) both the merchant seller and the merchant purchaser shall be registered in the Merchants' Registry, as provided in Section 2801 of the Code and in Article 2801(a)-1 of this Regulation. When the seller or the purchaser of the services is a person who is not engaged in a trade or business in Puerto Rico, and does not have the obligation to register in the Merchants' Registry, said merchant shall certify with a statement to that effect that the services were rendered by or to a person engaged in a trade or business or carrying out activities for the production of income, as applicable; and

(II) the payments for such services are ordinary and necessary expenses paid or incurred by the purchasing merchant in the operation of the trade or business, or for the production of income, directly deductible under Section 1023(a)(1) or (2) of the Code, as applicable, or through an allowance for depreciation, depletion, exhaustion, wear and tear, or obsolescence under Section 1023(k) of the Code.

For the purposes of this clause (i), the merchant seller shall document the exempt nature of each transaction by obtaining Form AS 2916.1, the Certificate for Exempt Purchases, as such term is defined in Article 2407-1(d) of this Regulation, filled out and signed by the purchaser, and shall keep said Certificate in his or her files for a period of six (6) years, from and after the date of the transaction. When the service is provided on a continuous basis in the ordinary course of business, it shall not be necessary to request the Certificate for Exempt Purchases for each transaction.

The provisions of this clause (i) are illustrated with the following examples:

Example 1: Security Company "K", which is registered in the Merchants' Registry, provides security services on a continuous basis to supermarket "L", which is also registered in the Merchants' Registry. Security services are an ordinary and necessary expense for "L". Therefore, the services provided to "L" by "K" are not considered taxable services. "K" shall request the Certificate for Exempt Purchases from "L" only once, and shall keep it in its files for a period no shorter than six (6) years.

Example 2: Mrs. "A" is registered in the Merchants' Registry as a lessor of commercial properties. "A" owns two (2) commercial properties, which she rents on an

annual basis. "A" contracted the fumigation services of "B", who is also registered in the Merchants' Registry, to fumigate the two (2) commercial properties. Such fumigation services are an ordinary and necessary expense for the production of income of "A". Therefore, the services that "B" provided to "A" are not considered taxable services. "B" shall request a Certificate for Exempt Purchases from "A", and shall keep it in its files for a period no shorter than six (6) years.

Example 3: Mr. "C" is the general manager of company "M", which is registered in the Merchants' Registry. "M" contracts the services of company "N", which is also registered in the Merchants' Registry, for the maintenance and cleaning of the common areas of the headquarters building. "C" also contracts the services of "N" for the maintenance and cleaning of his residence. The maintenance and cleaning services are an ordinary and necessary expense for "M" and, therefore, are not considered taxable services. However, since "C" is not a merchant registered in the Merchants' Registry, and the services provided by "N" in "C's" residence constitute a personal expense, such services are considered taxable services. The fact that the total payment is made by "M" directly to "N" shall not mean that all the services shall be considered excluded services as services rendered from business to business.

Example 4: "A" is a merchant in the business of repairing air conditioners. "B" is not a merchant and owns an air conditioner. "C" is a merchant who is engaged in the trade or business of subscribing extended warranty contracts covering the type of air conditioner that "B" has. "B" has an extended warranty contract with "C".

"B's" air conditioner breaks down and he calls "C" to validate the extended warranty. "C" contracts "A" to repair "B's" air conditioner.

The services rendered by "A" for "B's" benefit under the extended warranty contract subscribed by "C" shall be considered payments made for services rendered from business to business because "C" has an obligation under the extended warranty contract to provide such service.

Example 5: "A" is a merchant in the business of repairing automobiles. "B" is not a merchant and owns an automobile. "C" is a merchant in the business of subscribing property and contingency insurance contracts for automobiles. "B" has a property and contingency insurance contract with "C".

"B" is involved in an automobile accident and calls "C" to validate the insurance. "B" contracted "A" to repair the automobile.

The services rendered by "A" for "B's" benefit under the property and contingency insurance contract that he subscribed with "C", shall not be considered services rendered from business to business because "C" does not have an obligation under the property and contingency insurance contract to provide the repair services, his obligation is to compensate "B" for his economic loss.

(ii) designated professional services, as such term is defined in paragraph (nn) of this article;

(iii) services provided by the Commonwealth of Puerto Rico and by the Government of the United States, including the following:

(A) the sewer service provided by the Puerto Rico Aqueduct and Sewer Authority or any other entity authorized to provide said service; and

(B) the collective transportation services provided by the Commonwealth of Puerto Rico, such as the Metropolitan Bus Authority system, the Ports Authority, the Department of Transportation and Public Works, or by an operator or subcontractor of them, including persons that are certified by the Commonwealth of Puerto Rico, its agencies or instrumentalities, to offer such services, in the same way that they are excluded from the term "admission fees;"

The provisions of this clause (iii) are illustrated with the following examples:

Example 1: Municipality "X" provides garbage collection and recycling services to its residents. Since "X" is a municipality of the Commonwealth of Puerto Rico, the garbage collection and recycling services provided by it are not considered taxable services.

Example 2: The Puerto Rico Conservatory of Music offers educational music courses for children, young adults, and adults of the community in general. The Puerto Rico Conservatory of Music is an instrumentality of the Commonwealth of Puerto Rico and, therefore, the services provided by it are not considered taxable services.

(iv) educational services, including registration costs and other charges related to providing such services. However, the materials used to provide such services shall not be considered educational services if they are shown separately in



the invoice or similar document given to the purchaser.

The term "educational services" refers only to the following:

(A) courses offered by entities regulated by the General Education Council or the Council on Higher Education;

(B) courses or tutoring offered by teachers who are certified by the Department of Education of Puerto Rico to teach the subject on which the tutoring is given; and

(C) continued education courses offered by professional colleges or associations;

(v) interests and other charges for the use of money;

(vi) the service charges provided by financial institutions as defined in Section 1024(f)(4) of the Code. The term "service charges" does not include the lease or rental rate of a property charged by a person who is regulated by the Commissioner of Financial Institutions. For the purposes of this clause, the term "financial institution" means a person doing business in Puerto Rico who is:

(A) a commercial bank or trust company;

(B) a private bank;

(C) a savings and loan association or a building and loan association;

(D) an insured institution as defined in section 401 of the National Housing Act;

(E) a savings bank, industrial bank, or other financial or savings institution;

(F) brokerage or securities house;

(G) institutions involved in mortgage loans, commonly known as "mortgage banks or mortgage brokers"; or

(H) any other entity organized or authorized to operate under the banking or financing laws of the Commonwealth of Puerto Rico, of the United States of America, of any state of the Union, or of a foreign country, including the subsequent laws;

(vii) insurance commissions and services provided by persons regulated by the Office of the Commissioner of Insurance of Puerto Rico. These services include the issuance of the following insurance contracts and the service charges for the issuance of these contracts:

- (A) life, health, disability, property, and contingency insurance;
- (B) warranty service and extended warranty service contracts;
- (C) title insurance policies;
- (D) reinsurances and surplus limit; and
- (E) credit insurance, annuities, and bonds;

(viii) health or medical hospital services. The term "health services" refers to the services offered by physicians authorized to practice medicine in Puerto Rico and by health professionals with licenses issued by the Office of Regulations and Licensing of Health Professionals ascribed to the Department of Health and the Board of Medical Examiners. The term "medical hospital services" refers to the services offered at health facilities certified by the Puerto Rico Department of Health, as established by Act No. 101 of June 26, 1965, as amended, known as the "Health Facilities Act", or any subsequent legislation, including hospitals, nursing homes, long-term care facilities, rehabilitation centers, and mental health centers, among others. The health or medical hospital services include, but are not limited to, the following services:

- (A) preventive services;
- (B) hospitalization services;
- (C) medical surgery services;
- (D) maternity services;
- (E) diagnostic tests services;
- (F) outpatient rehabilitation services;
- (G) emergency room services;
- (H) dental services;
- (I) ambulance services;
- (J) mental health services;
- (K) veterinary services; and

(L) all the services covered by Medicare, Medicaid, and the medical insurance card of the Government of Puerto Rico; and

(ix) services rendered by persons whose annual business volume does not exceed fifty thousand (50,000) dollars. For the purposes of this clause, the term "business volume" means the total sales, as such term is defined in Article 2602(a)-1(d)

of this Regulation, of any business (reduced by returns), the gross income received or derived from the rendering of any service or any other commercial activity, and the sales price of any property.

If a person is part of a controlled group, as defined in Section 1028 of the Code, the person's business volume shall be determined by considering the business volume of all the members of the controlled group. In the case of a person who is an individual, the business volume shall be determined by considering the business volume from all of his or her activities of trade or business or for the production of income. The phrase "activities of trade or business or for the production of income" does not include salaries, dividends, interest, or incidental capital gains.

The provisions of this clause (ix) are illustrated with the following examples:

Example 1: Employee "A" of company "B" earns a salary of forty thousand (40,000) dollars a year. Mr. "A" also owns a messenger service company, which makes thirty thousand (30,000) dollars a year. The annual business volume of "A" is thirty thousand (30,000) dollars, since his salary is not considered a part of his activities of trade or business or for the production of income. Therefore, the messenger services provided by "A" are not taxable services, since they do not exceed fifty thousand (50,000) dollars.

Example 2: Attorney "C" is a self-employed lawyer and derives forty thousand (40,000) dollars a year from his legal services. "C" also owns a vehicle repair shop which generates thirty thousand (30,000) dollars a year from the automobile repair services. The annual business volume of "C" is seventy thousand (70,000) dollars, since all of his activities are considered part of his activities of trade or business or for the production of income. Therefore, the auto repair services are taxable services, since the total annual business volume exceeds fifty thousand (50,000) dollars.

(qq) Dietary supplements.- Any product, other than tobacco, used to supplement a diet, and which:

- (1) contains one or more of the following ingredients:
  - (i) vitamins;
  - (ii) minerals;
  - (iii) herbs or other botanicals;

- (iv) amino acids;
- (v) dietary substances used to supplement a diet, increasing the total dietary consumption; or
- (vi) concentrates, metabolic substances, components, extracts; or
- (vii) the combination of any of these ingredients, consumed in tablets, capsules, powders, softgels, gelcaps, or in liquid form, or if not consumed in the aforementioned forms, they are not shown as a conventional food, and are not considered the only course of a meal or diet; and

(2) requires to be identified as a dietary supplement on the label, as provided by 21 C.F.R. §101.36. Dietary supplement packaging shall include the following information: "Supplement Facts," name and quantity of the dietary supplement, and a list of ingredients.

The following products, and any product containing a combination of them, which is identified as a dietary supplement, are examples of dietary supplements: vitamins, iron, calcium, folic acid, and zinc, among others.

(rr) Reserved

(ss) Tobacco.- Cigarettes, as such term is defined in Subtitle B of the Code, cigars, chewing or pipe tobacco, or any other product that contains tobacco, as such product may be defined in the future.

(tt) Reserved

(uu) Bundled transaction.- A transaction shall be considered a bundled transaction when it consists of the sale of two or more tangible personal properties or services, where the tangible personal properties or services are different and identifiable, and the tangible personal properties or services are sold at one non-itemized price. Every bundled transaction shall be considered a sale of taxable items. The fact that a transaction is not considered a bundled transaction shall not necessarily mean that such transaction is exempt.

(1) The term "different and identifiable tangible personal properties or services" excludes:

(i) packaging materials, such as containers, boxes, pallets, sacks, bags, and bottles, and other packaging materials which are included in retail sales but are

incidental or immaterial to the sale, such as wrapping paper, labels, instruction manuals, grocery sacks, shoeboxes, dry cleaning garment bags, postal service boxes and envelopes, among others; and

(ii) taxable tangible personal property obtained free of charge with the purchase of another property or service, when the sales price of the property or service acquired does not change with the inclusion of the property that is free of charge.

The provisions of this subparagraph (1) are illustrated with the following examples:

Example 1: A refrigerator distributor sells the refrigerators in boxes, protected with Styrofoam, over pallets, and sealed with adhesive tape. Such sales shall not be considered bundled transactions because the packaging material is not considered different and identifiable tangible personal property. The sale shall be considered the sale of a refrigerator.

Example 2: "R" acquires a toothbrush at a drugstore. The company that distributes toothbrushes is offering two (2) toothbrushes per package, for the price of one (1). Said transaction shall not be considered a bundled transaction because the toothbrush obtained free of charge is not considered different and identifiable tangible personal property.

(2) The term "one non-itemized price" excludes a price that is separately identified by tangible personal property or services in documentation made available to the purchaser, such as invoices, sales receipts, contracts, service contracts, lease or rental agreements, periodic notices of rates and services, price lists, in any other similar document.

The provisions of this subparagraph (2) are illustrated with the following example :

Example: Vehicle repair services shop "P" billed Mr. "H" for a total of three hundred (300) dollars for tire installation and alignment services. Although "P" did not provide a detail in the invoice, "H" requested to have four (4) tires of brand "X" installed, which according to "P's" price list, cost fifty (50) dollars each. Also, according to the services price list, "P" charges fifty (50) dollars for the alignment service and fifty (50) dollars for the tire installation service. Therefore, this transaction shall not be considered a bundled transaction because the three hundred (300) dollars are not

considered "one non-itemized price", but a transaction consisting of the sale of four (4) tires for two hundred (200) dollars, the alignment service for fifty (50) dollars, and the tire installation service for fifty (50) dollars.

(3) The following transactions shall not be considered bundled transactions:

(i) the sale of two or more tangible personal properties or services whose sales price is variable or negotiable based on the selection made by the purchaser of the properties or services included in the transaction. The fact that the sales price varies based on the selection of the purchaser, implies that the total sales price can be itemized for each tangible personal property or service sold; and the tax treatment afforded to each tangible personal property or service sold, whether taxable or exempt, shall be as corresponds to each; or

(ii) when the true object of the transaction is the sale of an exempt tangible personal property or an excluded service, for example:

(A) a sale of taxable tangible personal property together with an excluded service, where (I) the taxable tangible personal property is essential for the use of the exempt service, and it is provided exclusively in connection with the excluded service; and (II) the true object of the transaction is to provide the excluded service.

The provisions of this sub-clause (A) are illustrated with the following example:

Example: "X" provides shoe cleaning and polishing services. His annual business volume is fifteen thousand (15,000) dollars. Therefore, as established in Article 2301-1(pp) of this Regulation, such services are not considered taxable services. "X" charges five (5) dollars for polishing each pair of shoes. This price includes the application of various types of oils and polishers. The oils and polishers used by "X" to provide his services constitute tangible personal property that is essential for this type of service and is provided exclusively in connection with the shoe polishing service offered by "X". The true object of this transaction is providing shoe cleaning and polishing services for five (5) dollars, and not the sale of oils and polishers. Therefore, this transaction shall not be considered a bundled transaction;

(B) the sale of more than one service where:

(I) a taxable service is essential for the use or receipt of an excluded service;

(II) the taxable service is provided exclusively in connection with the excluded service; and

(III) the true object of the transaction is to offer the excluded service; and

(C) a transaction that includes both exempt and taxable tangible personal property, in which the purchase price or the sales price of the taxable property is immaterial.

(I) The term "immaterial" means that the purchase price or the sales price of the taxable tangible personal property does not exceed ten (10) percent of the total purchase or sales price of the bundled tangible personal properties; and

(II) The seller shall use either the purchase price or the sales price of the properties included in the transaction to determine whether the taxable tangible personal property is immaterial.

The provisions of this sub-clause (C) are illustrated with the following example:

Example: "P" purchases a fruit basket at a gift shop. The fruits are foods and food ingredients and, therefore, considered exempt tangible personal property. On the other hand, the basket is considered taxable tangible personal property. The sales price of the basket exceeds ten (10) percent of the total sales price. This transaction shall be considered a bundled transaction.

(vv) Use.- (1) The term "use" shall include the exercise of any right or power over a taxable item incidental to its ownership, or interest on it. The term also includes the storage or consumption of tangible advertising material imported to Puerto Rico. For the purposes of the obligations of tax payment, reporting, and remittance to the Secretary, it shall be understood that a taxable item is used on the date when it is used for the first time. In the case of taxable items that are acquired outside of Puerto Rico or manufactured in Puerto Rico, it shall be presumed that such taxable items have been used for the first time on the date of their introduction to Puerto Rico or the date of their purchase from the manufacturer in Puerto Rico.

(2) Removal of a taxable item from a merchant's inventory for any purpose other than resale shall be considered use by the merchant. This includes removals from inventory for:

(i) personal use;

- (ii) business use;
- (iii) distribution as samples or as promotional items; and
- (iv) distribution as donations or charitable gifts.

The provisions of this subparagraph (2) are illustrated with the following examples:

Example 1: "J" owns a toy store. The week before Christmas, "J" removes several toys from his inventory to give them to his children. Since "J" acquired said toys for resale, exempt from the SUT, and now he is removing them from the toy store's inventory for personal use, this removal shall be considered use by "J", and the base, for the purpose of computing the SUT, shall be the cost of the toys removed from inventory.

Example 2: Company "C" is in the business of distributing computers. "C" removes a computer from its inventory of merchandise for resale, to use it in its accounting department. Such removal from inventory shall be considered business use by "C", and the base shall be the cost of the computer removed from inventory.

Example 3: Company "L" is in the business of distributing beauty products. "L" removes several beauty products from its inventory and gives them to its clients as samples. Such removal from inventory shall be considered use by "L", and the base shall be the cost of the beauty products removed from inventory.

Example 4: "D" owns a sporting goods store. "D" removes several tennis rackets from his inventory and donates them to a junior tennis team. Since "D" acquired such rackets for resale, and is removing them from his inventory to make a donation, then this removal shall be considered use by "D", and the base shall be the cost of the tennis rackets removed from inventory.

Example 5: Company "P" provides consulting services. "P" acquires a printer from company "E", which is located in the United States. After receiving the printer, "P" remits the use tax to the Department. Several years later, "P" donates the printer to a college. Such donation does not constitute a removal from inventory because the printer was acquired to be used in "P's" business and "P" remitted the use tax to the Department. Therefore, such donation shall not be considered use by "P."



Example 6: "L" owns a ceramic tile store. On some occasions, "L" uses tiles from her inventory to display them in the store. Such display of tiles is not considered a removal from inventory, since "L" can later sell the tiles. Therefore, the display of samples shall not be considered use by "L".

(3) Transitory provision.- Taxable items that were acquired before November 15, 2006, which were subject to the general excise tax, and are removed from inventory between November 15, 2006 and November 14, 2007 for any use other than resale, shall not be considered used by the merchant. The merchant shall be responsible for keeping the documentation needed to evidence payment of the excise tax for the merchandise described herein.

(4) The removal of tangible personal property by a manufacturer from the inventory of raw materials, in-process or finished goods, for any purpose other than resale in the ordinary course of business, shall be considered use by the manufacturer.

This includes removals from inventory for:

- (i) personal or business use;
- (ii) distribution as samples or as promotional items;
- (iii) distribution as samples for clients' comments; and
- (iv) distribution as donations or charitable gifts.

The removal of tangible personal property from inventory excludes: the loss of raw materials in the regular manufacturing process; and the removal of raw materials or finished goods for design testing, quality control testing, or validation of compliance with any state or federal regulations' specifications or requirements.

(5) The disposal by a merchant of tangible personal property, in the ordinary course of business, for less than its cost, when such disposal responds to discounts allowed in exchange for subscribing a service contract, a maintenance contract, or other type of contract or service, whether or not it is related to said tangible personal property, shall be considered use of said tangible personal property by the merchant.

The provisions of this subparagraph (5) are illustrated with the following examples:

Example 1: Telecommunications company "T", as part of the marketing of its services, offers its clients a cellular phone for twenty-five (25) dollars, the cost of which

is two-hundred (200) dollars. Such transaction shall be considered use of the cellular phone by "T", and the base of the transaction shall be the cost of the cellular phone, two-hundred (200) dollars.

Example 2: Telecommunications company "S", as part of the marketing of its services, offers two (2) accessories free of charge to clients who acquire a cellular phone. Such transaction shall be considered use of the accessories by "S", and the base of the transaction, for the purpose of computing the SUT, shall be the cost of the accessories.

(6) Admission fees.- The term "use" includes disposal for promotional or marketing purposes, among others, of any admission fee, as such term is defined in paragraph (n)(1) of this article. The base for the transaction, for the purpose of computing the SUT, shall be what would have been the sales price of the admission fee.

(7) Maritime vessels or crafts and aircrafts, including those crewed by their owners.- The term "use" shall include the exercise of any right or power over a maritime vessel or craft or an aircraft in Puerto Rico, as such term is defined in paragraph (q) of this article, except for those vessels or crafts which, after analyzing the specific facts and circumstances, are understood to have not established a sufficient nexus in the jurisdiction to determine that they have been used in Puerto Rico or which, due to their use in interstate commerce, are not subject to pay the use tax in Puerto Rico. For the aforementioned analysis, the following criteria shall be considered. None of them shall be a determining factor when performing said analysis or impede the consideration of other relevant factors:

(i) when the stay in Puerto Rico is not longer than sixty (60) days; provided, however, that such period does not necessarily need to be consecutive, and thus, any stay occurring during the period of three hundred and sixty-five (365) days before the occurrence at hand shall be taken into consideration in determining such period;

(ii) when the owners are not Puerto Rico residents;

(iii) when the maritime vessel or craft or aircraft is in Puerto Rico only for tourism purposes or for repairs;

(iv) when the maritime vessel or craft or aircraft is registered outside Puerto Rico and is considered used in the jurisdiction of its registration for the purpose of taxes similar to the SUT;

(v) when the intention of the craft's user demonstrates that the craft is used in Puerto Rico in light of factors such as the purchase or rental of storage space for more than six (6) months at a port, registration of the craft with the local regulatory agencies (for example, the Department of Natural Resources), unequivocal comments or statements made by the person who introduced the craft expressing the intention to use the craft in Puerto Rico;

(vi) when Puerto Rico is considered the craft's port of origin; that is, if all its voyages (private or charters) begin and end in Puerto Rico; or

(vii) when Puerto Rico is considered the craft's port of documentation.

(8) The term "use" shall not include:

(i) the possession of a taxable item when said item has been introduced to Puerto Rico with the purpose of being an "object of commerce" in the ordinary course of business. For these purposes, the phrase "object of commerce" means the sale of a taxable item in Puerto Rico;

(ii) the use of taxable items that constitute regular travel clothing and equipment of the tourists or visitors that arrive to Puerto Rico;

(iii) the use of taxable items with an added value that does not exceed five hundred (500) dollars introduced by residents of Puerto Rico who arrive to Puerto Rico from abroad;

(iv) the use of taxable items introduced temporarily to Puerto Rico which are directly related to the production of films, construction, trade shows, workshops, conventions, or other purposes, and which are re-exported from Puerto Rico by the person who imported them;

(v) the use of taxable items acquired in an occasional or sporadic sale, as such term is defined in subparagraph (2) of paragraph (bb) of this article; and

(vi) the involuntary conversion of tangible personal property, due to the effects of hurricanes, earthquakes, fires, landslides, floods, or other acts of God, or as the result of vandalism or malicious damage where there is no guilt or negligence of the

taxpayer, as evidenced by a complaint or claim filed to such effect stating the damages caused.

(ww) Sale.- (1) The term "sale" shall include:

(i) any transfer of title or possession of taxable items, whether conditional, in installments, or in another form, in any manner or by any means, in exchange for cause or remuneration, including exchange, barter, and use license, among others.

The transfer of possession of taxable items (for example, lease or rental) included in this clause shall be such which complies with the following requirements:

(A) it is not a lease or rental included in the leases or rentals listed in paragraph (pp)(1)(ii) of this article;

(B) it constitutes an agreement for a fixed term (regardless of whether it can be extended or renewed) that imposes a penalty on the lessee for premature cancellation which may be computed based on the present value of the remaining unpaid installments, and which may or may not have a previously agreed calculation to adjust such penalty based on the value of the property;

(C) at the end of the agreement's initial fixed period, the lessee may acquire the property, continue or renew the term or conditions of the lease or rental, or return the property to the lessor;

(D) the lessee assumes the risk of loss of such property and is required to give maintenance to such property and keep it duly insured or free of encumbrances; and

(E) the lessee has the obligation to pay all the taxes attributed to the property, except for those that can be attributed to the lessor's income;

(ii) the production, manufacturing, processing, or printing of taxable items in exchange for cause or consideration for the purchasers who, directly or indirectly, provide the materials used in the production, manufacturing, processing, or printing;

(iii) providing, preparing, or serving in exchange for cause or consideration, any taxable items for consumption in or outside the premises of the person who provides, prepares, or serves such tangible personal property;

(iv) the transfer of taxable items requested by mail, Internet, or another means of communication, including the processing of such request or purchase order through a

sales representative, factory representative, or commission agent, to a merchant located in or outside Puerto Rico who receives the order and transports the property or delivers it to be transported, either by mail or another means of transportation, to a person in Puerto Rico; and

(v) the financial lease or rental that constitutes a purchase in accordance with the generally accepted accounting principles, except for those financial leases or rentals that meet the requirements set forth in Section 1(c) of Act No. 76 of August 13, 1994, as amended.

(2) The term "sale" shall exclude:

(i) the tax-free exchanges under Subtitle A of the Code;

(ii) the sale or exchange of all or substantially all the assets of a business, outside the ordinary course of business;

(iii) the disposal by a merchant of tangible personal property for less than its cost, in the ordinary course of business, when such reduction may be attributed to discounts allowed in exchange for subscribing a service contract, a maintenance contract, or other type of contract or service, whether or not it is related to said tangible personal property, insofar as such disposal is considered use under subparagraph (5) of paragraph (vv) of this article;

(iv) the sale of items or any material that evidences a donation or charitable gift, including the sale of prints, stickers, hearts, or other items of no commercial value which merely evidence a donation and, in the selling of admission fees for activities or shows benefiting a charitable organization, that portion of the price of the admission fee that may be considered a donation or a charitable gift. Except with previous authorization from the Secretary, it shall be presumed that the portion of the price for admission to such activities or shows that can be attributed to a donation or charitable gift shall not exceed seventy-five (75) percent of the entrance price for such activity. For these purposes, the term "charitable organization" refers to the "bona fide" nonprofit partnerships, associations, and groups registered as such in the Puerto Rico State Department, whose activities are geared towards promoting the general well-being of the community;

(v) the transfer of the title of ownership of tangible personal property from a seller/lessee to a purchaser/lessor and the subsequent lease of such tangible personal property from the purchaser/lessor to the seller/lessee, when such title of ownership transfer is done as part of a sale and lease-back transaction and complies with the following requirements:

(A) the seller/lessee has paid the corresponding sales tax or use tax on the tangible personal property; and

(B) the title transfer between seller/lessee and purchaser/lessor and the subsequent transfer of possession between purchaser/lessor and seller/lessee occurs within a period of ninety (90) days from the moment of the first functional use of the tangible personal property in the hands of the seller/lessee.

For the purposes of this clause, the term "seller/lessee" refers to a person who has acquired tangible personal property for his or her use, having paid the SUT, and who sells it to another person with the intention of reacquiring the same tangible personal property through a lease or rental contract described in clause (i) of subparagraph (1) of this paragraph. For the purposes of this clause, the term "purchaser/lessor" refers to a person engaged in, and duly authorized to exercise, the business of leasing or renting tangible personal property in Puerto Rico, and who acquires tangible personal property from another person with the intention of conveying its possession to the person from whom he or she acquired such property through a lease or rental contract described in clause (i) of subparagraph (1) of this paragraph.

(vi) occasional or sporadic sales, as such term is defined in subparagraph (2) of paragraph (bb) of this article; and

(vii) the reimbursable amount required as a deposit when registering to receive a service. If the deposit is not returned to the consumer, and is applied to the invoice for a service, then the deposit shall be considered a service and shall pay taxes in accordance with the nature of the service in question.

The provisions of this subparagraph (2) are illustrated with the following examples:

Example 1: Taxpayer "C" exchanges equipment he possessed for production use in his industry or business for another equipment of a similar nature and for the

same use. Such transaction shall not be considered a sale.

Example 2: Telecommunications company "T", as part of the marketing for its services, offers its clients a cellular phone for twenty-five (25) dollars, which costs two hundred (200) dollars. Such transaction shall not be considered a sale of a cellular phone; it shall be considered use by "T", as indicated in paragraph (vv) of this article.

Example 3: Telecommunications company "S", as part of the marketing for its services, offers its clients who buy a cellular phone, two (2) accessories free of charge. The sale of the cellular phone shall be considered a sale. However, disposal of the accessories shall not be considered a sale, it shall be considered use by "S", as indicated in paragraph (vv) of this article.

Example 4: Mr. "B" acquired a ticket for a movie premiere benefiting a charitable organization in Puerto Rico. The ticket entrance price was one hundred (100) dollars. From the total entrance price, seventy-five (75) dollars shall be considered a donation and twenty-five (25) dollars shall be considered the sales price of the admission fee, except when the opposite is demonstrated to the Secretary before the date of the activity.

Example 5: Mr. "C" gave one (1) dollar to a charitable organization while shopping at drugstore "F". "F" charged him one (1) dollar as part of his purchases and placed a poster with "C's" name in one of its display windows. The donation to acquire the poster shall not be considered a sale.

Example 6: Company "P" leases or rents computer equipment through contracts that comply with the requirements stated in clause (i) of subparagraph (1) of this paragraph. The computer equipment leased or rented by "P" has a useful life of three (3) years. "W" leased or rented computer equipment from "P" for a period of two (2) years. "P" is considered to have acquired the computer equipment as part of its inventory for commercial sale, and the transaction through which "W" pays "P" for the transfer of possession of the computer equipment constitutes a "sale" for the purposes of the SUT and shall be subject to payment of it.

(xx) Retail sale.- Sale, lease or rental, or licensing of taxable items to a purchaser or to any person, for any purpose except for resale, sublease, or subrent, except as provided in Subtitle BB of the Code and this Regulation. The term "retail

sale" includes all the transactions that may be carried out at a retail sales establishment.

In accordance with their use in Subtitle BB of the Code and this Regulation, the terms retail sale, use, storage, and consumption do not include materials, containers, labels, sacks, bags, or similar items that may accompany an item sold to a purchaser without which the delivery of the product would be impossible due to the nature of the contents, and which are used only once for the packaging of taxable items or for the convenience of the purchaser. When a purchaser pays a separate amount for packaging materials, such transaction shall be considered a retail sale of the packaging material.

Also, in accordance with its use in Subtitle BB of the Code and this Regulation, the term "retail sale" includes each individual transaction in the resale or continuous transfer of property possession described in paragraph (ww)(1)(i) of this article (for example, payment of the property rental rates subject to the requirements indicated therein), and the rendering of taxable services described in paragraph (pp)(1)(ii) of this article (for example, payment of the property rental rates subject to the requirements indicated therein).

(yy) Gross sales.- The total sum of all the sales of taxable items, without deductions of any type or nature, except as provided in Subtitle BB of the Code and this Regulation.

Article 2302-1.- Scope of the term "includes".- For the purposes of the terms and phrases defined in Subtitle BB of the Code and this Regulation, the words "includes" and "including" shall not be interpreted as excluding, omitting, or eliminating other matters within the definition of the defined term. Likewise, the objects specified shall only be interpreted as an illustration or characterization, but not as representing the totality of the objects described therein.

## **CHAPTER II SALES AND USE TAX**

Article 2401-1.- Sales tax.- (a) General rule.- Except when otherwise provided in this Regulation, a sales tax of five point five (5.5) percent of the sales price of taxable items in Puerto Rico shall be levied, collected, and paid. The application of such tax shall be subject to the exemptions granted in Chapter 3 of Subtitle BB of the Code and in Chapter III of this Regulation.



(b) Multilevel marketers.- In the case of multilevel marketers, the term "sales price of taxable items in Puerto Rico" means the suggested sales price of the taxable item, as indicated in the catalogs, price lists, or any other document of the multilevel marketer that establishes the sales prices of the taxable items in Puerto Rico.

(c) The sales tax shall be levied and collected over the total sales price of each transaction in the following manner:

Total Sales Price	Sales Tax
\$ 0.00 o \$ 0.09	\$ 0.00
\$ 0.10 a \$ 0.27	\$ 0.01
\$ 0.28 a \$ 0.45	\$ 0.02
\$ 0.46 a \$ 0.63	\$ 0.03
\$ 0.64 a \$ 0.81	\$ 0.04
\$ 0.82 a \$ 0.99	\$ 0.05

(1) When the calculation of the sales tax results in a fraction of half of one cent (\$0.005) or greater, the calculation of the sales tax shall be rounded off to charge an additional cent. On the other hand, when the calculation of the sales tax results in a fraction of less than half of one cent (\$0.005), it shall not be rounded off, and an additional cent shall not be charged.

(2) The taxable items with sales prices between one cent (\$0.01) and nine cents (\$0.09) acquired in a transaction shall not be exempt if the total sales price of the transaction is greater than ten cents (\$0.10).

The provisions of this subparagraph (2) are illustrated with the following examples:

Example 1: Drugstore "X" sells mints at five cents (\$0.05) each. "A" purchases one (1) mint. The total sales price of the transaction is five cents (\$0.05) and the drugstore shall not charge the sales tax because the total sales price of the transaction is less than ten cents (\$0.10).

Example 2: Gas station "Z" sells individual pieces of chewing gum at five cents (\$0.05) each. "N" purchases two (2) pieces of chewing gum. The total sales price of the transaction is ten cents (\$0.10), so the transaction shall be subject to the sales tax. "Z" shall charge eleven cents (\$0.11), ten cents (\$0.10) for the sales price of the pieces of chewing gum and one cent (\$0.01) corresponding to the sales tax.

Article 2402-1.- Use tax.- (a) A five point five (5.5) percent tax over the sales price of each transaction shall be levied and paid for the use, storage, or consumption of a taxable item in Puerto Rico.

(b) The use tax shall be levied on the total sales price of each transaction, in the following manner:

Total Sales Price	Use Tax
\$ 0.00 o \$ 0.09	\$ 0.00
\$ 0.10 a \$ 0.27	\$ 0.01
\$ 0.28 a \$ 0.45	\$ 0.02
\$ 0.46 a \$ 0.63	\$ 0.03
\$ 0.64 a \$ 0.81	\$ 0.04
\$ 0.82 a \$ 0.99	\$ 0.05

(1) When the calculation of the use tax results in a fraction of half of one cent (\$0.005) or greater, the calculation of the use tax shall be rounded off and an additional cent shall be paid. On the other hand, when the calculation of the use tax results in a fraction of less than half of one cent (\$0.005), it shall not be rounded off, and an additional cent shall not be paid.

(2) The taxable items with sales prices between one cent (\$0.01) and nine cents (\$0.09) acquired in a transaction shall not be exempt if the total sales price of the transaction is greater than ten cents (\$0.10).

Article 2403-1.- Rules for determining the source of income generated by the sale of taxable items.- (a) The source of the income generated by the sale of taxable items is one of two factors (the other one being the existence of a nexus with the jurisdiction that imposes the SUT) that shall be considered to determine if a merchant has an obligation to collect the SUT and, if he or she has such obligation, the jurisdiction to which it shall be remitted.

In general, the merchant shall only have the obligation to collect and remit the SUT that a certain jurisdiction could impose if such merchant has a nexus with said jurisdiction, and the source of the income of the sale of the taxable item is within said jurisdiction.

In accordance with the provisions of Section 6189 of the Code, these source of income rules shall be uniformly applied in Puerto Rico. Therefore, the criteria indicated herein shall be applicable in intermunicipal transactions in the same way as in interstate transactions.

(b) The source of income generated by the sale of tangible personal property shall be determined, for the purposes of the SUT, using the rules indicated below. For the purposes of the SUT, the determination of the source of income shall define the obligation of a seller to pay or to retain and deposit the SUT to a particular jurisdiction. For the purposes of the SUT, there is only one jurisdiction: Puerto Rico. The SUT is managed by the Department and it affects all sale transactions that take place in Puerto Rico, both for consumption in Puerto Rico, and for consumption outside Puerto Rico, as provided herein. The rules for the determination of source of income established herein can also, with the consent of other jurisdictions of the United States whose cooperation is needed, affect sale transactions that take place outside Puerto Rico, for consumption in Puerto Rico. These rules shall be applied hierarchically. First, the source of income shall be determined in accordance with subparagraph (1). If, in accordance with subparagraph (1), the source of income cannot be determined, then the rest of the subparagraphs shall be considered in their respective order.

(1) When the property is given to the purchaser at the facilities of the seller, the source shall be considered to be said facility.

The provisions of this subparagraph (1) are illustrated with the following examples:

Example 1: "A" purchases a television at "B's" store. "B's" store is in Puerto Rico. "B" gives the television to "A" in the store. The income generated by this transaction is determined by this subparagraph and can be attributed to the jurisdiction where "B's" store is located.

Example 2: "A" purchases a television at "B's" store. "B's" store is in Puerto Rico. "B" delivers the television to "A" at his home. "A" lives in Puerto Rico. The source of the income generated by this transaction cannot be determined by this subparagraph, so the rest of the subparagraphs in this article shall be applicable in hierarchical order.

(2) When the property is not given to the purchaser at the seller's facilities, the source shall be considered to be the location where it is received by the purchaser, including the address indicated by the purchaser to the seller for the transportation and delivery of the property. This subparagraph shall only be applicable when the seller has

knowledge of the location where the purchaser shall receive the property, regardless of whether the property is delivered by the seller or by a third party.

The provisions of this subparagraph (2) are illustrated with the following examples:

Example 1: As indicated in Example 2 of subparagraph (1) of this paragraph, "A" purchases a television at "B's" store. "B's" store is in Puerto Rico. "B" transports and delivers the television to "A's" home. "A" lives in Puerto Rico. The source of income generated by this transaction shall be the jurisdiction in which "A's" home is located.

Example 2: "A" purchases a television at "B's" store. "B's" store is in one municipality of Puerto Rico and his warehouse is in a different municipality of Puerto Rico. "A" picks up the television at "B's" warehouse. The source of income generated by this transaction shall be the jurisdiction in which "B's" warehouse is located.

Example 3: "A" purchases a television at "B's" store. "B's" store is in Puerto Rico. "B" does not offer transportation services. "C" picks up the television in "A's" name at "B's" store without indicating the address to which the delivery will be made. "B" has kept "A's" address in his files, as it had been provided in the ordinary course of business. "C" transports and delivers said television to "A" at home. "A" lives in Puerto Rico. The source of income generated by this transaction cannot be determined by this subparagraph; subparagraph (3) of this paragraph shall be applicable.

Example 4: "A" purchases a television at "B's" store. "B's" store is in Puerto Rico. "B" offers transportation services. "A" is a regular client of "B" and "B" keeps in his files the merchandise delivery address that "A" provided in the ordinary course of business. However, "A" decides to contract the delivery services of "C," who picks up the television in "A's" name at "B's" store to deliver it to "A" at the address provided by "B". "C" transports and delivers the television to "A". "A" lives in Puerto Rico. The source of income generated by this transaction shall be the jurisdiction where the point of delivery to "A" is located.

(3) If subparagraphs (1) and (2) are not applicable, the source of income of the sale shall be the address of the purchaser, as it appears in the files kept by the seller in the ordinary course of business, when the use of such address does not constitute an act of bad faith. In this case, the seller shall use the address obtained

from the purchaser in the ordinary course of business, whether from previous sales, or from the current one.

The provisions of this subparagraph (3) are illustrated with the following example:

Example: "A" purchases a television at "B's" store. "B's" store is in Puerto Rico. "B" does not offer transportation services. "C" picks up the television in "A's" name at "B's" store without indicating the address to which the delivery will be made, although "B" has kept "A's" address in his files, because "A" had provided it in the ordinary course of business. "C" transports and delivers the television to "A" at home. "A" lives in Puerto Rico. The source of income generated by this transaction is determined based on the address that "B", in good faith, had obtained from "A" in the ordinary course of business.

(4) If subparagraphs (1) to (3) are not applicable, the source of the sale shall be considered to be the purchaser's address which is obtained in the process of consummation of the current sale, including the address that appears in the purchaser's instrument of payment, if there is no other address available, insofar as the use of such address does not constitute an act of bad faith.

As mentioned before, these rules for determining the source in a sale of tangible personal property shall be applied hierarchically. Therefore, subparagraph (3) shall have priority over subparagraph (4), and an address that was obtained by a seller during transactions in the ordinary course of business, and which has been kept in the seller's files, shall take precedence over an address obtained during the first sale made to a purchaser.

The provisions of this subparagraph (4) are illustrated with the following example:

Example: "A" purchases a television at "B's" store. "B's" store is in Puerto Rico. "B" does not offer transportation services. "C" picks up the television in "A's" name at "B's" store without indicating the address to which the delivery will be made. "B" does not have "A's" address in his files. However, "A" paid "B" with a check that has "A's" postal address printed on it. "C" transports and delivers the television to "A" at home. "A" lives in Puerto Rico. The source of income generated by this transaction is determined based on the postal address of "A" that "B", in good faith, had obtained from "A's" check.

(5) When none of the previous subparagraphs are applicable, including the situation in which the seller does not have sufficient information to apply such rules, then the source of the sale shall be determined in reference to the address from which the tangible personal property was delivered or shipped. Provided, that in the case of the sale of mobile phone call services or prepaid cellular phones, the source may be determined using the location associated with the cellular or mobile phone number as an alternative.

The provisions of this subparagraph (5) are illustrated with the following examples:

Example 1: "A" purchases a television at "B's" store. "B's" store is in one municipality of Puerto Rico and his warehouse is in a different municipality of Puerto Rico. "A" is not a regular customer of "B", he paid for the television in cash, and indicated that "C" would pick up the television at "B's" warehouse to deliver it to "A". "B" does not have sufficient information to apply any of the aforementioned rules. The source of income generated by this transaction shall be the jurisdiction in which "B's" warehouse is located, from which the television is dispatched.

Example 2: "A", a resident of Wisconsin, purchases a television at "B's" store. "B's" store is in one municipality of Puerto Rico and his warehouse is in a different municipality of Puerto Rico. "A" is not a regular customer of "B", he paid for the television in cash, and indicated that "C" would pick up the television at "B's" warehouse to deliver it to "A". "B" does not have sufficient information to apply any of the aforementioned rules. The source of income generated by this transaction shall be the jurisdiction in which "B's" warehouse is located, from which the television was delivered or shipped.

(c) The source of the sale of taxable items, except for telecommunications, cable or satellite television services, and tangible personal property lease or rental, shall be the location where the services are rendered. In the case of the sale of property transportation services to Puerto Rico or from Puerto Rico, which are not related to a sale of tangible personal property, or considered delivery charges, as this term is defined in Article 2301-1(i) of this Regulation, it shall be presumed that such services were rendered at the location or locations where the majority of the costs that can be

attributed to transportation occur, even if it is outside of Puerto Rico.

The provisions of this paragraph (c) are illustrated with the following examples:

Example 1: "A" repairs "B's" vehicle at an auto repair shop. The source of income of this transaction shall be said repair shop.

Example 2: "B's" automobile breaks down on the road. "B" lives in a municipality in the southern area of Puerto Rico, and his automobile broke down in the western area of Puerto Rico. "A" has his auto repair shop in a municipality in the northern area of Puerto Rico, but he repairs "B's" vehicle at the location where it broke down. The source of income of this transaction shall be the location where "A" repaired "B's" vehicle.

Example 3: "O" is a residential insect extermination and fumigation company with headquarters in San Juan, Puerto Rico. "O" has a sales workforce of fifty (50) persons that render services in any part of Puerto Rico and in the U.S. Virgin Islands. The source of income of the residential fumigation services rendered shall be the location where "O" offers the residential fumigation services. Therefore, "O" shall fulfill its obligation to pay the SUT by remitting the tax that can be attributed to all its sales in Puerto Rico, as applicable. However, "O" shall not be subject to collect and remit the SUT over the sales of the services rendered in the U.S. Virgin Islands.

Example 4: "U" is a company in the business of providing merchandise transportation services by land in Puerto Rico. "A" is an individual who is not involved in business or industry in Puerto Rico, who resides in the municipality of Fajardo. "A" contracts "U's" transportation services to send a present to his brother, "B", who resides in the municipality of Añasco. The source of income of the transportation services rendered shall be attributed to the location where such services are rendered.

Example 5: "U" is a company in the business of providing maritime merchandise transportation services between Puerto Rico and the state of Florida. "A" is an individual who is not involved in business or industry in Puerto Rico, who resides in the municipality of Ponce. "A" contracts "U's" transportation services to move his brother "B's" belongings to Florida, where he resides. The source of income of the transportation services rendered shall be attributed to Florida.

(d) Subsection (c) of Section 2403 of the Code provides that:

"The source of the sale of telecommunications services shall be as follows:

(1) in the case of telecommunications services provided through a wire, or "wire line", the source shall be the location where two of the following three events occur: where the service originates, terminates, or is billed; and

(2) in the case of wireless telecommunications services, including prepaid service, the source shall be the location of the client's primary place of use, which shall be the client's residential or commercial address."

Considering the areas of the field occupied by the Federal jurisdiction, the phrase "through a wire or wireline" used in said section refers to the rendering of telecommunications services sold by call, or sales made in what is known as a "call-by-call basis". For these purposes, see the Federal Supreme Court decision in the case of Goldberg v. Sweet, 488 US 252, 109 S. Ct. 582 (1989). For these purposes, it is considered that a telecommunications service is sold call by call, when any method in which the price is measured based on individual calls is used for billing such services.

(1) For the aforementioned reasons, for the purposes of paragraph (1) of subsection (c) of Section 2403 of the Code, and except for the services itemized in Article 2403-2 of this Regulation, the sale of telecommunications services in the case of services rendered on a "call-by-call basis", shall be sourced to the location where two of the following three events occur:

(i) where the call is originated;

(ii) where the call is received or "terminated"; or

(iii) where the telecommunication service is invoiced. The "location where the telecommunication service is invoiced" shall mean the location of the telephone number charged for the call.

The provisions of this subparagraph (1) are illustrated with the following examples:

Example 1: "V" is a company in the business of providing telecommunications services in Puerto Rico. "V" sells and invoices its services on a call by call basis. "C", a residential client of "V", resides in the municipality of Guaynabo, Puerto Rico. "C" originates a phone call from his residence that is received by "M", who resides in the



state of New York. The call shall be invoiced to "C's" phone number. The source of the sale of the telecommunications service shall be Puerto Rico, because it is the jurisdiction where the call was originated, and the location of the telephone number to which the call is invoiced.

Example 2: The same facts as Example 1, except that "C's" call to "M" was a collect call. The source of the sale of the telecommunications service shall be New York, because it is the jurisdiction where the call was received and the location of the telephone number to which the call is invoiced.

Example 3: "V" is a company in the business of providing telecommunications services in Puerto Rico. "V" sells and invoices its services based on a fixed rate that is not affected by individual calls. "C", a residential client of "V", resides in the municipality of Guaynabo, Puerto Rico. "C" originates a phone call that is received by "M", who resides in the state of New York. Insofar as the service is not sold on a call by call basis, the source of the sale of the telecommunications service shall not be determined by this subparagraph.

Example 4: "A" originates a call to "B" from his residential phone, whose service is billed on a call by call basis. "A" requests that the call be billed to his sister "C's" telephone number. The source of the sale of the telecommunications service shall be determined in accordance with the provisions of post-paid services established in paragraph (b) of Article 2403-2 of this Regulation.

(2) in the case of telecommunications service sold at a fixed price regardless of the number of individual calls, the source of the sale shall be the client's primary use location. For these purposes, the "client's primary use location" shall be the client's physical residential or commercial address. In the case of mobile telecommunications services, the "client's primary use location" shall be within the license or service area of said client's service provider, in accordance with the definition of "home service provider" provided in Section 124(5) of the Mobile Telecommunications Sourcing Act, PL 106-252; 4 USC §§ 116 et seq.

The provisions of this subparagraph (2) are illustrated with the following examples:

Example 1: "A" is a residential client of "V", a telecommunications services provider in Puerto Rico. "V" sells its telecommunications services through offers of unlimited consumption for a fixed price. "A" resides in the municipality of Ponce, Puerto Rico. The source of the sale of the telecommunications services to "A" shall be Puerto Rico, because it is the jurisdiction of "A's" physical residential address.

Example 2 "A" is a client of "V", a telecommunications services provider in Puerto Rico, and uses a cellular or mobile phone activated by such provider. "V" sells its telecommunications services through offers of unlimited consumption for a fixed price and is considered a "home service provider" for "A". "A" resides in the municipality of Ponce, Puerto Rico. "A" has traveled to the state of Texas and originates telephone calls from his hotel to several persons who reside in the state of Texas. The sale of telecommunications services to "A" shall be sourced to Puerto Rico, because it is the jurisdiction considered the "home service provider".

(e) In the case of cable or satellite television services, the source shall be the client's primary use location, which shall be the client's residential or commercial address.

The provisions of this paragraph (e) are illustrated with the following example:

Example: "C" is a satellite television services provider company with offices in San Juan, Puerto Rico, and clients in the seventy-eight (78) municipalities and the U.S. Virgin Islands. "B" is a client of "C", and a resident of the U.S. Virgin Islands subscribed to "C's" satellite television service. The source of the sale of the satellite television service shall be in the U.S. Virgin Islands.

(f) In the case of lease or rental of tangible personal property, the source of the sale shall be as follows :

(1) In the case of leases or rentals that require recurring periodic payments, the source of income of the first payment shall be determined in accordance with the provisions applicable to the sale of tangible personal property established in paragraph (b) of this article. The source of income of the subsequent payments shall be in accordance with the primary location of the leased or rented property during the period covered by the payment. The primary location of the leased or rented property shall be the one indicated by the lessee and it shall be available for the lessor in the files that he

or she keeps in the ordinary course of business, insofar as the use of such address does not constitute an act of bad faith. The primary location of the leased or rented property shall not be considered to be altered by intermittent or temporary use of the leased or rented property at another location, as would be the case of leased or rented commercial property carried by an employee during a business trip.

The provisions of this subparagraph (1) are illustrated with the following example:

Example: "A" leased a computer from "B's" store for six (6) months. As part of the leasing contract, "A" must make periodic monthly payments. "A" picked up the computer from "B's" store. "B's" store is located in a different jurisdiction than the one where "A" will use the computer primarily, according to what "A" told "B". Moreover, for work reasons, "A" will also use the computer temporarily in several jurisdictions. The source of income of the first payment generated in this transaction shall be determined in accordance with the provisions of paragraph (b) of this article. The source of income of the subsequent payments shall be the primary use location of the computer for the duration of the lease. This shall be so, even if "A" uses the computer temporarily in other jurisdictions.

(2) In the case of leases or rentals that do not require periodic payments, their source shall be determined in accordance with the provisions applicable to the sale of tangible personal property established in paragraph (b) of this article.

The provisions of this subparagraph (2) are illustrated with the following example:

Example: "A" leased a computer from "B's" store for six (6) months. As part of the leasing contract, "A" had to make only one payment when he subscribed to said contract. "A" picked up the computer from "B's" store. "B's" store is located in a different jurisdiction than the one where "A" will use the computer primarily, according to what "A" told "B". Moreover, for work reasons, "A" will also use the computer temporarily in several jurisdictions. The source of income of the payment generated in this transaction shall be determined in accordance with the provisions of paragraph (b) of this article, regardless of the primary or temporary location of the computer for the duration of the lease.

(g) For the purposes of the sale of admission fees, the source of income of such sale shall be the location where the event for which the admission fee is charged

takes place, including shows and performances. In the case of any taxable item that, due to its nature, could be considered an admission fee or a transportation service, and which is not provided or rendered at a fixed location, the source of income shall be determined in accordance with paragraph (c) of this article.

(h) It is hereby provided that the rules established in this article shall be of exclusive application to the imposition of the SUT, and that they shall not apply nor can they be used in a supplementary manner for income tax purposes.

Article 2403-2.- Telecommunications services with specific rules.- Regardless of what is provided in Article 2403-1 of this Regulation, the source of the sale of the following telecommunications services shall be attributed to each level of taxing jurisdiction, as follows:

(a) A sale of mobile telecommunications services other than air-to-ground radiotelephone services and prepaid calling services, shall have its source at the client's primary use location, as required by the Mobile Telecommunications Sourcing Act.

(b) A sale of post-paid calling services shall have its source in the origination point of the telecommunications signal, as primarily identified by:

(1) the seller's telecommunications system; or

(2) the information received by the seller from its service provider, when the system used to transport such signals is not that of the seller.

The term "post-paid calling service" means the telecommunications service obtained by making a payment on a call-by-call basis, either through the use of a credit card or payment mechanism such as a bank card, travel card, debit card, or by charging the call to a telephone number which is not associated with the telephone number from which the telecommunications service was originated or where it was terminated or destined.

(c) A sale of prepaid calling services or a sale of prepaid wireless, mobile, or cellular phone calling services shall have its source in accordance with the provisions applicable to the sale of tangible personal property.

(d) Transactions related to private telecommunications services shall have specific sale source rules. The term "private telecommunications services" is defined as a telecommunications service that allows a client exclusive or priority use of a

communication channel or a group of communication channels between termination points, regardless of the way in which such channels are connected, and includes the capacity for line switching, extension lines, stations, and any other associated service that is provided in relation to the use of such channel or channels. A sale of private communications services shall have its source as follows:

(1) Service for a separate charge that is related to a client's channel termination point (defined as the place where the client enters or receives the communications) shall have its source in each level of jurisdiction in which such channel termination point is located.

(2) Service in which all of the client's termination points are entirely within a jurisdiction or level of jurisdiction shall have its source in the jurisdiction where the client's channel termination points are located.

(3) Service for channel segments between two client's channel termination points located in different jurisdictions, and whose channel segments are charged separately shall have fifty (50) percent of its source in each level of jurisdiction in which the client's channel termination point is located.

(4) Service for channel segments located in more than one jurisdiction or level of jurisdiction, and whose segments are not invoiced separately, shall have its source in each jurisdiction based on the percentage determined when dividing the number of client's channel termination points in such jurisdiction by the total number of client's channel termination points.

Article 2404-1.- Person responsible for paying the tax.- (a) In general.- Except when otherwise provided in Subtitle BB of the Code or this Regulation, any person who purchases, uses, consumes, or stores a taxable item in Puerto Rico shall be mainly responsible for paying the SUT to the Secretary.

(b) Exception.- When a transaction is subject to the SUT established by Subtitle BB of the Code, and one merchant has the obligation to collect the tax, said merchant shall be mainly responsible for paying the tax that can be attributed to the transaction. However, the Secretary may collect from a purchaser the tax imposed in Section 2401 of the Code over a taxable item when such merchant fails to comply with his or her obligation to collect the tax.

The provisions of this article are illustrated with the following example:

Example: "A" purchases a taxable item from "B", a merchant with the obligation to collect the SUT, and registered in the Merchant's Registry. Inadvertently, "B" does not charge "A" the sales tax for the taxable item that "A" purchased. Since, in accordance with Section 2404(b) of the Code and paragraph (b) of this article, "B" is responsible for collecting the SUT, and did not collect it, "B" shall have to remit the tax to the Secretary. If he fails to do so, the Secretary may collect the tax from "B" or "A".

Article 2405-1.- Collection of the tax.- (a) In general.- The obligation of a merchant to collect and remit the SUT to the jurisdiction that imposes that obligation arises when the merchant has a nexus with said jurisdiction (determined as established by Section 2301(j) of the Code and Article 2301-1(j) of this Regulation) and the source of income generated by the sale of the taxable items for which the SUT is imposed is within that jurisdiction (determined as provided in Section 2403 of the Code and Articles 2403-1 and 2403-2 of this Regulation).

(b) Except in the cases of merchants whose Merchants' Registration Certificate indicates that they are not collectors of the SUT, or when it is otherwise provided in this article, every merchant who sells taxable items shall have the obligation to collect and remit, as established in Section 2604 of the Code, the sales tax set by Subtitle BB of the Code. Provided, also, that in the cases when, under paragraph (d) of this article, a purchaser does not have an obligation to pay the tax to the merchant, the merchant who sells taxable items shall have the obligation to remit, as provided in Section 2604 of the Code, the sales tax.

(1) In the case of multilevel marketers who have obtained authorization from the Secretary in accordance with Article 2301-1(j) of this Regulation, the obligation to collect the sales tax shall fall on the multilevel marketer, and not on the independent distributors.

(2) In the case of merchants who are not resellers of tangible personal property, as established in Article 2407-1 of this Regulation, they shall not have the obligation to collect the SUT over the portion of their invoice that reflects the price of the tangible personal property that they acquired subject to the SUT.

The provisions of this subparagraph (2) are illustrated with the following example:

Example: A nurse, following doctor's orders, gives medicament "X" to a patient as part of the treatment to improve his health. Said patient is in a hospital owned by the Commonwealth of Puerto Rico. Medicament "X" can be acquired without a medical prescription and, therefore, shall not be considered a prescribed medicament. The hospital shall not charge him, and the patient shall not have to pay the SUT over the cost of medicament "X", because the hospital is not a reseller of medicaments.

(3) A sales representative, factory representative, or commission agent shall have the obligation to collect the SUT over his or her sales, unless his or her principal has assumed the obligation to collect the SUT for having employees, agents, or representatives in Puerto Rico, who solicit business or carry out business transactions in representation of such principal.

(c) Any merchant who is responsible for collecting the sales tax, shall state it separately in any receipt, invoice, ticket, or any other evidence of sale, except as provided in Section 2406 of the Code. When, in accordance with Section 6189 of the Code, more than one tax is imposed on a transaction, it shall be necessary to separate both the state and the municipal tax.

In the case of the sale of admission fees through tickets, every merchant shall display prominently in the ticket booth or any other place where the entrance fee is charged, a notice indicating the entrance price and the sales tax, which shall be computed and collected based on the price of the admission fee charged by the merchant.

In the case of lay away sales contracts, the sales tax shall be computed based on the sales price that is determined when the sales contract is signed. The first payments received shall be considered principal or sales price payments, and the sales tax shall be collected when the final payment under the sales contract is received.

(d) The tax shall constitute, together with the sales price, evidence of a debt of the purchaser to the merchant until it is paid, and shall be collected legally in the same manner as other debts. In the case that the merchant is not registered in the Merchants' Registry, the purchaser shall not have the obligation to pay the tax to the merchant and, therefore, said tax shall not constitute a debt of the purchaser.

(e) The taxes established in Subtitle BB of the Code shall become funds of the Commonwealth of Puerto Rico at the moment they are collected.

(f) Except where otherwise specifically provided in Subtitle BB of the Code or this Regulation, merchants who refuse or fail to collect the sales tax for sales of taxable items made by them, their agents, or their employees, shall be primarily responsible for paying such tax.

(g) A merchant who is in any business in which taxable items subject to the taxes imposed by Subtitle BB of the Code are sold, shall in no way advertise or publicly express that, directly or indirectly, he or she will assume all or part of the tax, or that he or she will exempt the purchaser from all or part of the payment of the sales tax, or that the tax will not be added to the sales price, or that, when it is added, it will be reimbursed in full or in part, directly or indirectly, by any means. For these purposes, announcing or publicly expressing that the merchant will make a reduction in the sales price of items previously subject to payment of the general excise tax provided in Section 2015(a) of the Code, shall not be considered an offer to assume all or part of the SUT, a release from payment, or that the SUT will not be added to the sales price.

Article 2406-1.- Collection of the tax together with the sales price.- (a) When, due to the nature of the business, it is impractical to comply with the requirements of Section 2405(b) of the Code, the Secretary may exempt a merchant or operator of a vending machine, on his or her own initiative or upon a request to said effect, from complying with such requirement, and require or authorize him or her to reflect the sales tax together with the sales price.

The provisions of this paragraph (a) are illustrated with the following example:

Example: "A" is a merchant registered in the Merchants' Registry, in the business of selling newspapers. Each newspaper is sold at eighty-five (85) cents. Due to the nature of the business, "A" obtains the Secretary's authorization to reflect the tax together with the sales price. Therefore, "A" shall be able to sell the newspapers at ninety (90) cents, and shall not have to reflect the sales tax separately over the newspaper's sales price.

(b) In the case mentioned in paragraph (a) of this article, the taxes to be paid over taxable items shall be computed by subtracting the total of taxable sales from the



applicable reporting period from the total gross sales for the same period. Except in the case of payment for taxes related to the sales made in municipalities for which the Department acts as a centralized collector and administrator, the taxable sales shall be determined by dividing the gross sales by 1.055, and the merchant or operator of the vending machine shall be responsible for complying with his or her obligation, if any, to make a payment to a municipality.

(c) Vending machines.- A merchant in the business of selling taxable items through vending machines may collect the SUT together with the sales price of the tangible personal property dispensed by the machine that he or she operates. This authorization shall be provisional and shall be effective from November 15, 2006 to December 31, 2006. Every operator of vending machines shall renew his or her authorization to collect the SUT together with the sales price no later than January 1<sup>st</sup>, 2007, by filing a request to said effects, and sending it to the Secretary, including the information that is required by the Secretary. The merchant or operator of the vending machine shall be responsible for remitting the tax to the Secretary in compliance with this article.

The provisions of this paragraph (c) are illustrated with the following example:

Example: "L" is a merchant registered in the Merchants' Registry, in the business of operating vending machines. The tangible personal property dispensed by the machine has a sales price of one (1) dollar and seventy-five (75) cents. Due to the nature of this business, the Secretary has authorized it to reflect the sales tax together with the sales price. Therefore, "L" shall be able to sell the tangible personal property for one (1) dollar and eighty-five (85) cents, and shall not have to reflect the sales tax over the sales price of the tangible personal property separately

Article 2407-1.- Collection of the tax in sales for resale.- (a) Definition of a reseller.- (1) The term "reseller" means a merchant who purchases taxable items mainly for resale. For these purposes, the term "mainly" means that during the three (3) year period immediately before the year of the determination, an average of eighty (80) percent or more of the inventory removed by the merchant was removed for making retail sales.

A merchant who is considered a reseller may apply for an Exemption Certificate from the Secretary, as established in Article 2502(a)-1 of this Regulation. A merchant reseller may obtain an Exemption Certificate even if the taxable items acquired are not sold in Puerto Rico, or the purchases of inventory for resale are not made in Puerto Rico.

The provisions of this subparagraph (1) are illustrated with the following examples:

Example 1: "A" is in the business of air conditioner repair and maintenance, and incidentally sells spare parts and filters for air conditioners. Since "A" does not buy the parts mainly for resale, because he does not fulfill the eighty (80) percent requirement established in this subparagraph, "A" shall not be considered a reseller and shall not be entitled to obtain an Exemption Certificate.

Example 2: "A" is a merchant registered in the Merchants' Registry who fulfills the eighty (80) percent requirement established in this subparagraph, and is in the business of reselling electronic household appliances at a shopping mall in Puerto Rico's capital city and at a shopping mall in Florida. "A" shall be considered a reseller and shall be entitled to obtain an Exemption Certificate for the purchases for resale of electronic household appliances. This shall be so, even if not all of the electronic household appliances that "A" acquires for resale are to be sold in Puerto Rico.

(2) A merchant shall be considered a reseller when the tangible personal property that he or she purchases is sold in the form of tangible personal property. Therefore, if a merchant acquires tangible personal property and resells it in a form different from tangible personal property, he or she shall not be considered a reseller.

The provisions of this subparagraph (2) are illustrated with the following example:

Example: Contractor "C" acquires materials to build a two-level house for Mr. "S." Even though the materials acquired by "C" are tangible personal property, the house that "C" will build and sell to "S" is real property, and not tangible personal property. Therefore, "C" shall not be considered a reseller of the construction materials.

(3) In the case of the leases or rentals described in Article 2301-1(ww)(1)(i) of this Regulation, a merchant shall be considered a reseller of the tangible personal property destined for such lease or rental. However, a merchant shall not be

considered a reseller of the tangible personal property acquired for the leases or rentals described in Article 2301-1(pp)(1)(ii) of this Regulation.

The provisions of this subparagraph (3) are illustrated with the following examples:

Example 1: "A" is in the business of leasing heavy industrial equipment. "A's" typical leasing contract is an agreement for a fixed term that imposes penalties on the lessee for premature cancellation that are computed based on the current value of the remainder of the periodic payments not made, and upon conclusion of the contract's initial fixed period, the lessee may acquire the property. In accordance with the provisions of Article 2301-1(wv)(1)(i) of this Regulation, the lease made by "A" constitutes a sale of tangible personal property by "A". "A" shall be considered a reseller of the tangible personal property that is to be leased, and may request an Exemption Certificate for his purchases of such property.

Example 2: "B" is in the business of renting videos. Said rental complies with the criteria established in Article 2301-1(pp)(1)(ii) of this Regulation. "B" shall not be considered a reseller of the videos that are to be rented, and shall not be able to obtain an Exemption Certificate for his purchases of such videos.

(4) A merchant who is in the business of providing services, even if he or she may acquire tangible personal property in the process of providing the services, shall not be considered a reseller if the tangible personal property acquired becomes part of, or adheres to, the tangible personal property or real property over which such merchant provides his or her services.

The provisions of this subparagraph (4) are illustrated with the following examples:

Example 1: An auto mechanic acquires automobile parts only to repair his customers' automobiles. The auto mechanic uses the parts he acquired in the process of repairing the automobile, therefore, he does not resell the parts in their original condition, he makes them part of the automobile that he repairs. In light of this, the mechanic shall not be considered a reseller of the parts that he acquires.

Example 2: A merchant in the business of painting properties acquires the paint that he will use to provide his services. As a part of his services, the paint will adhere

and become part of the structure that the merchant agreed to paint. Therefore, the painter shall not be considered a reseller of the paint that he acquires.

(5) In situations where it cannot be determined whether or not the merchant is a reseller by using the rules indicated above, the real object of the merchant's business activity shall be examined to make that determination.

(i) If the real object of the business activity is the sale of a service, even if the activity may include the incidental transfer of tangible personal property, the merchant shall not be considered a reseller.

The provisions of this clause (i) are illustrated with the following examples:

Example 1: "A" is in the business of office cleaning and maintenance. "A" purchases the cleaning products that are necessary to provide these services. The real object of "A's" business activity is to provide a service (the cleaning and maintenance of the offices). Even if "A" uses tangible personal property (the cleaning products) incidentally, as he does while providing his services, "A" shall not be considered a reseller of such products.

Example 2: "B" is a hospital unit duly authorized to operate as such by the Commonwealth of Puerto Rico. "B" purchases medicaments and medical supplies that are necessary to provide its services to its patients. The real object of "B's" business activity is to offer medical hospital services. Even if "B" uses tangible personal property (the medicaments and medical supplies) while providing its services, "B" shall not be considered a reseller of medicaments and medical supplies.

(ii) If the real object of the business activity is the sale of tangible personal property, and the business activity includes the incidental sale of services, then the merchant shall be considered a reseller of the tangible personal property acquired.

The provisions of this clause (iii) are illustrated with the following example:

Example: "M" owns a full service Mexican restaurant that acquires foods and food ingredients (Foods), as well as alcoholic beverages, tobacco and products derived from it, pastry shop items, candies, and carbonated beverages (Other Products). "M" also acquires disposable cutlery and eating utensils, napkins, and cups (Utensils). "M" is considered a reseller of Foods and Other Products, even though, in order to sell them, he has to prepare the Foods and offer the services typical of a restaurant, since

these services are incidental to the sale of Foods and Other Products.

On the other hand, "M" shall not be considered a reseller of the Utensils because "M" uses them when selling the Foods and Other Products to his clients. Therefore, "M" shall be considered a reseller only regarding the Foods and the Other Products that he acquires.

(b) Release from collection.- A merchant shall be released from the requirement of collecting and depositing the sales tax in the sales of machinery and equipment used in manufacturing, raw materials, or tangible personal property, as such terms are defined in subsections (v), (y), and (jj) of Section 2301 of the Code, respectively, to merchants who have an Exemption Certificate issued by the Secretary and thus prove it to the seller.

(c) Exemption Certificate.- (1) Definition.- The Exemption Certificate is the document issued by the Secretary to a merchant registered in the Merchants' Registry, through which the Secretary recognizes that the merchant is a reseller of tangible personal property or a manufacturing plant entitled to the exemption established in Section 2506 of the Code.

(2) On every occasion that a merchant makes a first sale to a holder of an Exemption Certificate, the merchant seller shall document the exempt nature of the transaction by reviewing the original copy of the purchaser's effective Exemption Certificate and by keeping a copy of such Certificate. A merchant seller may request that the Secretary allow him or her to document the exempt nature of the transaction through an alternative method.

The merchant seller shall keep the copy of the Exemption Certificate in his or her files for a period of six (6) years, beginning on the date of the filing of the Monthly Return in which said exempt transaction was reported.

(d) Certificate for Exempt Purchases.- (1) Definition.- The Certificate for Exempt Purchases is a form provided by a person who is entitled to purchase taxable items without paying the SUT, which confirms his or her condition of having such right to the merchant from whom he or she acquires such items.

(2) When a merchant makes sales, including the first sale and all the subsequent sales, to a holder of an Exemption Certificate or a person entitled to acquire

taxable items without paying the SUT, the merchant seller shall document the exempt nature of each transaction by obtaining the Certificate for Exempt Purchases, filled out and signed by the purchaser.

(3) Instead of obtaining the Certificate for Exempt Purchases for each subsequent transaction, a merchant seller may, after the first sale to a holder of an Exemption Certificate or a person entitled to acquire taxable items without paying the SUT, use one of the following alternative methods to document the exempt nature of each transaction:

(i) Alternative document to the Certificate for Exempt Purchases.- The seller merchant, after the first transaction with a holder of an Exemption Certificate or a person entitled to acquire taxable items without paying the SUT, may substitute the Certificate for Exempt Purchases with his or her invoice or any other substituting document, for example, the receipt of purchase, bill of sale, or purchase order, provided that such document includes the following information:

- (A) name of the seller merchant;
- (B) name of the purchaser;
- (C) purchaser's Merchants' Registry number;
- (D) a list and description of the taxable items acquired by the purchaser; and
- (E) a certification signed by the purchaser to the effects that the taxable items are acquired free from payment of the SUT because they are purchased for resale; because they constitute raw materials or equipment (in the case of manufacturing plants); or for another reason specifically indicated in the Certificate for Exempt Purchases.

The certification shall read as follows: "I, \_\_\_\_\_, reseller or authorized representative of \_\_\_\_\_, with Merchants' Registry number \_\_\_\_\_, certify that I purchased the taxable items indicated herein free of payment of the SUT because they were purchased for resale, manufacturing, or for another reason indicated in Form AS 2916.1 of the Department of the Treasury."

In the cases where the invoice or other substituting document includes both taxable items subject to the SUT and exempt items, the taxable or exempt nature of both types of items shall be identified in said invoice or document.

The information required herein, including the certification, may be included in the printed text of the invoice or other document by using a rubber stamp or any other permanent printing method.

(ii) Alternative document to the Certificate for Exempt Purchases in the case of recurring sales.- When the merchant's sales to the holder of an Exemption Certificate or a person entitled to acquire taxable items without paying the SUT are recurrent in the ordinary course of business, and the merchant has an open account with the purchaser, it shall only be necessary to request the Certificate for Exempt Purchases from the purchaser on the first sale made to him or her in each natural year.

To these effects, "recurring sales" means that the merchant has made at least twelve (12) sales to the purchaser during the natural year immediately before the year of the first sale made to him or her in any calendar year.

The term "open account" refers to the fact that the merchant seller keeps in his or her files at least the following commercial information of the purchaser: name, Merchants' Registry number, address, and phone numbers.

(iii) Other alternative methods.- The Secretary may approve any additional alternative method that allows a merchant to document the exempt nature of a transaction, if the nature of the seller merchant's business allows it.

Every application shall be sent to the Department's Assistant Secretary of Internal Revenues by letter, and shall include a detailed description of the proposed alternative method to the Certificate for Exempt Purchases.

If a merchant seller fails to comply with the requirements established herein for the alternative methods, he or she shall have to obtain the Certificate for Exempt Purchases from the purchaser in every transaction, as established in subparagraph (2) of this paragraph.

(4) In any case, the merchant seller shall exercise a sufficient degree of care to prevent that the purchaser acquires taxable items using the Exemption or Certificate for Exempt Purchases which, in accordance with the information related to the industry or business activity of the purchaser, as it appears on said Certificate, it would be unreasonable to think that could be acquired free from payment of the SUT.

Regardless of the method used by the seller merchant, he or she shall keep a filing system that associates the Certificate for Exempt Purchases or alternative document for each transaction with the invoice, receipt, or other corresponding evidence of sale. This information may be kept in physical, magnetic, or electronic files.

The merchant seller shall keep the Certificate for Exempt Purchases or alternative document in his or her files for a period of six (6) years, from and after the date of filing of the Monthly Return in which said exempt transaction was reported.

The Certificate for Exempt Purchases shall be available at the Department and in the Department's web page, **www.hacienda.gobierno.pr**. Also, every merchant shall have copies of such Certificate available for his or her customers at each commercial establishment.

(e) Penalties.- Any merchant who does not require or retain a copy of the Exemption Certificate, the Certificate for Exempt Purchases, or the alternative document shall be subject to the penalty established in Section 6105(d) of the Code. Also, any person who in any way falsifies or possesses an Exemption Certificate knowing that it is fraudulent, shall be subject to the penalty established in Section 6105(c) of the Code.

(f) Any merchant who does not have an Exemption Certificate and acquires merchandise subject to the sales tax established in Subtitle BB of the Code shall have the obligation to pay the sales tax at the moment of the purchase. When the merchant is a reseller of tangible personal property and he or she resells the merchandise for which he or she paid the sales tax, he or she shall collect the tax over the complete price of the sale and may not claim a credit for the previously paid tax.

Article 2409-1.- Necessary evidence and presumption of correctness.- (a) Presumption of taxable acquisition.- It shall be presumed that all purchasers who acquire taxable items from a merchant for delivery in Puerto Rico shall have done so for use, consumption, or storage in Puerto Rico, unless such person submits evidence to refute such presumption.

(b) Presumption of correction.- The determinations made by the Secretary in the administration of Subtitle BB of the Code shall have a presumption of administrative procedural correction before the courts.



(c) Presumption of exemption.- It shall be presumed that every person who acquires taxable items from a merchant for delivery in Puerto Rico, submitting an Exemption Certificate and a Certificate for Exempt Purchases or their equivalent, is entitled to the exemption granted therein. A merchant shall accept such certificate in good faith and, unless otherwise provided in Subtitle BB of the Code or in this Regulation, he or she shall not need to require additional documentation to validate the exemption.

Article 2410-1.- Limitation to fix taxes.- Except as provided in Section 6189 of the Code, no municipality of the Commonwealth of Puerto Rico, whether it is autonomous or not, may levy or collect any excises or taxes on items, services, taxable items, or transactions that are subject to or exempt from the SUT established in Subtitle BB of the Code, as established in Section 6188 of the Code.

### **CHAPTER III EXEMPTIONS**

Article 2501-1.- Exemptions.- Powers of the Secretary.- (a) Pursuant to the power granted to the Secretary in Section 2501 of the Code to establish conditions regarding the granting of Exemption Certificates for the payment or retention of the tax established in Subtitle BB of the Code, the Secretary may impose the following requirements and conditions:

(1) that the taxpayer file returns and reports, keep accounting books and files, and present any document or evidence considered relevant to the exemption claimed or granted, as the case may be;

(2) require the posting of a bond for the amount of the exemption requested and of any administrative fine, surcharge, or interest that, in accordance with the Code, may be imposed;

(3) require authorization to perform inspections, periodic or otherwise, to vans, containers, storage areas, and display areas, among others, in relation to taxable items; or

(4) require that the contracts, orders, or any other information related to the permits to transfer or sell taxable items be filed in advance.

(b) If a person uses an SUT Exemption Certificate to acquire taxable items and subsequently uses, stores, or consumes them for non-exempt purposes, he or she shall be responsible for remitting the SUT.

Article 2502(a)-1.- Exemption Certificate.- (a) Application for the Exemption Certificate.- Every merchant registered in the Merchants' Registry who acquires tangible personal property for resale, and the manufacturing plants entitled to the exemption established in Section 2506 of the Code shall request the Exemption Certificate by filling out Form AS 2914.1, Application for Merchants' Registration Certificate and Exemption Certificate (Application). None of the persons entitled to the exemptions established in Sections 2503, 2504, 2507, 2508, 2509, 2510, and 2513 of the Code shall apply for the Exemption Certificate, and claim the exemption, as established in this Regulation.

An Application shall be filed for each merchant, which shall include a list of all the commercial establishments of said merchant. The Application shall be available at the Department and in the Department's web page, [www.hacienda.gobierno.pr](http://www.hacienda.gobierno.pr).

The provisions of this paragraph (a) are illustrated with the following example:

Example: "R" is an individual who owns a school supplies store. School supplies are taxable items. "R" acquires his inventory of school materials from "M", a merchant who does business in Puerto Rico. In order to acquire the school supplies that he will resell in his store without having to pay the sales tax to "M", "R" will need to apply for an Exemption Certificate in the Application. By presenting said Certificate (of which "M" shall retain a copy) and handing in a Certificate for Exempt Purchases, "M" shall be released from his obligation of collecting the sales tax. "R" shall collect and remit the sales tax in the retail sale of school supplies.

(b) Issuance of the Exemption Certificate.- The Secretary shall issue the Exemption Certificate for every merchant, which shall be sent by mail to the address provided by the merchant in the Application. Said Exemption Certificate shall include, at least, the name of the merchant, the description of the activity carried out by the merchant, the Merchants' Registry number, and the expiration date of the Certificate. In order to consider the issuance of an Exemption Certificate, the Secretary shall require from the applicant that:

(1) he or she indicates if he or she is in the business of resale of tangible personal property or a manufacturing plant entitled to the exemption established in Section 2506 of the Code;

(2) he or she informs in the Application the description of the activity and the North American Industry Classification System (NAICS) code;

(3) in the case of a merchant in the business of resale in the ordinary course of business, he or she provides the category, type, or classification of the tangible personal property that he or she will buy for resale, for example, sporting goods, apparel, household items, electronic equipment, among others, and

(4) in the case of a manufacturing plant, it provides the information required in the Application to confirm its classification as a manufacturing plant, or a description of the raw materials or machinery and equipment that it will acquire, as applicable.

Article 2502(a)-2.- Effectiveness and renewal of the Exemption Certificate.- The Exemption Certificate shall be effective for a period of three (3) years. Every merchant who has an Exemption Certificate may request its renewal at any time. To renew an Exemption Certificate, the merchant shall comply with the same requirements established in Article 2502(a)-1(b) of this Regulation.

Article 2502(b)-1.- Revocation of the Exemption Certificate.- (a) Revocation.- The Secretary may revoke the Exemption Certificate when:

(1) a Certificate holder fails to comply with any of the requirements established in this Regulation to obtain a Certificate;

(2) the Certificate is used to acquire tangible personal property, raw materials, or machinery and equipment that was not included in the Application;

(3) the Certificate holder cedes, conveys, or in any other way transfers such Certificate to another person; or

(4) the Merchants' Registration Certificate of the Certificate holder has been revoked.

(b) Procedure.- The Secretary shall notify the merchant of his or her decision to revoke the merchant's Exemption Certificate, indicating the reasons for the revocation. For this purpose, the Secretary or his or her representative may notify the merchant in person or by certified mail, using the last known address of the merchant.

Said notification of revocation shall inform the merchant of his or her right to show cause for which said Certificate should not be revoked.

Within the thirty (30) days following the date of the personal notification of the decision of the Secretary, or the date when such notification was deposited in the mail, as may be the case, the merchant may file a complaint in writing before the Adjudicatory Procedure Secretariat of the Department, in accordance with Act No. 170 of August 12, 1988, as amended, known as the "Commonwealth of Puerto Rico Uniform Administrative Procedures Act", showing cause for which said Certificate should not be revoked.

(c) Any merchant whose Exemption Certificate has been revoked may request the issuance of a new Certificate. In accordance with Section 2501(a)(2) of the Code, the Secretary may require the posting of a bond.

Article 2503-1.- Exemptions for exportation.- (a) Except for the obligations of reciprocity in the collection of sales and use taxes in Puerto Rico provided in the Code, the taxable items that are sold for use or consumption outside of Puerto Rico shall be exempt from remittance of the SUT, even when the sale occurs in Puerto Rico. For the purposes of this article, a taxable item that consists of tangible personal property shall be considered sold for use or consumption outside of Puerto Rico when the purchaser of such taxable item takes possession of it outside of Puerto Rico. In the case of the purchase of a taxable item that consists of taxable services, it shall be considered sold for use or consumption outside of Puerto Rico when the purchaser of such item receives the benefit of the rendering of such services outside of Puerto Rico. In the case of the sale of property transportation services that are not related to a sale of tangible personal property or considered delivery charges, as this term is defined in Article 2301-1(i) of this Regulation, they shall be considered sold for use or consumption outside of Puerto Rico when the majority of the costs that can be attributed to such transportation occur outside of Puerto Rico.

The provisions of this paragraph (a) are illustrated with the following examples:

Example 1: "A" is a resident of the Virgin Islands who purchased electrical household appliances at a shopping mall in the capital city of Puerto Rico. When making the purchases of electrical household appliances, "A" requested that the seller

deliver such items to his residence in the Virgin Islands. "A" never took possession of the electrical household appliances in Puerto Rico. In this case, the electrical household appliances shall be considered sold for use or consumption outside of Puerto Rico, and the seller shall not have an obligation to collect the SUT in said sale.

Example 2: "A" is a resident of the Virgin Islands who purchased clothing at a shopping mall in the capital city of Puerto Rico. When making the purchases, "A" took possession of such items of clothing at the moment of making the payment at the cash register. "A" indicated to the seller that such items of clothing would be used by him in his residential jurisdiction in the Virgin Islands. Insofar as the property was delivered in Puerto Rico, in accordance with Section 2409 of the Code, the sale shall be presumed to be for use or consumption in Puerto Rico, and the seller shall have the obligation to collect the SUT in such sale.

(b) Notwithstanding what is stated above, in the case of the sale of taxable items that consist of tangible personal property sold for exportation, such taxable items may remain in Puerto Rico for a term of sixty (60) days from and after the date of the sale without losing the right to the exemption established in paragraph (a).

A merchant reseller may acquire taxable items for resale without the obligation to remit the SUT even if the items thus acquired will not be sold in Puerto Rico, without having to comply with the sixty (60) day term included in this paragraph, because the merchant's condition as a reseller does not depend on the exportation of the taxable item.

The provisions of this paragraph (b) are illustrated with the following examples:

Example 1: "A" is a merchant reseller of carbonated beverages registered in the Merchants' Registry who holds an Exemption Certificate. "A" purchases all his carbonated beverages from "C", a local producer. "A" sells seventy (70) percent of his inventory of carbonated beverages in Puerto Rico and exports the remaining thirty (30) percent. Insofar as "A" holds an Exemption Certificate as a reseller of tangible personal property, the purchases of carbonated beverages for resale made between "A" and "C" shall not be subject to payment of the SUT even if the tangible personal property, which in this case consists of carbonated beverages, is kept in Puerto Rico for more than sixty (60) days.

Example 2: "A" is an information systems technical consultation services provider. "A" provides services for clients in and outside of Puerto Rico. "A" is a merchant who is not in the business of selling tangible personal property. As a part of the rendering of his information systems consultation services, "A" acquires from "H" several electronic equipments that he installs in his clients' facilities, both in and outside of Puerto Rico, and they represent an incidental cost to the rendering of the services. Insofar as "A" is not a merchant in the business of the resale of electronic equipments, "A" shall not be able to acquire the electronic equipments from "H" without the obligation to remit the SUT, nor shall he be entitled to request a refund for the SUT paid for having used such equipments outside of Puerto Rico. However, the rendering of the taxable service outside of Puerto Rico shall be covered by the provisions of this article, and "A" shall not have the obligation to collect the SUT in relation to those services.

(c) A person who is not a merchant may, after request to such effects to the Secretary, enjoy the exemption provided in Section 2503 of the Code and in this article in the purchase of tangible personal property that, even if originally delivered in Puerto Rico, will be exported within sixty (60) days of its purchase. When evaluating said request, the Secretary shall impose all the conditions required to guarantee that the tangible personal property for which the exemption is requested is not used in Puerto Rico without having paid the SUT, including requiring the posting of a bond guaranteeing the payment of the SUT and the storage of the tangible personal property at a bonded warehouse, among others. A merchant seller in Puerto Rico shall retain a copy of the Secretary's determination granting this exemption instead of an Exemption Certificate or a Certificate for Exempt Purchases.

(d) The sale or transfer of tobacco or cigarettes to ships with foreign registrations, and with registrations from the United States, to warships from foreign countries, and to ships from foreign countries during courtesy visits to Puerto Rico, shall be considered sale for use or consumption outside of Puerto Rico, even is such sale takes place in the territorial waters of Puerto Rico.

(e) In accordance with Section 6145 of the Code, the Secretary may extend the term established in subsection (a) of Section 2503 of the Code to allow a person to export his or her taxable items.

Article 2504-1.- Exemptions for in-transit taxable items.- (a) In accordance with the provisions of Section 2301(vv)(4) of the Code and Article 2301-1(vv)(8)(iv) of this Regulation, all taxable items introduced to Puerto Rico temporarily, which are directly related to the production of films, constructions, trade shows, conventions, seminars, or for other purposes, and which are re-exported from Puerto Rico by the same person who imported them, shall be exempt from paying the use tax.

(b) When a taxable item directly related to the production of films, constructions, trade shows, conventions, seminars, or for other purposes is to be introduced to Puerto Rico temporarily, the merchant may request from the Secretary to be exempted from paying the SUT. For those purposes, the merchant shall submit a request in writing, together with the following documents:

(1) an itemized list of the taxable items with the amount, brand, code, serial number, if applicable, use, cost, and any other information required;

(2) a copy of the contract with the local entities, as the case may be, specifying the period during which he or she will carry out the constructions, trade shows, film production, conventions, seminars, or others;

(3) a list of the persons that will participate in the case of trade shows, film productions, conventions, and seminars; and

(4) if required by the Secretary, a bond satisfactory to the Secretary that covers the use tax plus the penalties for the taxable items introduced.

(c) Also, the person introducing the taxable items to Puerto Rico shall comply with the following requirements:

(1) allow the taking of inventory of the taxable items for which exemptions are requested at the time of their introduction by Department officials;

(2) immediately notify the intention to export the taxable items covered by the exemption, with the purpose of checking them against the inventory taken in the introduction and verifying their exit;

(3) present the bill of lading corresponding to the taxable items to verify their exit and to ensure that the person responsible for introducing the taxable items is the same person who exported them; and

(4) pay any applicable use tax, fines, and penalties if any of the taxable items that were awarded exemptions were not exported.

Article 2505-1.- Reserved

Article 2506-1.- Exemptions for items used in manufacturing.- (a) All manufacturing plants shall be exempt from paying the SUT established in Subtitle BB of the Code in the purchase of "raw materials", excluding hydraulic cement, and in the "machinery and equipment used in manufacturing" for the manufacture of finished products or products used in the manufacturing of such products, including, but not limited to the process of electrical power. The manufacturing plants shall also be exempt from the SUT with regard to the items for which an exemption from remittance of excise taxes is provided under Section 6(c) of Act No. 135 of December 2, 1997, as amended, known as the "Tax Incentives Act of 1998", any subsequent similar provision, or under any law that replaces it.

(b) To enjoy the exemption provided in this article, the manufacturing plant shall request from the Secretary the corresponding Exemption Certificate, as established in Article 2502(a)-1 of this Regulation.

Article 2507-1.- Exemption for items sold in air or maritime terminal stores to persons leaving Puerto Rico.- (a) Taxable items available for sale in air or maritime terminal stores to persons traveling outside of Puerto Rico's jurisdictional borders shall be exempt from the SUT.

(b) This exemption shall be granted when the merchant who sells the taxable items complies with the following requirements:

- (1) is registered in the Department's Merchants' Registry;
- (2) has the Internal Revenue license required under Section 2042 of the Code;
- (3) delivers the tax-free items on board the plane or vessel in which the acquirer is to travel, or in the area or immediate boarding concourse of the air or maritime vessel; and
- (4) in the case of concessionaires who operate a store in duty-free zones, they shall have the same obligations and shall be subject to the same requirements



applicable to such stores under the provisions of Subtitle B of the Code, as they governed on November 14, 2006.

(c) Any person who is entitled to claim the exemption shall certify to the merchant his or her condition as an exempt person by showing the merchant a document that confirms that the person is leaving Puerto Rico on the day of the purchase, such as his or her boarding pass.

Article 2508-1.- Exemptions for taxable items acquired by government agencies.- (a) All taxable items acquired for official use by the agencies and instrumentalities of the Government of the United States and the government of the Commonwealth of Puerto Rico shall be exempt from payment of the SUT.

(b) The taxable items that have enjoyed the exemption provided in this article and are subsequently sold, transferred, or in any other way disposed of, shall be subject to pay the tax established by Subtitle BB of the Code. When the Commonwealth of Puerto Rico or any agency and instrumentality of the Government of the United States sells, transfers, or in any other way disposes of the taxable items, it shall have the obligation to require from the acquirer, before the delivery of the taxable items:

(1) payment of the SUT for the taxable items, or  
(2) proof that it is a government agency entitled to opt for the exemption provided under Section 2508 of the Code.

(c) To claim this exemption, the government agency shall present a Certificate for Exempt Purchases, as established in paragraph (d) of Article 2407-1 of this Regulation, at the moment of making its purchases. The agency shall indicate in said Certificate the type of taxable item acquired, including a clear and specific reference to the purchase order issued for the purchase of such taxable item. To be released from its obligation to remit the SUT, the seller of the taxable item shall confirm that the taxable item for which the Certificate for Exempt Purchases is presented corresponds to the taxable item described in the purchase order.

Instead of obtaining the Certificate for Exempt Purchases for each transaction, a merchant seller may, after the first sale to a government agency, use one of the alternative methods established in paragraph (d) of Article 2407-1 of this Regulation.

(d) The agency shall keep evidence of all the documentation related to the transactions for which it claimed the exemption granted by this article for a period of, at least, six (6) years.

Article 2509-1.- Exemptions for taxable items that constitute a change of domicile.- (a) Any individual who is not a resident of Puerto Rico or persons in the Armed Forces of the Government of the United States or the Government of the Commonwealth of Puerto Rico who are officially transferred to provide their services in Puerto Rico, who wish to establish or reestablish their residence in Puerto Rico, shall be entitled to introduce, without having to pay the use tax established in Subtitle BB of the Code, the used taxable items that reasonably constitute, in effect, a change of domicile.

(b) Soldiers who live alone abroad, without a spouse or dependents through which they could introduce the taxable items to Puerto Rico, may send them to their spouse or closest relative, together with a certified copy of their transfer order. The term "closest relative" shall mean the father, mother, or any other relative under immediate custody of the soldier.

(c) For the purposes of this article, the term "change of domicile" shall mean the whole collection of used taxable items that usually make up part of the furniture of a household.

(d) The Secretary shall acknowledge the exemption established in this article provided that the interested party requests it in writing and complies with the following requirements:

(1) submit the bill of lading or shipping manifest of the carrier introducing the taxable items, with the list that identifies each one of them;

(2) allow the taking of inventory of the taxable items at the moment of their introduction; and

(3) in the case of persons in the Armed Forces of the Government of the United States or the Government of the Commonwealth of Puerto Rico, they shall submit the official transfer order that is contemporaneous with the introduction of taxable items to Puerto Rico.

Article 2510-1.- Exemptions for admission fees.- (a) The admission fees for sports events or other types of events sponsored by public or private elementary

schools, intermediate schools, high schools, universities or colleges that provide educational services. For these purposes, the term "sponsored" means that the event is completely sponsored, promoted, and produced by the aforementioned institutions, or that it is covered by Title 1 of the Department of Education and endorsed by theater companies that are registered in the Commonwealth of Puerto Rico Bidder Registry.

(b) The exemption granted by Section 2510 of the Code shall be claimed by the entity that will carry out the activity for which admission fees covered by the exemption will be paid, when the approval of the tickets that represent the admission fee is requested, as required by Article 2301-1(n) of this Regulation. Any merchant who wishes to claim such exemption shall be duly registered in the Merchants' Registry in accordance with Section 2801 of the Code. In the case of public educational institutions, since they are not considered merchants, they shall not need to be registered in the Merchants' Registry.

Article 2511-1.- Exemptions for foods.- The following foods shall be exempt from paying the sales tax:

(a) foods and food ingredients, as defined in Section 2301(a) of the Code and in Article 2301-1(a) of this Regulation;

(b) prepared foods served to patients or residents of any hospital or other installation or facility designed and operated mainly for the care of persons who are sick, elderly, feeble, mentally or physically disabled, or who require special care and attention, provided that they are part of a bundled transaction of the sale of health or medical hospital services;

(c) prepared foods served to students in school cafeterias and those that are part of a bundled transaction of the sale of educational services. For these purposes, the term "school cafeteria" means the cafeterias that are part of the Commonwealth of Puerto Rico Department of Education system.

The provisions of this paragraph (c) are illustrated with the following examples:

Example 1: Private school "P" provides educational services, including lunch in the cafeteria for all the students. "P" charges an eight hundred (800) dollar registration fee and one hundred fifty (150) dollars a month. Students may or may not eat at the cafeteria. The cafeteria food shall qualify for the exemption provided in Section 2511 of

the Code, because it is part of a bundled transaction of the sale of educational services.

Example 2: Private school "M" provides educational services. "M" charges an eight hundred (800) dollar registration fee, one hundred fifty (150) dollars a month, and two hundred fifty (250) dollars for a meal plan. The meal plan shall not qualify for the exemption provided in Section 2511 of the Code, because it is not part of a bundled transaction of the sale of educational services; and

(d) prepared foods that are served by an all-inclusive hotel, as such term is defined in Article 2 of Act No. 272 of September 9, 2003, as amended, provided that they are part of a bundled transaction subject to the Room Occupancy Tax established by the Puerto Rico Tourism Company.

The provisions of this paragraph (d) are illustrated with the following examples:

Example 1: Hotel "H" is an all-inclusive hotel located in Puerto Rico. The accommodation packages that "H" offers to its guests include, among other things, the prepared foods served in the hotel's facilities. Such offers are subject, in their entirety, to the Room Occupancy Tax established by the Puerto Rico Tourism Company. Therefore, the prepared foods served by "H" shall not be subject to the SUT.

Example 2: Hotel "J" offers its guests several accommodation packages. One of the offers includes the accommodations and the prepared foods served in the hotel's facilities. Only the accommodations are subject to the Room Occupancy Tax established by the Puerto Rico Tourism Company. Therefore, the prepared foods served by "J" shall be subject to the SUT.

Article 2512-1.- Exemptions for prescribed medicaments.- (a) The exemption granted by Section 2512 of the Code shall only apply to medicaments that are to be consumed by a human being, that can be acquired solely and exclusively with a medical prescription.

(1) In the case of patients, such medicaments shall need to be prescribed by a physician duly licensed to practice medicine in the jurisdiction of the Commonwealth of Puerto Rico, or by a dentist, podiatrist, or other health professional duly authorized to prescribe medicaments in Puerto Rico, with a valid license issued by an authority qualified within the jurisdiction of the Commonwealth of Puerto Rico, and shall be

dispatched by a pharmacist that is duly licensed under the laws of the Commonwealth of Puerto Rico.

(2) In the case of a physician duly licensed to practice medicine in the jurisdiction of the Commonwealth of Puerto Rico, or a dentist, podiatrist, or other health professional duly authorized to prescribe medicaments in Puerto Rico, with a valid license issued by an authority qualified within the jurisdiction of the Commonwealth of Puerto Rico, they shall be able to acquire the medicaments subject to the exemption provided in this article by purchase, or receive them free of charge as samples, without having to pay the SUT. Provided that they are used or dispatched to a patient as part of or for, his or her treatment, such medicaments shall not be subject to payment of the SUT by the patient.

(3) In the case of a public or private hospital unit or health facility, duly authorized to operate as such by the Commonwealth of Puerto Rico, they shall be able to acquire the medicaments under the exemption provided in this article by purchase, or receive them free of charge as samples, without having to pay the SUT. Such medicaments, provided that they are used or dispatched to a patient as part of his or her treatment as prescribed or ordered by a physician duly licensed to practice medicine in the Commonwealth of Puerto Rico, shall not be subject to payment of the SUT by the patient.

The provisions of this paragraph (a) are illustrated with the following examples:

Example 1: A physician prescribes some pills for a patient to relieve his back pain. The pills do not need a medical prescription to be dispatched by a pharmacist within the jurisdiction of the Commonwealth of Puerto Rico (i.e., medicaments known as "over the counter"). Such pills shall not be considered a prescribed medicament when they are acquired by the patient at a drugstore. Therefore, they shall not qualify for the prescribed medicaments exemption and shall be subject to payment of the SUT.

Example 2: A nurse, following doctor's orders, gives medicament "Y" to a patient in a hospital institution property of the Commonwealth of Puerto Rico, as part of the treatment to improve his health. Medicament "Y" can only be dispatched in the jurisdiction of the Commonwealth of Puerto Rico with a medical prescription or order, and is considered a prescribed medicament for the purposes of Section 2512 of the

Code. The patient shall not have to pay the SUT for medicament "Y" because it is subject to the exemption provided by Section 2512 of the Code.

(b) The following items shall also be exempted from the SUT:

(1) hypodermic needles, hypodermic syringes, and chemical compounds used to treat illnesses, ailments, or injuries of human beings, usually sold for internal or external use in the healing, relieving, treatment, or prevention of diseases or ailments in human beings. The term "chemical compounds used to treat illnesses, ailments, or injuries of human beings" refers to the chemical compound that is part of a test kit used to perform, among others, diabetes tests, pregnancy tests, urine tests, and tuberculin tests. This includes strips that have a test area containing chemical compounds and the reagent tablets used for such tests ("reagent strips and tablets");

(2) prostheses, as such term is defined in Article 2301-1(II) of this Regulation;

(3) insulin; and

(4) oxygen.

(c) The exemption provided herein does not include cosmetics or toiletries, even though they contain ingredients that are classified as medicaments.

Article 2513-1.- Exemptions for lease or rental of real property.- The following shall be exempt from the SUT:

(a) the rate for the lease or rental of real property for commercial purposes, paid by a merchant who is registered in the Merchants' Registry, including payments for sales or office space, warehouses, and parking lots acquired as part of the contract for the lease or rental of the real property, and which does not have an hourly rate; and

(b) the rate for the lease or rental of real property paid by:

(1) a student, for his or her student housing; and

(2) an individual, for what constitutes his or her main residence. For these purposes, it shall be understood that the amount paid as a monthly rate at a place where the person resides, even if the person receives additional care or services, constitutes a rate for payment of the lease or rental for the person's main residence.

The provisions of this subparagraph (2) are illustrated with the following example:

Example: "X" is an elderly person who resides in a nursing home where, in addition to a room and access to facilities, he receives food services or other care. The

monthly rate paid by "X" shall be considered to be paid for what constitutes his main residence.

#### **CHAPTER IV TIME AND FORM OF PAYMENT**

Article 2601-1.- Accounting method.- (a) Every merchant shall use, for the purposes of Subtitle BB of the Code, the same accounting method that he or she uses to report his or her income in the income tax return; provided that, in every case, the merchant's obligation to pay shall arise from the moment when he or she receives payment from the client. In the case of nonprofit entities, they shall use the accounting method that they use to keep their accounting books.

(b) As established in paragraph (a) of this article, the merchant shall be responsible for paying the sales tax from the moment that he or she receives payment from the client. For these purposes, the term "payment" shall include the receipt of cash and any property or services. It shall also include, among others, the promise, in writing or not, of the purchaser to pay the purchase price of the taxable item plus the corresponding sales tax.

In the case of the sale of taxable items by a merchant who uses the accrual method, the delivery of the invoice by the merchant in light of an agreement, in writing or not, to render the services provided for which an invoice has been sent, shall constitute a promise by the purchaser to pay the purchase price of the taxable item plus the corresponding sales tax.

In cases where the accrual method is used, the merchant shall be entitled, under Section 2703 of the Code, to a credit for bad debts in the event that the purchaser of the taxable item does not pay the price of the taxable item plus the corresponding tax.

Article 2602(a)-1.- Sales and Use Tax Monthly Return.- (a) Definition of exempt purchases.- For the purposes of the Monthly Return, the term "exempt sales" means the total sales of taxable items for resale, the sale of taxable items covered by an exemption, and the total sales of properties or services that are excluded from the term taxable items.

(b) Obligation to file the Monthly Return.- Unless exempted by the provisions of this Regulation, any person who sells a taxable item or an item excluded from the term taxable item, shall have the obligation to file a Monthly Return. The Monthly

Return shall be delivered to the Department no later than the twentieth (20<sup>th</sup>) day of the calendar month following the month during which the sales occurred.

Any merchant who wishes to claim any exemption corresponding to taxable items shall have the obligation to file the Monthly Return and to claim the exemption in it.

In the case of merchants whose Merchants' Registration Certificates indicate that they shall not be collectors of the SUT, they shall not have the obligation to file the Monthly Return to report their exempt sales. However, every merchant, insofar as he or she sells taxable items, shall have the obligation to file the corresponding Monthly Return.

The provisions of this paragraph (b) are illustrated with the following examples:

Example 1: "A" is in the business of renting commercial properties. Section 2513 of the Code grants an exemption for payment of the rental of a real property used for commercial purposes. In order to claim the aforementioned exemption, "A" shall have to file the Monthly Return and report in it the amount received from the rental rate covered by the exemption.

Example 2: "B" is exclusively in the business of providing legal services. Sections 2301(nn) and (pp) of the Code exclude legal services from the definition of taxable items, therefore, these services do not constitute a taxable item. "B" shall not have the obligation to file the Monthly Return and report in it the amount of legal services rendered during the month, and the amount which, in accordance with the provisions of Section 2301(nn), shall be considered designated professional services.

Example 3: "C" owns a drugstore where she sells, among other items, medicaments for human consumption that cannot be sold without a prescription. Section 2512 of the Code provides an exemption for prescription medicaments. "C" shall have to file the Monthly Return and report the amount received during the month for the sale of such medicaments covered by the exemption.

Example 4: "D" owns a business in which he sells automobiles and automobile accessories. Section 2301(jj) of the Code excludes automobiles from the concept of tangible personal property and, therefore, they do not constitute a taxable item. However, "D" shall have the obligation to file the Monthly Return and report the amount received from the sale of automobiles and automobile accessories. That is, "D" shall



report the total sales, as this term is defined in paragraph (d) of this article, in the Monthly Return.

(c) Obligation to provide information separately for each municipality.- In accordance with Section 2602(f) of the Code, a person who has the obligation to file the Monthly Return shall comply with the requirement to provide the information for each municipality only if he or she submits such information for each commercial establishment. The term "commercial establishment" includes the business headquarters and any other location where real or personal property is sold or used, as such term is defined in Section 2301(vv) of the Code, where services are rendered, where admission fees are sold, or where bundled transactions are carried out. For these purposes, neither a vending machine nor a billboard shall be considered commercial establishments. Also, the presence of employees or agents of one person in the facilities of a client shall not turn the client's facilities into a commercial establishment of such person. In those cases where the sale of taxable items shall be attributed to a municipality in which the merchant does not have a commercial establishment, pursuant to the rules established in Section 2403 of the Code and Articles 2403-1 and 2403-2 of this Regulation, those sales of taxable items shall be reported in the Monthly Return corresponding to the commercial establishment where the sale took place.

The provisions of this paragraph (c) are illustrated with the following examples:

Example 1: "A" is a consultant, his office is in San Juan, and there are seven employees in his firm. "A's" employees visit clients throughout the Island and provide services in the facilities of such clients. "A" shall have the obligation to file the Monthly Return only for the establishment where his headquarters are located. Even if the sales that can be attributed to the provision of services have their sources in several municipalities, the provision of services by "A's" employees in his client's facilities shall not turn such facilities into commercial establishments of "A" for the purposes of the requirement to file the Monthly Return for each commercial establishment.

Example 2: "B" is in the business of selling cellular phones, he has a sales office in San Juan with ten employees. "B's" employees visit clients throughout the Island who have expressed their interest in buying cellular phones. "B's" employees conduct

sales and deliver equipment at the client's facilities. "B" shall only have an obligation to file the Monthly Return for the establishment where his sales office is located. The sale and delivery of equipment by "B's" employees at his clients' facilities shall not turn such facilities into commercial establishments of "B" for the purposes of the requirement to file the Monthly Return for each commercial establishment.

Example 3: The same facts as in Example 2, except that "B" has a warehouse in the municipality of Guaynabo, where no sales are carried out. Since he acquired the warehouse, "B" has had the obligation to file one Monthly Return for the establishment where his sales office is located and another one for the establishment where his warehouse is located. Regarding the Monthly Return corresponding to the warehouse, "B" shall report only those sales, if any, which are subject to the use tax, as applicable, or, if not, he shall file his Monthly Return for an amount of zero.

Example 4: "A" buys a television at "B's" store, located in San Juan. "B" transports and delivers it to "A" at his home in Ponce. "B" does not have a commercial establishment in Ponce. In keeping with the source of income rules, the source shall be Ponce, the jurisdiction in which "A's" home is located. However, since "B" does not have a commercial establishment in Ponce, he shall report this sale in the Monthly Return for the commercial establishment in San Juan.

Example 5: The same facts as in Example 4, except that "B" has a commercial establishment in Ponce. In keeping with the source of income rules, the source shall be Ponce, the jurisdiction in which "A's" home is located. Since "B" has a commercial establishment in Ponce, he shall report this sale in the Monthly Return for the commercial establishment in Ponce.

(d) Additional information required in the Monthly Return.- In addition to the information required by Section 2602 of the Code, the Monthly Return shall include the total sales and any applicable interest, surcharges, or penalties. For these purposes, the term "total sales" shall be the sum of the product of the sale of a taxable item plus the product of the sale of an item excluded from the term "taxable item".

Article 2602(b)-1.- Monthly Return for purchase of taxable items subject to the use tax.- In the case of individuals who have a Merchants' Registry number and, even though they do not have the obligation to pay the SUT, they have purchased taxable

items subject to the use tax, they shall file a Monthly Return no later than the twentieth (20<sup>th</sup>) day of the calendar month following the month during which the transaction subject to the tax occurred.

The provisions of this article are illustrated with the following example:

Example: "C" provides legal services and orders the headed paper that he uses in his office from outside of Puerto Rico. On the month that "C" receives the headed paper, he shall report such purchase as a purchase subject to the use tax in the Monthly Return.

Article 2602(c)-1.- Closing date for filing the Monthly Return.- The Secretary shall accept as filed on time all the Monthly Returns that arrive postmarked no later than the twentieth (20<sup>th</sup>) day of the calendar month following the month during which the taxes were collected, or the month following the one during which the transaction subject to the tax occurred, as the case may be. If the twentieth (20<sup>th</sup>) day were a Saturday, Sunday, or a federal or state holiday, the returns shall be accepted if they are postmarked on the next working day. The returns that the Secretary requires to be sent electronically shall be received no later than the twentieth (20<sup>th</sup>) day of the calendar month following the month during which such taxes were collected, or the month following the one during which the transaction subject to the tax occurred, as the case may be.

Article 2602(d)-1.- Electronic filing of the Monthly Return.- Every merchant who is required to remit the sales tax by an electronic transfer of funds, as provided in Section 2607 of the Code, shall have the obligation to file the Monthly Return electronically. The Secretary shall accept such returns as filed on time if the transfer is initiated and accepted no later than the twentieth (20<sup>th</sup>) day of the calendar month following the month during which such taxes were collected.

The Secretary may release the merchant from the requirement to make an electronic exchange of information transfer due to problems with the merchant's or the Department's computer system. To obtain a release, the merchant shall prove in writing to the Secretary that such circumstances exist.

Article 2602(g)-1.- Cable or satellite telecommunications and television services.-

In the case of the sale of cable or satellite telecommunications and television services, the commercial establishment that shall report the corresponding sales shall be determined depending on whether or not the merchant who provides such services has commercial establishments in all the municipalities of Puerto Rico. If the merchant who provides such services has establishments in all the municipalities of Puerto Rico, each establishment shall report in the Monthly Return the sales corresponding to the services rendered to its clients who are billed at an address within the municipality where the establishment is located. If the merchant who provides such services does not have establishments in all the municipalities of Puerto Rico, then the services billed to an address in a municipality where the merchant does not have an establishment shall be reported in the Monthly Return filed for the establishment where the headquarters are located.

The provisions of this article are illustrated with the following examples:

Example 1: "A", who resides in Ponce, uses the services of "B", a merchant in the business of selling cable television services. "B's" headquarters are located in San Juan. "B" does not have a commercial establishment in Ponce. In keeping with the source of income rules, the source shall be Ponce, the jurisdiction in which "A's" house is located. However, since "B" does not have a commercial establishment in Ponce, he shall report this sale in the Monthly Return for the headquarters located in San Juan.

Example 2: The same facts as in Example 1, except that "B" has a commercial establishment in Ponce. In keeping with the source of income rules, the source shall be Ponce, the jurisdiction in which "A's" house is located. Since "B" has a commercial establishment in Ponce, he shall report this sale in the Monthly Return for the commercial establishment in Ponce.

Article 2603-1.- Sales and Use Tax Annual Return.- In the case of merchants that are duly registered in the Merchants' Registry, an Annual Return shall not be required for the taxable years that began during calendar year 2006. For the taxable years that begin after December 31, 2006, all the merchants who do not have an obligation to file one or more Monthly Returns showing their total sales, shall file an Annual Return describing their total sales for their taxable year in the form approved by

the Secretary for such purposes, no later than the fifteenth (15<sup>th</sup>) day of the third calendar month following the closing of their taxable year.

In the case of persons who are not merchants, who acquire taxable items for use or consumption in Puerto Rico, and who have the obligation to pay the corresponding use tax, they shall file a use return in the form approved by the Secretary for such purposes, no later than the fifteenth (15<sup>th</sup>) day of the third month following the closing of the calendar year, or on the date of filing of their Income Tax Return, including extensions, as applicable.

The provisions of this article are illustrated with the following example:

Example: "A" is a salaried employee and he orders by catalog, from outside of Puerto Rico, a sound system to be used at his residence. "A" also orders movies in DVD format regularly from a video club in the United States. When "A" receives the equipment and the movies, he shall not have the obligation to file a Monthly Return for the use tax for the equipment and the movies. However, "A" shall have the obligation to report the purchase of the equipment and the movies, and the corresponding SUT, in the form provided by the Secretary.

Article 2604-1.- Remittance of the sales and use tax.- Remittance to the Secretary of the taxes levied by Subtitle BB of the Code (in the case of a merchant, regardless of whether or not they were collected) shall be done as provided below:

(a) by the merchant, except in the case described in paragraph (b) of this article, as provided in Section 2606 of the Code;

(b) in the case of merchants who collect the sales tax in representation of other merchants, under a billing and collecting agreement, the person responsible for remittance of the taxes to the Secretary shall be the one who recognizes the sale in his or her books in accordance with the generally accepted accounting principles;

(c) by the person who uses, consumes, or stores taxable items in Puerto Rico, as provided by Section 2606 of the Code; or

(d) by the multilevel marketer, in the case of persons who have fulfilled the requirements established in Article 2301-1(j) of this Regulation.

Article 2605-1.- Payment of the sales tax computed together with the sales price.- The taxes to be paid for taxable items computed in accordance with Section 2406 of the Code shall be remitted to the Department by the operator or the merchant.

Article 2606-1.- Time of remittance of the sales and use tax.- (a) In general.- The taxes levied by Subtitle BB of the Code shall be payable to the Secretary by the person responsible for issuing the payment, no later than the twentieth (20<sup>th</sup>) day of the calendar month following the month during which the transaction subject to the tax occurred. In the case of persons who do not have a Merchants' Registry number and have purchased taxable items subject to the use tax, they shall remit the SUT together with the return required in Article 2603-1 of this Regulation.

(b) Deposit in excess of thirty thousand (30,000) dollars.- For taxable years that begin after December 31, 2006, those merchants whose deposits of the tax levied by Subtitle BB of the Code for the previous taxable year exceed thirty thousand (30,000) dollars, the tax shall be payable at the time and under the conditions that shall govern the payment or deposit of such retained taxes, as determined by the Secretary.

Article 2607-1.- Form of payment.- (a) The taxes levied in Subtitle BB of the Code shall be paid by postal or bank money order, legal tender, checks, debit card, or electronic transfer.

(b) Any merchant with a sales volume equal or greater than five hundred thousand (500,000) dollars a year shall remit the SUT by electronic transfer. For these purposes, the term "sales volume" means the business volume, as such term is defined in Article 2301-1(pp)(2)(ix) of this Regulation.

(c) The Secretary may require from a merchant who has issued a check with insufficient funds, that subsequent payments be made by certified, official, or manager's checks.

(d) When the payment due date for the tax is not a working day, payment shall be made the next working day.

(e) The Secretary shall accept all payments as remitted on time if they are postmarked no later than the twentieth (20<sup>th</sup>) day of the calendar month following the month during which the taxes were collected, or the month following the one during which the transaction subject to the tax occurred, as the case may be. If the twentieth

day were a Saturday, Sunday, or a federal or state holiday, the payments shall be accepted if they are postmarked on the next working day. The payments that the Secretary requires to be sent electronically shall be received no later than the twentieth (20<sup>th</sup>) day of the calendar month following the month during which such taxes were collected, or the month following the one during which the transaction subject to the tax occurred, as the case may be.

## **CHAPTER V DEDUCTION, CREDIT, AND REFUND**

Article 2701(a)-1.- Refund to the purchaser for return of taxable items.- In the case of a return by a purchaser of a taxable item for which the merchant collected the sales tax, the purchaser shall be entitled to receive a refund for the tax paid from the merchant who collected the tax, not from the Secretary.

The merchant may return to the purchaser the sum of the taxable items together with the tax collected in cash, or by issuing a credit for future purchases, or a credit or adjustment to the credit or debit card, if such were the method of payment.

Article 2701(b)-1.- Deduction for return of taxable items.- The deduction granted in subparagraph (b) of Section 2701 of the Code shall be applicable regardless of whether or not at the time of the return of the taxable item the merchant has already remitted the collected sales tax.

The provisions of this article are illustrated with the following examples:

Example 1: "A" sells a bicycle to "B" on December 10, 2006 and collects the corresponding sales tax. On December 27, 2006, "B" returns the bicycle to "A" because it was defective. At the time of the return of the bicycle, "A" still has not remitted the collected tax, which he must do on or before January 20, 2007. On the Monthly Return for December, "A" shall have to report the sale of the bicycle, and he shall also be entitled to a deduction from the gross sales of said month for the amount of the bicycle's sales price, excluding the collected tax.

Example 2: The same facts as in Example 1, except that "B" returns the bicycle on January 25, 2007. At the time of the return of the bicycle, "A" had already remitted the tax collected in said transaction. In the Monthly Return for December, "A" shall have to report the sale of the bicycle. In the Monthly Return for January, he shall be entitled to a deduction from the gross sales of said month for the amount of the bicycle's

sales price, excluding the collected tax. "A" shall not need to amend the Monthly Return for December of 2006.

Article 2702-1.- Credit for sale of merchant's property.- Section 2702 of the Code establishes the rule for those cases where a merchant acquires a taxable item for his or her use and later transfers it to inventory and sells it without having used it.

The term "used", for the purposes of the requirement to sell the taxable item "without having used it" in Section 2702 of the Code, does not include the storage of the purchased taxable item. The credit resulting from the use tax may be equally claimed for the sales or the use tax.

For the merchant to be entitled to the credit granted by Section 2702 of the Code, he or she must have obtained the Merchants' Registration Certificate .

Pursuant to Sections 6001 and 6011 of the Code, the period of limitation established in subsection (b) of Section 6011 shall apply to credit claims under Section 2702 of the Code and this article.

The provisions of this article are illustrated with the following examples:

Example 1: "A" has a furniture business. "A" orders a computer to the United States to use it in the Accounts Payable Department. "A" receives the computer and pays the use tax. Before removing it from its packaging, a client sees it and offers to buy it. "A" sells the computer to his client. Following the rules established in Article 2301-1(ww) regarding occasional sales, "A" does not have an obligation to collect the sales tax in this transaction. Therefore, "A" is not entitled to a credit for the total amount of the use tax paid for that computer.

Example 2: "A" has a computer business. "A" orders a computer to the United States to use it in the Accounts Payable Department. "A" receives the computer and pays the use tax. Before removing it from its packaging, a client sees it and offers to buy it. "A" sells the computer to his client and collects the applicable sales tax. "A" is entitled to a credit for the total amount of the use tax paid for that computer.

Example 3: The same facts as in Example 2, except that "A" used the computer for a period of six (6) months before selling it. "A" sells the computer to his client and collects the applicable sales tax. "A" shall not be entitled to a credit for the total amount of the use tax paid for that computer because "A" used it.



Article 2703-1.- Credit for bad debts.- (a) Subsection (a) of Section 2703 of the Code applies to merchants who use the accrual method to report their income in their income tax returns. The purpose of said subsection is to allow a credit for all or part of a receivable account that becomes a bad debt. The credit shall be claimed in the Monthly Return corresponding to the month during which such account becomes a bad debt.

To determine the total amount of the credit, pursuant to said subsection, only the direct write-off method shall be allowed; for those purposes, the use of the reserve method shall not be allowed. This is consistent with the requirement of Section 2601 of the Code to the effect that, for the purposes of the sales tax, the accounting method used for income tax purposes shall be used and, to those effects, the only method allowed for claiming bad debts shall be the direct write-off method.

The resulting credit may be used for either the sales tax or the use tax.

For the merchant to be entitled to the credit allowed in Section 2703 of the Code, he or she must have obtained the Merchants' Registration Certificate .

Pursuant to Sections 6001 and 6011 of the Code, the period of limitation established in subsection (b) of Section 6011 shall apply to credit claims under Section 2703 of the Code and this article.

(b) Conditional sales.- When a merchant has paid the tax established in Subtitle BB of the Code for a taxable item sold, and he or she repossesses (with or without a judicial process) the taxable item, he or she may claim a credit in the next Monthly Return for an amount equal to the taxes that can be attributed to the uncollectible balance owed to such merchant.

(c) Recovery.- In the case of the recovery of bad debts for which the merchant has claimed a credit, the recovered amount shall be included under "total sales" in the next Monthly Return filed by the merchant after such recovery, and it shall be subject to the corresponding tax.

Article 2704-1.- Credit for taxes paid by the merchant.- The credit allowed by Section 2704 of the Code only applies to a merchant who holds an Exemption Certificate at the moment of purchasing a taxable item. Therefore, merchants who are resellers, and who do not hold an Exemption Certificate at the moment of paying the

sales tax for items that they resell, shall not be entitled to claim a credit for taxes paid for such items. This credit does not apply to manufacturers.

The resulting credit may be used for either the sales or the use tax.

Pursuant to Sections 6001 and 6011 of the Code, the period of limitation established in subsection (b) of Section 6011 shall apply to credit claims under Section 2704 of the Code and this article.

Article 2705-1.- Refund of paid taxes.- (a) In general.- The following persons may request from the Secretary, in writing, the refund of the SUT within the term and in accordance with the proceedings indicated below:

(1) a merchant who pays with his or her Monthly Return a SUT in excess of what is established by Subtitle BB of the Code; and

(2) any person who pays the use tax wrongfully or excessively to the Secretary.

For the purposes of this article, a person shall be considered to have wrongfully paid or been charged for the SUT when he or she is entitled to one of the exemptions provided in Subtitle BB of the Code, or in special legislation, and he or she remits a payment to the Secretary for the SUT. However, for the purposes of this article, a person shall be considered to have paid or been charged excessively for the SUT when he or she is required to remit payment of the SUT to the Secretary and he or she remits a sum that exceeds the total amount of the SUT computed in accordance with Sections 2401 and 2402 of the Code at a rate of five point five (5.5) percent of the sales price or the purchase price of the taxable item, as the case may be.

The provisions of this paragraph (a) are illustrated with the following examples:

Example 1: "A" is a merchant who collected five thousand (5,000) dollars from the SUT during December of 2006. In his Monthly Return for December, which is due on January 20, 2007, "A" mistakenly computed that the amount of the SUT he had to remit was seven thousand (7,000) dollars. "A" is entitled to claim a refund for two thousand (2,000) dollars.

Example 2: "B" is a merchant in the business of providing services. "B" acquires furniture and office equipment for his office valued at five thousand (5,000) dollars from "C", a merchant in the business of selling office equipment. The SUT corresponding to

that sale is two hundred seventy-five (275) dollars. "C" mistakenly collected four hundred twenty-five (425) dollars for the SUT for that sale. Such collection is an excessive collection of the SUT. "B" is not entitled to request a refund from the Secretary for the one hundred fifty (150) dollars that he paid in excess because his payment was made to "C", and "C" may claim the corresponding credit or refund from the SUT remitted to the Secretary, as applicable.

Example 3: "B" is a merchant in the business of providing services. "B" acquires furniture and office equipment for his office valued at five thousand (5,000) dollars from "C.com", a merchant in the business of selling office equipment, who does not have a nexus with Puerto Rico and makes sales through the Internet. The SUT corresponding to that sale is two hundred seventy-five (275) dollars. "C" did not collect the SUT from "B", so "B" remitted directly to the Secretary his use tax return, together with a payment of four hundred twenty-five (425) dollars for his purchase. Such payment is an excessive payment of the SUT. "B" is entitled to request a refund from the Secretary for the one hundred fifty (150) dollars that he paid in excess because his payment was made directly to the Secretary.

Example 4: "E" is a bona fide farmer who acquires a tractor for his farm valued at ten thousand (10,000) dollars from "F", a merchant who sells machinery and equipment. "E" is entitled to purchase his machinery and equipment free from the SUT because "E" is a bona fide farmer. "F" wrongfully collected five hundred fifty (550) dollars for the SUT for that sale. "E" is not entitled to request a refund from the Secretary for the five hundred fifty (550) dollars that he wrongfully paid, because his payment was made to "F". "E" shall make the corresponding claim to "F", and "F" may claim the corresponding credit or refund of the SUT remitted to the Secretary, as applicable.

Example 5: "E" is a bona fide farmer who acquires a tractor for his farm valued at ten thousand (10,000) dollars from "G", a seller of machinery and equipment who is based in the United States and has no nexus with Puerto Rico. "E" is entitled to purchase his machinery and equipment free from the SUT because "E" is a bona fide farmer. "G" did not collect the SUT from "E", so "E" remitted directly to the Secretary his use tax return, together with a payment of five hundred fifty (550) dollars for the purchase. Said payment is a wrongful payment of the SUT. "E" is entitled to request a

refund from the Secretary for the five hundred fifty (550) dollars that he wrongfully paid because his payment was made directly to the Secretary.

Example 6: "D" is a merchant in the business of selling office furniture and equipment. "D" does not hold an Exemption Certificate. "D" acquires for resale, office furniture and equipment valued at five thousand (5,000) dollars from "E", a merchant who sells office equipment. The SUT corresponding to that sale is two hundred seventy-five (275) dollars. "E" collected two hundred seventy-five (275) dollars for the SUT for that sale. "D" is not entitled to request from the Secretary or from the merchant a refund for the two hundred seventy-five (275) dollars that he paid for the SUT, because such amount was not paid wrongfully or in excess.

(b) Application for refund.- The refund for the SUT paid wrongfully or in excess shall be requested through Form AS 2923.1, Application for Sales and Use Tax Refund (Application for Refund). This type of refund may not be claimed in the Monthly Return. The right to receive any refund under the provisions of this article is nontransferable, except to a successor entity in a corporate reorganization, the executor, administrator, receptor, trustee in a bankruptcy case, or assignee in an insolvency proceeding, of the person entitled to the refund.

(c) No refund may be claimed unless the Application for Refund is presented to the Secretary within the timeframes established for a claim for refund of the tax paid or collected wrongfully or in excess, in accordance with Subtitle F of the Code.

(d) When the Secretary approves an Application for Refund, or decides on his or her own initiative that the person or merchant has made a wrongful or excessive payment, the Secretary shall credit the amount of the corresponding refund to any tax liability of the person or merchant. Any residual amount from the wrongfully or excessively paid SUT shall be reimbursed to the person or merchant.

(e) A total or partial refusal of an Application for Refund shall be notified in the form and manner provided in Subtitle F of the Code.

(f) When the Secretary concludes that a refund has been wrongfully paid, he or she may reconsider the case and recalculate the SUT, refusing the refund and notifying the person or merchant, in the form and in accordance with the procedure established in Section 6002 of the Code.

(g) If the Application for Refund were refused in whole or in part, the person or merchant may initiate the procedure provided in Sections 6030 to 6032 of the Code.

Article 2706-1.- Special disposition of funds.- (a) The SUT for admission fees that are collected or can be attributed to the Capital city municipal stadium shall be credited to a special account and transferred to the municipality of San Juan, by the Secretary, in the form and time that he or she may determine, and during the time that the Secretary deems necessary, considering the income and expenses resulting from the operation and construction of the park and its facilities.

(b) The SUT for admission fees collected at the stadiums of other municipalities shall be credited to a special account and transferred to the corresponding municipality until the total amount of any debt or obligation incurred by such municipalities with the purpose of defraying the costs of improvements or extensions made to such stadiums is paid off. This provision shall take effect on the starting date of the improvement or extension works. The Sports and Recreation Secretary shall supervise and approve the works, and shall notify the starting date to the Secretary. For these purposes of this paragraph, the improvement or extension works shall be considered to have begun once the Municipal Assembly of the municipality authorizes a loan for the funding of said works. Such funds shall revert to the Commonwealth of Puerto Rico General Fund when the improvement or extension works are not physically started within a period of two (2) years, from and after the date of authorization of the municipal loan.

(c) Ten (10) percent of the SUT collected for admission fees, except the SUT for admission fees referred to in paragraphs (a) and (b) of this article, and the SUT corresponding to events held at the Coliseo Pachín Vicéns in Ponce and at the Coliseo Roberto Clemente in San Juan, shall be credited to a special fund for the operating costs of the Festival Casals Inc., the Puerto Rico Symphonic Orchestra Corporation, the Children's Strings Program, and the Puerto Rico Conservatory of Music Corporation.

Every three (3) months, the Secretary shall transfer sixty-six (66) percent of the amounts credited to such fund to the Musical Arts Corporation, created by Act No. 4 of July 31, 1985, to place them, according to the applicable laws, at the disposal of the Festival Casals, Inc. and the Puerto Rico Symphonic Orchestra Corporation, in equal

parts; provided, that the remaining thirty-four (34) percent of the amounts credited to such fund shall be transferred by the Secretary every three (3) months to the Conservatory of Music Corporation, to be used in equal parts for its operation and the operation of the Children's Strings Program.

## **CHAPTER VI REQUIRED DOCUMENTS**

Article 2801(a)-1.- Merchants' Registry.- (a) Requirement to register in the Merchants' Registry.- Every natural or juridical person who does or wishes to do business of any kind in Puerto Rico, including itinerant or temporary businesses, shall request registration in the Merchants' Registry at least thirty (30) days before starting operations. In the case of exhibitors, they shall register before the convention or exhibition begins.

Every trust, estate, association, and nonprofit organization that does business in the Commonwealth of Puerto Rico or sells taxable items, whether or not it has a tax exemption in accordance with the provisions of Section 1101 of the Code, shall have the obligation to register in the Merchants' Registry.

For these purposes, pension plans shall not be considered to do business in the Commonwealth of Puerto Rico, or to sell taxable items. Therefore, they shall not have the obligation to register.

The provisions of this paragraph (a) are illustrated with the following example:

Example: Association "C" is a corporation organized with the purpose of representing the titleholders of Condominium "Z". "C" derives its income from the fixed monthly fees paid by the titleholders of "Z", and uses such fees to subsidize, among others, the maintenance and security costs of "Z". "C" does not do business in the Commonwealth of Puerto Rico nor does it sell taxable items. "C" shall not need to register in the Merchants' Registry.

(b) Application for Merchants' Registration Certificate.- (1) Registration in the Merchants' Registry shall be done by filling out the Application. One Application per merchant shall be filed, which shall include a list of all the merchant's commercial establishments. For the purposes of registration in the Merchants' Registry, a vending machine and a billboard shall not be considered a commercial establishment. In the case of merchants who are individuals doing business as sole proprietors, they shall file

one Application per individual. Said Application shall be available at the Department and in the Department's web page, [www.hacienda.gobierno.pr](http://www.hacienda.gobierno.pr).

The provisions of this subparagraph (1) are illustrated with the following examples:

Example 1: Corporation "X" is in the business of selling furniture. Its headquarters are in Bayamón, and it has furniture stores in Bayamón, Caguas, Mayagüez, and Ponce, and one warehouse in Guaynabo. "X" shall only fill out one Application as a merchant, but he shall include in it information about each of the establishments. In this case, as established in paragraph (d) of this article, the Secretary shall issue six (6) Merchants' Registration Certificates, one for the headquarters located in Bayamón, one for the warehouse located in Guaynabo, and one for each of the furniture stores.

Example 2: "T" is an individual doing business as a sole proprietor and the owner of the following businesses: a gas station, a bakery, and a shoe store. Although "T" has three (3) different businesses, he shall only fill out one Application as a merchant, but he shall include the information of each of the businesses. "T" shall include the information of each business in the spaces on the Application that would otherwise be used for listing commercial establishments. In this case, as established in paragraph (d) of this article, the Secretary shall issue three (3) Merchants' Registration Certificates.

Example 3: "A" and "B" are married and both are business owners independently. "A" is a mechanical engineer and "B" is an interior decorator. "A" and "B" shall fill out two (2) separate Applications. "A" shall register as a mechanical engineer, and shall receive a Merchants' Registration Certificate for such business; and "B" shall register as an interior decorator and shall receive a Merchants' Registration Certificate for such business.

Example 4: "C" and "D" are married. "C" is a salaried individual and does not have a business of his own. "D" owns an unincorporated business. "C" shall not have to fill out an Application, but "D" shall fill out an Application for her unincorporated business. "D" shall receive a Merchants' Registration Certificate for such business.

Example 5: "E" is an operator of ten (10) vending machines. "E" shall only fill out one Application. "E" shall not have to include information regarding each vending machine in the Application, since such machines are not considered a commercial establishment for the purposes of registration in the Merchants' Registry. "E" shall receive one Merchants' Registration Certificate for his business.

Example 6: "F" makes a business renting five (5) commercial properties. "F" shall only fill out one Application as a lessor, but he shall include in it information about each establishment. In this case, as established in paragraph (d) of this article, the Secretary shall issue six (6) Merchants' Registration Certificates, one for "F's" principal office, and one for each of the rented properties.

(2) Information to be submitted in the Application.- The following information shall be included in the Application:

- (i) reason for filing the Application;
- (ii) applicant's legal name (corporation, partnership, sole proprietor, or other);
- (iii) social security number and employer identification number, as applicable;
- (iv) postal address;
- (v) physical address. In the case of merchants who are doing business as sole proprietors, itinerant businesses, and temporary businesses, they shall provide the owner's residential address. In the case of other types of organizations, they shall provide the physical address of the headquarters;
- (vi) phone and facsimile numbers;
- (vii) electronic address and web page, as applicable;
- (viii) type of organization;
- (ix) date of incorporation or creation. In the case of merchants who are doing business as sole proprietors, they shall provide the starting date of operations of their business or principal commercial activity;
- (x) accounting period closing date;
- (xi) aggregate business volume at the end of the natural year immediately prior to the Application. If the business did not operate during the twelve (12) months immediately prior to the Application, the merchant shall provide the annualized business volume. In the case of new businesses, they shall provide the estimated business



volume. Also, in the case of merchants who use a fiscal year, they shall use the aggregate business volume at the end of the prior fiscal year;

- (xii) nature of the principal business;
- (xiii) code under the North American Industry Classification System (NAICS);
- (xiv) information about the owners, partners, shareholders, or any other person

possessing fifty (50) percent or more interest in the business:

- (A) name;
- (B) title;
- (C) social security number and employer identification number, as applicable;
- (D) percentage of participation;
- (E) residential address;
- (F) telephone number; and

(G) if the business provides services, indicate if the owner, partner, or shareholder possesses fifty (50) percent or more interest in another business, and indicate the name and employer identification number of the other business;

(xv) information about the commercial establishments operated by the business:

- (A) type of Merchants' Registration Certificate requested;
- (B) commercial name or "DBA" (doing business as);
- (C) indicate if tangible personal property will be sold;
- (D) physical address;
- (E) telephone number;
- (F) description of the activity;
- (G) code under the North American Industry Classification System (NAICS);
- (H) business volume at the end of the year immediately prior to the

Application. If the business did not operate during the twelve (12) months immediately prior to the Application, the merchant shall provide the annualized business volume. In the case of new businesses, they shall provide the estimated business volume. Also, in the case of merchants who use a fiscal year, they shall use the business volume at the end of the prior fiscal year; and

- (I) starting date of operations;

- (xvi) indicate if it conducts sales outside of Puerto Rico; and
- (xvii) any other information that the Secretary should deem relevant.

(3) In addition to providing the information described in subparagraph (2) of this paragraph, the merchants whose information does not appear in the Department's systems shall provide a copy of the certificate of incorporation, and any document issued by the Federal Internal Revenue Service (IRS) confirming the employer identification number (EIN) or individual taxpayer identification number (ITIN) assigned to the merchant, as applicable. In the case of individuals, they shall provide the social security number issued by the Social Security Administration. In the case of foreign entities, they shall provide the authorization to operate and do business issued by the Puerto Rico State Department.

(4) Methods for submitting information.- Every merchant shall submit the Application to the Department using any of the following methods, or any other method established by the Secretary:

- (i) personal delivery at the Department;
- (ii) the Department's web page, **www.hacienda.gobierno.pr**; or
- (iii) certified mail with return receipt requested, to the address that appears in the Application's instructions.

(5) Notification of incomplete information.- The Secretary shall notify the merchant of any information that has not been submitted or that has been incorrectly submitted. For this purpose, the Secretary shall use the merchant's last known address.

(c) Types of Merchants' Registration Certificates.- The Secretary shall issue the following types of Certificates:

(1) Merchant.- This type of Merchants' Registration Certificate shall be issued to every natural or juridical person who wishes to do or does business of any kind in Puerto Rico, whether or not he or she has the obligation to collect and remit the SUT, except for exhibitors, itinerant businesses, and temporary businesses.

(2) Exhibitor.- This type of Merchants' Registration Certificate shall be issued to every person authorized through an agreement to sell taxable items at a convention or exhibition during a specified period. The provisions related to the exhibitors are included in Article 2804-1 of this Regulation.

(3) Itinerant business.- This type of Merchants' Registration Certificate shall be issued to every business that, permanently, sells taxable items without a fixed commercial establishment, in mobile units, on foot, or from locations that are not attached to any place or real property.

(4) Temporary business.- This type of Merchants' Registration Certificate shall be issued to every business that operates for a period of no more than six (6) consecutive months during the year.

The provisions of this paragraph (c) are illustrated with the following examples:

Example 1: "C" is a company that provides accounting services. Its offices are located in San Juan. "C" shall request a Merchants' Registration Certificate under the merchant classification.

Example 2: "P" is in the business of selling hot potatoes during the twelve (12) months of the year, and does not have a fixed commercial establishment. "P" shall request a Merchants' Registration Certificate under the itinerant business classification.

Example 3: "L" provides at-home car wash services, and does not have a fixed commercial establishment. "L" shall request a Merchants' Registration Certificate under the itinerant business classification.

Example 4: "S" is a salaried employee who sells *pasteles* during the months of November, December, and January. "S" shall request a Merchants' Registration Certificate under the temporary business classification, because he will conduct sales for a period of three (3) months.

In some cases, even if a merchant is eligible for a Merchants' Registration Certificate under the temporary business classification, it could prove beneficial for such merchant to request a Certificate under the merchant classification. For example, if a merchant sells Christmas trees only during the months of November and December, such merchant would be eligible to request the Certificate under the temporary business classification. However, if such merchant sells Christmas trees every year, he or she could request the Certificate under the merchant classification, and he or she would not have to request the Certificate under the temporary business classification every year, because the Certificate under the merchant classification would be effective until the business stopped operating. However, once the merchant receives the Certificate under

the merchant classification, he or she would have to file the Monthly Return every month even if there is no balance due in the return.

(d) Issuance of the Merchants' Registration Certificate.- The Secretary shall issue a Merchants' Registration Certificate for every commercial establishment included in the Application. Said Certificate shall indicate whether or not the merchant has the obligation to collect the SUT. The Certificate shall be sent by mail to the address provided by the merchant in the Application.

(e) Duplicates of the Merchants' Registration Certificate.- The Secretary may issue duplicates of the Merchants' Registration Certificate in case of theft, destruction, or loss of the Certificate. Also, the Secretary may issue duplicates of the Merchants' Registration Certificate under the same classification as the original Certificate or other classification in those cases where the merchant's individual situation requires it. For example, a Merchants' Registration Certificate holder who participates in a temporary event outside of his or her permanent commercial establishment may request a duplicate of the Certificate under the temporary business classification, instead of requesting a new temporary business Merchants' Registration Certificate. Duplicates of the Certificate shall be requested by filling out Form AS 2917.1, Application for Merchants' Registration Certificate Duplicate.

(f) Effectiveness of the Merchants' Registration Certificate.- The Certificate shall be effective provided that the merchant has not ceased operations or sold his or her business. It shall be the merchant's responsibility to notify this information to the Department no later than thirty (30) days after the cease or sale.

The provisions of this paragraph (f) are illustrated with the following examples:

Example 1: "T" has been operating a flower shop as sole proprietor for twenty-five (25) years. "T" decides to retire, and transfers the business to his daughter. "T" shall report the cease to the Department thirty (30) days after the cease, and his daughter shall request a new Merchants' Registration Certificate in her name.

Example 2: An individual who is doing business as sole proprietor sells his business to another person, who will operate the business under the same name. Even though the business will continue to operate under the same name, the seller shall notify the sale of the business to the Department thirty (30) days after the sale, and the

purchaser shall have to request a new Merchants' Registration Certificate .

(g) Penalties.- Every merchant who knowingly provides false information in the Application shall be subject to the penalty established in Section 6106(c) of the Code. Also, any person who in any way forges a Merchants' Registration Certificate or who knowingly possesses a fraudulent Certificate shall be subject to the penalty established in Section 6106(e) of the Code.

Article 2801(c)-1.- Conveyance or transfer of the Merchants' Registration Certificate.- No merchant shall sell, convey, assign, or in any other way transfer to another person a Merchants' Registration Certificate , unless such transfer is authorized by the Secretary. Any merchant who fails to comply with the provisions of this article shall be subject to the penalty established in Section 6106(b) of the Code.

Article 2801(e)-1.- Notification of change or amendment to the information required in the Merchants' Registration Certificate and Exemption Certificate Application, and notification of theft, loss, or destruction of the Merchants' Registration Certificate.- (a) Notification.- Every merchant shall have an obligation to notify the Secretary of any change or amendment to the information required for the Application no later than thirty (30) days after the event which requires a change or amendment. The merchant shall file an amended Application to notify such change or amendment. The merchant shall only fill out the following sections of the Application, as applicable:

- (1) the reason for filing the application;
- (2) the legal name of the corporation, partnership, sole proprietor, or other;
- (3) the social security number and the employer identification number, as applicable;
- (4) the blank for the Merchants' Registration number assigned to the commercial entity or establishment that requires amendment; and
- (5) the specific lines that require amendments.

(b) Changes.- The following constitute examples of changes that shall be notified to the Secretary by filing an amended Application:

- (1) change in the legal name or commercial name;
- (2) change in the address of the merchant or any of the commercial establishments;

- (3) change in the type of organization;
- (4) cease of operations; or
- (5) addition or elimination of commercial establishments, commercial activities, or tangible personal property for resale.

The following changes may be notified in the Monthly Return instead of filing an amended Application: change of address, phone number, fax number, electronic address, and web page.

(c) A change in the information provided regarding the owners, partners, shareholders, or any other person who possesses fifty (50) percent or more interest in the business, as such, shall not require the notification established in paragraph (a) of this article. Such change may be notified to the Secretary when any other change or amendment to the information required in the Application occurs, such as the changes listed in paragraph (b) of this article, among others.

The provisions of this paragraph (c) are illustrated with the following example:

Example: "A" and "B" are shareholders of Corporation "C", which provides electronic equipment repair services. Each of them possesses fifty (50) percent of the shares of "C". "A" sells his shares to "F" during the month of January of 2007. "C" does not have to notify the Secretary of this change in one of its shareholders who possesses fifty (50) percent of the shares. "C" opens a new commercial establishment on March 1, 2007. In this case, "C" shall notify the Secretary of both the new commercial establishment and the change caused by the sale of shares by "A" to "F", no later than March 31, 2007.

(d) Theft, loss or destruction of the Merchants' Registration Certificate.- Every merchant shall have the obligation to notify the Secretary of the theft, loss, or destruction of the Merchants' Registration Certificate no later than thirty (30) days after the event. Such notification shall be done by filling out the Application for Merchants' Registration Certificate Duplicate.

(e) Penalties.- Any merchant who fails to comply with the provisions of this article shall be subject to the penalty established in Section 6106(d) of the Code.

Article 2802-1.- Display of the Merchants' Registration Certificate.- (a) In general.- The Merchants' Registration Certificate shall be displayed at all times in a visible place for the general public in the commercial establishment for which it was issued. The Merchants' Registration Certificate issued by the Department contains unique characteristics and security devices for each original document. The merchant shall only display the Merchants' Registration Certificate issued by the Department or any duplicate authorized and issued by the Secretary. The display of a copy or facsimile of the Merchants' Registration Certificate fails to comply with the requirement established in this article.

The provisions of this paragraph (a) are illustrated with the following example:

Example: A Certificate that is displayed in the cash register, window, or customer service area of a commercial establishment shall be considered to be displayed properly.

(b) Special cases.- (1) Stores with multiple cash registers.- The Certificate shall be displayed in the customer service area of each commercial establishment or in another area designated by the merchant for the display of permits, licenses, or any other documents issued by the Commonwealth of Puerto Rico.

(2) Exhibitors.- The Certificate shall be displayed in the kiosk or in another place where the items are displayed during the convention or exhibition.

(3) Itinerant businesses.- The Certificate shall be displayed in the mobile unit or the place from which the merchant makes his or her sales. If the itinerant merchant does not have a place of business, he or she shall carry the Certificate at all times.

(c) Penalties.- Any person who does not display the Merchants' Registration Certificate or who displays a forged Certificate, shall be subject to the penalties established in Section 6104(a) and (d) of the Code, respectively.

Article 2803-1.- Commercial negotiations without a Certificate.- No person shall do business as a merchant without having obtained a Merchants' Registration Certificate. Any person who does business as a merchant in Puerto Rico without having requested a Merchants' Registration Certificate shall be subject to the penalty established in Section 6106(a) of the Code.

Article 2804-1.- Registry for exhibitors.- (a) An exhibitor, as such term is defined in Article 2801(a)-1(c)(2) of this Regulation, shall register in the Merchants' Registry if, during the convention or exhibition, he or she:

- (1) will carry out retail sales of taxable items; or
- (2) will take purchase orders of taxable items that will be shipped or delivered to individuals in Puerto Rico, and such orders comply with the requirements of a purchase contract: consent, object, and cause.

The provisions of this paragraph (a) are illustrated with the following examples:

Example 1: "Y" is a merchant from the United States who has come to participate in an international chemicals convention held at the Puerto Rico Conventions Center. "Y" will only display his equipment in the convention and will not sell taxable items. Therefore, "Y" shall not need to register in the Merchants' Registry.

Example 2: "Z" is a merchant from China who has come to participate at a computer exhibition that will be held at a hotel in Puerto Rico, and he will sell his products at retail during the exhibition. "Z" will also take purchase orders that fulfill the requirements of a purchase contract (consent, object, and cause). The computers will be sent to purchasers in Puerto Rico. "Z" shall register in the Merchants' Registry as an exhibitor.

Example 3: "A" is a merchant registered in the Merchants' Registry who owns an aromatic candle store in San Juan and will participate in an exhibition of decorative items in Caguas. "A" will not register in the Merchants' Registry as an exhibitor because he holds a Merchants' Registration Certificate. "A" will request a duplicate of his Merchants' Registration Certificate and will only use said duplicate during the exhibition.

(b) If an exhibitor fails to comply with his or her obligation to collect the SUT in any of the transactions listed in subparagraphs (1) and (2) of paragraph (a) of this article, the Secretary may collect such tax from the exhibitor or the purchaser.

Article 2806-1.- Requirement to keep documents.- Every merchant shall make sure to keep in Puerto Rico, for a period no shorter than six (6) years, all that information which serves as evidence of the taxable items received, used, sold at retail, distributed or stored, leased by such merchant, such as invoices, shipping documents, the charges for such sales, and other documents that the Secretary could require.



Article 2807-1.- Documents required to merchants and purchasers.- (a) Documents required to merchants.- Every merchant shall keep, for a period no shorter than six (6) years, the accounting books, papers, documents, and any other evidence related to the sales and amount of the retained and deposited sales tax. The documents and information to keep shall include, but not limited to, statements, invoices, commercial receipts, canceled checks, payment receipts, and Exemption Certificate.

(b) Documents required to purchasers.- (1) In general, a purchaser who is subject to the provisions of Subtitle BB of the Code shall keep, for a period no shorter than twenty-four (24) hours, the sales receipts, documents, and any other evidence of the retail purchase and the payment of the corresponding taxes.

(2) Exception.- If the acquired taxable item has a sales price of one thousand (1,000) dollars or more, the purchaser shall keep the documents mentioned in subparagraph (1) for a period no shorter than four (4) years.

Article 2808-1.- Documents required for claiming credits.- (a) Any merchant who claims a credit granted in Subtitle BB of the Code against his or her obligation to pay the sales tax, shall keep and have available for the Secretary all the documentation needed to verify the merchant's right to such credits.

(b) The Secretary may reject a credit claimed in the Monthly Return, insofar as it is not supported by the information required in this article, in which case, the amount owed shall be considered a deficiency, as established in Subtitle F of the Code.

Article 2809-1.- Sampling.- (a) When a merchant does not have the appropriate accounting books for his or her retail sales, the Secretary may, based on a test or sample of the merchant's available records or other information related to the sales or purchases made by such merchant for a representative period, determine the proportion of the sales of taxable items compared to the total sales, or the proportion of the purchases of taxable items compared to the total purchases made by the merchant. The purpose of this article is not to exempt the merchant from collecting the SUT.

(b) When the accounting books of a merchant are appropriate but extensive, the Secretary may select a sample of transactions and make a projection based on the data compiled during the complete auditing period. This shall be done to determine the

proportion of the sales of taxable items compared with the total sales, or the proportion of the purchases of taxable items compared to the purchases made by the merchant.

To carry out such sampling, the Secretary may reach an agreement with the merchant to determine the means and the methods to be used in the sampling process. In the event that an agreement can not be reached, the merchant shall be entitled to a review by the Secretary.

(c) In the case of an Application for Refund, every merchant is entitled, when his or her records are appropriate but extensive, to establish the amount of the refund by statistical sampling or any other sampling method agreed to with the Secretary. Regardless of the sampling method selected, it shall reflect both the excessive payments and the deficiencies in the payment of the SUT, as applicable.

The sampling method shall be approved by the Secretary before submitting an Application for Refund. Therefore, an Application for Refund submitted before the sampling method has been approved by the Secretary can not be considered a complete Application for Refund.

(d) For the purposes of this article, the Secretary shall establish the procedures related to the sampling methods, including the criteria for their use, and the approval of the sampling method selected by a merchant.

Article 2810-1.- Bond.- (a) In all cases where it is necessary to secure the payment of the sales tax established in the provisions of Subtitle BB of the Code, the Secretary may require a deposit in cash, bond, or another security as a condition for a person to obtain or retain a Merchants' Registration Certificate. Said bond shall be in the form and amount that the Secretary deems appropriate for the specific circumstances.

(b) Any person who does not make such deposit in cash, bond, or another security, as provided by paragraph (a) of this article, shall not be entitled to obtain or retain a Merchants' Registration Certificate, and the Secretary of Justice is hereby authorized to proceed with the corresponding judicial means, when thus required by the Secretary, to prevent the person from doing business, subject to the provisions of Subtitle BB of the Code, until the cash, bond, or another security has been deposited with the Secretary.

Article 2811-1.- Permission to pay the sales and use tax to the Secretary directly.- (a) Any merchant who wishes to request permission to pay the SUT to the Secretary directly, instead of paying it to the seller of taxable items, shall do so by presenting a closing agreement with the Secretary in accordance with the provisions of Section 6126 of the Code. The applicant shall include in said agreement his or her general information and the following:

(1) a certification in which he or she promises to file the Monthly Return, as provided in Section 2602 of the Code, and to pay the SUT for the taxable items on the date established in Section 2606 of the Code;

(2) a description, with the detailed information that the Secretary shall determine, of the accounting system through which the applicant shall make the distinction between the taxable items and the exempt items;

(3) an explanation of the business reasons that justify the use of the permit to pay the SUT to the Secretary directly, and the merchant's capacity to comply with the requirements of information and payment imposed by Subtitle BB of the Code and this Regulation. For example, the authorization to pay the SUT to the Secretary directly shall achieve one or more of the following objectives:

(i) reduce the administrative work invested in determining the taxation of items, collection, verification, calculation, or remittance of the SUT;

(ii) improve the capacity of compliance with the Code;

(iii) provide for more accurate compliance in situations where the determination of an item's taxation is difficult or impractical at the moment of sale; or

(iv) allow for a more accurate calculation of the SUT in situations in which the automation or centralization of purchasing or accounting functions or processes have occurred, and the applicant is subject to taxation in several jurisdictions.

(4) evidence of records that establish that the applicant will annually purchase taxable items with a value of eight hundred thousand (800,000) dollars or more when purchased, excluding the value of the taxable items for which an Exemption Certificate would have been issued in accordance with subsection (a) of Section 2502 of the Code;

(5) the bond that, in keeping with the power conferred to him or her by Section 2810 of the Code, the Secretary may at his or her discretion request in the

amount that he or she deems reasonable; and

(6) any other information that the Secretary may require to these effects.

(b) The Secretary shall be responsible for evaluating the application to obtain permission to pay the SUT to the Secretary directly in accordance with the requirements established in paragraph (a) of this article. In the cases in which permission is refused, the decision may not be appealed, and the person may request authorization from the Secretary to submit an amended application or a new application after a reasonable period has elapsed since the refusal of the original application.

(c) A merchant who has been authorized to pay the SUT to the Secretary directly shall keep the documentation that is necessary to determine his or her tax liability in accordance with Sections 2401 and 2402 of the Code.

(d) For the purposes of this paragraph, the term "Total Exemption Certificate" refers to the permit issued by the Secretary that allows the holder to pay the sales tax established in Section 2401 of the Code to the Secretary directly, instead of the seller of taxable items.

All persons who hold a Total Exemption Certificate, in accordance with what is established in paragraph (a) of this article, in order to pay the SUT to the Secretary directly, shall have to present such Certificate to the merchants who sell them taxable items, and such merchants shall be released from the obligation to collect the SUT. This certificate shall cover all future sales of taxable items to the holder of such permit. Said Total Exemption Certificate shall include the name of the person, the Merchants' Registry number, and a certification indicating that the holder promises to pay the SUT for the taxable items acquired with the Total Exemption Certificate.

(e) On every occasion that a merchant makes a sale to a holder of a Total Exemption Certificate for the first time, the merchant seller shall document the exempt nature of the transaction by reviewing the original copy of the purchaser's effective Total Exemption Certificate, and retaining a copy of such certificate.

The merchant seller shall keep the copy of the Total Exemption Certificate in his or her files for a period of six (6) years from the date of the filing of the Monthly Return in which such exempt transaction was reported.

(f) When a merchant sells, including the first sale and all the subsequent sales, to the holder of a Total Exemption Certificate, the merchant seller shall document the exempt nature of each transaction by obtaining the Certificate for Exempt Purchases, as established in paragraph (d) of Article 2407-1 of this Regulation.

Instead of obtaining the Certificate for Exempt Purchases with each transaction, a merchant seller may, after the first sale to a holder of a Total Exemption Certificate, use one of the alternative methods established in paragraph (d) of Article 2407-1 of this Regulation.

(g) The holder of a Total Exemption Certificate may voluntarily rescind it. However, such certificate shall be effective for a period of one year, or until the Secretary revokes it and issues a notification in such respect, as established in paragraph (h) of this article.

(h) The Secretary shall cancel, at his or her discretion, the Total Exemption Certificate. Such cancellation is irrevocable, and the Secretary shall notify such person of the cancellation in writing through certified mail.

## **CHAPTER VII TRANSITORY PROVISIONS**

Article 2901-1.- Definitions.- for the purposes of Section 2901 of the Code and Articles 2901-1 to 2901-4 of this Regulation, the following terms have the meaning provided below, except when context clearly indicates otherwise:

(a) Purchase Certificate.- The form that a purchaser of tangible personal property completes, with the purpose of giving it to the merchant from whom he or she acquires such tangible personal property to confirm his or her right to the exclusion provided in Section 2901 of the Code. The Purchase Certificate shall be available at the Department and in the Department's web page, **[www.hacienda.gobierno.pr](http://www.hacienda.gobierno.pr)**.

(b) Qualified contract.- A written contract executed in the ordinary course of business of a merchant, between such merchant and one (1) or more persons, who may or may not be merchants, through which the merchant acquires an obligation to sale at retail a determined amount of tangible personal property at an established price. The qualified contract shall be executed before October 31, 2006. However, the term "qualified contract" shall include a contract executed after October 30, 2006, but by virtue of a bid awarded before October 31, 2006. The term "qualified contract" shall

also include a lease or rental contract executed in accordance with the provisions of Article 2301-1(wv)(1)(i) of this Regulation.

Also, to determine if a contract is qualified, the Secretary shall consider the following:

(1) Cancellation clauses.- The inclusion of a cancellation clause in a contract shall not constitute an impediment for such contract to be considered a qualified contract.

(2) Change orders.- Any change order accepted after October 30, 2006, which leads to an increase in the amount of the tangible personal property covered by the original qualified contract or an increase in the total price of the contract due to the imposition of the SUT, shall not constitute a qualified contract or become part of the original qualified contract and, therefore, the exclusion established in Section 2901 of the Code shall not be applicable to it. However, a qualified contract shall not cease to be considered as such merely because of a change in the price of the tangible personal property items to be sold.

(3) Renewals or extensions.- Except in the case of lease or rental contracts executed in accordance with the provisions of Article 2301-1(wv)(1)(i) of this Regulation, no renewal or extension of a qualified contract granted after October 30, 2006 shall constitute a qualified contract or become part of the original qualified contract and, therefore, the exclusion established in Section 2901 of the Code shall not be applicable to it. In the case of lease or rental contracts executed in accordance with the provisions of Article 2301-1(wv)(1)(i) of this Regulation, the renewal may only be considered part of the qualified contract when the contracting parties and the tangible personal property that constitutes the object of the contract are identical.

(4) Clauses that absorb the price increase caused by the imposition of the SUT.- No contract whose clauses have the effect of causing that the purchaser of the tangible personal property absorb the price increase caused by the imposition of the SUT shall be considered a qualified contract.

(5) Cession of contracts.- The cession of a qualified contract shall not affect its qualification insofar as, in accordance with its terms, the assignee ends up having the same obligation that the assignor used to have.

Article 2901-2.- Exclusion of preexisting contracts and awarded bids.- (a) In general.- Section 2901 of the Code shall apply when the SUT becomes effective. The purpose of this section is to prevent that the price of tangible personal property to be purchased at retail by a person under a qualified contract (including a qualified lease or rental contract executed in accordance with the provisions of Article 2301-1(ww)(1)(i) of this Regulation) increases due to the imposition of the tax levied by subsection (a) of Section 2015 of the Code and the SUT.

Pursuant to the provisions of this Regulation, any person who is a party in a qualified contract may, as provided herein, acquire tangible personal property without paying the SUT for a period of twelve (12) months beginning on November 15, 2006. Provided that, in keeping with the power conferred to the Secretary in subsection (a) of Section 2901 of the Code, any person who is a party in a qualified contract and wishes to acquire tangible personal property without paying the SUT, after a period of twelve (12) months, beginning on November 15, 2006, has elapsed, shall present to the Secretary a request for authorization to those effects, and submit the information required by the Secretary.

(b) Except as provided in paragraph (c) of this article, the retail sale of tangible personal property covered by contracts executed or bids awarded before October 31, 2006, shall be excluded from the SUT.

(c) Taxable services.- In the case of the sale of taxable services, they shall be subject to the SUT if rendered after October 31, 2006, regardless of whether they were contracted, or they pertain to a bid awarded before October 31, 2006.

The provisions of this article are illustrated with the following examples:

Example 1: On January 15, 2006, "A" agreed, for a set amount and price, and through a written contract, that "B" would provide taxable services to him for a period of twelve (12) months. Even though the contract was executed before October 31, 2006, the taxable services provided by "B" to "A" after November 14, 2006 shall be subject to the SUT.

Example 2: On January 15, 2006, "A", through a written contract, agreed that he would buy from "B", during a period of twelve (12) months, a set amount of tangible personal property at a set price. The tangible personal property that "A" receives from

"B", pursuant to such contract, after November 14, 2006, shall be excluded from payment of the SUT, because said contract is a qualified contract.

Example 3: On October 15, 2006, "A" executed a lay-away sales contract in writing, for a period of six (6) months, with "B", for the acquisition of tangible personal property at a set price. The payments made by "B" to "A" for the acquisition of the tangible personal property shall not be subject to the SUT, because said contract is a qualified contract.

Example 4: On October 15, 2006, developer "A", a corporation in the business of residential real estate development and sales, executed a written construction contract with "B", the contractor. "B" does not sell construction materials. "B" usually purchases construction materials from "C", and does not execute a contract with "C" to acquire the materials that he will need to fulfill his contract with "A". "B" begins construction on November 30, 2006. The construction materials that "B" acquires from "C" shall be subject to the SUT because "B" does not have a qualified contract with "C".

Example 5: The same facts as in the previous example. However, "B" executes a qualified contract with "C" on October 30, 2006 to acquire the construction materials needed to comply with the contract executed with "A". The construction materials that "B" acquires from "C" shall not be subject to the SUT because "B" has a qualified contract with "C", which was executed before October 31, 2006.

Example 6: On October 30, 2006, "A" executed a qualified contract with "B" for four (4) years for the acquisition of one hundred (100) units of tangible personal property. "B" acquires one hundred (100) units between November 15, 2006 and December 31, 2006. All the units acquired by "B" shall be excluded from payment of the SUT because they are part of a qualified contract.

Example 7: The same facts as in the previous example. However, "B" acquires one hundred ten (110) units between November 15, 2006 and December 31, 2006. Only the one hundred (100) units included in the qualified contract shall be excluded from payment of the SUT.

Example 8: The same facts as in Example 6. However, "B" acquires ninety (90) units as part of the qualified contract between November 15, 2006 and November 14, 2007. The ninety (90) units shall be excluded from payment of the SUT because they



are part of the qualified contract before November 14, 2007. However, for the ten (10) remaining units to be excluded from payment of the SUT, "B" shall provide the information provided by the Secretary, as established in paragraph (a) of this article, because such units will be acquired after the twelve (12) month period has elapsed.

Example 9: On October 15, 2006, "C" executed a qualified contract with "D" for two (2) years for the acquisition of two hundred (200) units of tangible personal property. On November 20, 2006, "D", as part of a change order to such qualified contract, added twenty (20) units. "D" acquired two hundred twenty (220) units between November 15, 2006 and December 31, 2006. The two hundred (200) units acquired by "D" shall be excluded from payment of the SUT because they were acquired as part of the qualified contract. However, the remaining twenty (20) units acquired from "D" shall be subject to the SUT because the change order is not part of the qualified contract.

Article 2901-3.- Exclusion.- (a) Validation of the exclusion.- To validate the exclusion established in Section 2901 of the Code, the person who wishes to purchase tangible personal property pursuant to a qualified contract has the obligation to present Form AS 2920.1, Certificate for Purchases Covered by a Qualified Contract (Purchase Certificate) to the seller.

(b) Release from collection.- For a merchant seller to be released from the requirement to collect and deposit the SUT in those tangible personal property sales related to a qualified contract made to merchants, he or she shall:

- (1) obtain from the purchaser a Purchase Certificate;
- (2) remit to the Secretary, no later than the twentieth (20<sup>th</sup>) day of each month, a copy of every Purchase Certificate received during the previous month, grouped by purchaser and by contract with such purchaser; and
- (3) deliver to the Secretary, no later than the twentieth (20<sup>th</sup>) day of the calendar month following the month of the first sale covered by the qualified contract, and which occurred later than November 14, 2006, a copy of such qualified contract. In the case of qualified contracts executed for bids awarded before October 31, 2006, the seller of the tangible personal property under such contract shall also provide evidence certifying that the bid was awarded before October 31, 2006.

If the merchant seller fails to comply with these requirements, he or she shall be subject to pay the SUT that was not collected.

(c) Exception.- In the case of lay-away sale contracts for acquiring tangible personal property with a sales price lower than five thousand (5,000) dollars, it shall not be necessary to comply with the requirements established in subparagraphs (2) and (3) of paragraph (b) of this article.

Article 2901-4.- Information requirements.- (a) Purchaser information requirement.- Every merchant purchaser who presents a Purchase Certificate shall:

(1) include in the Purchase Certificate all the information required therein;

(2) keep a copy of the qualified contract and the invoices, receipts, or other evidence of the purchases of tangible personal property made in keeping with such contract; and

(3) keep a record of the total purchase amount of tangible personal property acquired under each qualified contract. To such effects, the merchant purchaser shall keep a perpetual balance of the purchases made of such items, and the amount of tangible personal property that remains to be acquired in accordance with each qualified contract.

(b) Seller information requirement.- Every merchant seller shall:

(1) keep the Purchase Certificate for a period of six (6) years from the date of filing of the Monthly Return in which such excluded transaction was reported;

(2) keep a filing system that relates the qualified contract with the corresponding Purchase Certificates, and the Purchase Certificates with the corresponding invoice, receipt, or other evidence of the sale; and

(3) keep a record of the total sales of tangible personal property sold under each qualified contract in which he or she is a party. To such effects, the merchant seller shall keep a perpetual balance of the sales made of such items, and the amount of tangible personal property that remains to be sold in accordance with each qualified contract.

**CHAPTER VIII**  
**REPEAL AND EFFECTIVENESS**

REPEAL: This Regulation repeals Regulation No. 7201 of August 18, 2006 and Regulation No. 7230 of October 13, 2006.

EFFECTIVENESS: This Regulation shall become effective immediately after it is filed at the State Department, in accordance with Section 2.13 of Act No. 170 of August 12, 1988, as amended, known as the "Commonwealth of Puerto Rico Uniform Administrative Procedures Act". However, the provisions of the Regulation shall be effective from and after November 15, 2006.

Approved in San Juan, Puerto Rico, on November 20, 2008.

Angel A. Ortiz García  
Secretary of the Treasury

Filed in the State Department on November 20, 2008.