

GOVERNMENT OF PUERTO RICO

DISBURSEMENT AND TAX CONCESSION AUTHORIZATION COMMITTEE

RESOLUTION 2018-01

April 23, 2018

RESOLUTION OF THE DISBURSEMENT AND TAX CONCESSION AUTHORIZATION COMMITTEE (THE "COMMITTEE") TO CLARIFY THE RULES FOR THE USE OF SECTION 5(C) OF ACT 73-2008 CREDITS, PURSUANT TO THE PROVISIONS OF ADMINISTRATIVE ORDER AO 2017-01, AS AMENDED, ISSUED BY THE FISCAL AGENCY AND FINANCIAL ADVISORY AUTHORITY (THE "AUTHORITY").

WHEREAS, on March 7, 2017, the Authority issued Administrative Order AO 2017-01 (the "Order") suspending the concession of new tax credits and creating the Committee, with authority to control the concession and use of tax credits;

WHEREAS, the Order grants the Committee authority to, amongst others (a) evaluate tax credit applications submitted and not approved as of March 7, 2017, (b) receive, evaluate and approve new tax credit applications submitted after March 7, 2017, and (c) establish limitations on the use of the credits granted on or before March 7, 2017;

WHEREAS, on June 20, 2017, the Committee issued Resolution 2017-05 to establish the rules and limitations applicable to the use of tax credits granted on or before March 7, 2017 for tax year 2017 and subsequent years;

WHEREAS, every exempt business that intends to generate Section 5(c) tax credits of Act 73-2008 ("R&D Credits") must request a Certificate of Eligibility issued by the Puerto Rico Industrial Development Company (PRIDCO) which certifies the activities of a research and development project carried out in Puerto Rico that qualify as eligible investments for purposes of the Section 5(c) tax credit;

WHEREAS, pursuant to Resolution 2017-05 and in accordance with Act 73-2008, R&D Credits generated from investments made up to taxable year 2016 are considered granted before the date of the Order, only if, Applicant requests the Certificate of Eligibility to PRIDCO on or before March 7, 2017 or the due date, including any extensions, of the income tax return corresponding to the tax year in which the eligible investment was made, whichever occurs later ("Granted R&D Credits");

WHEREAS, on July 25, 2017, the Committee issued Resolution 2017-09 to establish the procedure for the approval of Completed Tax Credit Applications, as such term is defined in said resolution, and the applicable rules for the use of tax credits granted under said resolution;

WHEREAS, R&D Credits generated from investments made during tax year 2017 are considered Completed Tax Credit Applications under Resolution 2017-09;

WHEREAS, Resolution 2017-05 and Resolution 2017-09 of the Committee (collectively, the “Tax Credit Resolutions”) establish that granted tax credits may be used to offset up to a maximum of twenty-five percent (25%) of the income tax liability of the holder for the pertinent taxable year, as determined under the provisions of Subtitle A of the Puerto Rico Internal Revenue Code (the “PR Code”) or any applicable special law (the “25% Limitation”);

WHEREAS, the Tax Credit Resolutions also establish that the granted tax credits granted will be available for use during a maximum term of four (4) consecutive taxable years (the “Four Year Period”), with an optional extension of three additional (3) taxable years (the “Additional Three Year Period”) (referred to, collectively, as the “Time Limitation”);

WHEREAS, Section III. (B) of Resolution 2017-05 provides an exception to the 25% Limitation Rule for Tax Year 2017 (“Resolution 2017-05 Exception”). The Resolution 2017-05 Exception applies only to tax credits granted before the date of the Order that, pursuant to the law under which they were granted all or part of the credit is available to be used for the first time in tax year 2017. Therefore, the part of the credit that, by virtue of the law under which it was granted, is available to be used for the first time in tax year 2017, may be claimed against the income tax liability of the holder, as determined under the provisions of Subtitle A of the Code or any applicable special law, without the 25% Limitation during tax year 2017;

WHEREAS, Section 5(c)(3) of Act 73-2008 establishes that the R&D Credits may be claimed in two or more installments: up to 50% of said credit may be claimed as a credit for the year the eligible investment is made and the balance in subsequent years until exhausted. However, R&D Credits cannot be used by the holder until they are registered on the Integrated Tax Credits Portal (“CCI Portal”) of the Puerto Rico Treasury Department. This registration requires copy of the Certificate of Eligibility issued by PRIDCO;

WHEREAS, the Committee wishes to clarify the use rules and limitations applicable to the R&D Credits under the Tax Credit Resolutions for tax year 2017 and subsequent years.

NOW, THEREFORE, BE IT RESOLVED that the Committee hereby adopts the following:

I. DEFINITIONS

For purposes of this resolution, all terms defined in the Tax Resolutions, and not otherwise defined herein, are hereby incorporated by reference.

II. CLARIFICATIONS OF USE RULES AND LIMITATIONS APPLICABLE TO R&D TAX CREDITS

- A. Granted R&D Credits that were not available for use for the tax year 2016, because they had not been registered on the CCI Portal before the original due date of the income tax return corresponding to tax year 2016, and, therefore are available for use for the first time in the Tax Year 2017, will be covered by the Resolution 2017-05 Exception. The Holder of Granted R&D Credits covered by this Resolution may, subject to the provisions of the applicable law, sell or assign such credit and the buyer or assignee will also be covered by the Resolution 2017-05 Exception for tax year 2017 and the limitations set forth herein.

- B. Applicant will be deemed to have complied with the filing of Informative Return on Tax Credits Held (Form 480.71) even if the Granted R&D Credits were not informed through the electronic filing of Form 480.71 because the Certificate of Eligibility was not issued by PRIDCO by May 19, 2017, due date of Form 480.71.
- C. No R&D Credits will be granted by the Committee for investments made during taxable years prior to tax year 2017, if such credit does not meet the definition of Granted R&D Credits.
- D. R&D Credits generated from investments made during tax year 2017 shall continue to be subject to the use rules set forth Resolution 2017-09. That is, the 25% Limitation Rule, regardless of the tax year for which said credit is available, and the Time Limitation. The Applicant must request the Certificate of Eligibility to PRIDCO on or before the due date, including extension, of the income tax return corresponding to the tax year 2017 in order for the R&D Credits to be considered granted.

III. SCOPE AND APPLICABILITY

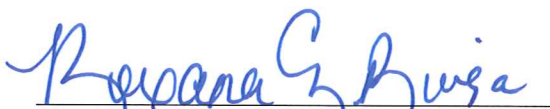
The provisions of Section II.A. of this resolution will apply even if the Granted R&D Credits were sold or transferred prior to the date of this resolution.

The provisions of this resolution shall not apply in the case of tax credits authorized under Sections 1051.01, 1051.02 and 1051.03 of the PR Code, Subchapters B and C of Chapter A of the PR Code, and to Act 154-2010.


IV. EFFECTIVENESS

This resolution will be valid immediately after its approval.

IN WITNESS WHEREOF, we, the members of the Committee, sign this resolution, on April 23, 2018.



Raul Maldonado-Gautier, Esq., CPA
or his designee
Chairman of the Committee
Secretary of Treasury



José I. Marrero-Rosado, Esq., CPA
or his designee
Member of the Committee
Director of OGP



Gerardo José Portela-Franco or his designee
Chairman of the Committee
Executive Director of FAFAA