

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

Regulation to amend Articles 2301-1, 2406-1(a), 2407-1, 2502(a)-1(b), 2502(b)-1(a)(2), 2503-1(c), 2504-1, 2506-1(a), 2508-1(a), 2512-1(b), 2602(a)-1(d), 2602(b)-1, 2606-1(a), 2607-1(e), 2703-1(c), 2801(a)-1(b)(2), 2801(e)-1, 2901-2, and 2901-3 and to add paragraphs (zz), (aaa), (bbb), and (ccc) to Article 2301-1, and Articles 2505-1, 2514-1, 2516-1, and 2519-1 to Regulation No. 7249 of November 14, 2006, enacted pursuant to Section 2303 of the Puerto Rico Internal Revenue Code of 1994, as amended, which authorizes the Secretary of the Treasury to adopt the Regulations related to the imposition, exemption, interpretation, administration and collection of the sales and use tax.

Article 2301-1

Subparagraph (2) of paragraph (n) of Article 2301-1 is hereby amended to read as follows:

"(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"; and

(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."

Paragraph (s) of Article 2301-1 is hereby amended to read as follows:

"(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, 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. Any person who wishes to apply for such certification shall provide to the Department evidence that the entity was created exclusively to act as an agent for the Government. Additionally, he or she shall provide a certification issued by the Government entity in whose name he or she is acting, that certifies the aforementioned and provides a breakdown of the taxable items that will be acquired in the name of the Government entity. All applications and the aforementioned documents shall be sent to the Department's Assistant Secretary for Internal Revenue Area."

Paragraph (t) of Article 2301-1 is hereby amended to read as follows:

"(t) Sales tax.- The tax levied by Sections 2401 and 6189 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."

Paragraph (u) of Article 2301-1 is hereby amended to read as follows:

"(u) Use tax.- The tax levied by Sections 2402 and 6189 of the Code for the use, consumption, or storage of a taxable item in Puerto Rico."

Paragraph (y) of Article 2301-1 is hereby amended to read as follows:

"(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, cement or the production process of electrical power.

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."

Clause (v) of subparagraph (1) of paragraph (hh) of Article 2301-1 is hereby amended to read as follows:

"(v) Installation charges.- Provided that, in the case of the sale of tangible personal property, the installation charges that cannot be segregated from the sales price of said tangible personal property on the invoice or other sales document and appropriately presented as services related to the installation of said property, shall be included in the sales price of the tangible personal property;"

Subparagraph (1) of paragraph (ll) of Article 2301-1 is hereby amended to read as follows:

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

Additionally, the term "prosthesis" shall include items specifically designed to make up for the physical or physiological deficiencies of persons with disabilities, as such term is defined in Act No. 264 of August 31, 2000, as amended, known as the "Puerto Rico Technological Assistance Program Act" and in Act No. 238 of August 31, 2004, as amended, known as the "Bill of Rights for Persons with Disabilities."

In accordance with the aforementioned laws, the term "person with a disability" refers to a person who has a physical, mental or sensory disability (or disabilities) that substantially limits one or more life activities and functions, but that, with the help of technological assistance equipment or services, can lessen the functional deterioration,

maintain or increase the level of the functional capacity in any principal life activity; has a medical history of a disability; or is considered to have a disability."

Clause (i) of subparagraph (2) of paragraph (pp) of Article 2301-1 is hereby amended to read as follows:

"(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 the services indicated in this clause (i) 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 merchant purchaser 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, 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;"

Clause (vi) of subparagraph (2) of paragraph (pp) of Article 2301-1 is hereby amended to read as follows:

"(vi) the charges for financial services 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" is defined by reference to Section 1024(f)(4) of the Code. Said section reads as follows:

"Financial Institution.- For the purposes of this subsection, 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) a brokerage or securities house;
- (G) institutions that provide 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.

As provided in subparagraph (H) of paragraph (4) of subsection (f) of Section 1024 of the Code, the entities listed under subparagraphs (A) through (G), both inclusive, of paragraph (4) of subsection (f) of Section 1024 of the Code, or others that could be understood to engage in business as a "financial institution," shall be 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. Therefore, the service charges included in the exclusion provided in Section 2301(pp)(2)(E) of the Code, shall be those that can be attributed to services whose rendering requires the entity to be 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."

Clause (ix) of subparagraph (2) of paragraph (pp) of Article 2301-1 is hereby amended to read as follows:

"(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 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 an annual salary of forty thousand (40,000) dollars. "A" also owns a messenger service company, which generates 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 who generates 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."

Clause (iv) of subparagraph (8) of paragraph (vv) of Article 2301-1 is hereby amended to read as follows:

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



Clause (i) of subparagraph (1) of paragraph (ww) of Article 2301-1 is hereby amended to read as follows:

"(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. For the purposes of the obligations of paying, reporting, and remitting the tax to the Secretary, it shall be understood that the date on which a taxable item is sold is either the date of the transfer of possession or the date of the transfer of title, whichever occurs first.

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 included in the leases 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 early 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 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 that can be attributed to the property, except for those that can be attributed to the lessor's income;"

Clause (iv) of subparagraph (2) of paragraph (ww) of Article 2301-1 is hereby amended to read as follows:

"(iv) the handing out of taxable items or any material (tangible or intangible) that evidences a donation, including the handing out of prints, stickers, hearts, or other items of no commercial value which merely evidence that the true purpose of a contribution is to make a donation."

Paragraph (zz) is hereby added to Article 2301-1 to read as follows:

"(zz) Newspaper.- Informative publication that is printed and distributed at certain intervals to communicate news that are of public interest. The term "newspaper" does not include "handbills", circulars, fliers, or similar publications, unless they are distributed as part of a publication that is part of the newspaper, within the definition that appears in this paragraph, or they are materials that are components of a newspaper, as such term is defined in paragraph (aaa) of this article. In addition, the term "newspaper" does not include any printed material published to provide information about certain topics of special interest to groups, unless such publication otherwise qualifies as a newspaper within the definition provided in this paragraph."

Paragraph (aaa) is hereby added to Article 2301-1 to read as follows:

"(aaa) Materials that are components of a newspaper.- Publications and other printed materials that, ordinarily and without affecting the sales price of a newspaper, are physically incorporated, or are attached or inserted to a newspaper, as such term is defined in paragraph (zz) of this article, are expressly produced to be incorporated, attached, or inserted in a newspaper, and are delivered directly by the printer to the newspaper. "Materials that are components of a newspaper" are distributed with the newspaper and should reasonably constitute an integral part of it in relation to the frequency or periodicity with which said materials are included in the newspaper. "Materials that are components of a newspaper" include products such as commercial supplements, shoppers and advertising materials, printed by the newspaper's manufacturing plant or by a third party."

Paragraph (bbb) is hereby added to Article 2301-1 to read as follows:

"(bbb) Commercial establishment.- A business establishment through which the total or partial commercial procedures of a business are performed, and that is required to be registered in the Merchants' Registry of the Department and to obtain the corresponding Merchants' Registration number, as such term is defined in paragraph (ccc) of this article, in accordance with Section 2801 of the Code. The term "commercial establishment" includes the main business office 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."

Paragraph (ccc) is hereby added to Article 2301-1 to read as follows:

"(ccc) Merchants' Registration Number.- Number assigned to a merchant registered in the Merchants' Registry of the Department in accordance with Section 2801 of the Code. The Merchants' Registration number shall be composed of eleven (11) digits. The first seven (7) digits shall be associated with the person (individual or legal entity), and the following four (4) digits shall be associated with the merchant's physical location."

Article 2406-1(a)

Paragraph (a) of Article 2406-1 is hereby amended to read as follows:

"(a) When, due to the nature of the business, it is impractical to comply with the requirements of Section 2405(b) of the Code, a merchant or operator of a vending machine may reflect the sales tax together with the sales price, if he or she complies with the following requirements:

(1) reflects the sales tax together with the sales price in all sales of taxable items; and

(2) clearly discloses in his or her commercial establishment or vending machine, or on the invoice, bill, ticket, or other evidence of sale, that the sales tax is reflected together with the sales price of the taxable items.

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

Example 1: "A" is a merchant registered in the Merchants' Registry, who is in the business of selling newspapers. Each newspaper is sold for eighty-five (85) cents. "A" will be able to sell the newspapers for ninety (90) cents, and will not have to reflect the sales tax separately from the newspaper's sales price, provided that he does the same for all his newspaper sales and that he clearly discloses that the sales tax is reflected together with the newspaper's sales price.

Example 2: "L" is a merchant registered in the Merchants' Registry, who is 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. "L" will be able to sell the tangible personal property for one (1) dollar and eighty-five (85) cents,

and will not have to reflect the sales tax separately from the sales price of the tangible personal property, provided that he does the same for all his sales of tangible personal property through vending machines, and that he clearly discloses in the vending machines that the sales tax is reflected together with sales price of the tangible personal property."

Article 2407-1

Subparagraph (1) of paragraph (a) of Article 2407-1 is hereby amended to read as follows:

"(1) The term reseller means a merchant who purchases taxable items mainly for resale. For these purposes, the term "mainly" means that during the period of three (3) taxable years 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. The previous analysis specifically refers to the average of sales of the inventory of taxable items for resale, not to the average of all the merchant's sales. Therefore, the average of eighty (80) percent does not include the sales of services or the sales of exempt items.

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 comply with 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 complies with 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 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."

Subparagraph (2) of paragraph (d) of Article 2407-1 is hereby amended to read as follows:

"(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.

(i) In the case of merchants who sell "materials that are components of a newspaper", as such term is defined in paragraph (aaa) of Article 2301-1 of this Regulation, to a newspaper's manufacturing plant, the merchant seller shall document the exempt nature of every transaction by obtaining the Certificate for Exempt Purchases, filled out and signed by the manufacturing plant.

(ii) In the case of merchants who sell "materials that are components of a newspaper", as such term is defined in paragraph (aaa) of Article 2301-1 of this Regulation, and such "materials that are components of a newspaper" are paid by another merchant who is not a newspaper's manufacturing plant, the seller merchant shall document the exempt nature of every transaction by obtaining the Certificate for Exempt Purchases and a copy of the publication agreement with the corresponding newspaper. Once the materials that are components of a newspaper have been published, the purchaser shall deliver to the merchant seller a certification of circulation issued by the newspaper.

(iii) In the case of a merchant who makes sales to diplomatic missions and their staff who are holders of an Exemption Card issued by the United States Department of State, the following procedure shall be carried out:

(A) at the moment of purchase, the diplomatic personnel (the purchaser) shall inform the merchant seller that he or she is eligible for the exemption of payment of the SUT for his or her function as a diplomat or consul;

(B) the purchaser shall present to the merchant seller a valid Exemption Card issued by the United States Department of State;

(C) the merchant seller has the obligation of verifying the Exemption Card to ensure that the purchase complies with the restrictions established in said card and, therefore, qualifies as an exempt transaction; and

(D) if the purchase qualifies as an exempt transaction, the purchaser shall fill out the Certificate for Exempt Purchases and give it to the seller."

Article 2502(a)-1(b)

Paragraph (b) of Article 2502(a)-1 is hereby amended to read as follows:

"(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 that the applicant:

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

(2) provides in the Application the description of the activity and the North American Industry Classification System (NAICS) code."

Article 2502(b)-1(a)(2)

Subparagraph (2) of paragraph (a) of Article 2502(b)-1 is hereby amended to read as follows:

"(2) the Certificate is used to acquire tangible personal property that is not for resale, or is not raw materials or machinery and equipment used in manufacturing;"

Article 2503-1(c)

Paragraph (c) of Article 2503-1 is hereby amended to read as follows:

"(c) A person who is not a merchant may claim the exemption provided in Section 2503 of the Code and in this article on the purchase of tangible personal property that, even if not exported at the time of the sale, will be exported within sixty (60) days of its purchase. In order to acquire the tangible personal property without paying the SUT, the person who wishes to claim said exemption shall present to the merchant seller in Puerto Rico, the Certificate for Exempt Purchases duly filled out in Parts I, II (boxes 4, 6, and 7) and III. Additionally, the person shall mark box 4.k. (Exportation) in Part II of the Certificate for Exempt Purchases, as the source of his or her right to make a purchase of taxable items free of payment of the SUT. The merchant seller shall ensure that the purchaser includes an address outside of Puerto Rico in Part III of the Certificate for Exempt Purchases and send the taxable items directly to the purchaser or give them to a carrier, as the case may be."

Article 2504-1

Article 2504-1 is hereby amended to read as follows:

"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 temporarily introduced to Puerto Rico, 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, 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 temporarily introduced to Puerto Rico, the merchant may request from the Secretary to be exempted from paying the SUT. Said exemption shall be conditioned to the taxable item being re-exported from Puerto Rico. For the purposes of claiming said exemption, the merchant shall submit a request in writing, at least ten (10) days prior to the date of introduction, declaring the reasons for the exemption, the name of the carrier, the date of introduction, and the approximate period or date of exportation of the introduced taxable item, 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 required information;

(2) a copy of the contract with the local entities, as the case may be, specifying the period during which they 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 constructions, trade shows, film production, conventions, and seminars, as the case may be; and

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

(c) Also, the person introducing the taxable items to Puerto Rico shall:

(1) if required by the Secretary, coordinate with officials from the Consumption Tax Bureau, the performance of a physical inventory of the taxable items for which an exemption is requested, prior to their removal from the carrier's location and at any time, until their exit;

(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 entry and exit bills of lading corresponding to the taxable items; and

(4) pay any applicable use tax, fines, and penalties if any of the taxable items covered by the conditional exemption were not exported."

#### Article 2505-1

Article 2505-1 is hereby added to read as follows:

"Article 2505-1.- Exemption for promotional material.- (a) All tangible personal property that is considered promotional material shall be exempt from paying the use tax.

(b) For these purposes, "promotional material" (known as "giveaways"), shall be defined as all tangible personal property that is given out free of charge with a promotional purpose by a promoter, exhibitor, or planner of meetings or congresses, to a participant of a convention, trade show, forum, meeting, incentives trip, or congress. Provided, that in the case of prizes, gifts, emoluments or awards given as part of an



incentives or recognition trip, these shall be covered by the provisions of Section 2505 of the Code and this article.

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

Example: "F," a transportation company with headquarters outside of Puerto Rico, organizes an incentives or recognition trip for its outstanding employees. Although some of the employees are residents of Puerto Rico, most of them are individuals who are not residents of Puerto Rico. As part of the recognition, "F" awards its employees with crystal statues introduced to Puerto Rico with the sole purpose of being awarded as part of the incentives or recognition trip, and they would not be included in the employee's income as salary. Said statues are covered by the exemption provided in Section 2505 of the Code.

(c) In order to demonstrate the promotional purpose, the promoter, exhibitor, or planner of meetings or congresses, shall submit to the Secretary, thirty (30) days in advance, an application that shall include a detailed description of the activity to be carried out, the tangible personal property to be given out, the purposes and ends pursued by giving out the referred tangible personal property, and, if available, the name, address, and relationship of the receiver of the tangible personal property with the promoter, exhibitor, or planner of meetings or congresses.

(d) When the tangible personal property to be given out has a cost per unit that does not exceed one hundred (100) dollars, it shall be understood that it will be given out with a promotional purpose and it shall not be necessary to comply with the requirements established in paragraph (c) of this article."

#### Article 2506-1(a)

Paragraph (a) of Article 2506-1 is hereby amended to read as follows:

"(a) All manufacturing plants shall be exempt from paying the SUT established in Subtitle BB of the Code in the purchase of "raw materials," including hydraulic cement, and in the "machinery and equipment used in manufacturing" for the manufacturing 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 excise tax exemption 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."

Article 2508-1(a)

Paragraph (a) of Article 2508-1 is hereby amended to read as follows:

"(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. Moreover, in accordance with Article 2301-1(s) of this Regulation, the Department may issue a certification to the entities that operate or act in the name or on behalf of the Government in order to make the exemption provided in Section 2508 of the Code applicable to them. However, said exemption from payment of the SUT is not applicable to entities merely for having contracts with the Government and that, as part of those contracts, they need to acquire taxable items subject to the SUT."

Article 2512-1(b)

Paragraph (b) of Article 2512-1 is hereby amended to read as follows:

"(b) The following items shall also be exempt from paying 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 the strips that have a test area containing chemical compounds and the reagent strips and tablets used for such tests;

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

(3) insulin;

(4) oxygen; and

(5) any medical treatment equipment that qualifies for a total or partial refund from Medicare, Medicaid, the Government of the Commonwealth of Puerto Rico's health card, or under a medical insurance contract or policy issued by a person

authorized to underwrite health care insurances or contracts in the Commonwealth of Puerto Rico."

Article 2514-1

Article 2514-1 is hereby added to read as follows:

"Article 2514-1.- Exemption for funeral services.- In accordance with Section 2514 of the Code, funeral services shall be exempt from payment of the SUT up to a total of four thousand (4,000) dollars. Likewise, said section provides that the term "funeral services" refers to all the services, either combined or individual, that are rendered by a funeral home for the wake and final disposition of a human body, such as, but without being limited to :

- (a) registration of death certificate;
- (b) obtaining the burial permit;
- (c) embalming;
- (d) use of the funeral home's facilities and personnel;
- (e) removal and transfer of a body;
- (f) use of funeral vehicles;
- (g) restoration of the body;
- (h) treatment for shipment abroad;
- (i) cremation;
- (j) the acquisition of a plot, in the case of cemeteries;
- (k) the casket; and
- (l) any others used for the same purposes.

The exemption only applies to funeral services, including those specifically mentioned above, which are provided through a funeral home. However, despite the aforementioned, the "casket", although it is tangible personal property, is considered within the scope of the term "funeral services". Therefore, the "casket" is the only tangible personal property that is eligible for the exemption provided under Section 2514 of the Code.

The funeral services that are eligible for the exemption of the SUT include the acquisition of the plot. Insofar as the acquisition of a plot constitutes a purchase of real property, as such term is defined in Section 2301(kk) of the Code, it is not included in

the definition of taxable item and, thus, is exempt from the SUT. Therefore, at the time of calculating the amount of the eligible funeral services for the maximum exemption of four thousand (4,000) dollars, as provided in Section 2514 of the Code, the value of the real property acquired shall not be taken into consideration."

Article 2516-1

Article 2516-1 is hereby added to read as follows:

"Article 2516-1.- Exemptions for machinery, medical-surgical materials, supplies, items, equipment, and technology used in the provision of health services.- (a) Every health service providing facility that has been granted an exemption under Act No. 168 of June 30, 1968, as amended, known as the "Hospitals Tax Exemption Act", shall be exempt from payment of the SUT in the purchase of all kinds of machinery, equipment, and effects (excluding parts and accessories) that have been specifically designed for the diagnosis and medical treatment of human diseases.

(b) Every health service providing facility that enjoys the benefits of tax exemption under the provisions of Section 1101(4) or (6) of the Code, granted to nonprofit entities, shall be exempt from payment of the SUT in the purchase of the items acquired for the exclusive use of the facility used exclusively in the provision of health services in the process of diagnosing and treating diseases in human beings, such as machinery, medical-surgical materials, supplies, items, equipment, and technology. Provided, that the exemption provided by subsection (b) of Section 2516 of the Code shall not be interpreted as a general exemption for nonprofit entities that may have been granted the income tax exemption under the provisions of Section 1101(4) or (6) of the Code, but as a specific exemption for health service providing facilities that are exempt under the provisions of Section 1101(4) or (6) of the Code.

(c) In order to claim the exemption from payment of the SUT, the health service providing facility shall present to the merchant seller the Certificate for Exempt Purchases and indicate, as applicable, in box 4.j. of Part II of said form, "Act No. 168 of June 30, 1968" or "Section 1101(4) or (6) of the Puerto Rico Internal Revenue Code of 1994, as amended" as the source of its right to claim the exemption."

Article 2519-1

Article 2519-1 is hereby added to read as follows:

"Article 2519-1.- Exemption for vessels used to provide tugging services or fueling services.- All the vessels used to provide tugging services, either on territorial waters or outside of them, shall be exempt from payment of the SUT.

Likewise, tugboats and barges used for fueling other vessels (bunkering) shall be exempt from payment of the SUT. For the purposes of this exemption, the service may be rendered both in territorial waters and outside of them."

Article 2602(a)-1(d)

Paragraph (d) of Article 2602(a)-1 is hereby amended to read as follows:

"(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."

Article 2602(b)-1

Article 2602(b)-1 is hereby amended to read as follows:

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

On the other hand, merchants registered in the Merchants' Registry who have the obligation to collect the SUT and file the Monthly Return every month, shall file the Monthly Return to report both the purchases subject to the use tax and the taxable sales subject to the sales tax.

(b) 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 Monthly Return by using the Department's web page, [www.hacienda.gobierno.pr/ivu](http://www.hacienda.gobierno.pr/ivu).

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

Example 1: "C" provides legal services and orders the letterhead paper that he uses in his office from outside of Puerto Rico. On the month that "C" receives the

letterhead paper, he shall report such purchase as a purchase subject to the use tax in the Monthly Return.

Example 2: "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 sound system and the movies, he shall have the obligation to file a Monthly Return for the use tax for the sound system and the movies by using the Department's web page."

Article 2606-1(a)

Paragraph (a) of Article 2606-1 is hereby amended to read as follows:

"(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 paragraph (b) of Article 2602(b)-1 of this Regulation."

Article 2607-1(e)

Paragraph (e) of Article 2607-1 is hereby amended to read as follows:

"(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. If the twentieth day were a Saturday, Sunday, or a federal or state holiday, the payments shall be accepted on the next working day."

Article 2703-1(c)

Paragraph (c) of Article 2703-1 is hereby amended to read as follows:

"(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 as a taxable sale in the next Monthly Return filed by the merchant after such recovery, and the merchant shall pay the corresponding tax."

Article 2801(a)-1(b)(2)

Subparagraph (2) of paragraph (b) of Article 2801(a)-1 is hereby amended to read as follows:

"(2) Information to be submitted in the Application.- The following information shall be included in the Application:

- (i) applicant's legal name (corporation, partnership, sole proprietor, or other);
- (ii) social security number or employer identification number, as applicable;
- (iii) postal address;
- (iv) physical address. In the case of merchants who are doing business as sole proprietors, mobile 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 their headquarters;
- (v) phone number;
- (vi) electronic address;
- (vii) type of organization;
- (viii) 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;
- (ix) accounting period closing date;
- (x) 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 previous fiscal year;

(xi) 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 previous fiscal year; and

- (I) starting date of operations;

(xii) 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 or employer identification number, as applicable;
- (D) percentage of participation; and

(E) 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; and

- (xiii) any other information that the Secretary should deem relevant."

#### Article 2801(e)-1

Article 2801(e)-1 is hereby amended to read as follows:

"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 the obligation to notify the Secretary of any change or amendment to the information required in the Application no later than thirty (30) days after the event which requires a change or amendment. The merchant shall file one of the following forms to notify the change or amendment:

(1) Form AS 2914 A, Application for Change to the Information of Merchant's Principal Office;

(2) Form AS 2914 B, Application for Amendments to the Merchants' Registration Certificate of a Commercial Location; or

(3) Form AS 2914 C, Application to Adding a New Location or Activity to a Merchant Registered in the Merchants' Registry Form.

(b) Changes.- The following constitute examples of changes that shall be notified to the Secretary by filing one of the forms indicated in paragraph (a) of this article:

(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 or activities.

(c) A change in the information provided about the owners, partners, shareholders, or any other person who possesses fifty (50) percent or more interest in the business, in itself, 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 2008. "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,

2008. 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, 2008.

(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 2901-2

Article 2901-2 is hereby amended to read as follows:

"Article 2901-2.- Exclusion of preexisting contracts and 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 contract executed in accordance with the provisions of Article 2301-1(w)(1)(i) of this Regulation) increases due to the imposition of the excise 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 Department's Assistant Secretary for Internal Revenue Area an application for authorization to those effects on or before November 15, 2007. The extension of the exemption from payment of the SUT for purchases made under qualified contracts shall cover a period of twelve (12) months beginning on November 15, 2007, or the period during which the amount of the tangible personal property covered by the qualified

contract runs out, whichever happens first. The application shall be presented through a letter that justifies the petition and by submitting in "Modelo SC 2921, Solicitud de Extensión de la Exención del Pago del Impuesto sobre Ventas y Uso en Compras Efectuadas bajo Contratos Calificados", the following information about the:

(1) Purchaser: name, telephone, Merchants' Registration number, date of the contract and awarding of the bid (if applicable) for every contract related to the application, as well as a report that indicates the remaining amount of the tangible personal property covered by the qualified contract in accordance with the purchase balance on the date of the application based on the perpetual balance.

(2) Seller: name, telephone, and Merchants' Registration number.

(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 subscribed 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 submit an application for an extension in writing to justify the petition, and shall submit in "Modelo SC 2921, Solicitud de Extensión de la Exención del Pago del Impuesto sobre Ventas y Uso en Compras Efectuadas bajo Contratos Calificados", the information indicated 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 said 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

Article 2901-3 is hereby amended to read as follows:

"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. Provided that, in case the merchant purchaser has applied for an extension and has complied with the requirements indicated in Article 2901-2(a) of this Regulation, he or she may continue to supply evidence to the merchant seller, who is a party in a qualified contract, of his or her claim for exemption from payment of the SUT by presenting the Purchase Certificate or any of the alternative documents described in this article. It shall not be necessary to wait for a reply from the Department before claiming the exemption.

For sales carried out on and after March 1<sup>st</sup>, 2007, instead of obtaining the Purchase Certificate on every transaction, a merchant seller may, after the first sale, use one of the following alternate methods to document the exempt nature of each transaction:

(1) Alternate document to the Purchase Certificate.- The merchant seller, after the first transaction with the purchaser, may substitute the Purchase Certificate with his or her invoice or any other substituting document, such as, for example, the

receipt of purchase, bill of sale, or purchase order (invoice), provided that the Invoice includes the following information:

- (i) name of the merchant seller;
- (ii) name of the purchaser;
- (iii) purchaser's Merchants' Registry number, as applicable;
- (iv) a list and description of the tangible personal property acquired by the purchaser; and
- (v) a certification signed by the purchaser to the effects that the tangible personal property is acquired free from payment of the SUT because they are part of a qualified contract.

The certification shall read as follows:

"I, \_\_\_\_\_, purchaser or authorized representative of \_\_\_\_\_, with Merchants' Registry number \_\_\_\_\_, certify that I purchased the tangible personal property indicated herein free of payment of the SUT because it was part of a contract executed before October 31, 2006 or a contract executed subsequently by virtue of a bid awarded before October 31, 2006, in accordance with the requirements established by the Department of the Treasury."

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

(2) Alternate document to the Purchase Certificate in the case of recurring sales.- When the merchant seller's sales are recurrent in the ordinary course of business, and the purchaser has an open account with the merchant, it shall only be necessary to request the Purchase Certificate from the purchaser on the first sale made on every natural year.

To these effects, "recurring sales" means that the merchant seller has made at least one (1) sale a month to the purchaser under the Qualified Contract.

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

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

Every application shall be directed to the Department's Assistant Secretary for Internal Revenue Area by letter, and shall indicate the name, address, and phone number of the merchant seller. It shall also include a detailed description of the proposed alternative method.

(4) Merchant sellers who cannot comply with the alternate methods described above shall have to request the Purchase Certificate in every transaction until they are able to satisfy the requirements established herein.

(b) Release from collection.- For a merchant seller to be released from the obligation 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 a Purchase Certificate from the purchaser, as applicable;
- (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.

Effective March 1<sup>st</sup>, 2007, the above mentioned requirement may be satisfied by the merchant seller by retaining a copy of all the Purchase Certificates received during the month and keeping them available for inspection by the Department. Provided, that no Purchase Certificate issued to carry out sales between November 15, 2006 and February 28, 2007 shall be valid unless the requirement of remitting to the Secretary copies of all the Purchase Certificates has been fulfilled no later than March 20, 2007; and

(3) send 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.

In any case, the merchant seller shall exercise a sufficient degree of care in order to prevent that the purchaser uses the Purchase Certificate to acquire taxable items that, pursuant to the information related to the trade or business activity of the purchaser, as reflected on said Certificate, it would be unreasonable to think that could be acquired free of payment of the SUT.

If the merchant seller fails to comply with these requirements, he or she shall be subject to the payment 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."

EFFECTIVENESS: This Regulation shall become effective thirty (30) days after it is filed at the State Department, in accordance with the provisions of Act No. 170 of August 12, 1988, as amended, known as the "Commonwealth of Puerto Rico Uniform Administrative Procedures Act."

Approved in San Juan, Puerto Rico, on November 20, 2008.

Angel A. Ortiz García  
Secretary of the Treasury

Filed at the State Department on November 20, 2008.



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

Regulation to amend Articles 2301-1, 2406-1(a), 2407-1, 2502(a)-1(b), 2502(b)-1(a)(2), 2503-1(c), 2504-1, 2506-1(a), 2508-1(a), 2512-1(b), 2602(a)-1(d), 2602(b)-1, 2606-1(a), 2607-1(e), 2703-1(c), 2801(a)-1(b)(2), 2801(e)-1, 2901-2, and 2901-3 and to add paragraphs (zz), (aaa), (bbb), and (ccc) to Article 2301-1, and Articles 2505-1, 2514-1, 2516-1, and 2519-1 to Regulation No. 7249 of November 14, 2006, enacted pursuant to Section 2303 of the Puerto Rico Internal Revenue Code of 1994, as amended, which authorizes the Secretary of the Treasury to adopt the Regulations related to the imposition, exemption, interpretation, administration and collection of the sales and use tax.

Article 2301-1

Subparagraph (2) of paragraph (n) of Article 2301-1 is hereby amended to read as follows:

"(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"; and

(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."

Paragraph (s) of Article 2301-1 is hereby amended to read as follows:

"(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, 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. Any person who wishes to apply for such certification shall provide to the Department evidence that the entity was created exclusively to act as an agent for the Government. Additionally, he or she shall provide a certification issued by the Government entity in whose name he or she is acting, that certifies the aforementioned and provides a breakdown of the taxable items that will be acquired in the name of the Government entity. All applications and the aforementioned documents shall be sent to the Department's Assistant Secretary for Internal Revenue Area."

Paragraph (t) of Article 2301-1 is hereby amended to read as follows:

"(t) Sales tax.- The tax levied by Sections 2401 and 6189 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."

Paragraph (u) of Article 2301-1 is hereby amended to read as follows:

"(u) Use tax.- The tax levied by Sections 2402 and 6189 of the Code for the use, consumption, or storage of a taxable item in Puerto Rico."

Paragraph (y) of Article 2301-1 is hereby amended to read as follows:

"(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, cement or the production process of electrical power.

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."

Clause (v) of subparagraph (1) of paragraph (hh) of Article 2301-1 is hereby amended to read as follows:

"(v) Installation charges.- Provided that, in the case of the sale of tangible personal property, the installation charges that cannot be segregated from the sales price of said tangible personal property on the invoice or other sales document and appropriately presented as services related to the installation of said property, shall be included in the sales price of the tangible personal property;"

Subparagraph (1) of paragraph (ll) of Article 2301-1 is hereby amended to read as follows:

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

Additionally, the term "prosthesis" shall include items specifically designed to make up for the physical or physiological deficiencies of persons with disabilities, as such term is defined in Act No. 264 of August 31, 2000, as amended, known as the "Puerto Rico Technological Assistance Program Act" and in Act No. 238 of August 31, 2004, as amended, known as the "Bill of Rights for Persons with Disabilities."

In accordance with the aforementioned laws, the term "person with a disability" refers to a person who has a physical, mental or sensory disability (or disabilities) that substantially limits one or more life activities and functions, but that, with the help of technological assistance equipment or services, can lessen the functional deterioration,

maintain or increase the level of the functional capacity in any principal life activity; has a medical history of a disability; or is considered to have a disability."

Clause (i) of subparagraph (2) of paragraph (pp) of Article 2301-1 is hereby amended to read as follows:

"(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 the services indicated in this clause (i) 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 merchant purchaser 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, 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;"

Clause (vi) of subparagraph (2) of paragraph (pp) of Article 2301-1 is hereby amended to read as follows:

"(vi) the charges for financial services 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" is defined by reference to Section 1024(f)(4) of the Code. Said section reads as follows:

"Financial Institution.- For the purposes of this subsection, 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) a brokerage or securities house;
- (G) institutions that provide 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.

As provided in subparagraph (H) of paragraph (4) of subsection (f) of Section 1024 of the Code, the entities listed under subparagraphs (A) through (G), both inclusive, of paragraph (4) of subsection (f) of Section 1024 of the Code, or others that could be understood to engage in business as a "financial institution," shall be 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. Therefore, the service charges included in the exclusion provided in Section 2301(pp)(2)(E) of the Code, shall be those that can be attributed to services whose rendering requires the entity to be 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."

Clause (ix) of subparagraph (2) of paragraph (pp) of Article 2301-1 is hereby amended to read as follows:

"(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 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 an annual salary of forty thousand (40,000) dollars. "A" also owns a messenger service company, which generates 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 who generates 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."

Clause (iv) of subparagraph (8) of paragraph (vv) of Article 2301-1 is hereby amended to read as follows:

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



Clause (i) of subparagraph (1) of paragraph (ww) of Article 2301-1 is hereby amended to read as follows:

"(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. For the purposes of the obligations of paying, reporting, and remitting the tax to the Secretary, it shall be understood that the date on which a taxable item is sold is either the date of the transfer of possession or the date of the transfer of title, whichever occurs first.

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 included in the leases 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 early 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 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 that can be attributed to the property, except for those that can be attributed to the lessor's income;"

Clause (iv) of subparagraph (2) of paragraph (ww) of Article 2301-1 is hereby amended to read as follows:

"(iv) the handing out of taxable items or any material (tangible or intangible) that evidences a donation, including the handing out of prints, stickers, hearts, or other items of no commercial value which merely evidence that the true purpose of a contribution is to make a donation."

Paragraph (zz) is hereby added to Article 2301-1 to read as follows:

"(zz) Newspaper.- Informative publication that is printed and distributed at certain intervals to communicate news that are of public interest. The term "newspaper" does not include "handbills", circulars, fliers, or similar publications, unless they are distributed as part of a publication that is part of the newspaper, within the definition that appears in this paragraph, or they are materials that are components of a newspaper, as such term is defined in paragraph (aaa) of this article. In addition, the term "newspaper" does not include any printed material published to provide information about certain topics of special interest to groups, unless such publication otherwise qualifies as a newspaper within the definition provided in this paragraph."

Paragraph (aaa) is hereby added to Article 2301-1 to read as follows:

"(aaa) Materials that are components of a newspaper.- Publications and other printed materials that, ordinarily and without affecting the sales price of a newspaper, are physically incorporated, or are attached or inserted to a newspaper, as such term is defined in paragraph (zz) of this article, are expressly produced to be incorporated, attached, or inserted in a newspaper, and are delivered directly by the printer to the newspaper. "Materials that are components of a newspaper" are distributed with the newspaper and should reasonably constitute an integral part of it in relation to the frequency or periodicity with which said materials are included in the newspaper. "Materials that are components of a newspaper" include products such as commercial supplements, shoppers and advertising materials, printed by the newspaper's manufacturing plant or by a third party."

Paragraph (bbb) is hereby added to Article 2301-1 to read as follows:

"(bbb) Commercial establishment.- A business establishment through which the total or partial commercial procedures of a business are performed, and that is required to be registered in the Merchants' Registry of the Department and to obtain the corresponding Merchants' Registration number, as such term is defined in paragraph (ccc) of this article, in accordance with Section 2801 of the Code. The term "commercial establishment" includes the main business office 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."

Paragraph (ccc) is hereby added to Article 2301-1 to read as follows:

"(ccc) Merchants' Registration Number.- Number assigned to a merchant registered in the Merchants' Registry of the Department in accordance with Section 2801 of the Code. The Merchants' Registration number shall be composed of eleven (11) digits. The first seven (7) digits shall be associated with the person (individual or legal entity), and the following four (4) digits shall be associated with the merchant's physical location."

Article 2406-1(a)

Paragraph (a) of Article 2406-1 is hereby amended to read as follows:

"(a) When, due to the nature of the business, it is impractical to comply with the requirements of Section 2405(b) of the Code, a merchant or operator of a vending machine may reflect the sales tax together with the sales price, if he or she complies with the following requirements:

(1) reflects the sales tax together with the sales price in all sales of taxable items; and

(2) clearly discloses in his or her commercial establishment or vending machine, or on the invoice, bill, ticket, or other evidence of sale, that the sales tax is reflected together with the sales price of the taxable items.

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

Example 1: "A" is a merchant registered in the Merchants' Registry, who is in the business of selling newspapers. Each newspaper is sold for eighty-five (85) cents. "A" will be able to sell the newspapers for ninety (90) cents, and will not have to reflect the sales tax separately from the newspaper's sales price, provided that he does the same for all his newspaper sales and that he clearly discloses that the sales tax is reflected together with the newspaper's sales price.

Example 2: "L" is a merchant registered in the Merchants' Registry, who is 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. "L" will be able to sell the tangible personal property for one (1) dollar and eighty-five (85) cents,

and will not have to reflect the sales tax separately from the sales price of the tangible personal property, provided that he does the same for all his sales of tangible personal property through vending machines, and that he clearly discloses in the vending machines that the sales tax is reflected together with sales price of the tangible personal property."

Article 2407-1

Subparagraph (1) of paragraph (a) of Article 2407-1 is hereby amended to read as follows:

"(1) The term reseller means a merchant who purchases taxable items mainly for resale. For these purposes, the term "mainly" means that during the period of three (3) taxable years 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. The previous analysis specifically refers to the average of sales of the inventory of taxable items for resale, not to the average of all the merchant's sales. Therefore, the average of eighty (80) percent does not include the sales of services or the sales of exempt items.

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 comply with 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 complies with 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 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."

Subparagraph (2) of paragraph (d) of Article 2407-1 is hereby amended to read as follows:

"(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.

(i) In the case of merchants who sell "materials that are components of a newspaper", as such term is defined in paragraph (aaa) of Article 2301-1 of this Regulation, to a newspaper's manufacturing plant, the merchant seller shall document the exempt nature of every transaction by obtaining the Certificate for Exempt Purchases, filled out and signed by the manufacturing plant.

(ii) In the case of merchants who sell "materials that are components of a newspaper", as such term is defined in paragraph (aaa) of Article 2301-1 of this Regulation, and such "materials that are components of a newspaper" are paid by another merchant who is not a newspaper's manufacturing plant, the seller merchant shall document the exempt nature of every transaction by obtaining the Certificate for Exempt Purchases and a copy of the publication agreement with the corresponding newspaper. Once the materials that are components of a newspaper have been published, the purchaser shall deliver to the merchant seller a certification of circulation issued by the newspaper.

(iii) In the case of a merchant who makes sales to diplomatic missions and their staff who are holders of an Exemption Card issued by the United States Department of State, the following procedure shall be carried out:

(A) at the moment of purchase, the diplomatic personnel (the purchaser) shall inform the merchant seller that he or she is eligible for the exemption of payment of the SUT for his or her function as a diplomat or consul;

(B) the purchaser shall present to the merchant seller a valid Exemption Card issued by the United States Department of State;

(C) the merchant seller has the obligation of verifying the Exemption Card to ensure that the purchase complies with the restrictions established in said card and, therefore, qualifies as an exempt transaction; and

(D) if the purchase qualifies as an exempt transaction, the purchaser shall fill out the Certificate for Exempt Purchases and give it to the seller."

Article 2502(a)-1(b)

Paragraph (b) of Article 2502(a)-1 is hereby amended to read as follows:

"(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 that the applicant:

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

(2) provides in the Application the description of the activity and the North American Industry Classification System (NAICS) code."

Article 2502(b)-1(a)(2)

Subparagraph (2) of paragraph (a) of Article 2502(b)-1 is hereby amended to read as follows:

"(2) the Certificate is used to acquire tangible personal property that is not for resale, or is not raw materials or machinery and equipment used in manufacturing;"

Article 2503-1(c)

Paragraph (c) of Article 2503-1 is hereby amended to read as follows:

"(c) A person who is not a merchant may claim the exemption provided in Section 2503 of the Code and in this article on the purchase of tangible personal property that, even if not exported at the time of the sale, will be exported within sixty (60) days of its purchase. In order to acquire the tangible personal property without paying the SUT, the person who wishes to claim said exemption shall present to the merchant seller in Puerto Rico, the Certificate for Exempt Purchases duly filled out in Parts I, II (boxes 4, 6, and 7) and III. Additionally, the person shall mark box 4.k. (Exportation) in Part II of the Certificate for Exempt Purchases, as the source of his or her right to make a purchase of taxable items free of payment of the SUT. The merchant seller shall ensure that the purchaser includes an address outside of Puerto Rico in Part III of the Certificate for Exempt Purchases and send the taxable items directly to the purchaser or give them to a carrier, as the case may be."

Article 2504-1

Article 2504-1 is hereby amended to read as follows:

"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 temporarily introduced to Puerto Rico, 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, 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 temporarily introduced to Puerto Rico, the merchant may request from the Secretary to be exempted from paying the SUT. Said exemption shall be conditioned to the taxable item being re-exported from Puerto Rico. For the purposes of claiming said exemption, the merchant shall submit a request in writing, at least ten (10) days prior to the date of introduction, declaring the reasons for the exemption, the name of the carrier, the date of introduction, and the approximate period or date of exportation of the introduced taxable item, 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 required information;

(2) a copy of the contract with the local entities, as the case may be, specifying the period during which they 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 constructions, trade shows, film production, conventions, and seminars, as the case may be; and

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

(c) Also, the person introducing the taxable items to Puerto Rico shall:

(1) if required by the Secretary, coordinate with officials from the Consumption Tax Bureau, the performance of a physical inventory of the taxable items for which an exemption is requested, prior to their removal from the carrier's location and at any time, until their exit;

(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 entry and exit bills of lading corresponding to the taxable items; and

(4) pay any applicable use tax, fines, and penalties if any of the taxable items covered by the conditional exemption were not exported."

#### Article 2505-1

Article 2505-1 is hereby added to read as follows:

"Article 2505-1.- Exemption for promotional material.- (a) All tangible personal property that is considered promotional material shall be exempt from paying the use tax.

(b) For these purposes, "promotional material" (known as "giveaways"), shall be defined as all tangible personal property that is given out free of charge with a promotional purpose by a promoter, exhibitor, or planner of meetings or congresses, to a participant of a convention, trade show, forum, meeting, incentives trip, or congress. Provided, that in the case of prizes, gifts, emoluments or awards given as part of an



incentives or recognition trip, these shall be covered by the provisions of Section 2505 of the Code and this article.

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

Example: "F," a transportation company with headquarters outside of Puerto Rico, organizes an incentives or recognition trip for its outstanding employees. Although some of the employees are residents of Puerto Rico, most of them are individuals who are not residents of Puerto Rico. As part of the recognition, "F" awards its employees with crystal statues introduced to Puerto Rico with the sole purpose of being awarded as part of the incentives or recognition trip, and they would not be included in the employee's income as salary. Said statues are covered by the exemption provided in Section 2505 of the Code.

(c) In order to demonstrate the promotional purpose, the promoter, exhibitor, or planner of meetings or congresses, shall submit to the Secretary, thirty (30) days in advance, an application that shall include a detailed description of the activity to be carried out, the tangible personal property to be given out, the purposes and ends pursued by giving out the referred tangible personal property, and, if available, the name, address, and relationship of the receiver of the tangible personal property with the promoter, exhibitor, or planner of meetings or congresses.

(d) When the tangible personal property to be given out has a cost per unit that does not exceed one hundred (100) dollars, it shall be understood that it will be given out with a promotional purpose and it shall not be necessary to comply with the requirements established in paragraph (c) of this article."

#### Article 2506-1(a)

Paragraph (a) of Article 2506-1 is hereby amended to read as follows:

"(a) All manufacturing plants shall be exempt from paying the SUT established in Subtitle BB of the Code in the purchase of "raw materials," including hydraulic cement, and in the "machinery and equipment used in manufacturing" for the manufacturing 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 excise tax exemption 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."

Article 2508-1(a)

Paragraph (a) of Article 2508-1 is hereby amended to read as follows:

"(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. Moreover, in accordance with Article 2301-1(s) of this Regulation, the Department may issue a certification to the entities that operate or act in the name or on behalf of the Government in order to make the exemption provided in Section 2508 of the Code applicable to them. However, said exemption from payment of the SUT is not applicable to entities merely for having contracts with the Government and that, as part of those contracts, they need to acquire taxable items subject to the SUT."

Article 2512-1(b)

Paragraph (b) of Article 2512-1 is hereby amended to read as follows:

"(b) The following items shall also be exempt from paying 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 the strips that have a test area containing chemical compounds and the reagent strips and tablets used for such tests;

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

(3) insulin;

(4) oxygen; and

(5) any medical treatment equipment that qualifies for a total or partial refund from Medicare, Medicaid, the Government of the Commonwealth of Puerto Rico's health card, or under a medical insurance contract or policy issued by a person

authorized to underwrite health care insurances or contracts in the Commonwealth of Puerto Rico."

Article 2514-1

Article 2514-1 is hereby added to read as follows:

"Article 2514-1.- Exemption for funeral services.- In accordance with Section 2514 of the Code, funeral services shall be exempt from payment of the SUT up to a total of four thousand (4,000) dollars. Likewise, said section provides that the term "funeral services" refers to all the services, either combined or individual, that are rendered by a funeral home for the wake and final disposition of a human body, such as, but without being limited to :

- (a) registration of death certificate;
- (b) obtaining the burial permit;
- (c) embalming;
- (d) use of the funeral home's facilities and personnel;
- (e) removal and transfer of a body;
- (f) use of funeral vehicles;
- (g) restoration of the body;
- (h) treatment for shipment abroad;
- (i) cremation;
- (j) the acquisition of a plot, in the case of cemeteries;
- (k) the casket; and
- (l) any others used for the same purposes.

The exemption only applies to funeral services, including those specifically mentioned above, which are provided through a funeral home. However, despite the aforementioned, the "casket", although it is tangible personal property, is considered within the scope of the term "funeral services". Therefore, the "casket" is the only tangible personal property that is eligible for the exemption provided under Section 2514 of the Code.

The funeral services that are eligible for the exemption of the SUT include the acquisition of the plot. Insofar as the acquisition of a plot constitutes a purchase of real property, as such term is defined in Section 2301(kk) of the Code, it is not included in

the definition of taxable item and, thus, is exempt from the SUT. Therefore, at the time of calculating the amount of the eligible funeral services for the maximum exemption of four thousand (4,000) dollars, as provided in Section 2514 of the Code, the value of the real property acquired shall not be taken into consideration."

Article 2516-1

Article 2516-1 is hereby added to read as follows:

"Article 2516-1.- Exemptions for machinery, medical-surgical materials, supplies, items, equipment, and technology used in the provision of health services.- (a) Every health service providing facility that has been granted an exemption under Act No. 168 of June 30, 1968, as amended, known as the "Hospitals Tax Exemption Act", shall be exempt from payment of the SUT in the purchase of all kinds of machinery, equipment, and effects (excluding parts and accessories) that have been specifically designed for the diagnosis and medical treatment of human diseases.

(b) Every health service providing facility that enjoys the benefits of tax exemption under the provisions of Section 1101(4) or (6) of the Code, granted to nonprofit entities, shall be exempt from payment of the SUT in the purchase of the items acquired for the exclusive use of the facility used exclusively in the provision of health services in the process of diagnosing and treating diseases in human beings, such as machinery, medical-surgical materials, supplies, items, equipment, and technology. Provided, that the exemption provided by subsection (b) of Section 2516 of the Code shall not be interpreted as a general exemption for nonprofit entities that may have been granted the income tax exemption under the provisions of Section 1101(4) or (6) of the Code, but as a specific exemption for health service providing facilities that are exempt under the provisions of Section 1101(4) or (6) of the Code.

(c) In order to claim the exemption from payment of the SUT, the health service providing facility shall present to the merchant seller the Certificate for Exempt Purchases and indicate, as applicable, in box 4.j. of Part II of said form, "Act No. 168 of June 30, 1968" or "Section 1101(4) or (6) of the Puerto Rico Internal Revenue Code of 1994, as amended" as the source of its right to claim the exemption."

Article 2519-1

Article 2519-1 is hereby added to read as follows:

"Article 2519-1.- Exemption for vessels used to provide tugging services or fueling services.- All the vessels used to provide tugging services, either on territorial waters or outside of them, shall be exempt from payment of the SUT.

Likewise, tugboats and barges used for fueling other vessels (bunkering) shall be exempt from payment of the SUT. For the purposes of this exemption, the service may be rendered both in territorial waters and outside of them."

Article 2602(a)-1(d)

Paragraph (d) of Article 2602(a)-1 is hereby amended to read as follows:

"(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."

Article 2602(b)-1

Article 2602(b)-1 is hereby amended to read as follows:

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

On the other hand, merchants registered in the Merchants' Registry who have the obligation to collect the SUT and file the Monthly Return every month, shall file the Monthly Return to report both the purchases subject to the use tax and the taxable sales subject to the sales tax.

(b) 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 Monthly Return by using the Department's web page, [www.hacienda.gobierno.pr/ivu](http://www.hacienda.gobierno.pr/ivu).

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

Example 1: "C" provides legal services and orders the letterhead paper that he uses in his office from outside of Puerto Rico. On the month that "C" receives the

letterhead paper, he shall report such purchase as a purchase subject to the use tax in the Monthly Return.

Example 2: "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 sound system and the movies, he shall have the obligation to file a Monthly Return for the use tax for the sound system and the movies by using the Department's web page."

Article 2606-1(a)

Paragraph (a) of Article 2606-1 is hereby amended to read as follows:

"(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 paragraph (b) of Article 2602(b)-1 of this Regulation."

Article 2607-1(e)

Paragraph (e) of Article 2607-1 is hereby amended to read as follows:

"(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. If the twentieth day were a Saturday, Sunday, or a federal or state holiday, the payments shall be accepted on the next working day."

Article 2703-1(c)

Paragraph (c) of Article 2703-1 is hereby amended to read as follows:

"(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 as a taxable sale in the next Monthly Return filed by the merchant after such recovery, and the merchant shall pay the corresponding tax."

Article 2801(a)-1(b)(2)

Subparagraph (2) of paragraph (b) of Article 2801(a)-1 is hereby amended to read as follows:

"(2) Information to be submitted in the Application.- The following information shall be included in the Application:

- (i) applicant's legal name (corporation, partnership, sole proprietor, or other);
- (ii) social security number or employer identification number, as applicable;
- (iii) postal address;
- (iv) physical address. In the case of merchants who are doing business as sole proprietors, mobile 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 their headquarters;
- (v) phone number;
- (vi) electronic address;
- (vii) type of organization;
- (viii) 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;
- (ix) accounting period closing date;
- (x) 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 previous fiscal year;

(xi) 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 previous fiscal year; and

- (I) starting date of operations;

(xii) 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 or employer identification number, as applicable;
- (D) percentage of participation; and

(E) 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; and

- (xiii) any other information that the Secretary should deem relevant."

#### Article 2801(e)-1

Article 2801(e)-1 is hereby amended to read as follows:

"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 the obligation to notify the Secretary of any change or amendment to the information required in the Application no later than thirty (30) days after the event which requires a change or amendment. The merchant shall file one of the following forms to notify the change or amendment:

(1) Form AS 2914 A, Application for Change to the Information of Merchant's Principal Office;

(2) Form AS 2914 B, Application for Amendments to the Merchants' Registration Certificate of a Commercial Location; or

(3) Form AS 2914 C, Application to Adding a New Location or Activity to a Merchant Registered in the Merchants' Registry Form.

(b) Changes.- The following constitute examples of changes that shall be notified to the Secretary by filing one of the forms indicated in paragraph (a) of this article:

(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 or activities.

(c) A change in the information provided about the owners, partners, shareholders, or any other person who possesses fifty (50) percent or more interest in the business, in itself, 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 2008. "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,

2008. 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, 2008.

(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 2901-2

Article 2901-2 is hereby amended to read as follows:

"Article 2901-2.- Exclusion of preexisting contracts and 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 contract executed in accordance with the provisions of Article 2301-1(w)(1)(i) of this Regulation) increases due to the imposition of the excise 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 Department's Assistant Secretary for Internal Revenue Area an application for authorization to those effects on or before November 15, 2007. The extension of the exemption from payment of the SUT for purchases made under qualified contracts shall cover a period of twelve (12) months beginning on November 15, 2007, or the period during which the amount of the tangible personal property covered by the qualified

contract runs out, whichever happens first. The application shall be presented through a letter that justifies the petition and by submitting in "Modelo SC 2921, Solicitud de Extensión de la Exención del Pago del Impuesto sobre Ventas y Uso en Compras Efectuadas bajo Contratos Calificados", the following information about the:

(1) Purchaser: name, telephone, Merchants' Registration number, date of the contract and awarding of the bid (if applicable) for every contract related to the application, as well as a report that indicates the remaining amount of the tangible personal property covered by the qualified contract in accordance with the purchase balance on the date of the application based on the perpetual balance.

(2) Seller: name, telephone, and Merchants' Registration number.

(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 subscribed 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 submit an application for an extension in writing to justify the petition, and shall submit in "Modelo SC 2921, Solicitud de Extensión de la Exención del Pago del Impuesto sobre Ventas y Uso en Compras Efectuadas bajo Contratos Calificados", the information indicated 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 said 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

Article 2901-3 is hereby amended to read as follows:

"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. Provided that, in case the merchant purchaser has applied for an extension and has complied with the requirements indicated in Article 2901-2(a) of this Regulation, he or she may continue to supply evidence to the merchant seller, who is a party in a qualified contract, of his or her claim for exemption from payment of the SUT by presenting the Purchase Certificate or any of the alternative documents described in this article. It shall not be necessary to wait for a reply from the Department before claiming the exemption.

For sales carried out on and after March 1<sup>st</sup>, 2007, instead of obtaining the Purchase Certificate on every transaction, a merchant seller may, after the first sale, use one of the following alternate methods to document the exempt nature of each transaction:

(1) Alternate document to the Purchase Certificate.- The merchant seller, after the first transaction with the purchaser, may substitute the Purchase Certificate with his or her invoice or any other substituting document, such as, for example, the

receipt of purchase, bill of sale, or purchase order (invoice), provided that the Invoice includes the following information:

- (i) name of the merchant seller;
- (ii) name of the purchaser;
- (iii) purchaser's Merchants' Registry number, as applicable;
- (iv) a list and description of the tangible personal property acquired by the purchaser; and
- (v) a certification signed by the purchaser to the effects that the tangible personal property is acquired free from payment of the SUT because they are part of a qualified contract.

The certification shall read as follows:

"I, \_\_\_\_\_, purchaser or authorized representative of \_\_\_\_\_, with Merchants' Registry number \_\_\_\_\_, certify that I purchased the tangible personal property indicated herein free of payment of the SUT because it was part of a contract executed before October 31, 2006 or a contract executed subsequently by virtue of a bid awarded before October 31, 2006, in accordance with the requirements established by the Department of the Treasury."

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

(2) Alternate document to the Purchase Certificate in the case of recurring sales.- When the merchant seller's sales are recurrent in the ordinary course of business, and the purchaser has an open account with the merchant, it shall only be necessary to request the Purchase Certificate from the purchaser on the first sale made on every natural year.

To these effects, "recurring sales" means that the merchant seller has made at least one (1) sale a month to the purchaser under the Qualified Contract.

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

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

Every application shall be directed to the Department's Assistant Secretary for Internal Revenue Area by letter, and shall indicate the name, address, and phone number of the merchant seller. It shall also include a detailed description of the proposed alternative method.

(4) Merchant sellers who cannot comply with the alternate methods described above shall have to request the Purchase Certificate in every transaction until they are able to satisfy the requirements established herein.

(b) Release from collection.- For a merchant seller to be released from the obligation 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 a Purchase Certificate from the purchaser, as applicable;
- (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.

Effective March 1<sup>st</sup>, 2007, the above mentioned requirement may be satisfied by the merchant seller by retaining a copy of all the Purchase Certificates received during the month and keeping them available for inspection by the Department. Provided, that no Purchase Certificate issued to carry out sales between November 15, 2006 and February 28, 2007 shall be valid unless the requirement of remitting to the Secretary copies of all the Purchase Certificates has been fulfilled no later than March 20, 2007; and

(3) send 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.

In any case, the merchant seller shall exercise a sufficient degree of care in order to prevent that the purchaser uses the Purchase Certificate to acquire taxable items that, pursuant to the information related to the trade or business activity of the purchaser, as reflected on said Certificate, it would be unreasonable to think that could be acquired free of payment of the SUT.

If the merchant seller fails to comply with these requirements, he or she shall be subject to the payment 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."

EFFECTIVENESS: This Regulation shall become effective thirty (30) days after it is filed at the State Department, in accordance with the provisions of Act No. 170 of August 12, 1988, as amended, known as the "Commonwealth of Puerto Rico Uniform Administrative Procedures Act."

Approved in San Juan, Puerto Rico, on November 20, 2008.

Angel A. Ortiz García  
Secretary of the Treasury

Filed at the State Department on November 20, 2008.