

COMMONWEALTH OF PUERTO RICO
DEPARTMENT OF THE TREASURY

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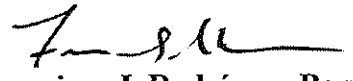


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Secretario Auxiliar de Servicios

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Regulation to amend Regulation No. 7970 of December 29, 2010, titled "Regulation to implement the provisions of Section 2101, 2102, 2103 and 2104 of Act No. 120 of October 31, 1994, as amended, known as the "Puerto Rico Internal Revenue Code of 1994", enacted pursuant to Section 6130 of the Internal Revenue Code of 1994, as amended, which authorizes the Secretary of the Treasury to adopt the Regulations necessary to make effective said Code".

Article 1.- Repealing Reg. § 2102(a)-1(a) of Regulation 7970 and replaced with a new Reg. § 2102(a)-1(a) to read as follow:

"Reg. § 2102(a)-1. Collection and Deposit of Tax. (a) General Rule.— Each person entitled to receive consideration for personal property or services in a transaction on which a tax is imposed by Code sec. 2101(a) shall collect the tax computed under this Subtitle B from the person providing or to provide such consideration and deposit, in the manner prescribed by the Secretary (which may include depositing by electronic means), with the Secretary or any institution authorized by the Secretary to be a depository of public funds as follows: (1) for taxable acquisitions made up to February 28, 2013, on or before the fifteenth (15th) day of the month following the month in which the acquisition of the personal property or services occurs, and (2) for taxable acquisitions made from March 1, 2013 and thereafter, on or before the thirteenth (13th) day of the month following the month in which the acquisition of the personal property or service occurs.

(b) Penalty.—Any person that does not collect the tax or does not timely deposit the tax collected, shall be subject to a penalty of two (2) percent of the insufficiency if the omission is for thirty (30) days or less, and an additional penalty of two (2) percent of the insufficiency for each thirty (30) day period or fraction thereof for which the omission continues, provided the penalty shall not exceed twenty-four (24) percent of the insufficiency. For purposes of this paragraph (b), the term "insufficiency" shall mean the excess of the amount of tax that should

have been deposited over the amount of tax deposited on or before the date the tax is required to be deposited.

(c) Examples. —

Example 1. Company B acquires property subject to tax under Code sec. 2101 from Company A on December 1, 2012 for \$100 (without regard to the excise tax under Code sec. 2101). Under the contract between Company A and Company B, Company B paid Company A \$50 on December 15, 2012 and \$50 on January 15, 2013. Company A must collect and deposit \$3.75 (the excise tax with respect to the acquisition for a price of \$100) on or before January 15, 2013, the fifteenth (15th) day of the month following the month in which the acquisition occurs (December).

Example 2. Company B acquires property subject to tax under Code sec. 2101 from Company A on January 15, 2013 for \$100 (without regard to the excise tax under Code sec. 2101). Under the contract between Company A and Company B, Company B pays Company A \$100 on December 15, 2012. Company A must collect and deposit \$2.75 (the excise tax with respect to the acquisition for \$100) on or before February 15, 2013, the fifteenth (15th) day of the month following the month in which the acquisition occurs (January).

Example 3. Company B acquires property subject to tax under Code sec. 2101 from Company A on January 15, 2013 for \$100 (without regard to the excise tax under Code sec. 2101). Under the contract between Company A and Company B, Company B is to pay Company A the acquisition price by March 15, 2013. Company A must collect and deposit \$2.75 (the excise tax with respect to the acquisition for \$100) on or before February 15, 2013, the fifteenth (15th) day of the month following the month in which the acquisition occurs (January).

Example 4. The facts are the same as in Example 3 except that Company B acquires the property on March 15, 2013. Company A must collect and deposit \$2.75 (the excise tax with respect to the acquisition for \$100) on or before April 13, 2013, the thirteenth (13th) day of the month following the month in which the acquisition occurs (March).

Example 5. Company B acquires property subject to tax under Code sec. 2101 from Company A on July 15, 2013 for 200 units of foreign currency. On July 15, 2013, the 200 units of foreign currency have a value of \$100. Company A must collect and deposit \$4 (the excise tax with respect to the acquisition for \$100) on or before August 13, 2013. The value of any foreign currency is determined on the date of the acquisition. Any subsequent change in the value of the foreign currency is irrelevant for purposes of the tax imposed by Code sec. 2101.”

Article 2- Repealing Reg. § 2102(a)-2(a) of Regulation 7970 and replaced with a new Reg. § 2102(a)-2(a) to read as follow:

“Reg. § 2102(a)-2. Generally Applicable Credits Against Tax. (a) In General.—A person otherwise liable for the excise tax imposed by Code sec. 2101 may, subject to the limitations in paragraph (j)(3), reduce the liability for such tax, but not below zero, by applying the credits described in paragraphs (b) through (i) below. The amount of any credits applied for each calendar month shall be reflected in the quarterly excise tax return that is required to be filed in accordance with Reg. § 2103(a)-1 for the quarter that includes such month. A quarterly excise tax return must be filed for each calendar quarter in which a member of the controlled group makes a taxable acquisition, even if no tax is owing as a result of the application of the credits in this article.

(1) The credits in paragraphs (b) through (i) of this article shall apply with respect to each controlled group as a whole.

(2) Except as otherwise provided in this article, the amount of the credit in each of paragraphs (b) through (i) shall be allocated among all acquiring members of the controlled group that make acquisitions subject to tax under Code sec. 2101 according to their respective acquisitions subject to tax under Code sec. 2101 computed on a cumulative basis during the calendar year as of the end of each calendar month. See paragraph (k), Examples 10-12 for the application of this rule.

(3) Alternatively, a controlled group may allocate among all acquiring members the amount of the credit in each of paragraphs (b) through (i) below for each month according to their respective taxable acquisitions in that

month. The method in this subparagraph (a)(3) or the method described in subparagraph (a)(2) must be used consistently for an entire calendar year. See paragraph (k), Examples 13-15 for the application of this rule.

(4) Consistent with the requirement that the excise tax imposed by Code sec. 2101 applies for the calendar year, the credits permitted under this article are computed on a calendar year basis for a controlled group regardless of the common taxable year of the controlled group.”

Article 3- Repealing Reg. § 2102(a)-2(b) of Regulation 7970 and replaced with a new Reg. § 2102(a)-2(b) to read as follow:

“Reg. § 2102(a)-2(b) - General Credit Against Tax. —

(1) For calendar year 2011, each controlled group shall be entitled to a credit of four million (4,000,000) dollars against the tax imposed by Code sec. 2101, or the aggregate tax liability under Code sec. 2101 of the controlled group, whichever is less.

(2) For calendar year 2012, the maximum amount of the credit under this paragraph (b) shall equal the excise tax rate for such years divided by four (4) percent (the excise tax rate for 2011) times four million (4,000,000) dollars, or the aggregate tax liability under Code sec. 2101 of the controlled group, whichever is less.

(3) For calendar year 2013, the maximum amount of the credit under this paragraph (b) shall be computed as follows: (i) for the semester from January 1, 2013 through June 30, 2013, both inclusive, shall be one million three hundred seventy-five thousand (1,375,000) dollars; and (ii) for the semester from July 1, 2013 through December 31, 2013, both inclusive, shall be two million (2,000,000) dollars or the aggregate tax liability under Code sec. 2101 of the controlled group for each semester, whichever is less.

(4) For each calendar year after 2013, the maximum amount of the credit under this paragraph (b) shall be four million (4,000,000) dollars, or the aggregate tax liability under Code sec. 2101 of the controlled group, whichever is less.

(5) Except as otherwise provided in this subparagraph (b)(5) or subparagraph (b)(6), the credit under this paragraph (b) that may be used for any calendar month may not exceed the amount of the annual credit under subparagraphs (b)(1), (b)(2), (b)(3) or (b)(4) divided by twelve (12), adjusted to reflect the amount of any credit in this paragraph (b) that could have been claimed in a prior month in the same calendar year but was not claimed because the amount of such credit exceeded the tax on taxable acquisitions in the prior month or because a credit under paragraph (c) or (d) was erroneously claimed. See paragraph (k), Example 2. The credit under this paragraph (b) shall be reflected on the monthly excise tax deposit form for each calendar month as required by the Secretary.

(6) If a controlled group reasonably projects that, after the application of the credit described in this paragraph (b), the sum of the liabilities for all acquiring members of the controlled group for the excise tax imposed by Code sec. 2101 will be zero for the calendar year, then no acquiring member shall be required to pay the excise tax for any calendar month for which such projections remain reasonable and no disposing member of the controlled group shall be required to collect and deposit any such tax for any such month.

(7) No unused credit for the calendar year may be carried forward or carried back, nor shall it be refunded. Notwithstanding the foregoing, if an acquiring member of a controlled group has paid excise tax in one or more months of a calendar year in which the sum of the liabilities for all acquiring members of the controlled group for the excise tax in Code sec. 2101 is zero (without regard to the limitation in subparagraph (5) for the calendar year after the application of the credit in this paragraph (b), the acquiring member or members shall be entitled to a refund of such tax paid for the calendar year. A claim for refund must be submitted in accordance with the terms and conditions of Code sec. 6011.

(8) If a controlled group claims the credit provided for by this paragraph (b), the controlled group shall reasonably project for the entire calendar year the number of employees (as defined in subparagraph (j)(2)) employed in manufacturing or producing personal property, or manufacturing services, in

Puerto Rico, and such projections shall be attached to each quarterly excise tax return, provided, however, that final calculations shall be attached to the quarterly return for the period from October 1 through December 31 for each year for which any credit is claimed. If for a calendar year the controlled group is not in fact eligible for the credit provided by this paragraph (b), the amount of any credit previously claimed for such calendar year shall be treated as a tax arising on account of an acquisition deemed to occur during the month of December of such year.”

Article 4.- Repealing Reg. § 2102(a)-2(c) of Regulation 7970 and replaced with a new Reg. § 2102(a)-2(c) to read as follow:

“Reg. § 2102(a)-2(c) - Alternative Credit Based on Gross Receipts. —

(1) In lieu of the credit provided by paragraph (b), a controlled group that meets the requirements described in this paragraph (c) may elect the credit provided by this paragraph (c).

(2) Where, for a calendar year, those members of a controlled group that engage in manufacturing and production in Puerto Rico, the quotient of:

(i) the gross receipts with respect to manufacturing and production in Puerto Rico of such members divided by

(ii) the average monthly number of employees in Puerto Rico of such members for the calendar year or the average monthly number of employees in Puerto Rico for calendar quarter ending December 31, whichever is higher, is less than five hundred fifty thousand (550,000) dollars, for 2011 a credit against the tax imposed by Code sec. 2101 of seven million (7,000,000) dollars or the aggregate tax liability of the controlled group, whichever is less, shall be allowed. Upon consultation with the Secretary of Economic Development and Commerce, the Secretary may make adjustments to the five hundred and fifty thousand (550,000) dollar threshold for a controlled group, taking into account local employment and such other matters as may be appropriate. Any discretionary adjustment made under this provision may be limited and subject to terms and conditions.

(3) For calendar year 2012, the maximum amount of the credit shall equal the excise tax rate for such year divided by four (4) percent (the excise tax rate for 2011) times seven million (7,000,000) dollars, or the aggregate tax liability under Code sec. 2101 of the controlled group, whichever is less.

(4) For calendar year 2013, the maximum amount of the credit shall be computed as follows: (i) for the semester from January 1, 2013 through June 30, 2013, both inclusive, shall be two million four hundred six thousand two hundred fifty (2,406,250) dollars; and (ii) for the semester from July 1, 2013 through December 31, 2013, both inclusive, shall be three million five hundred (3,500,000) dollars, or the aggregate tax liability under Code sec. 2101 of the controlled group for each semester, whichever is less.

(5) For each calendar year after 2013, the maximum amount of the credit shall be seven million (7,000,000) dollars, or the aggregate tax liability under Code sec. 2101 of the controlled group, whichever is less.

(6) Except as otherwise provided in this subparagraph (c)(6) or subparagraph (c)(7), the credit under this paragraph (c) that may be used for any calendar month may not exceed the amount of the annual credit under subparagraph (c)(2), (c)(3), (c)(4), or (c)(5) divided by twelve (12), adjusted to reflect the amount of any credit in this paragraph (c) that could have been claimed in a prior month in the same calendar year but was not claimed because the amount of such credit exceeded the tax on taxable acquisitions in the prior month or because a credit under paragraph (d) was erroneously claimed. See paragraph (k), Example 7.

(7) If a controlled group reasonably projects that, after the application of the credit described in this paragraph (c), the sum of the liabilities for all acquiring members of the controlled group for the excise tax in Code sec. 2101 will be zero for the calendar year, then no acquiring member of the controlled group shall be required to pay the excise tax for any calendar month for which such projections remain reasonable and no disposing member of the controlled group shall be required to collect and deposit any such tax for any such month.

(8) No unused credit for the calendar year may be carried forward or carried back, nor shall it be refunded. Notwithstanding the foregoing, if an acquiring member of a controlled group has paid excise tax in one or more months of a calendar year in which the sum of the liabilities for all acquiring members of the controlled group for the excise tax in Code sec. 2101 is zero

(without regard to the limitation in subparagraph (6)) for the calendar year after the application of the credit in this paragraph (c), the acquiring member or members shall be entitled to a refund of such tax paid for the calendar year. A claim for refund must be submitted in accordance with the terms and conditions of Code sec. 6011.

(9) If a controlled group elects the use of the credit described in this paragraph (c), the controlled group shall reasonably project for the entire calendar year the number of employees (as defined in subparagraph (j)(2)) employed in manufacturing or producing personal property, or manufacturing services, in Puerto Rico and the gross receipts for all sales of personal property and services, and such projections shall be attached to each quarterly excise tax return, provided, however, that final calculations shall be attached to the quarterly return for the period from October 1 through December 31 for each year for which any credit is claimed. If, for a calendar year, the controlled group is not in fact eligible for the credit provided by this paragraph (c) because, for example, the gross receipts per employee exceed the threshold in subparagraph (c)(2), any credit claimed in excess of the credit allowable under paragraph (b) shall be treated as a tax arising on account of an acquisition deemed to occur during the month of December of such year.

(10) An election to use the credit described in this paragraph (c) for a calendar year shall be made by claiming the credit described in this paragraph (c) on the first monthly excise tax deposit form filed for a calendar year or on a form for a subsequent calendar month in which the controlled group determines that it is eligible for such credit.”

Article 5 - Repealing Reg. § 2102(a)-2(d) of Regulation 7970 and replaced with a new Reg. § 2102(a)-2(d) to read as follow:

“Reg. § 2102(a)-2 (d) Alternative Credit Where Taxable Acquisitions Exceed Certain Thresholds. —

(1) In lieu of the credits provided in paragraphs (b) and (c), a controlled group having, for a calendar year,

(i) taxable acquisitions equal to or greater than four billion (4,000,000,000) dollars,

(ii) an average monthly number of employees engaged in manufacturing or production and manufacturing services in Puerto Rico that equals or exceeds four hundred (400), and

(iii) total compensation for such employees that equals or exceeds twenty million (20,000,000) dollars (for this purpose, compensation includes all amounts paid for services rendered, including bonuses, vacation allowances, and fringe benefits) may elect the credit provided by this paragraph (d).

(2) For 2011,

(i) where the taxable acquisitions for all members of the controlled group are equal to or greater than four billion (4,000,000,000) dollars and less than four and one half billion (4,500,000,000) dollars, the credit is twenty million (20,000,000) dollars;

(ii) where the taxable acquisitions for all members of the controlled group are equal to or greater than four and one half billion (4,500,000,000) dollars and less than five billion (5,000,000,000) dollars, the credit is forty million (40,000,000) dollars;

(iii) where the taxable acquisitions for all members of the controlled group are equal to or greater than five billion (5,000,000,000) dollars and less than five and one half billion (5,500,000,000) dollars, the credit is sixty million (60,000,000) dollars;

(iv) where the taxable acquisitions for all members of the controlled group are equal to or greater than five and one half billion (5,500,000,000) dollars, the credit is eighty million (80,000,000) dollars.

(3) For calendar year 2012, the credit described in this paragraph (d) shall equal the excise tax rate for such year divided by four (4) percent (the excise tax rate for 2011) times the credit determined under subparagraph (d)(2) for the level of taxable acquisitions in such year, or the aggregate tax liability under Code sec. 2101 of the controlled group, whichever is less.

(4) For calendar year 2013, the credit described in this paragraph (d) shall be computed as follows: (i) for the semester from January 1, 2013 through June 30, 2013, both inclusive, shall equal fifty (50) percent of the excise tax rate for 2013 divided by four (4) percent times the credit determined under subparagraph (d)(2) for the level of taxable acquisitions in such six month period; and (ii) for the semester from July 1, 2013 through December 31, 2013, both inclusive, shall equal fifty (50) percent of the credit

determined under subparagraph (d)(2) for the level of taxable acquisitions in such six month period, or the aggregate tax liability under Code sec. 2101 of the controlled group for each semester, whichever is less. See paragraph (k), Example 17.

(5) For each calendar year after 2013, the credit described in this paragraph (d) shall be the credit determined under subparagraph (d)(2) for the level of taxable acquisitions in such year, or the aggregate tax liability under Code sec. 2101 of the controlled group, whichever is less.

(6) The credit in this paragraph (d) used for any calendar month may not exceed the amount of the annual credit in subparagraph (d)(2) divided by twelve (12), adjusted to reflect the amount of any credit in this paragraph (d) that could have been claimed in a prior month in the same calendar year but was not claimed and to reflect any credit under paragraph (b) or (c) in this article that was claimed. See paragraph (k), Example 7.

(7) No unused credit for the calendar year may be carried forward or carried back, nor shall it be refunded.

(8) If a controlled group elects the use of the credit provided for by this paragraph (d), the controlled group shall reasonably project for the entire calendar year the number of employees (as defined in subparagraph (j)(2)) employed, and the compensation of such employees related thereto, in manufacturing or producing personal property, or performing manufacturing services, in Puerto Rico, and the amount of taxable acquisitions, and such projections shall be attached to each quarterly excise tax return, provided, however, that final calculations shall be attached to the quarterly return for the period from October 1 through December 31 for each year for which any credit is claimed. If for the calendar year the controlled group is not in fact eligible for the credit provided by this paragraph (d), or is eligible for a lesser amount than the amount claimed, any credit claimed in excess of the credit allowable under paragraph (b), (c) or (d), as the case may be, shall be treated as a tax arising on account of an acquisition deemed to occur during the month of December of such year.

(9) An election to use the credit described in this paragraph (d) for a calendar year shall be made by claiming the credit described in this paragraph (d) on the first monthly excise tax deposit form filed for a calendar year or on a form for a subsequent calendar month in which the controlled group determines that it is eligible for such credit.

Article 6 - Repealing Reg. § 2102(a)-2(e) of Regulation 7970 and replaced with a new Reg. § 2102(a)-2(e) to read as follow:

“(e) Addition to Alternative Credit for Incremental Increase in Employees.—

(1) In the case of a controlled group that meets the requirements of subparagraph (d)(1) for a taxable year, and also meets the requirements in this paragraph (e), an additional credit is allowed as provided in this paragraph (e).

(2) For each calendar month for which the number of employees employed by the controlled group in connection with manufacturing and production and manufacturing services in Puerto Rico is in excess of the employee baseline for the controlled group (as defined in subparagraph (j)(1)) by at least twenty-five (25) employees, the controlled group shall be entitled to a credit of one hundred eighty-seven thousand five hundred (187,500) dollars, plus an additional one hundred eighty-seven thousand five hundred (187,500) dollars for each additional twenty-five (25) employees to a maximum of five hundred (500) additional employees, for a maximum credit of three million seven hundred fifty thousand (3,750,000) dollars, or the aggregate tax liability under Code sec. 2101 of the controlled group, whichever is less.

(3) For calendar year 2012, the credit described in this paragraph (e) shall equal the excise tax rate for such year divided by four (4) percent (the excise tax rate for 2011) times the credit determined under subparagraph (e)(2), or the aggregate tax liability under Code sec. 2101 of the controlled group, whichever is less.

(4) For calendar year 2013, the credit described in this paragraph (e) shall be computed as follows: (i) for the semester from January 1, 2013 through June 30, 2013, both inclusive, shall equal fifty (50) percent of the excise tax rate for 2013 divided by four (4) percent times the credit determined under subparagraph (e)(2); and (ii) for the semester from July 1, 2013 through December 31, 2013, both inclusive, shall equal fifty (50) percent of the credit determined under subparagraph (e)(2), or the aggregate tax liability under Code sec. 2101 of the controlled group for each semester, whichever is less.

(5) For each calendar year after 2013, the credit described in this paragraph (e) shall be the credit determined under subparagraph (e)(2), or the aggregate tax liability under Code sec. 2101 of the controlled group, whichever is less.

(6) No unused credit for the calendar year may be carried forward or carried back, nor shall it be refunded.

(7) If a controlled group elects the use of the credit provided for by this paragraph (e), the controlled group shall reasonably project for the entire calendar year the number of employees (as defined in subparagraph (j)(2)) to be employed in each month of that calendar year in manufacturing or producing personal property, or manufacturing services, in Puerto Rico and the amount of taxable acquisitions, and such projections shall be attached to each quarterly excise tax return, provided, however, that final calculations shall be attached to the quarterly return for the period from October 1 through December 31 for each year for which any credit is claimed. If a controlled group claims the credit provided for by this paragraph (e) and the controlled group is not in fact eligible for the credit provided by this paragraph (e), or is eligible for a lesser amount than the amount claimed, any credit claimed in excess of the credit allowable under paragraph (e), as the case may be, shall be treated as a tax arising on account of an acquisition deemed to occur during the month of December of such year.

(8) An election to use the credit described in this paragraph (e) for a calendar year shall be made by claiming the credit described in this paragraph (e) on the first monthly excise tax deposit form filed for a calendar year or on a form for a subsequent calendar month in which the controlled group determines that it is eligible for such credit.”

Article 7 - Repealing Reg. § 2102(a)-2(f) of Regulation 7970 and replaced with a new Reg. § 2102(a)-2(f) to read as follow:

“Reg. § 2102(a)-2(f) Controlled Groups with Manufacturing and Production Facilities in Multiple Municipalities in Puerto Rico. —

(1) In lieu of the credits provided in paragraphs (d) and (e) (but in addition to any credit provided by paragraph (b) or paragraph (c)), a controlled group that meets the requirements in subparagraph (f)(2) below may elect the credit provided by this paragraph (f).

(2) In the case of a controlled group that has one or more members that are engaged in manufacturing and production or manufacturing services in facilities located in three (3) or more different municipalities in Puerto Rico as of October 24, 2010, a credit of five million (5,000,000) dollars per each such municipality shall be allowed for each such facility that has a monthly average of more than thirty (30) employees during the calendar year for which a credit is claimed under this paragraph (f), up to a maximum credit of twenty million (20,000,000) dollars with respect to all such municipalities.

(3) For calendar year 2012, the credit described in this paragraph (f) shall equal the excise tax rate for such year divided by four (4) percent (the excise tax rate for 2011) times the credit allowed under subparagraph (f)(2), or the aggregate tax liability under Code sec. 2101 of the controlled group, whichever is less.

(4) For calendar year 2013, the credit described in this paragraph (f) shall be computed as follows: (i) for the semester from January 1, 2013 through June 30, 2013, both inclusive, shall equal fifty (50) percent of the excise tax rate for 2013 divided by four (4) percent times the credit allowed under subparagraph (f)(2); and (ii) for the semester from July 1, 2013 through December 31, 2013, both inclusive, shall equal the fifty (50) percent of the credit allowed under subparagraph (f)(2), or the aggregate tax liability under Code sec. 2101 of the controlled group for each semester, whichever is less.

(5) For each calendar year after 2013, the credit in this paragraph (f) shall be the credit allowed under subparagraph (f)(2), or the aggregate tax liability under Code sec. 2101 of the controlled group, whichever is less.

(6) The credit in this paragraph (f) used for any calendar month may not exceed the amount of the annual credit divided by twelve (12).

(7) No unused credit for the calendar year may be carried forward or carried back, nor shall it be refunded.

(8) If a controlled group elects the use of the credit provided for by this paragraph (f), the controlled group shall reasonably determine that it will maintain the required number of facilities and employees for the entire calendar year, and a certification of such determination shall be attached to each quarterly excise tax return. If the controlled group is not in fact eligible for the credit provided by this paragraph (f), or is eligible for an amount less than the amount claimed, any credit claimed in excess of the credit allowable under this paragraph (f) shall be treated as a tax arising on account of an acquisition deemed to occur during the month of December of such year.

(9) An election to use the credit described in this paragraph (f) for a calendar year shall be made by claiming the credit described in this paragraph (f) on the first monthly excise tax deposit form filed for a calendar year or on a form for a subsequent calendar month in which the controlled group determines that it is eligible for such credit.”

Article 8 - Repealing Reg. § 2102(a)-2(g) of Regulation 7970 and replaced with a new Reg. § 2102(a)-2(g) to read as follow:

“Reg. § 2102(a)-2(g) - Economically Disadvantaged or Critical Industry Suppliers. —

(1) If a controlled group makes direct purchases of property or services from a supplier certified by the Secretary and by the Department of Economic Development and Commerce as an economically disadvantaged or critical industry business (“Economically Disadvantaged or Critical Industry Supplier”), then a credit shall be allowed as described in this paragraph (g).

(2) Amount of Credit. —

(i) If, during a calendar year, the costs of direct purchases of property and services from Economically Disadvantaged or Critical Industry Suppliers made by members of a controlled group are less than or equal to seventy-five (75) percent of its total purchases of property and services, and purchases from Economically Disadvantaged or Critical Industry Suppliers are in excess of the average annual direct purchases of property and services from Economically Disadvantaged or Critical Industry Suppliers for the preceding two (2) calendar years, then a credit in the amount of one hundred (100) percent of such excess shall be allowed.

(ii) If, during a calendar year, the costs of direct purchases of property and services from Economically Disadvantaged or Critical Industry Suppliers made by members of a controlled group are in excess of seventy-five (75) percent of its total purchases of property and services for such calendar year, then a credit in the amount of one hundred fifty (150) percent of such excess shall be allowed.

(3) The credit allowed by this paragraph (g) is in addition to, and not in lieu of, the credits provided for in paragraphs (b), (c), (d), (e), (f), (h) and (i).

(4) The credit provided for in this paragraph (g) may not exceed one (1) percent of the excise tax otherwise owing (after the application of any other credits) without regard to the credits provided in this paragraph (g).

(5) If a controlled group claims the benefits of the credit described in this paragraph (g), the controlled group shall reasonably project for the entire calendar year the costs of its purchases of property and services from Economically Disadvantaged or Critical Industry Suppliers, provided, however, that final calculations shall be attached to the quarterly return for the period from October 1 through December 31 for each year for which any credit is claimed. (All certificates of Economically

Disadvantaged or Critical Industry Suppliers shall be made available for review upon request.) If the controlled group is not in fact eligible for the credit provided by this paragraph (g), or is eligible for a lesser amount than the amount claimed, any credit claimed in excess of the credit allowable under this paragraph (g) shall be treated as a tax arising on account of an acquisition deemed to occur during the month of December of such year.

(6) An election to use the credit described in this paragraph (g) for a calendar year shall be made by claiming the credit described in this paragraph (g) on the first monthly excise tax deposit form filed for a calendar year or on a form for a subsequent calendar month in which the controlled group determines that it is eligible for such credit.”

Article 9 - Repealing Reg. § 2102(a)-2(h) of Regulation 7970 and replaced with a new Reg. § 2102(a)-2(h) to read as follow:

“Reg. § 2102(a)-2(h) - Knowledge Corridor and Research and Development Investment Credit. —

(1) If, during a calendar year, a controlled group makes contributions to the Puerto Rico Science, Technology and Research Trust or Special Economic Development Fund or otherwise invests in research and development activities in Puerto Rico, then a credit shall be allowed as described in this paragraph (h).

(2) Amount of Credit. —

(i) If a controlled group makes contributions to the Puerto Rico Science, Technology and Research Trust or Special Economic Development Fund, there shall be allowed a credit in the amount of one hundred (100) percent of such contributions, subject to the limitation that the amount of the credit for such contributions may not exceed one (1) percent of the excise tax otherwise owing after the application of any applicable credits in paragraphs (b), (c), (d), (e), (f), (g) and (i).

(ii) If the amount of a controlled group's research and development investments in Puerto Rico in a calendar year is in excess of the average annual research and development investments in Puerto Rico for the preceding two (2) calendar years, then a credit in the amount of one hundred (100) percent of such excess shall be allowed, subject to the limitation that the amount of the credit attributable to such excess may not exceed two (2) percent of the excise tax otherwise owing after the application of any applicable credits in paragraphs (b), (c), (d), (e), (f), (g) and (i).

(3) The credit allowed by this paragraph (h) is in addition to, and not in lieu of, the credits provided for in paragraphs (b), (c), (d), (e), (f), (g) and (i).

(4) **Investment in Research and Development Activities.**—The term “investment in research and development activities,” as used in this article, means expenditures incurred in Puerto Rico in connection with the controlled group's trade or business which represent research and development costs in the experimental or laboratory sense. The term generally includes all such costs incident to the development or improvement of a product. Expenditures represent research and development costs in the experimental or laboratory sense if they are for activities intended to discover information that would eliminate uncertainty concerning the development or improvement of a product. Uncertainty exists if the information available to the taxpayer does not establish the capability or method for developing or improving the product or the appropriate design of the product. Whether expenditures qualify as research or experimental expenditures depends on the nature of the activity to which the expenditures relate, not the nature of the product or improvement being developed or the level of technological advancement the product or improvement represents.

(i) For purposes of this article, the term “product” includes any pilot, model, process, formula, invention, technique, or similar property, and includes products to be used by the taxpayer in its trade or business as well as products to be held for sale, lease, or license.

(ii) The term research and development expenditures does not include expenditures for:

(I) The ordinary testing or inspection of materials or products for quality control (quality control testing);

(II) Efficiency surveys;

(III) Management studies;

(IV) Consumer surveys;

(V) Advertising or promotions;

(VI) The acquisition of a patent, model, production or process;

(VII) Research in connection with literary, historical, or similar projects; or

(VIII) Items that must be capitalized for income tax purposes (but expenditures may include depreciation or amortization with respect to such items).

(5) A controlled group shall adequately document the qualifying contributions or investments prior to claiming any credit under this paragraph (h). The controlled group may reasonably project its tax liability for the entire calendar year and reduce such reasonably projected tax liability by the sum of the contributions qualifying for the credit described in subdivision (h)(2)(i) (not to exceed one (1) percent of the projected tax liability for each quarter) and the incremental research and development investments qualifying for the credit described in subdivision (h)(2)(ii) (not to exceed two (2) percent of the projected tax liability for each quarter), provided, however, that final calculations shall be attached to the quarterly return for the period from October 1 through December 31 for each year for which any credit is claimed. If the controlled group is not in fact eligible for a credit provided by this paragraph (h), or is eligible for a lesser amount than the amount claimed, any credit claimed in excess of the credit allowable under this paragraph (h) shall be treated as a tax arising on account of an acquisition deemed to occur during the month of December of such year.

(6) An election to use the credit described in this paragraph (h) for a calendar year shall be made by claiming the credit described in this paragraph (h) on the first monthly excise tax deposit form filed for a calendar year or on a form for a subsequent calendar month in which the controlled group determines that it is eligible for such credit.”

Article 10 – Add a new Reg. § 2102(a)-2(i) to read as follow:

“Reg. §2102(a)-2 (i) - Single Operation with a High Concentration Risk. —

(1) In lieu of the credits provided in paragraphs (b) through (f), both inclusive, in the case of a controlled group that has taxable acquisitions equal to or greater than one billion (1,000,000,000) dollars for any calendar year after December 31, 2012, and also meets the requirements in subparagraph (2) below, an additional credit is allowed as provided herein.

(2) If during a calendar year, a controlled group:

(i) has one single manufacturing facility in Puerto Rico;

(ii) has taxable acquisitions of personal property manufactured,

in whole or in part, in such manufacturing facility in Puerto Rico; and

(iii) acquisitions of such personal property represent ninety (90) percent or more of total gross receipts of the member of the controlled group engaged in the manufacture or production of tangible property in Puerto Rico or performance of services related to the manufacture or production of tangible property in Puerto Rico, then a credit shall be allowed in the amount of forty five million (45,000,000) dollars.

(3) For calendar year 2013, the credit described in this paragraph (i) shall be computed as follows: (i) for the semester from January 1, 2013 through June 30, 2013, both inclusive, the controlled group will be ineligible for the credit described in this paragraph (i) and shall be entitled to fifty (50) percent of the applicable excise tax rate for the semester divided by four (4) percent times the credits it is allowed under paragraphs (b) through (f), both inclusive; and (ii) for the semester from July 1, 2013 through December 31, 2013, both inclusive, shall equal fifty (50) percent of the credit allowed under subparagraph (i)(2).

(4) The credit in this paragraph (i) used for any calendar month may not exceed the amount of the annual credit divided by twelve (12).

(5) No unused credit for the calendar year may be carried forward or carried back, nor shall it be refunded.

(6) If a controlled group elects the use of the credit provided in this paragraph (i), the controlled group shall reasonably project for the entire calendar year the number of employees (as defined in subparagraph (j)(2)) employed in manufacturing or producing personal property, or manufacturing services, in Puerto Rico, and such projections shall be attached to each quarterly excise tax return, provided however, that final calculations shall be attached to the quarterly return for the period from October 1 through December 31 for each year for which any credit is claimed. If for a calendar year the controlled group is not in fact eligible for the credit provided by this paragraph (i), the amount of any credit previously claimed for such calendar year shall be treated as a tax arising on account of an acquisition deemed to occur during the month of December of such year.”

Article 11 – Rename Reg. § 2102(a)-2(i) as Reg. § 2102(a)-2(j) and amend to read as follow:

Reg. § 2102(a)-2 (j) - Definitions and Special Rules. —

(1) Employee Baseline Defined. —

(i) The employee baseline for a controlled group shall be the average monthly number of employees (as defined in subparagraph (j)(2)) engaged in manufacturing or production or manufacturing services in Puerto Rico for the twelve (12) months ended September 30, 2010. Alternatively, a controlled group may elect to use as the employee baseline the number of employees engaged in manufacturing and production or manufacturing services in Puerto Rico on September 30, 2010.

(ii) Discretionary Adjustments to Employee Baseline.—

Upon consultation with the Secretary of Economic Development and Commerce, the Secretary may make adjustments to the employee baseline of any controlled group otherwise determined under this subparagraph (j)(1), taking into account local employment and such other matters as may be appropriate.

(I) The appropriate circumstances for such adjustments to a controlled group's employee baseline include circumstances where a controlled group demonstrates, by clear and convincing evidence, that its worldwide employment has decreased, where a controlled group makes acquisitions or dispositions of trades or businesses, and where a controlled group has experienced other exceptional circumstances. Exceptional circumstances could include destruction of, or damage to, a facility by a hurricane or other disaster, but would not include the expiration of a patent.

(II) Any discretionary adjustment made under this provision may be limited and subject to terms and conditions. Unless the Secretary specifically determines otherwise, such a discretionary adjustment shall not reduce the employee baseline for purposes of the computation of the amount of the credit, if any, available under paragraph (e).

(2) Employee Defined.—For purposes of this article, “employee” means an individual who performs activities in Puerto Rico on behalf of one or more members of a controlled group and is treated as a full-time employee under this subparagraph (j).

(i) **Full-time employee.—**The term “full-time employee” means, with respect to any month, an employee who is employed by one or more members of a controlled group on average at least forty (40) hours of service per week in Puerto Rico and whose compensation is reported on Form 941-PR by one or more members of the controlled group.

(ii) Full-time equivalents treated as full-time employees.—

For purposes of this article, in addition to the number of full-time employees for any month otherwise determined, a controlled group shall include for such month a number of full-time employees determined by dividing the aggregate number of hours of service of employees who are not full-time employees for the month by one hundred sixty (160). For this purpose, employees who are not full-time employees include temporary, part-time, and other individuals whose compensation is reported on Form 941-PR by one or more members of the controlled group and does not include contractors and other service providers.

(7) Limitations on Availability of Credits.—No credit shall be permitted under this Reg. § 2102(a)-2 to any member of a controlled group for a calendar year in which the controlled group has an average monthly number of full-time employees engaged in manufacturing and production and manufacturing services in Puerto Rico for the twelve (12) months of such calendar year that is less than ninety (90) percent of the controlled group's employee baseline. Nor shall any credit be permitted under this Reg. § 2102(a)-2 to any member of a controlled group for a calendar quarter in which the controlled group has failed to deposit or pay with the return due for such calendar quarter at least seventy-five (75) percent of the tax due for such calendar quarter under Code sec. 2101.

Article 12 – Rename Reg. § 2102(a)-2(j) as Reg. § 2102(a)-2(k) and amend to read as follow:

Reg. § 2102(a)-2 (k)Examples.— Except as otherwise stated, all examples in this paragraph (k) assume that the requirements of paragraph (j) are satisfied.

Example 1. In December 2010, the controlled group of which Company B is a member projects taxable acquisitions for 2011 of \$125,000,000. In January 2011, there are taxable acquisitions of \$8,000,000 and the controlled group claims a credit under paragraph (b) of \$320,000 (4 percent [the tax rate for 2011] times 8,000,000, which is less than the maximum monthly credit for January under paragraph (b) of 333,000). In February 2011, there are taxable acquisitions of \$12,000,000. The controlled group may claim a credit for February 2011 of \$346,666 (\$4,000,000 [the maximum under this paragraph (b)] divided by 12 [\$333,333] times 2 [\$666,666] less \$320,000 [the credit claimed for January 2011]).

Example 2. During 2011, the controlled group of which Company C is a member has an average monthly number of employees engaged in manufacturing and production

and manufacturing services in Puerto Rico that equals or exceeds the amount specified in subdivision (d)(1)(ii). In December 2010, the controlled group reasonably projects taxable acquisitions for 2011 of \$4,200,000,000. In January 2011, the controlled group, in the aggregate, has taxable acquisitions of \$350,000,000, resulting in a pre-credit tax of \$14,000,000. The controlled group claims a credit under paragraph (d) of \$1,666,667 ($\$20,000,000$ divided by 12). Because the controlled group claims a credit under paragraph (d), the controlled group may not claim a credit under paragraph (b) or paragraph (c).

In February 2011, the controlled group revises its projections of taxable acquisitions for 2011 from \$4,200,000,000 to \$3,600,000,000. Based on the revised projections, the controlled group may not claim a credit for 2011 under paragraph (d), but may claim a credit for 2011 under paragraph (b). Because the controlled group erroneously claimed a credit of \$1,666,667 under paragraph (d) for January 2011, the controlled group may not claim a credit under paragraph (b) until June 2011 (provided its revised projections are correct). Under paragraph (b), a controlled group may claim a maximum of \$333,333 of credit per month in 2011, adjusted to reflect the amount of any credit under paragraph (b) that could have been claimed in a prior month in the same calendar year but was not claimed. Because the controlled group claimed \$1,666,667 under paragraph (d) in January 2011, the controlled group may not claim a credit under paragraph (b) for February, March, April, or May ($\$1,666,667$ minus \$333,333 for each month until the erroneously claimed credit is exhausted), and the amount of the credit for June would be \$333,333.

Example 3. In December 2010, the controlled group of which Company D is a member reasonably projects that its taxable acquisitions for 2011 will be \$180,000,000 and that its gross receipts per employee for 2011 will be \$485,000. Prior to the application of any credits, the controlled group of which Company D is a member projects that it will be liable for tax under Code sec. 2101 of \$600,000 per month (4 percent times \$180,000,000 [$\$7,200,000$] divided by 12 [$\$600,000$]). Based on these projections, the controlled group claims a credit under paragraph (c) of \$583,333 per month ($\$7,000,000$ divided by 12) and therefore pays a tax of \$16,666 per month. The controlled group's taxable acquisitions for 2011 in fact are \$174,000,000. The controlled group's excise tax liability is reduced to zero by the credit provided in paragraph (c). As a consequence, no acquiring member of the controlled group is subject to the tax imposed by Code sec. 2101 in 2011, and therefore each acquiring member would be subject to the rules of Code sec.

1123(f)(4). Each acquiring member shall be entitled to a refund of any tax paid under Code sec. 2101 for the calendar year in accordance with subparagraph (c)(6).

Example 4. The facts are the same as in Example 3, except that the gross receipts per employee for the controlled group for 2011 are \$512,000. As a consequence, no credit is allowable under paragraph (c). A credit would be permitted under paragraph (b). The credit under paragraph (b) is \$333,333 per month (\$4,000,000 divided by 12), and, based on taxable acquisitions of \$174,000,000 in 2011, the tax liability under Code. sec. 2101 for the acquiring members of the controlled group in 2011 is \$2,960,000 (\$6,960,000 minus \$4,000,000).

Example 5. The facts are the same as in Example 4, except that the controlled group has an average monthly number of full-time employees engaged in manufacturing or production and manufacturing services in Puerto Rico for the twelve (12) months in 2011 that is less than ninety (90) percent of the controlled group's employee baseline. No credit is available under this article because the requirements of paragraph (j) are not satisfied, and the tax liability of the controlled group for 2011 is \$6,960,000.

Example 6. In 2011, the controlled group of which Company E is a member has an average monthly number of employees engaged in manufacturing or production and manufacturing services in Puerto Rico that equals or exceeds the number specified in subdivision (d)(1)(ii) and has taxable acquisitions of \$4,250,000,000. Such controlled group is entitled to a credit of \$20,000,000 in 2011. The controlled group may claim up to one-twelfth of this amount (\$1,666,667) in each month of 2011.

Example 7. In 2011, the controlled group of which Company E is a member has an average monthly number of employees engaged in manufacturing or production and manufacturing services in Puerto Rico that equals or exceeds the number specified in subdivision (d)(1)(ii). In December 2010, the controlled group of which Company E is a member reasonably projects that the taxable acquisitions by all members of the controlled group for 2011 will be \$3,900,000,000. In March 2011, the controlled group revises its projections of taxable acquisitions from \$3,900,000,000 to \$4,250,000,000. Based on the original projections, the controlled group does not claim a credit under paragraph (d) for January or February 2011. For March 2011, the controlled group may claim a credit in the amount of the excess of \$5,000,000 (the credit computed under paragraph (d) of \$1,666,667 for each of January, February, and March 2011) less the amount of any credit claimed under paragraph (b) or (c) for January and February 2011.

Example 8. In 2011, the controlled group of which Company E is a member has an average monthly number of employees engaged in manufacturing or production and manufacturing services in Puerto Rico that equals or exceeds the number specified in subdivision (d)(1)(ii) and reasonably projects that the taxable acquisitions by all members of the controlled group for 2011 will be \$4,600,000,000. Based on this projection, the controlled group claims a credit under paragraph (d)(2)(ii) of \$3,333,333 each month from January through November 2011 (\$40,000,000 divided by 12). In fact, the controlled group's taxable acquisitions amount to \$4,400,000,000 for 2011. The controlled group is entitled to a credit under subdivision (d)(2)(i) of \$20,000,000 for the year rather than a credit of \$40,000,000 for the year under subdivision (d)(2)(ii). As a result, the controlled group is treated as having an additional tax of \$18,333,333 arising on account of an acquisition deemed to occur during the month of December of such year (the difference between the 11-month portion of the \$40,000,000 credit under subdivision (d)(2)(ii) [\$36,666,667] and the 11-month portion of the \$20,000,000 credit under subdivision (d)(2)(i) [\$18,333,333]). The controlled group may claim a credit of \$1,666,667 for December 2011.

Example 9. The facts are the same as in Example 8, except that in December 2011 the controlled group determines that it had an average monthly number of employees engaged in manufacturing and production and manufacturing services in Puerto Rico for the twelve (12) months in 2011 that is less than ninety (90) percent of the controlled group's employee baseline. No credit is available under this article because the requirements of subparagraph (j)(3) are not satisfied. As a result, the controlled group is treated as having an additional tax of \$36,666,667 arising on account of an acquisition deemed to occur during the month of December of such year.

Example 10. A controlled group of corporations consists of Company F, Company G, and Company H. Company F makes taxable acquisitions of \$10,000,000 each month from Company H in 2011. Company G makes taxable acquisitions of \$5,000,000 from Company H each month in 2011. The controlled group is entitled to a monthly credit of \$333,333 (\$4,000,000 divided by 12) under paragraph (b) for 2011. In the aggregate, Company F and Company G are liable for tax of \$266,667 for each month (\$15,000,000 of taxable acquisitions, resulting in a pre-credit tax of \$600,000 each month, less the monthly credit of \$333,333). The credit under paragraph (b) is allocated each month \$222,222 to Company F and \$111,111 to Company G, proportionate to their respective taxable acquisitions computed according to the method described in subparagraph (a)(2)

on a cumulative basis during the calendar year as of the end of each calendar month. As result, under this method, Company F is liable for \$177,778 of tax for each month, and Company G is liable for tax of \$88,889 of tax for each month.

Example 11. The facts are the same as in Example 10, except that Company G has no taxable acquisitions in January 2011 and taxable acquisitions of \$5,000,000 in February 2011. For January 2011, Company F is liable for \$66,667 of tax (\$10,000,000 of taxable acquisitions, resulting in \$400,000 of pre-credit tax less a credit of \$333,333). For February 2011, in the aggregate, Company F and Company G are liable for tax of \$266,667 (\$15,000,000 of taxable acquisitions resulting in a pre-credit tax of \$600,000, less the monthly credit of \$333,333). As of the end of February 2011, the cumulative credits (\$666,666) are allocated on the basis of the ratio of \$20,000,000 of taxable acquisitions by Company F (\$10,000,000 for January and \$10,000,000 for February) and \$5,000,000 of taxable acquisitions by Company G. Thus, at the end of February 2011, Company F is allocated a total of \$533,333 of the credits ($\frac{4}{5}$ of \$666,666) and Company G is allocated a total of \$133,333 ($\frac{1}{5}$ of \$666,666). Therefore, for February 2011, Company F is allocated \$200,000 of credits and Company G is allocated \$133,333 of credits. As a result, Company F is liable for tax of \$200,000 (\$10,000,000 of taxable acquisitions resulting in \$400,000 of pre-credit tax less \$200,000 of credits) and Company G is liable for tax of \$66,667 (\$5,000,000 in taxable acquisitions resulting in \$200,000 of pre-credit tax less \$133,333 of credits).

Example 12. The facts are the same as in Example 11, except that Company G has taxable acquisitions of \$10,000,000 in February 2011. For January 2011, Company F is liable for \$66,667 of tax (\$10,000,000 of taxable acquisitions, resulting in \$400,000 of pre-credit tax less a credit of \$333,333). For February 2011, in the aggregate, Company F and Company G are liable for tax of \$466,667 (\$20,000,000 of taxable acquisitions resulting in a pre-credit tax of \$800,000, less the monthly credit of \$333,333). As of the end of February 2011, the cumulative credits (\$666,666) are allocated on the basis of the ratio of \$20,000,000 of taxable acquisitions by Company F (\$10,000,000 for January and \$10,000,000 for February) and \$10,000,000 of taxable acquisitions by Company G. Thus, at the end of February 2011, Company F is allocated a total of \$444,444 of the credits ($\frac{2}{3}$ of \$666,666) and Company G is allocated a total of \$222,222 ($\frac{1}{3}$ of \$666,666). Therefore, for February 2011, Company F is allocated \$111,111 of credits and Company G is allocated \$222,222 of credits. As a result, Company F is liable for tax of \$288,889 for February 2011 (\$10,000,000 of taxable acquisitions resulting in \$400,000 of pre-credit tax

less \$111,111 of credits) and Company G is liable for tax of \$177,778 for February 2011 (\$10,000,000 in taxable acquisitions resulting in \$400,000 of pre-credit tax less \$222,222 of credits).

Example 13. The facts are the same as in example 10, except that the controlled group elects to allocate the credit under paragraph (b) in accordance with the method described in subparagraph (a)(3) instead of subparagraph (a)(2). Company F makes taxable acquisitions of \$10,000,000 each month from Company H in 2011. Company G makes taxable acquisitions of \$5,000,000 from Company H each month in 2011. The controlled group is entitled to a monthly credit of \$333,333 (\$4,000,000 divided by 12) under paragraph (b) for 2011. In the aggregate, Company F and Company G are liable for tax of \$266,667 for each month (\$15,000,000 of taxable acquisitions resulting in a pre-credit tax of \$600,000 each month less the monthly credit of \$333,333). The credit under paragraph (b) is allocated each month \$222,222 to Company F and \$111,111 to Company G, proportionately to their respective taxable acquisitions computed according to the method described in subparagraph (a)(3) based on the taxable acquisitions by each acquiring member during each month and not on a cumulative basis. As result, under this method, Company F is liable for \$177,778 of tax for each month, and Company G is liable for tax of \$88,889 of tax for each month.

Example 14. The facts are the same as in Example 13, except that Company G has no taxable acquisitions in January 2011 and taxable acquisitions of \$5,000,000 in February 2011. For January 2011, Company F is liable for \$66,667 of tax (\$10,000,000 of taxable acquisitions, resulting in \$400,000 of pre-credit tax, less a credit of \$333,333). For February 2011, in the aggregate, Company F and Company G are liable for tax of \$266,667 (\$15,000,000 of taxable acquisitions resulting in a pre-credit tax of \$600,000 less the monthly credit of \$333,333). For February 2011, the credits (\$333,333) are allocated on the basis of the ratio of \$10,000,000 of taxable acquisitions by Company F and \$5,000,000 of taxable acquisitions by Company G. Thus, for February 2011, Company F is allocated a total of \$222,222 of the credits ($\frac{2}{3}$ of \$333,333) and Company G is allocated a total of \$111,111 ($\frac{1}{3}$ of \$333,333). As a result, Company F is liable for tax of \$177,778 (\$10,000,000 of taxable acquisitions resulting in \$400,000 of pre-credit tax less \$222,222 of credits) and Company G is liable for tax of \$88,889 (\$5,000,000 in taxable acquisitions resulting in \$200,000 of pre-credit tax, less \$111,111 of credits).

Example 15. The facts are the same as in Example 14, except that Company G has taxable acquisitions of \$10,000,000 in February 2011. For January 2011, Company F

is liable for \$66,667 of tax (\$10,000,000 of taxable acquisitions, resulting in \$400,000 of pre-credit tax less a credit of \$333,333). For February 2011, in the aggregate, Company F and Company G are liable for tax of \$466,667 (\$20,000,000 of taxable acquisitions resulting in a pre-credit tax of \$800,000 less the monthly credit of \$333,333). For February 2011, the credit (\$333,333) is allocated on the basis of the ratio of \$10,000,000 of taxable acquisitions by Company F and \$10,000,000 of taxable acquisitions by Company G. Thus, for February 2011, Company F is allocated a \$166,667 of the credits (1/2 of \$333,333) and Company G is allocated \$166,667 (1/2 of \$333,333). As a result, Company F is liable for tax of \$233,333 (\$10,000,000 of taxable acquisitions resulting in \$400,000 of pre-credit tax less \$166,667 of credits).

Example 16. Company H and Company 1 are members of the same controlled group. For the 12 months ended September 30, 2010, the average monthly employment of the controlled group is 250 employees. On September 30, 2010, the controlled group has 240 employees. The controlled group elects to use 240 employees as the employee baseline. In 2011, the controlled group requests that the Secretary adjust its employee baseline and is able to demonstrate by clear and convincing evidence that its worldwide employment has declined by 10 percent. The Secretary may, after consultation with the Secretary of Economic Development and Commerce, determine that the employee baseline for the controlled group is 216 (240 less 10 percent or 24). However, if the Secretary agrees to make such adjustment, unless the Secretary specifically determines otherwise, the adjustment will not reduce the employee baseline for purposes of computation of the amount of the credit, if any, available under paragraph (e). Therefore, for purposes of paragraph (e), the employee baseline will be 240.

Example 17. For calendar year 2013, a controlled group qualifying for the credit specified in paragraph (d), has taxable acquisitions of \$6,000,000,000. Such controlled group is entitled to claim a credit under subparagraph (d)(4) of \$67,500,000 in 2013, computed as follows:

$$50\% \times [(2.75\% / 4\%) \times \$80,000,000] + (50\% \times \$80,000,000) = \$67,500,000$$

Article 13 – Amend Reg. § 2102(a)-3 to read as follow:

“Reg. § 2102(a)-3. Maximum Tax. (a) In General.—Except as provided in paragraph (c), in the aggregate, the tax imposed by Code sec. 2101 for a calendar year on all of the members of a controlled group that make taxable acquisitions shall not exceed three hundred seventy-five million (375,000,000) dollars less the Economically

(b) Computation.—Pursuant to paragraph (a), the tax imposed by Code sec. 2101 shall be the lesser of:

(1) the amount of the tax computed after the application of the credits available in paragraphs (b), (c), (d), (e), (f), (g), (h) or (i) or

(2) three hundred and seventy-five million (375,000,000) dollars less the Economically Disadvantaged or Critical Industry Suppliers credit provided in paragraph (g) and the Knowledge Corridor credit provided in paragraph (h).

(c) Limitation on Application of Maximum Tax.—The maximum tax limitation in paragraphs (a) and (b) shall not apply to a controlled group for a calendar year in which the controlled group has an average monthly number of full-time employees engaged in manufacture and production and manufacturing services in Puerto Rico for the twelve (12) months of such calendar year that is less than ninety (90) percent of the controlled group's employee baseline as defined in Reg. § 2102(a)-2(j)(1). Nor shall the maximum tax limitation in paragraphs (a) and (b) apply to a controlled group for a calendar year in which the controlled group has failed to deposit or pay with the return due for any calendar quarter in such calendar year at least seventy-five (75) percent of the tax due for such calendar quarter under Code sec. 2101.

EFFECTIVENESS: In accordance with the provisions of Section 2.13 of Act No. 170 of August 12, 1988, as amended, known as the “Commonwealth of Puerto Rico Uniform Administrative Procedures Act”, this Regulation shall become effective immediately after it is filed at the Department of State.

Approved in San Juan, Puerto Rico on October 21, 2013.



Angel Marzán Santiago
Acting Secretary of the Treasury

Filed at the Department of State on October 21, 2013