

**GOVERNMENT OF PUERTO RICO  
TREASURY DEPARTMENT**



**REGULATION TO AMEND ARTICLES 4010.01(h)-1, 4010.01(l), 4010.01(aa)-1, 4010.01(ff)-1, 4010.01(jj)-1, 4010.01(hhh)-1, 4010.01(iii)-1, 4020.03-1, 4020.05-1, 4020.08-1, 4041.02-1, 4042.03-1, 4060.01-1 AND 6080.14(a)(2)-1, TO ADD ARTICLES 4010.01(jjj)-1 AND 4030.28-1, AND TO REPEAL THE ARTICLES 4010.01(gg)-2, 4020.05-2 Y 4041.03-1 TO REGULATION NO. 8049 OF JULY 21, 2011, BETTER KNOWN AS "REGULATION OF THE INTERNAL REVENUE CODE OF 2011" ("REGULATION"), TO ENFORCE THE PROVISIONS OF SECTIONS 4010.01, 4020.03, 4020.05, 4020.08, 4030.28, 4041.02, 4042.03, 4060.01, AND 6080.14 OF ACT 1-2011, AS AMENDED, KNOWN AS THE "PUERTO RICO INTERNAL REVENUE CODE OF 2011" ("CODE"), ENACTED PURSUANT TO SECTION 6051.11 OF THE CODE THAT ENABLES THE SECRETARY OF THE TREASURY TO ADOPT THE NECESSARY REGULATIONS TO ENFORCE THE CODE.**

**GOVERNMENT OF PUERTO RICO  
TREASURY DEPARTMENT**

Title: Regulation to amend Articles 4010.01(h)-1, 4010.01(l)-1, 4010.01(aa)-1, 4010.01(ff)-1, 4010.01(jj)-1, 4010.01(hhh)-1, 4010.01(iii)-1, 4020.03-1, 4020.05-1, 4020.08-1, 4041.02-1, 4042.03-1, 4060.01-1 and 6080.14(a)(2), to add Articles 4010.01(jjj)-1 and 4030.28-1 and to repeal Articles 4010.01(gg)-2, 4020.05-2 and 4041.03-1 to Regulation No. 8049 of July 21, 2011, better known as “Regulation of the Puerto Rico Internal Revenue Code of 2011” (“Regulation”), to enforce the provisions of Sections 4010.01, 4020.03, 4020.05, 4020.08, 4030.28, 4041.02, 4042.03, 4060.01, and 6080.14 of Act 1-2011, as amended, known as the “Puerto Rico Internal Revenue Code of 2011” (“Code”), enacted pursuant to Section 6051.11 of the Code that enables the Secretary of the Treasury to adopt the necessary regulations to enforce the Code.

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**GOVERNMENT OF PUERTO RICO  
TREASURY DEPARTMENT**

**REGULATION OF THE PUERTO RICO INTERNAL REVENUE CODE OF 2011**

Regulation to amend Articles 4010.01(h)-1, 4010.01(l)-1, 4010.01(aa)-1, 4010.01(ff)-1, 4010.01(jj)-1, 4010.01(hhh)-1, 4010.01(iii)-1, 4020.03-1, 4020.05-1, 4020.08-1, 4041.02-1, 4042.03-1, 4060.01-1 and 6080.14(a)(2)-1, to add Articles 4010.01(jjj)-1 and 4030.28 and to repeal Articles 4010.01(gg)-2, 4020.05-2 and 4041.03-1 to Regulation No. 8049 of July 21, 2011, better known as “Regulation of the Puerto Rico Internal Revenue Code of 2011” (“Regulation”), to enforce the provisions of Sections 4010.01, 4020.03, 4020.05, 4020.08, 4030.28, 4041.02, 4042.03, 4060.01, and 6080.14 of Act 1-2011, as amended, known as the “Puerto Rico Internal Revenue Code of 2011” (“Code”), enacted pursuant to Section 6051.11 of the Code that enables the Secretary of the Treasury to adopt the necessary regulations to enforce the Code..

Amendments to Article 4010.01(h)-1

**To amend Article 4010.01(h)-1, to read as follows:**

Article 4010.01 (h)-1.- Merchant.-

(a) In general. Every person engaged in the business of selling taxable items in Puerto Rico shall be considered a merchant, including any wholesaler. Also, any person who, in the ordinary course of business, has the obligation to file the Sales and Use Tax and Tax on Imports Monthly Return (Monthly Return), to comply with the obligation to either collect and remit the sales tax, or to pay the use tax (monthly or with a different periodicity), as provided in Code secs. 4020.04, 4020.05, and 4042.01, shall be considered a merchant. For these purposes, any natural or juridical person who wishes to carry out or carries out business of any kind in Puerto Rico shall be considered a merchant,

(b) Multilevel marketer. Subject to compliance with the provisions of this paragraph, every person who sells taxable items through a network of independent distributors who resell such taxable items to a user in Puerto Rico or for the personal or commercial use of said independent distributors, shall be considered a merchant. The type of person who carries out business in the above described manner shall be named, for the purposes of this Regulation, a multilevel marketer.

(1) For the purposes of this paragraph (b), the term "independent distributor" means both an individual who acquires from a multilevel marketer taxable items to be sold to a consumer in Puerto Rico, using as a base the sales price suggested by the multilevel marketer from whom the property was acquired, and an individual who is authorized to sell taxable items from a multilevel marketer to a consumer in Puerto Rico, using as a base the sales price suggested by the multilevel marketer.

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

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

(4) The determination that a multilevel or direct sales business may remit the SUT in representation of its independent distributors shall be made through the presentation of a closing agreement with the Secretary, pursuant to the provisions of Code sec. 6051.07, in which the following shall be established:

(i) the multilevel marketer shall be considered a merchant for the purposes of Subtitle D and DDD of the Code and shall be registered in the Merchants' Registry, as provided in art. 4060.01(a)-1 of this Regulation; the independent distributors shall not be considered merchants and shall not have the obligation to register in the Merchants' Registry because of the sales of taxable items of the multilevel marketer;

(ii) the obligation to collect the sales tax shall fall on the multilevel marketer, and not on the independent distributors, as provided in art. 4020.05-1 of this Regulation; therefore, the

multilevel marketer shall collect the SUT over the suggested sales price of the taxable item, as provided in art. 4020.01-1 of this Regulation;

(iii) the multilevel marketer shall comply with the obligation to file the Monthly Return, as provided in art. 4041.02-1 of this Regulation;

(iv) the multilevel marketer that introduces taxable items to Puerto Rico for resale, shall be responsible for the payment of the use tax according to Code sec. 4020.04;

(v) the obligation to remit the sales tax and the use tax, as such term is defined in art. 4010.01(r)- 1 of this Regulation, to the Secretary, shall fall on the multilevel marketer and not on the independent distributors, as provided by art. 4042.01-1 of this Regulation;

(vi) the multilevel marketer shall be entitled to claim the credits, refunds, and deductions provided in arts. 4050.01-1 to 4050.05-1 of this Regulation, as applicable, whenever:

(A) there is a return of the taxable items either to the multilevel marketer directly or to the independent distributor;

(B) an account receivable becomes a bad debt;

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

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

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

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

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

(x) Said closing agreement shall be requested by letter addressed to the Assistant Secretary for Tax Policy of the Department, which shall be accompanied by a draft of the requested agreement and the complementary documents required herein.

(c) Sales representatives, factory representatives or commission agents. Sales representatives, factory representatives or commission agents shall be considered merchants.

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

(d) Person engaged in the business of selling taxable items in the Commonwealth of Puerto Rico. The factors indicated below, among others mentioned in Code sec. 4010.01(h), shall be considered to determine whether a person is considered to be in the business of selling taxable items in the Commonwealth of Puerto Rico or not; in other words, if there is a nexus between a merchant and the Commonwealth of Puerto Rico.

(1) Factors that shall be considered- For purposes of this paragraph (d), a person shall be considered to be engaged in the business of selling taxable items in the Commonwealth of Puerto Rico when, among others:

(i) the person maintains outlets or offices in Puerto Rico; or maintains or uses within Puerto Rico, directly or through a subsidiary or affiliate, an office, distribution warehouse, sales office or an office, warehouse or other premises operated by any person, other than a transportation business or carrier acting in such capacity;

(ii) the person has employees, independent contractors, representatives, direct or indirect, or agents in Puerto Rico, who carried out business or business transactions on behalf or for the benefit of said person. It is presumed that a person has employees, independent contractors, representatives or agents in Puerto Rico, who solicit business or make business transactions on behalf of or for the benefit of said person, if;

(A) the person, enters into an agreement by which a third party, in exchange for a commission or other consideration, refers, directly or indirectly, potential purchasers to the person, either by a link in an internet page, oral personal presentation, telemarketing or any other manner, and

(B) during the last twelve (12) months immediately preceding the beginning date of the taxable year of the person, the gross sales amount to purchasers in Puerto Rico, which were

referred by all independent contractors, representatives or agents in Puerto Rico with whom the person has this type of agreement, exceeds the ten thousand (10,000) dollars.

(C) The presumption provided hereby may be disputed if evidence is presented that independent contractors, representatives, or agents in Puerto Rico with whom the person has the agreement described above, did not participate in any activity carrying out business within Puerto Rico during the last twelve (12) months which creates a substantial nexus with Puerto Rico.

(iii) This rule is illustrated with the following examples:

(A) Example 1: Merchant "K" is a foreign corporation engaged in the business of selling taxable items. Merchant "K" does not have employees nor commercial site in Puerto Rico but contracts with a telemarketing company to make calls to potential clients and to offer its products. Merchant "K" compensates said company for each call that said company makes. During the immediately preceding taxable year, Merchant "K" made sales in Puerto Rico as a result from all telemarketing efforts in excess of ten thousand (10,000) dollars. Merchant "K" is considered to be engaged in the sale of taxable items in Puerto Rico, and therefore, has nexus with Puerto Rico, for having agents in Puerto Rico soliciting business and generating from such efforts more than ten thousand (10,000) dollars in sales during the immediately preceding calendar year.

(B) Example 2: The facts are the same of the previous example with the difference that the income generated by Merchant "K" in Puerto Rico during the immediately preceding calendar year does not exceed ten thousand (10,000) dollars. Merchant "K" shall not be considered to be engaged in the business of selling taxable items in Puerto Rico, and therefore, has no nexus with Puerto Rico, for not exceeding ten thousand (10,000) dollars established in the Code.

(iii) the person owns taxable items or real property in Puerto Rico;

(iv) an "affiliate" of said person, that is subject to the jurisdiction of the Commonwealth of Puerto Rico with respect to the sales and use tax fixed by Subtitle D and DDD of the Code for being engaged in the business of selling taxable items in Puerto Rico, makes any of the following actions on behalf or for the benefit of said person, except when demonstrated that the activities of the merchant do not create nexus with Puerto Rico:

(A) sells a product line similar to the product line sold by the person and under the same trade name of the person or a trade name similar to that of the person;

(B) uses his/her/its employees in Puerto Rico or his/her/its facilities in Puerto Rico, to advertise, promote or facilitate sales of the person to the purchasers in Puerto Rico;

(C) maintains an office, distribution center, warehouse or storage place or similar business premises to facilitate delivery or performance, as applicable, of taxable items sold by the person to purchasers in Puerto Rico;

(D) uses trademarks, service marks or trade names in Puerto Rico equal to or similar to those used by the person;

(E) gives, installs, assembles or renders maintenance services to taxable items sold by the person to purchasers of Puerto Rico;

(F) facilitates delivery of taxable items sold to the person's clients located in Puerto Rico, allowing the person's clients to collect the taxable items in an office, distribution center, warehouse or similar place of business maintained by the merchant in Puerto Rico, or receiving in any of those facilities the merchandise returned by the person's clients; or

(G) carries out other activities in Puerto Rico significantly associated with the person's capacity to establish and maintain a market in Puerto Rico for the person's sales.

(v) the person enters into an agreement with one or several residents in Puerto Rico by which the residents, in exchange for a commission or other consideration, refer, directly or indirectly, potential purchasers to the person, either by a link in an internet page, oral presentation, telemarketing or any other manner; provided, that the provisions of this clause:

(A) shall apply when the person's gross sales amount made to purchasers in Puerto Rico, which were referred to the person by all residents with whom the person has this type of agreement, is in excess of ten thousand (10,000) dollars during the last twelve (12) months immediately preceding the beginning date of the taxable year of the person for whom the determination is being made of whether or not the person is engaged in the business of selling taxable items in the Commonwealth of Puerto Rico; and

(B) shall not apply if evidence is presented that residents with whom the person has the agreement described above, did not participate in any activity within Puerto Rico during the last twelve (12) months which creates a substantial nexus with Puerto Rico;

(vi) the person creates a substantial nexus with Puerto Rico, including, but not limited to:

(A) In general:

(I) granting of sale contracts in Puerto Rico;

(II) direct marketing by any means, including, but not limited to, mail, radio, television, cyber portals, e-commerce or other electronic means, distribution of unsolicited catalogs, or advertisements from magazines, newspapers, billboards, cyber portals, websites, social media or other advertising means of distribution in Puerto Rico, whether electronic or not; and

(III) mail order sales, as defined in Article 4020.08-1 of this Regulation.

(B) For purposes of this clause, the activities described herein must be carried out by the person on an ongoing, recurring basis and in the regular course of business.

(I) In the case of the award of sales contracts in Puerto Rico, it will be understood that such activity is carried out on a continuous, recurring basis and in the regular course of business if the merchant has a gross sales in Puerto Rico in excess of ten thousand dollars (\$10,000).

(II) In the case of direct marketing by any means it will be understood that these activities are carried out on a continuous, recurring basis and in the regular course of business if the merchant carries out these activities in Puerto Rico directly, or indirectly for the purpose of selling taxable items in Puerto Rico or establishing a market in Puerto Rico.

(III) In the case of sales dispatched by mail as defined in Article 4020.08-1(a), by entities that do not have a physical location in Puerto Rico, it will be understood that these activities are carried out continuously, recurrently and in the ordinary course of business if the merchant has a volume of business, that is, the total gross sales, in Puerto Rico in excess of one hundred thousand dollars (\$100,000) or carries out at least two hundred (200) transactions during its fiscal year or annual accounting period.

(C) Determination of the Volume of Business for members of a controlled group. In the case of entities members of a controlled group, as defined in Section 1010.04 of the Code, the amount of the volume of business shall be determined by adding the volume of business of the transactions considered from Puerto Rico sources of all members of the controlled group. Passthrough entities will be considered as corporations under Section 1010.04 of the Code to determine whether they are members of the same controlled group for SUT purposes.

(D) Once a merchant establishes a nexus, such merchant shall be required to register in the Merchant's Registry set out in Article 4060.01-1 of this Regulation and shall be considered a merchant until he ceases activities and withdraws his Merchant's Certificate in accordance with said Article.

(vii) through agreement or reciprocity with another jurisdiction of the United States, and said jurisdiction uses its taxing authority and its jurisdiction over such person in support of Puerto Rico's authority;

(viii) the person consents, expressly or implicitly, the tax levied by this part;

(ix) the person, other than a transport company, haul or third party intermediary acting on such capacity, sells and sends or causes it to be shipped, taxable items including services, of any foreign state or country to any person in Puerto Rico through a link on a website, for use, consumption, or distribution in Puerto Rico, or for storage to be used or consumed in Puerto Rico. For purposes of this clause, the activities described herein must be carried out by the person on an ongoing, recurring basis and in the ordinary course of business. Such activities shall be deemed to be carried out on a continuous, recurring basis and in the ordinary course of business if the merchant has volume of business, that is total gross sales, in Puerto Rico in excess of one hundred thousand dollars (\$100,000), or if he carries out at least two hundred (200) transactions during his accounting year.

(A) Determination of the Volume of Business for members of a controlled group. In the case of entities members of a controlled group, as defined in Section 1010.04 of the Code, the amount of the volume of business shall be determined by adding the volume of business of the transactions considered from Puerto Rico sources of all members of the controlled group. Passthrough entities will be considered as corporations under Section 1010.04 of the Code to determine whether they are members of the same controlled group for SUT purposes.

(B) Once a merchant establishes a nexus, such merchant shall be required to register in the Merchant's Registry set out in Article 4060.01-1 of this Regulation and shall be considered a merchant until he ceases activities and withdraws his Merchant's Certificate in accordance with said Article.

(x) the person has a sufficient connection, or a relationship, with Puerto Rico or its residents of any kind, other than those described in clauses (i) through (ix) of this subsection (1) of this paragraph (d) of this section, for the purpose of, or in order to create a sufficient nexus with Puerto Rico to set on the person the responsibility of collecting the sales and use tax established by this part.

(xi) the person is a marketplace facilitator or a marketplace seller who sells and sends, or causes taxable items to be sent, from any state, territory or foreign country to any person in

Puerto Rico through a link on an Internet page, for use, consumption, or distribution in Puerto Rico, or for storage to be used or consumed in Puerto Rico. It will be understood that such activities are carried out continuously, recurrently and in the ordinary course of business if the marketplace facilitator or marketplace seller has a business volume, that is, a total gross sales, in Puerto Rico in excess of one hundred thousand dollars (\$100,000) or if they carry out at least two hundred (200) transactions during your fiscal year or annual accounting period. In the case of the marketplace seller, for these purposes, only those sales that are not made through a market facilitator will be taken into consideration.

(A) Determination of the Volume of Business for members of a controlled group. In the case of entities members of a controlled group, as defined in Section 1010.04 of the Code, the amount of the volume of business shall be determined by adding the volume of business of the transactions considered from Puerto Rico sources of all members of the controlled group. Partnerships, special partnerships and corporations of individuals will be considered as corporations under Section 1010.04 of the Code to determine whether they are members of the same controlled group for SUT purposes.

(B) Once a merchant establishes a nexus, such merchant shall be required to register in the Merchant's Registry set out in Article 4060.01-1 of this Regulation and shall be considered a merchant until he ceases activities and withdraws his Merchant's Certificate in accordance with said Article.

(e) Definitions. For purposes of the provisions of this article, the term "affiliate" means every merchant that is a member of the same "controlled group" of corporations of which the person is a member, as defined under Code sec. 1010.04, is a "related person" to the person or is part of a "group of related entities" to the person, as defined under Code sec. 1010.05, or any merchant, regardless of the form in which it was organized, possessing the same proportional relationship of ownership or equity with respect to the person that is a corporation which is a member of the same "controlled group" of corporations of which the person is a member. Furthermore, the term "affiliate" includes the parties that form part of an affiliate program, consisting of an agreement in which a third party in Puerto Rico includes a link in its internet page, and the link at the same time directs the user to the internet page of the other party. The third party receives a commission if the user completes a purchase in the internet page of the other party.

(1) Every person residing in Puerto Rico who after June 30, 2013, is affiliated or enters in an affiliate program with a person who before the agreement was not subject to Subtitle D and DDD of this Code, shall notify said agreement to the Department of the Treasury at the time and manner established by the Secretary through circular letter, information bulletin or administrative determination of general character. Failure to meet this requirement carries the fines and penalties provided in Subchapter C of Subtitle F of the Code.

(f) Examples.

(1) The provisions of clause (i) of subparagraph (1) of paragraph (d) of this article are illustrated with the following examples:

(i) Example 1: Merchant "A" operates a business of selling taxable items from a commercial site in Puerto Rico where the property to be sold is stored and his/her/its employees work. Merchant "A" is considered to be engaged in the business of selling taxable items in Puerto Rico, and therefore, has nexus in Puerto Rico, because of carrying out a business in Puerto Rico.

(ii) Example 2: Merchant "B" is a foreign corporation that is engaged in the business of selling taxable items. Merchant "B" does not have employees nor commercial site in Puerto Rico. Notwithstanding, Merchant "B" uses the warehouse of an affiliate in Puerto Rico for storage of taxable items that are sold to his/her/its clients in Puerto Rico. Merchant "B" is considered to be engaged in selling taxable items in Puerto Rico, and therefore, has nexus with Puerto Rico, for using the facilities of the affiliate for storage of taxable items in Puerto Rico.

(iii) Example 3: Merchant "C" is a foreign corporation that is engaged in the business of selling taxable items. Merchant "C" does not have employees nor commercial site in Puerto Rico. Notwithstanding, Merchant "C" enters into an agreement of warehousing and logistics with Merchant "D", a person not related to Merchant "C". Said agreement contemplates that Merchant "C" pays fees to Merchant "D" in exchange for storage and delivery of tangible personal property sold by Merchant "C" to his/her/its clients. Merchant "C" shall be considered to be engaged in the business of selling taxable items in Puerto Rico, and therefore, has a nexus with Puerto Rico, for contracting warehousing and delivery services in Puerto Rico.

(2) The provisions of clause (ii) of subparagraph (1) of paragraph (d) are illustrated with the following example:

(i) Merchant "J" is a foreign corporation engaged in the business of selling taxable items. Merchant "J" does not have employees nor commercial site in Puerto Rico but contracts various Puerto Rico resident individuals as sales representatives of the company. The sales representatives take orders for products, send them to Merchant "J" with the payment of the ordered merchandise and deliver the merchandise to its clients in Puerto Rico. The sales representatives receive a commission for each sale made in Puerto Rico. Merchant "J" is considered to be engaged in the business of selling taxable items in Puerto Rico, and therefore, has a nexus with Puerto Rico, for having sales representative in Puerto Rico.

(3) The provisions of clause (iii) of subparagraph (1) of paragraph (d) are illustrated with the following example:

(i) Merchant "E" is a foreign corporation engaged in the business of leasing taxable items in and outside Puerto Rico. Merchant "E" does not have employees nor commercial site in Puerto Rico. The clients contacts Merchant "E" through electronic or telephonic means to place an order for the taxable items they want to lease. Merchant "E" sends the taxable items to its clients using the United States Postal Service or other delivery method. The clients of Merchant "E" use the same delivery method to return the taxable items to Merchant "E". Merchant "E" is considered to be engaged in the business of selling taxable items in Puerto Rico, and therefore, has a nexus with Puerto Rico, for maintaining taxable items in Puerto Rico.

(4) The provisions of clause (iv)(F) of subparagraph (1) of paragraph (d) are illustrated with the following example:

(i) Merchant "F" is a foreign corporation engaged in the business of selling taxable items through an internet page. Merchant "F" does not have employees nor commercial site in Puerto Rico. Merchant "G", a corporation affiliated to Merchant "F", is engaged in the sale of taxable items via several stores located throughout Puerto Rico. Merchant "G" allows that the taxable items ordered through the internet page be picked up or returned by Merchant F's clients in its stores. Merchant "F" is considered to be engaged in the business of selling taxable items in Puerto Rico, and therefore, has a nexus with Puerto Rico, for having an agreement with an affiliate in Puerto Rico that allows its clients to pick up or return its purchases in the stores of the affiliate.

(5) The provisions of clause (iv)(B) of subparagraph (1) of paragraph (d) are illustrated with the following examples:

(i) Example 1: Same facts as in the aforementioned example (4) except that the clients of Merchant "F" cannot return the merchandise in the stores of Merchant "G" but Merchant "G" provides to its clients in Puerto Rico information regarding the internet page of Merchant "F" or provides discount coupons for purchases through the internet page of Merchant "F". Merchant "F" is considered to be engaged in the business of selling taxable items in Puerto Rico, and therefore, has nexus with Puerto Rico, because an affiliate in Puerto Rico informs about the internet page of Merchant "F" or provides discounts or other incentives for purchases in said internet page.

(ii) Example 2: Merchant "H" is a foreign corporation engaged in the business of selling taxable items. Merchant "H" does not have employees nor commercial site in Puerto Rico but has a subsidiary, Sub "I", engaged in the selling of taxable items in Puerto Rico from several stores located throughout the island. Merchant "H" sells taxable items to its clients directly from its stores located outside Puerto Rico, through an internet page and via catalog of products. The clients of Merchant "H" in Puerto Rico may go to the stores of Sub "I" to order from the catalog. Merchant "H" is considered to be engaged in the business of selling taxable items in Puerto Rico, and therefore, has a nexus with Puerto Rico, because its subsidiary in Puerto Rico receives merchandise' purchase or delivery orders in Puerto Rico sold by Merchant "H".

(iii) Example 3: Same facts as in the preceding example, except that the clients of Merchant "H" may only order directly from Merchant "H" and the deliveries of ordered articles arrive directly to the client using the U.S. Postal Service or any other type of delivery service. Sub "I" neither accepts article returns from Merchant "H" in its stores nor provides information or discounts to its clients for doing purchases to Merchant "H". Merchant "H" is not considered to be engaged in the business of selling taxable items in Puerto Rico, and therefore, does not have nexus with Puerto Rico, because its subsidiary in Puerto Rico does not make any activity that results in commercial benefit to Merchant "H".

(6) The dispositions of clauses (vi), (ix) y (xi) of subparagraph (1) of paragraph (d) are illustrated by the following examples:

(i) Example 1: Merchant "V", a non-resident person from Puerto Rico who is not engaged in industry or business in Puerto Rico, is engaged in the sale buttons, wholesale and retail, through an internet page. Merchant "V" has no property, employees, or business activities in Puerto Rico, nor does it engage in direct or indirect marketing activities by any means,

including those described in clause (vi) of subparagraph (1) of paragraph (d) of this Article 4010.01(h)-1. Merchant "C" is a resident of Puerto Rico who discovers Merchant "V" through an internet search and decides to buy buttons from Merchant "V" through his website. Merchant "C" is the only person who periodically purchases from Merchant "V" and such transactions do not exceed 200 in the economic year or annual accounting period of Merchant "V", nor did the total amount of sales to Trader "C" exceeded \$100,000 in that year. Merchant "V" has no sales representatives in Puerto Rico and does not have an agreement with any resident of Puerto Rico in exchange for commission. Nor does it have a telemarketing service to place ads in Puerto Rico or position its website to gain greater knowledge of its products to residents of Puerto Rico. In this case the Merchant "V" is not considered to be engaged in the sale of taxable items business in Puerto Rico, and therefore has no link with Puerto Rico, as the online sales activities carried out within Puerto Rico are not continuous and recurring, even when these are done in the regular course of business.

(ii) Example 2: The facts are the same as Example 1, except that Merchant "V" is engaged in direct or indirect marketing activities by any means, including those described in clause (vi) of subparagraph (1) of paragraph (d) of Article 4010.01(h)-1, for the purpose of selling its products in Puerto Rico. Merchant "V" is considered to have a nexus with Puerto Rico, because regardless of the volume of business generated, it carries out direct or indirect marketing activities in Puerto Rico by any means, on a continuous, recurring basis and in the ordinary course of business. Merchant "V" shall be deemed to be engaged in the business of sale of taxable items in Puerto Rico until direct or indirect marketing activities cease and cancels its Merchant's Certificate.

(iii) Example 3: The facts are the same as Example 1, except that Merchant "C" makes 30 purchases to Merchant "V" for the total amount of \$150,000. Merchant "V" is considered to be engaged in the sale of taxable item in Puerto Rico, and therefore has *nexus* with Puerto Rico, as the online sales activities it carries out with Puerto Rico are considered continuous, recurring and in the ordinary course of business for exceeding the amount of \$100,000, regardless of the fact that Merchant "V" does not do direct or indirect marketing activities to persons residing in Puerto Rico Rich. Merchant "V" shall be deemed to be engaged in the sale of taxable items in Puerto Rico.

(iv) Example 4: Merchant "Y" only engages in direct or indirect marketing activities by any means, including those described in clause (vi) of subparagraph (1) of paragraph (d) of Article 4010.01(h)-1 for the purpose of selling its products in Puerto Rico. Merchant "Y" is considered to be engaged in the sale of taxable items in Puerto Rico, and therefore has nexus with Puerto Rico, as Merchant "Y" carries out direct or indirect marketing activities by any means, even if it does not generate volume of business by sales to or in Puerto Rico. Merchant "Y" shall be deemed to be engaged in the business of selling taxable items in Puerto Rico until direct or indirect marketing activities cease and cancels the Merchant's Certificate.

(v) Example 5: Merchant "X", has website where individuals, including residents of Puerto Rico, may purchase taxable items at third-party auctions or online sales whose sole business relationship with Merchant "X" is that they pay an amount or charge for participating in the auction of, or included in, the website ("Participating Third Party Merchants"). Individuals who purchase taxable items on the "X" Merchant website do not purchase them from the Merchant, but from participating Third Party Merchants, but the sale is made through the "X" Merchant website. Merchant "X" carries out direct or indirect marketing activities by any means, including those described in clause (vi) of paragraph (1) of paragraph (d) of Article 4010.01(h)-1. Merchant "X" is considered to be engaged in the taxable games business in Puerto Rico, so it has a nexus with Puerto Rico.

(vi) Example 6: Merchant "Z" is a marketplace facilitator that owns a website where individuals, including residents of Puerto Rico, can purchase taxable items online from third parties whose only trading relationship with Merchant "Z" is that they pay an amount to be included in their website. Merchant "Z" collects sales tax from transactions of sale of taxable items provided through the Merchant "Z" website. Seller "S" has footballs available for sale in the Merchant "Z" market. A buyer in Puerto Rico buys a football included in the Seller "S" list in the market of Merchant "Z" website. The football is delivered to the address of the buyer's home in Puerto Rico. Merchant "Z" is considered to be engaged in the taxable items business in Puerto Rico, so it has a nexus with Puerto Rico. The result is the same regardless of whether Seller "S" is located in Puerto Rico and regardless of the sales volume of Seller "S" in Puerto Rico.

(7) Other situations applicable to the Article are illustrated with the following examples:

(i) Example 1: Merchant "R" is a foreign corporation that is engaged in the business of sales of taxable items. Merchant "R" has no employees or business premises in Puerto Rico.

It does not carry out any type of marketing, nor does it sell its taxable items in Puerto Rico. However, Merchant "R" recently received a request from an employee "TD", who performs services for the corporation, to move with his family to Puerto Rico and continue performing his service duties as an employee of the company from Puerto Rico. Merchant "R" fears that maintaining an employee in Puerto Rico will cause the company to have nexus for the foreign corporation in Puerto Rico and to have the obligation to register in the Merchants' Registry. To the extent that Merchant R does not sell taxable items, or perform any type of marketing in Puerto Rico, it will not be considered that it has a connection with Puerto Rico by reason of receiving work service from a TD employee residing in Puerto Rico. Merchant R is not considered a Merchant for Puerto Rico purposes and therefore will not have the obligation to register in the Merchants' Registry established in Article 4060.01-1 of these Regulations.

(ii) Example 2: The facts are the same as example (1), above, but with the difference that Merchant "R" enters into an equipment storage agreement in Puerto Rico, with a person not related to Merchant "R", so that the TD employee can effectively carry out their service tasks for the company from Puerto Rico. Said agreement contemplates that Merchant "R" will pay fees to this other Merchant located in Puerto Rico in exchange for it storing Merchant "R's" equipment. Merchant "R" is considered to have nexus with Puerto Rico, by reason of contracting storage services in Puerto Rico. Merchant R is considered a Merchant for Puerto Rico purposes and therefore will have the obligation to register in the Merchants' Registry established in Article 4060.01-1 of these Regulations.

(g) Other provisions relating to clauses (vi), (ix) and (xi) of subparagraph (1) of paragraph (d) of this Article 4010.01(h)-1.

(1) The fact that a Merchant establishes nexus under clauses (vi), (ix) and (xi) of subparagraph (1) of paragraph (d) of this Article 4010.01(h)-1, it shall not, on its own, establish an obligation to obtain an internal revenue license in regards to products whose sale, distribution, traffic, use or possession in Puerto Rico requires one of the internal revenue licenses as established on Subtitle C of the Code or any other special law.

(2) In the case of merchants who, in accordance with clauses (vi), (ix) and (xi) of subparagraph (1) of paragraph (d) of this Article 4010.01(h)-1, have no nexus to Puerto Rico but have agreements in place for the distribution of its products in Puerto Rico under which they exercise substantial control over the marketing of their trademarks, or if the distribution of their

products in Puerto Rico is sufficient to establish a market in Puerto Rico according to (vi) (ix) and (xi) of subparagraph (1) of paragraph (d) of this Article 4010.01(h)-1, where such merchants sell taxable items by mail or electronic means to Puerto Rico, they shall be deemed to be engaged in the sale of taxable items in Puerto Rico and have established a nexus with Puerto Rico under clauses (vi) (ix) and (xi) of subparagraph (1) of paragraph (d) of this Article 4010.01(h)- 1.

(3) Once a merchant establishes nexus under any of the clauses in subparagraph (1) of paragraph (d) of this Article 4010.01(h)-1, such merchant will be required to register in the Merchants' Registry in accordance to the requirements established on Article 4060.01-1 of this Regulation and shall be considered a merchant until the activities which gave rise to the establishment of nexus cease and the merchant cancels his Merchant's Certificate in accordance with such Article.”

#### Amendments to Section 4010.01(l)-1

#### **Paragraph (e) is added to Section 4010.01(l)-1 to read as follows:**

Article 4010-01(l)-1.- Admission fees.-

“(e) On the exclusion of transportation from the term right of admission:

(1) The exclusion of transportation from the term right of admission includes all types of mass public transportation provided by the Government of Puerto Rico or by persons or entities contracted by the Government or those entities or persons certified by the Department of Transportation and Public Works to provide this type of mass transportation to the residents of Puerto Rico.

(2) Transportation services that include taxis and vehicles of similar size, provided by private companies that are certified by the Department of Transportation will also be excluded from the term right of admission, because this transportation service is considered an auxiliary service to mass transportation services provided by the Government of Puerto Rico.

(i) The additional fees charged by taxis and by vehicles of private companies certified by the Department of Transportation and Public Works, which provide a similar service to a taxi, but which could include other type of services, amenities, and other charges, these type of charges should not be considered part of the exclusion of the term admission rights. These additional charges will always be subject to Sales and Use Tax as Other Taxable Services. Among these charges are:

(A) Waiting time Charge;

(B) Meeting and greeting Charge;

(C) Use of the application provided by the company to request the transportation service charges;

(D) Transporting luggage or packages with passengers charge;

(E) Parking charge;

(F) Snacks, flowers and other services purchased by the operator charge;

(G) Access to television, telephone, internet service or videos inside the vehicle charge.

(H) Other charges for incidental services, including mandatory gratuities, whether or not they are indicated separately, will be considered "Other Services" or charges for additional services and will always be subject to the SUT.

(3) Transportation in luxury cars

(i) All private transportation services will be considered a luxury transportation service, including private services of large cars normally provided in black cars, any type of luxury car, limousines and transportation known as "Party Buses".

(ii) The luxury transportation service is subject to the Sales and Use Tax, so it should not be considered part of the exclusion of the term right of admission, because it is not considered a mass transportation service accessible to the general public or an auxiliary services of mass transportation. The luxury transportation service requires prior coordination, which includes personnel requests and other special service requests and in many cases, they are coordinated by hotels or other service agencies.

#### Amendments to Section 4010.01(aa)-1

#### **Section 4010.01(aa)-1 is amended to read as follows:**

Article 4010-01(aa)-1.- Taxable Item

(a) "Means tangible personal property, taxable services, admission fees, digital products, specified digital products, other digital products and combined transactions.

(b) The term taxable services include:

(1) any activity or plan in which there is a payment or promise of payment for the opportunity to participate in a prize through chance or luck, including bets, raffles, bingos or any type of private or public lottery authorized by law, such as the Traditional Lottery, Electronic Lottery and other lotteries administered or authorized by the Commonwealth of Puerto Rico;

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

(3) the payment of installments made by persons to:

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

(ii) a labor union, guild or brotherhood; Y

(iii) private clubs and membership clubs other than those described in subsection (4) of paragraph (a) of Article 4010.01(l)-1 and in paragraph (c) of Article 4010.01(jjj)-1 of this Regulation;

(4) stamps issued by professional associations;

(5) the stamps issued by the Commonwealth of Puerto Rico and the Federal Government;

(6) security paper used for printing stamps and receipts;

(7) those items that, in accordance with Section 4020.06 of the Code and Article 4020.06-1 of this Regulation, the tax has been included together with the sale price, in such a way that the SUT is not levied on said total price;

(8) air and sea transportation tickets for passengers; Y

(9) human blood, tissues, and organs.

(c) The provisions of the article are illustrated by the following examples:

(1) Example 1: Developer "A" sold a residence to Family "B". Since real property is not a taxable item for the purposes of Subtitle D and DDD of the Code, the sale of the residence from "A" to "B" will not be subject to the SUT.

(2) Example 2: Pre-design house company "C" sold family "D" the architectural plan and construction materials to build a residence. The sale of construction materials from "C" to "D" will be considered a sale of taxable items because it is a sale of tangible personal property. On the other hand, the sale of the architectural plan will be considered the sale of a service and will be subject to the provisions related to taxable services, as said term is defined in Article 4010.01(nn)-1 of this Regulation."

#### Amendments to Section 4010.01(ff)-1

**Section 4010.01(ff)-1 is amended to read as follows:**

Article 4010.01(ff)-1.- Computer Program

(a) The term “computer program” or “software” means a set of coded instructions designed to enable a computer or automatic data processing equipment to carry out a function or task. The term "computer program" means a pre-built or pre-built program, which may be purchased at a store, by mail order, or may be installed ("downloaded") directly from the vendor's server, and which does not require substantial alteration or modification by part of the buyer to be able to be used.

(b) The term “computer program” also includes programs that are used through a cloud and accessed through the Internet, known as cloud computing (“cloud computing”), regardless of the form of payment. This includes web-based applications that provide computer programs or “software” as a service (“SaaS”).

(c) The term “computer program” also includes transactions known by the term infrastructure as a service (“IaaS”), and this also includes transactions of all data processing equipment.

(d) A computer program will generally be considered tangible personal property, except in the following cases:

(1) if the computer program is considered a data stream ("data streams"); which must be interpreted by software or firmware and streamed real time from the infrastructure of origin.

(2) These computer programs will be considered digital products, as said term is defined in Article 4010.01(jjj) -1 of these Regulations.

(c) The term “computer program” also includes transactions known by the term infrastructure as a service (“IaaS”), and this also includes transactions of all data processing equipment.

(d) A computer program will generally be considered tangible personal property, except in the following cases:

(1) if the computer program is considered a data stream (“data streams”); that must be interpreted by another "software" or "firmware"; and transmit data in real time from the infrastructure of origin, whose data the buyer did not produce, nor does it have a proprietary interest in them. These computer programs will be considered digital products, specified digital products or other digital products, as such terms are defined in Article 4010.01(jjj)-1 of this Regulation.

(e) Examples of computer programs include, but are not limited to, word processing programs, layout programs, bookkeeping programs, tax returns preparation programs, document or image editing programs, music and video playback programs, game programs and applications that can be purchased from the same computer, electronic equipment or mobile phone for various uses.

(f) The term "computer program" does not include the software which is designed or developed by an author or programmer following the specifications of a particular purchaser (hereinafter "custom programming"). If a computer program is substantially modified to the specifications of a particular purchaser, and the modification is invoiced separately, then said modification shall not be considered a computer program. The custom programming or modification of a computer software that is invoiced separately from the computer software cost is considered a computer programming service, as provided in Section 4010.01(nn)(1)(C) of the Code.

(g) The term "computer program" does not include information access services paid via subscriptions which allow the customer user to digitally access the provider's database and use information available for a certain time, known as "*subscription based information*" and data storage services in digital form. In cases of subscriptions where access to the data provided by the subscription is not made through a digital transmission also known as "digital streaming", these subscriptions will be considered services, as provided in Section 4010.01(nn)(1)(C ) of Code. However, any subscription that requires a digital transmission of data owned by or licensed by the provider via "digital streaming", will be considered a digital product, specified digital product or other digital products according to the provisions of Article 4010.01 (jjj)-1 of these Regulations.

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

(1) Example 1: Individual P visits a stationery store and buys a program to record the income and expenses of his business. This program is considered a computer program.

(2) Example 2: Using the facts of Example 1, P wants to use an updated version of the software and gets access to the website of the developer of the software purchased in the office supplies store and acquires the software update via download from the web page of the seller. This transaction is considered a purchase of a computer program.

(3) Example 3: Individual M acquires from his mobile device an application to calculate the time, distance, and cardiac rhythm for his exercise routine. This transaction is considered a purchase of a computer program.

(4) Example 4: ABC Corporation hires a computer engineer to design and develop a computer system that assists the business in the managing process of billing and collection for the services offered, including employee's time attributable to each client. This contract constitutes a service according to the provisions of Section 4010.01(nn)-1 of the Code."

(5) Example 5: XYZ Corporation subscribes to an online service to access a digital library. This service is paid monthly. This transaction is considered a service under the provisions of Section 4010.01(nn)(1) of the Code.

(6) Example 6: HIJ corporation purchases a computer program that wants to use to obtain real-time statistics. This program provides them with a serverless change data capture and replication service, which allows them to reliably synchronize data between applications and databases in real time and with updated views. This computer program should be considered a digital product, because it is a program that performs data transmissions "data streams" in real time, so it cannot be considered tangible personal property.

#### Amendment to Article 4010.01(gg)-2

**Article 4010.01(gg)-2 is RESERVED**

#### Amendments to Article 4010.01(jj)-1

**Article 4010.01(jj)-1 is amended to read as follows:**

"Article 4010-01(jj)-1.- Endorsement

(a) Endorsement is the authorization issued by the Secretary to a promoter for the sale and collection of admission rights to a public event, after receiving the written statement required for such purposes.

(1) The promoter will be authorized to start the sale and collection of the right of admission to a public event, once the computerized endorsement form has been submitted electronically through the Unified Internal Revenue System (SURI). Failure to comply with said requirement will result in the imposition of administrative fines as provided in Subtitle F of the Code.

(2) The endorsement return will include the following information:

(i) Name of artists or main people who will be performing in the public event;

(ii) The number of tickets to be sold, as well as their respective sale prices. The sale price will not include discounts to be granted by the promoter or service fees charged by ticketing companies;

(iii) Number of courtesy tickets;

(iv) Period in which the admission rights for the public event will be sold;

(v) Evidence of current global bond;

(vi) Number or total percentage of tickets to be sold with discounts. The promoter may sell the number of tickets that he deems pertinent at a discount as long as he notifies the Public Show Producer Services Office (OSPEP) in advance of the discount to be granted for tickets before the sale;

(vii) Any other requirement established by the Secretary through regulations, administrative determination, circular letter or general information bulletin;

(3) If the producer decides to increase the capacity of the event or add an additional consecutive event for a show already reported electronically in accordance with this section, the endorsement information return sheet should be amended to reflect the change.

(4) The promoter shall accompany the endorsement with a bond in favor of the secretary in the form and manner established by the Secretary through regulations, which shall cover the amount of the tax on admission rights and payment of interest, fines and penalties that may be incurred. impose in accordance with Subtitles D, DDD and F of the Code.

(5) The promoter will have a non-extendable term, no longer than five (5) business days from the presentation of each event, to claim the adjustment for unsold endorsed tickets and, therefore, the release of the deposit.

(6) In the case of event promoters that use the services of ticket vending companies to sell tickets, these companies will be considered Marketplace Facilitators as defined in Section 4010.01(ddd) of the 2011 Code.

(7) The responsibility for endorsing tickets for public events will remain with the promoter of public events.”

#### Amendments to Section 4010.01(hhh)-1

#### **Section 4010.01(hhh)-1 is amended to read as follows:**

“Article 4010.01(hhh)-1.- Marketplace Facilitators -

(a) Means any person, including a related person or entity, that facilitates the sale of tangible personal property, digital products, specified digital products, other digital products, admission rights or taxable services and that meets the following requirements:

(1) The person directly or indirectly performs any of the following activities:

(i) Publishes, makes available or promotes the sale of tangible personal property, digital products, specified digital products, other digital products, admission rights or taxable services on behalf of a "marketplace seller", in a medium owned, operated or controlled by the marketplace facilitator;

(ii) Facilitates the sale of the seller's products through a market, by transmitting or communicating an offer or acceptance of retail sale of tangible personal property, digital products, specified digital products, other digital products, admission rights or taxable services between a marketplace seller and a buyer in a medium that can include a store, counter, catalogue, website or some similar means;

(iii) Owns, rents, makes available, or operates any electronic or physical infrastructure or any property, process, method, copyright, trademark, or patent that connects marketplace sellers with buyers in order to make marketplace sales of tangible personal property, digital products, specified digital products, other digital products, admission rights or taxable services;

(iv) Provides or facilitates a market to sell tangible personal property, digital products, specified digital products, other digital products, admission rights or taxable services regardless of ownership or control of the taxable items that are subject to retail sales;

(v) Provides software development or research and development activities related to any activity described in this paragraph, if such software development or research and development activities are directly related to the physical market or email provided by a Marketplace Facilitator;

(vi) Provides or offers compliance or storage services to a marketplace seller;

(vii) Establishes the prices for the sale of tangible personal property, digital products, specified digital products, other digital products, admission rights or taxable services by the marketplace seller;

(viii) Provides or offers customer service to a marketplace seller or a marketplace seller's customers, or accepts or assists take orders, returns, or exchanges of tangible personal

property, digital products, specified digital products, other digital products, admission rights or taxable services for a market seller.

(2) The person performs directly or indirectly any of the following activities:

(i) Collects sales and use tax on the retail sale of tangible personal property, digital products, specified digital products, other digital products, admission rights or taxable services;

(ii) Provides payment processing services in the retail sale of tangible personal property, digital products, specified digital products, other digital products, admission rights or taxable services;

(iii) Invoices, collects or otherwise receives sales charges, listing charges, referral charges, closing charges, charges for inserting or making available tangible personal property, digital products, specified digital products, other digital products, admission rights or taxable services in a market or other consideration for facilitating a retail sale of tangible personal property, digital products, fees or taxable services, regardless of ownership or control of the tangible personal property, digital products, specified digital products, other digital products, admission rights or taxable services that are object of retail sale;

(iv) Through terms and conditions, agreements, or arrangements with a third party, collects payment in connection with a retail sale of tangible personal property, digital products, specified digital products, other digital products, admission rights or taxable services from a purchaser and transmits that payment to the market seller, regardless of whether the person collecting and transmitting such payment receives compensation or other consideration in exchange for the service;

(v) Provides a virtual currency that buyers can use to purchase tangible personal property, digital products, specified digital products, other digital products, admission rights or taxable services.

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

(1) Example 1: Company "A" facilitates sales by advertising local restaurants in its brochures and advertisements. Customers order food from restaurants by calling Company "A". Company "A" processes customer payments and provides a delivery service to customers. Company "A" does not own restaurant franchises. In 2019, the total price value of sales facilitated by Company "A" originating in Puerto Rico, combined among all its sellers in the market, exceeded \$100,000 in total sales volume. Company "A" is a marketplace facilitator and,

therefore, is required to remit the sales and use tax to the Department of the Treasury on all sales it facilitates on behalf of other sellers in Puerto Rico.

(2) Example 2: Company “B” facilitates sales by advertising local restaurants on its website and mobile app. Customers order food from restaurants on Company “B’s” website or mobile app. Company “B” processes customer payments through its website or mobile app and delivers the food to customers. Company “B” is a marketplace facilitator.

(3) Example 3: “SomosAmigos.com”, a social media network, provides a forum in which people who use the network can buy and sell used tangible personal property. SomosAmigos.com works only as an advertising platform that brings buyers and sellers together. Once the buyer and seller have contacted each other through the network, they must negotiate the sale and make payment arrangements between themselves. While the forum provided by SomosAmigos.com could be considered a market, SomosAmigos.com is not considered a marketplace facilitator because it is not dedicated to completing the sale, collecting the customer’s payment, and does not transmit payment to the marketplace seller as described in Section 4010.01(ddd) of the 2011 Code.

(4) Example 4: “Aquisevende.com”, is an application or website that facilitates the sale of admissions to public events of promoters such as concerts, plays, music festivals, sporting events and other related events. Customers enter the “Aquisevende.com” application or website, choose the public event they wish to buy and the number of tickets, enter the buyer's information and proceed with the payment process for the chosen tickets. The "Aquisevende.com" application processes customer payments and provides the ticket delivery service, which could be in electronic format to the buyer's email address, by regular mail or at the established business location. “Aquisevende.com” is considered a marketplace facilitator, as that term is described in Section 4010.01(ddd) of the 2011 Code, because it is dedicated to providing a market to complete the sale of admission rights for public events, charges the customer payment, delivers the sold tickets and transmits the final payment to the promoter of the public show. In the case of the promoter of the public event, will be considered a marketplace seller, as said term is described in Section 4010.01(eee) of the Code of 2011. The responsibility to collect and remit the sales and use tax of the right of admission to the Department will be the Marketplace facilitator, however the responsibility of the endorsement informative return to start the sale and the collection of the right of admission to a public event will continue to be the

promoter, as described in Section 4010.01(jj) of the 2011 Code and in Article 4010.01(jj)-1 of these Regulations.

Amendments to 4010.01(iii)-1

**Section 4010.01(iii)-1 is amended to read as follows:**

“Article 4010.01(iii)-1 Marketplace Seller

(a) It means a seller who makes sales at wholesale, retail or for resale through any physical or electronic market owned, operated or controlled by a marketplace facilitator of tangible personal property, digital products, specified digital products, other digital products, admission rights or taxable services, even if said seller would not have had the obligation to collect and pay the sales and use tax if the sales had not been made through that market.

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

(1) Example 1: Merchant “A” does not live in Puerto Rico and is not registered as a Merchant in the Merchants' Registry of the Department of the Treasury of Puerto Rico. Merchant “A” manufactures and sells doll clothes only through an internet marketplace for artisans. Merchant “A” has been notified by the marketplace facilitator that, effective January 1, 2021, the marketplace facilitator will collect and remit Puerto Rico sales and use tax on all Merchant “A” sales to merchants buyers who have a delivery address for the taxable items purchased in Puerto Rico. Because Merchant “A” does not live or have business operations located in Puerto Rico and exclusively makes its sales through a marketplace facilitator, it does not need to take any action with the Puerto Rico Department of the Treasury.

(2) Example 2: Merchant “B” has a business outside of Puerto Rico that sells fishing gear through a marketplace facilitator and from his own website. On the case of sales made through the marketplace facilitator, the facilitator is the one who collects and remits the Puerto Rico sales and use tax on sales made through his market. However, if Merchant “B” gross sales to Puerto Rico buyers from its own website are in excess of \$100,000 or conducts more than 200 separate transactions with Puerto Rico buyers in its fiscal year or annual accounting period through of its own website, Merchant “B” has a nexus and, therefore, must register with the Merchants' Registry of the Department of the Treasury to collect and remit the Puerto Rico sales and use tax on sales made from its own website.

(3) Example 3: Merchant “C” is a promoter of public events in Puerto Rico. The admission tickets for the concerts that it promotes are sold through a platform known as

“Aquisevende.com”. “Aquisevende.com” is a Merchant Registered in SURJ as a Marketplace Facilitator and dedicates its platform to providing a market to complete the sale of admission rights for public events from promoters, collect payment from the client, deliver the tickets sold and transmit the final payment to the promoter of the public event. Merchant “C” is a Marketplace Seller, since he exclusively makes his sales through a marketplace facilitator, it will be the Marketplace Facilitator who collects and deposits the SUT contribution of the admission rights to the Department. However, the responsibility to file the endorsement informative return electronically through SURJ will continue to be the responsibility of Merchant C as promoter of public events. The promoters of public events, who are registered as Merchants in the Department, must complete a request for exemption from collection of SUT on sales made through Marketplace Facilitators. Refer to Article 4020.05-4 “Waiver of Collection of the Marketplace Sellers” and the following administrative publications of the Department for more information on this procedure.

Article 4010.01(jjj)-1.

**Section 4010.01(jjj)-1 is added to read as follows:**

Article 4010.01(jjj)-1.- Digital Products, Specified Digital Products and Other Digital Products

(a) The term “Digital Products” includes items that can be acquired through digital transmission (“streaming”) either by purchase or subscription; video, photographs, applications for electronic equipment, games, music, computer programs or any other item of a similar nature that is delivered to the buyer electronically or by digital transfer, includes specified digital products and other digital products.

(b) The term “Specified Digital Products” means electronically transferred or delivered digital audiovisual works, digital audio works, or other digital products, provided that a digital code that gives a purchaser the right to obtain the product will be treated in the same way as a specific digital product, including digital products in the form or medium of a non-fungible token or “NFT”.

(c) The term “Other Digital Products” includes, but is not limited to, the following other digital products: greeting cards, images, video or electronic games or entertainment, memberships in electronic groups to obtain exclusive electronic or audiovisual data, including, but not limited to products theatrical products, musical products, including concerts or videos,

audiovisual material containing adult content, news or information products, digital storage products, computer software applications and any other product that could be considered a digital product, whether electronically or digitally delivered, transmitted or accessed.

(1) Digital audiovisual work means a series of related images which, when displayed in succession, convey an impression of movement, together with accompanying sounds, if any. Examples, movies, television series, documentaries, concerts, music, podcasts, games and any other material that can be considered an audiovisual work.

(2) Digital audio work means a work resulting from the fixation of a series of musical, spoken, or other sounds, including a ringtone.

(3) The term "Ringtone" means a digitized sound file that is downloaded to a device and can be used to alert the purchaser to a communication.

(4) Digital Codes- A digital code is a code that comes packaged with an eligible physical product for movies accessible anywhere, such as a DVD or Blu-ray. The purchaser can redeem digital movie codes on any site for a digital version of the movie, which can be added to their movie collection and the movies be accessible on any site.

(5) The term "Electronically Transferred" means that it was obtained or entered by the purchaser by means other than tangible storage media. Some examples of an electronically transferred product include:

- (i) download ("download") a product from the internet
- (ii) view a product that is transmitted over the internet ("streaming")
- (iii) receive a product by email from the seller.

(6) The term "Electronically Delivered" means delivery by download, email, or other method; while accessed electronically, delivery is via online access, usually accompanied by a password or code.

(7) The terms "data streams", "data streaming" or "digital streaming" refer to the process of continuous transfer of data generated on the internet at a constant rate, in real time and at high speed.

(8) The term "firmware" means software that provides basic instructions that allow a piece of "hardware" to function and communicate with other software running on a device.

(9) Computer programs that are obtained by digital transmission, meaning: the computer program is considered a data stream ("data streams"); which the buyer did not produce

or have an ownership interest in them, must be interpreted by software or firmware and streamed real time from the infrastructure of origin, it will be considered a digital product.

(10) Subscriptions where access to the data provided by the subscription is made through a digital transmission, also known as "digital streaming", will be considered a digital product. These digital subscriptions have the characteristic that a client cannot copy or download material from this subscription because the information, images, product, sound or visualizations that the subscription transmits are transmitted in real time. Other digital subscriptions that are related to information services that allow the user to digitally access the supplier's database and use information available for a certain time, known as "*subscription based information*" and data storage services in digital form, will be considered services, as provided in Section 4010.01(nn)(1)(C) of the Code.

(i) Digital subscriptions related to books, which are exempt under Section 4030.20, will also be exempt when the subscription material is the same version of the printed book.

(b) The provisions are illustrated by the following examples:

(1) Example 1: Mr. "P" obtains music through Company A, which offers a monthly subscription service to its internet site or application where it offers various music and podcasts. Mr. P pays a fixed monthly fee to Company A and this allows him to access from his computer, mobile or any other electronic device all the music content and other types of multimedia technology available offered by Company A. In this case, both music as the other type of multimedia technology that Mr. P accesses through monthly subscription payment to Company A is considered a specified digital product because it is an audiovisual work perceptible to the senses electronically transferred to Mr. P, therefore, it is a taxable item subject to the Sales and Use Tax ("SUT").

(2) Example 2: Speedy.com, is an Internet-based company that provides an electronic streaming service for some of the latest and greatest shows and movies the entertainment industry has to offer. Speedy has different service plans with different monthly costs that vary depending on several factors, including: the number of data users, the type of data the user wishes to access, and similar factors. In addition, it offers the service of charging a fixed fee per movie, program, documentary, series episode or song. The data transmission service offered by Speedy is considered an electronic download or transfer of audiovisual material, this is a digital

product, therefore it is considered a taxable item that will be subject to the SUT for users who receive the services in Puerto Rico.

Amendments to Article 4020.03-1

**Subsections (j) and (k) of Section 4020.03-1 are amended to read as follows:**

“Article 4020.03-1.- Rules for determining the source of income generated by the sale of taxable items.-

(a) ...

(b) ...

...

(j) For purposes of the sale of digital products, specified digital products and other digital products as defined in Article 4010.01(jjj)-1 of this Regulation, the source of income from such sales will be the physical address of the buyer to whom the sale is made. In the event that the seller does not have the physical address of the buyer, the seller must use the mailing address of the buyer as the source of income for the sale. In the event that the seller does not receive from the buyer any of his/her physical or postal addresses, the seller must use the information of the bank account or credit card of the buyer or the branch of the financial institution where the bank account is registered (that is, where it is domiciled) with which he/she makes the purchase of digital products. In the event that the bank account cannot be attributed to a specific branch or location, the source of the charges will be the main office of the financial institution. The source of income from the payment generated in the sales of digital products, specified digital products and other digital products shall be determined in accordance with the provisions of this paragraph, regardless of the physical location of any server from which the digital product, specified digital products and other digital products is reproduced or downloaded or of any other factor related to the sale thereof.

(k) The rules contained in this section shall be applicable exclusively to the imposition of sale and use tax, including the municipality portion under Section 6080.14 of the Code and shall not apply nor may be used in a supplemental manner for purposes of income taxes.”

Amendment Article 4020.05-1

**Article 4020.05-1 is amended to read as follows:**

“Article 4020.05-1 Collection of the Tax.-

(a) In general. The merchant's obligation to collect and remit to the Secretary the Sales and Use Tax (hereinafter, "SUT") of six (6) percent indicated in Code secs. 4020.01(b) and 4020.02(d)(2), the SUT of four point five (4.5) percent established in section 4210.01(b) and the SUT fixed tax rate of one (1) percent imposed by Code sec. 6080.14, or the obligation to collect and remit the SUT of four (4) percent imposed by Code sec. 4210.01(c), arises when the merchant sells taxable items subject to the taxes fixed in the Code, provided the merchant has a nexus with the jurisdiction (determined pursuant to Code sec. 4010.01(h)) and the source of income, produced by the sale of the taxable item on which the SUT is imposed, is within said jurisdiction (determined pursuant to Code sec. 4020.03).

(1) Exception. A merchant engaged in the sale of taxable items in Puerto Rico (the "Selling Merchant") shall not be required to collect SUT if each of the following circumstances are met in the order stated below, which generally occur in sales via *drop shipments*:

(i) the Selling Merchant receives a purchase order for taxable items from another merchant in Puerto Rico (the "Purchaser");

(ii) the taxable item ordered to the Selling Merchant by the Purchaser is not in possession of the Selling Merchant in Puerto Rico or the inventory is located outside Puerto Rico at the time the purchase order is received;

(iii) the Selling Merchant acquires the taxable item object of the sale from a supplier outside Puerto Rico (the "Supplier"), in case of taxable item ordered that is not in possession of the Selling Merchant in Puerto Rico at the time the purchase order is received;

(iv) the Supplier or the Selling Merchant delivers the taxable item directly to the Purchaser by sea and the Purchaser pays the SUT on import of the taxable item, if applicable;

(v) in case of a Selling Merchant who has acquired the taxable item after the purchase order from Purchaser is received, the invoice sent by Supplier to Selling Merchant for the price of the taxable item sold to the Selling Merchant and delivered directly to Purchaser, shall not be subject to any sales and use tax;

(vi) the Selling Merchant sends an invoice to Purchaser for the price of the taxable item sold and directly received by Purchaser from Supplier, which shall not include the SUT that, except for what is provided herein, would have been applicable to the taxable item sold. This transaction shall be documented through the Certificate for Exempt Purchases whereby the

Purchaser shall evidence to Selling Merchant that the SUT was paid at the time the merchandise was received by sea.

(2) In the situation described above, the Purchaser, being the person to whom the taxable item acquired is consigned to and received by sea, shall be required, according to Code sec. 4042.03(a)(1) and Art. 4042.03-1(a)(1) of this Regulation, to pay the use tax in the introduction applicable to said taxable item.

(3) The exception of the preceding subparagraph (1) shall never be applicable in cases in which the taxable item is delivered by any transportation means other than by sea.

(b) Except for merchants whose Merchant's Certificate of Registration indicates that they are not collectors of the SUT, or as otherwise provided in this article, every merchant who sells taxable items is required to collect and remit, according to Code sec. 4042.01, the sales tax imposed by Subtitle D of the Code and the surtaxes imposed by Subtitle DDD, as applicable, and the Municipal SUT established in Code sec. 6080.14. Provided, further, that in the cases in which, under paragraph (d) of this article, a buyer is not obligated before the merchant to pay the amount of the tax, the merchant who sells taxable items shall have the obligation to remit the sales tax, according to Section 4042.01 of the Code,

(1) If multilevel marketers obtained authorization from the Secretary for their independent distributors who are part of their sales network to not be considered as merchants for purposes of the collection and remittance of the SUT, then the obligation to collect the sales tax shall fall on the multilevel marketer and not on the independent distributors.

(2) Merchants who are not resellers of taxable items shall not be required to collect the SUT on the invoice's portion which shows the price of the taxable item that they acquired subject to SUT.

(i) The following example illustrates the provisions of this subparagraph (2): A nurse gives, by doctor's order, medication "X" to a patient who is at a hospital institution owned by the Government of Puerto Rico as part of his health condition's treatment. The medication "X" may be obtained without prescription and therefore, shall not be considered as a prescription drug. The hospital shall not collect, and the patient shall not have to pay, the SUT on the medication "X" because the hospital is not a reseller of medications.

(3) A sales representative, a factory representative or commission agent shall collect the SUT on the sales unless their principal has taken the obligation to collect the SUT for having

employees, agents or representatives in Puerto Rico who request business or engage in business on behalf of said principal.

(4) Any merchant engaged in the mail order sales business, as defined in Article 4020.08-1 of the Regulations, whose only contact with Puerto Rico is that the buyer is a resident or person engaged in trade or business in Puerto Rico, and who, does not comply with any of the rules of substantial nexus established in Article 4010.01(h)-1(d)(1)(vi) of the Regulation, shall not be required to collect taxes set by Subtitles D and DDD of the Code. The merchant who does not qualify as a Merchant according to said term is defined in Article 4010.01(h)-1 of the Regulations, may voluntarily register in the Merchants' Registry as established in Article 4060.01, in which case he will be obliged to collect the taxes established by Subtitles D and DDD of the Code and will be subject to those terms and conditions imposed by the Code and its Regulations.

(5) Notwithstanding the foregoing, any mail order sale transaction made after December 31, 2019 by a marketplace facilitator performing at least one of the activities detailed in Article 4010.01(hhh)-1 of this Regulation, will be considered a taxable transaction and, therefore, such marketplace facilitator shall be deemed a withholding agent and shall be required to collect the taxes set by this Subtitle on behalf of the seller. Any certification or exemption held by a market seller shall not apply to sales made through a marketplace facilitator unless the marketplace facilitator itself has such certification. This includes, but is not limited to, the certification under Section 4210.01(a)(1) of the Code.

(c) Every merchant who has to collect the sales tax shall display separately from the sales price, the tax on any receipt, invoice, ticket, or other sale's evidence, except as provided in Code sec. 4020.06. When according to Code sec. 6080.14 more than one tax is imposed on a transaction, it is necessary to segregate the state tax as well as the municipal tax.

(1) When the merchant separates the amount of taxes from the sales price, it shall be displayed with phrases similar to the following:

"IVU", "SUT" or "Tax 1"

"IVU 2", "SUT 2" OR "Tax 2"

(2) If the sale of admission rights is through tickets, each merchant shall prominently display a notice at the box office or other place where the admission charge is collected,

disclosing the admission's price and the sales tax, which shall be computed and collected on the basis of the admission right's price charged by merchant.

(3) If sales contracts are under installment plans or lay away transactions, the sales tax shall be computed on the sales price determined at the time the sales contract is signed. The first payments received shall be considered payments of principal or sales price and the sales tax shall be collected when the final payment under the sales contract is received.

(4) In the case of sales from merchants who do not have a physical location in Puerto Rico and remit the Municipal portion of the SUT, when segregating the amount of the sales tax, the merchant may totalize the SUT in a single line. In such cases, the line showing the tax shall have the name of phrases as follows:

"IVU", "SUT" or "Tax"

(d) The tax shall constitute, together with the selling price, the buyer's evidence of debt to merchant until it is paid, and it may be collected by law in the same manner as other debts. If the merchant is not registered in the Merchants' Registry, the buyer shall not be required to pay the tax to the merchant and therefore, said tax shall not constitute a buyer's debt.

(e) The taxes fixed in Subtitles D and DDD of the Code and in Code sec. 6080.14 shall become funds of the Government of Puerto Rico and the corresponding municipal treasury at the time of collection.

(f) Except as otherwise specifically provided in the Code or in this Regulation, any merchant who denies, fails, or refuses to collect the sales tax on sales of taxable items made by said merchant, his agents, or employees, shall be principally responsible for the payment of said tax.

(g) A merchant engaged in any business in which taxable items subject to the taxes fixed in Subtitles D and DDD of the Code and Code sec. 6080.14 are sold, shall not publicly advertise or express in any manner that merchant will directly or indirectly absorb all or part of the tax, or that merchant will release the buyer from the payment of all or part of the sales tax, or that the sales tax will not be added to the selling price, or that when added, all or part of said tax will be reimbursed, either directly or indirectly, by any means.

(h) Every merchant who has to collect the sales tax as withholding agent shall also comply with arts. 4030.01(a)-2, 4030.01(a)-3 and 4030.01(a)-4 regarding the installation and use of fiscal terminals.

(i) Every merchant who has to use a fiscal terminal in his points of sale shall also comply with the provisions of this article and ensure that any receipt, invoice, ticket or any other evidence of sale complies with the provisions of art. 40303.01(a)-2(c) of this Regulation.

Amendment to Article 4020.05-2

**Article 4020.05-2 RESERVED**

Article 4020.08-1

**Article 4020.08-1-1 is amended to read as follows:**

“Article 4020.08-1 Collection of sales tax on mail order sales.-

(a) For purposes of Subtitle D and DDD of the Code, the term "mail order sales" means the sale of taxable items, ordered by any means, including but not limited to mail, catalogs, portals, e-commerce, the internet or other means of communication, whether electronic or not, from a merchant who receives the order outside of Puerto Rico and transports the taxable item or causes the taxable item to be transported, whether or not by mail, from any place outside of Puerto Rico, to a person in Puerto Rico, regardless of whether or not said person is the person who ordered the taxable item. Similarly, this term will also include any sale of a taxable item made by a marketplace seller through a marketplace facilitator who performs at least one of the activities detailed in Article 4010.01(hhh)-1 of this Regulation.

(b) Any person engaged in the mail order sales business as defined in paragraph (a) of this Article and who is considered to be engaged in the sale of taxable items in Puerto Rico, shall be considered a merchant subject to the requirements of the Code and of this Regulation.

(c) However, any person engaged in the mail order sales business who is engaged in the sale of taxable items in Puerto Rico in accordance with the provisions of subsections (1) to (5), (7), ( 8), (10) or (11) of section (h) of Section 4010.01 of the Code, will be considered a merchant and will be required to comply with all the requirements of Subtitle D and DDD of the Code in relation to the collection and declaration of the SUT.

(d) It is also provided that, transactions taking place on or after January 1, 2020 through a marketplace facilitator that includes any of the activities detailed in Article 4010.01(hhh)-1, will be subject to the collection of the SUT and the marketplace facilitator shall be responsible for the collection and remittance of the tax on all mail order sales as defined in paragraph (a) of this Article, including own sales.

(e) The tax to be collected under Subtitle D and DDD of the Code, and any other amount, whether or not part of the tax, which is not returned to a buyer, but which was collected from the buyer on the representation that it was a tax, constitute funds of the Government of Puerto Rico from the time of the collection.

(f) The provisions of this article are illustrated by the following example:

(1) Example 1: The Company "Y" is engaged in the sale of shoes online and is dedicated to the sale of such items in Puerto Rico. Under Section 4010.01(h) of the Code, "Y" is considered a merchant under Subtitle D and DDD of the Code and is required to comply with all requirements of such Subtitle. "Y" transports shoes by mail from Miami, FL to its customers in Puerto Rico. The company "Y" is required to charge the SUT in the sale of the shoes to its customers in Puerto Rico.

(g) Any merchant engaged in the mail order sales business that is not classified as a withholding agent must inform the buyer in Puerto Rico about the obligation of said buyer to remit the use tax established in Section 4020.02 of the Code in relation to the taxable items acquired from said merchant."

#### Article 4030.28-1

#### **Section 4030.28-1 is added to read as follows:**

"Article 4030.28-1.- Exemption of Articles and Equipment for the Hurricane Season

(a) General rule.- The payment of the sales and use tax is exempted, during the period corresponding to the last weekend of the month of May, on the retail sale of articles and equipment prepared for the hurricane season according as they are defined in this Article.

(b) Definitions.- For the purposes of this Article, the following terms shall have the meaning indicated below:

i) Exemption Period.- shall mean the period established by the Secretary, which will be notified annually in an administrative publication that must be published no later than May 1 of each year in which the corresponding period will be specified. If an administrative publication is not issued, it will be understood that the period of this exemption will begin at 12:01 am on the last Friday of the month of May and will end at twelve midnight on the following Sunday, covering a period of three (days) each year.

(ii) Preparation Items.- means the items used so that people can prepare before the start of the hurricane season, including the following:

(A) Containers, tanks for fuel and water. This includes all maintenance products and equipment and any other mechanical parts that are necessary to repair the tank.

(B) Storms Shutters;

(C) Fittings, anchors and screws;

(D) Wood sticks and Wood panels;

(E) Ropes and moorings;

(F) Construction zinc panels;

(G) Non-perishable food, this includes food packages known as “emergency meal kits”, which contain food supplies for emergency situations;

(H) Water;

(I) Cleaning and sanitizing articles;

(J) Parts and products for repair and maintenance of generators and emergency solar equipment. This includes all generator maintenance products and equipment, which could include motor oils, and any other mechanical parts that are needed to repair a generator or solar equipment.

(iii) Preparation equipment- means the equipment used so that people can prepare before the start of the hurricane season, including the following:

(A) Portable generators whose sales price does not exceed \$3,000 dollars, used to provide electricity or communications or to preserve food in case of interruptions to electrical energy services. To be considered under the SUT exemption during this period, the cost of the generated can never exceed \$3,000 dollars. Therefore, those generators with a cost in excess of \$3,000 do not qualify for the SUT Exemption.

(B) Individual batteries or packs (AAA battery, AA battery, C cell, D cell, 6 volt or 9 volt);

(C) Battery or alternative-energy-operated lamps, flashlights, candles, and matches;

(D) Solar emergency equipment;

(E) Tools such as drills, disk saws, hammers and other equipment related to the process of securing the property; this includes the following: tree and branch cutting tools (“pruners”), all types of screws and washers, all types of nails, metal tensioners and cables, manual and motorized saws, shovels, augers, gloves, goggles, helmets, safety pants (“apron chaps”) and any type of chain, cutting file or mechanical part necessary to fix or use the

mechanical equipment mentioned herein. It will also include the tool combos (power tools combo kits) and any battery necessary for the use of the tools indicated above, including the rechargeable batteries of this equipment and the charging stations.

- (F) Gas stoves and burners (this does not include grills or BBQ's);
- (G) Gas in cylinders and tanks;
- (H) Emergency or rescue stairs;
- (I) Hurricane shutters;
- (J) Axes and machetes;
- (K) Non-electronic can openers;
- (L) Portable coolers to store ice and food;
- (M) Fire extinguishers;
- (N) Battery-operated smoke or carbon monoxide detectors;
- (O) First aid kits;
- (P) Plastic containers or containers for fuel dispatch;
- (Q) Ground anchor system or ground tie kit;
- (R) Reusable or artificial freezing items;
- (S) Mobile phone batteries and mobile phone chargers;
- (T) Portable radios (including battery operated), two-way radios (transmitter-receiver),

and weather band radios;

- (U) Battery or alternative power operated fans;
- (V) Portable stoves;
- (W) Propane Gas; and
- (X) Canvas or other type of flexible and impermeable material;

(c) Sales under term plans ("Lay Away"); - A transaction in which items or equipment are reserved for future delivery to a buyer who makes a deposit, agrees to pay the balance of the sales price over a period of time, and at the end of the payment period receives the merchandise. The sales on a lay away plan of a covered article for the exemption when the final payment under the lay away plan is made and the item is delivered to the purchaser during the exemption period. A sale in which the transfer of title occurs after the exemption period shall be subject to sales tax.

(d) Rain checks.- Voucher, receipt or ticket issued by merchant to the consumer when a advertised good on special is not available. A rain check allows the customer to buy an item at a certain price in the future because the item is sold out. The article that qualified for exemptions purchased during the exemption period using a rain check shall qualify for the exemption, regardless of when the rain check was issued. The issuance of a rain check during the exemption period will not qualify an article for the exemption if the same is purchased after the exemption period. A rain check does not have the effect of extension of the tax-free period established by Section 4030.28 of the Code.

(e) Purchases by mail, telephone, email and Internet. When a covered preparation item or equipment is purchased through the mail, telephone, email or internet, the purchase qualifies for the SUT exemption provided in Section 4030.28, when the preparation item or equipment is paid and delivered to the customer during the exemption period; or when both, the transfer of the title of the covered articles and its delivery to the purchaser takes place during the exemption period. For purposes of this Regulation the sale of an article is not considered completed or closed until the time and place where the delivery to the buyer occurs after the act of transportation concludes and the article arrives in Puerto Rico for its use or consumption. The covered preparation items and equipment that qualified for the exemption that are pre-ordered before the exemption period and delivered to the client and paid during the tax-free period qualify for the exemption.

(f) Gift certificates and gift cards. Preparation items and equipment that qualified for the SUT exemption, purchased during the exemption period using a gift certificate or gift card shall qualify for the exemption, regardless of when the gift certificate or card was purchased. Preparation items and equipment that qualified for exemption, purchased after the exemption period using a gift certificate or gift card are taxable even if the gift certificate or card was purchased during the exemption period.

(g) Returns.- During the period of sixty (60) days immediately after the SUT exemption period provided in Section 4030.28 of the Code, when a customer returns an article that qualified for exemption, no credit or refund of SUT will be given unless the customer provides a receipt or invoice that reflects that the tax was paid, or the seller has sufficient documentation to prove that the SUT was paid on said specific item. This period of sixty (60) days is set only for the purpose of designating a term during which the customer must provide documentation that effectively

shows that the SUT was paid on the purchase of the returned merchandise. The sixty (60) day period is not intended to change the seller's policy regarding the term during which the seller will accept returns.

(h) Different time zones ("Time zone").- The time zone or time zone location of the purchaser shall determine the time period authorized for the exemption period provided in Section 4030.28 of the Code when the purchaser is in time zone and the selling merchant is in another.

(i) Merchant's records.- The merchant is not required to obtain an Exemption Certificate or Certificate of Exempt Purchases on the retail sale of items that qualify for the exemption during the exemption period provided in Section 4030.28(a) of the Code. However, the merchant's records must clearly identify the type of item sold, the date in which it was sold, the sales price of the item covered by the exemption and all items, and, if applicable, any sales tax collected.

(j) The provisions of this article are illustrated with the following examples

(1) Example 1: Person A separated a power generator with a sale price of \$2,995, under a "lay away" program, making a deposit of \$500.00. Person A paid the balance of the sale price and picked up the generator during the tax-free period and the sale price of the generator did not exceed \$3,000 dollars, as established in Section 4030.24(b)(2), therefore the generator will be exempt from SUT.

(2) Example 2: The same facts as in Example (1), except that "A" paid the sale price balance during the tax free period by telephone with his credit card and picked up the electric generator the day after the tax free period ended. The electric generator acquired by "A" will be subject to the SUT, for not having delivered the generator during the exemption period.

(3) Example 3: The same facts as in Example (1), except that "A" paid the balance of the sale price after the tax-free period ended. The generator acquired by "A" will be subject to the SUT, for having been paid and delivered after the tax-free period.

(4) Example 4: Person B went to a store during the hurricane season tax-free period exemption to purchase an electric saw that was offered at a special price. Because the saw was not available in the store, he was given a voucher that would allow him to purchase the article in the future at the special advertised price. After the tax-free period ended, "B" went to the store

to buy the electric saw. B must pay the SUT on said electric saw, because it was acquired after the end of the tax-free period.

(5) Example 5: Person "C" ordered hurricane season preparation equipment online and paid for it upon delivery, which occurred during the tax-free period. The preparation equipment for the hurricane season ordered by "C" will be exempt from the SUT."

Article 4041.02-1

**Amendments to Paragraph 1 subsection (b) of Section 4041.02-1 is amended to read as follows:**

"Article 4041.02-1 Declaration of imports and monthly returns of tax sales and use tax. and imports -

(b) Monthly Import Tax Return –

(1) Any merchant who imports taxable items subject to use tax by any means, including a postal service system or air carrier, must file a Monthly Import Tax Return no later than the tenth (10th) day of the month following the that the taxable transaction occurred. After October 1, 2021, the Monthly Import Tax Return must be filed no later than the twentieth (20th) day of the month following the one in which the transaction subject to the tax occurred. The Import Return will include a summary of the Import Declarations submitted during the period for which it is filed.

(2) ...

Amendment to Article 4041.03-1

**Article 4041.03-1 RESERVED**

Article 4042.03-1

**Section 4042.03-1 is amended to read as follows:**

"Article 4042.03-1.- Time to remit the Sales and Use Tax.

(a) The taxes established by Subtitle D and DDD of the Code, shall be payable to the Secretary by the person responsible for remitting the payment, on the dates indicated below:

(1) Use Tax

(i) General Rule – As a general rule, the use tax applicable to taxable items imported into Puerto Rico by any person, except items introduced by air carrier or postal service system, shall be paid before the taxpayer takes possession of the article. Provided that this shall not

apply for purposes of the Sales and Use Tax, including the municipal use tax pursuant to Section 6080.14 of the Code. The use tax applicable to taxable items imported into Puerto Rico, including the municipal use tax pursuant to Section 6080.14 of the Code, will only be paid once. Therefore, a taxable item that was subject to use tax at the time it was imported, will not be subject to the use tax subsequently.

(ii) Exceptions. As an exception to the general rule mentioned above, any person must pay the corresponding use tax, including the municipal use tax under Section 6080.14 of the Code, on the days and under the circumstances listed below:

(A) payment of the use tax – on the following cases the use tax shall be paid on or before the tenth (10th) day of the month following the month in which the merchandise subject to the tax is introduced, After October 1, 2021, the use tax shall be paid on or before the twentieth (20th) day of the month following the month in which the merchandise subject to such tax is introduced:

(I) when the person is a bonded merchant, as such term is defined in Code Sec. 4042.03(b)(3) and in paragraph (b)(3) of this article, and the use tax, including the municipal use tax under Section 6080.14 of the Code, corresponding to the imported taxable item is covered by the posted bond;

(II) when due to a correction of an amount reported on the Declaration of Imports, the payment made by a person, including a merchant, prior to taking possession of any property introduced into Puerto Rico, as established in clause (i) of subparagraph (1) of this paragraph, is not enough to cover the total amount payable of the use tax as established in Subtitle D of the Code. After the information is corrected, the person shall pay any difference not later than the tenth (10th) day of the month following the month in which the transaction subject to tax took place or together with the filing of the Tax on Imports Monthly Return. After October 1, 2021, the payment of the use tax will be paid no later than the twentieth (20th) day of the month following the one in which the transaction subject to the tax occurred or together with the filing of the Monthly Import Tax Return.

(III) when any person introduces taxable items subject to the payment of use tax, including the municipal use tax use tax under Section 6080.14 of the Code, through air carrier or postal service system, except as indicated in subclause (C) below; and

(IV) when any person acquires taxable items subject to the payment of use tax via electronic transmission or copied from an electronic page.

(B) payment of the use tax, including the municipal use tax under Section 6080.14 of the Code, on or before the twentieth (10th) day of the month following the month in which the event subject to the imposition and payment of use tax takes place. After October 1, 2021, the payment of the use tax will be paid no later than the twentieth (20) day of the month following that in which the event that gives rise to the imposition and payment of the use tax arises - in the following cases, the use tax will be paid on or before the twentieth (20) day of the month following that in which the described event occurs:

(I) when a merchant has introduced taxable items consisting of inventory and has withdrawn it for personal use, use of the business, distribution as samples or promotional articles or distribution as gift;

(II) when a merchant has introduced taxable items consisting of inventory and it has been lost due to its deterioration or wear, or by fire, hurricane, earthquake or other fortuitous cause.

(C) Payment of the tax to the seller. As an exception to the general rule provided in paragraph (a) of this article, when any person receives taxable items from abroad, due to a purchase through the drop shipment method via any method of transportation except by sea, such person shall not be required to pay the use tax to the Secretary, instead said person is required to pay a sales tax to the seller. In case of transportation by sea, see Art. 4020.05-1(a)(1) of this Regulation.

(2) Sales Tax.

(i) General Rule. The sales tax fixed by Subtitle D and DDD of the Code, including the applicable sales tax on bank charges to be collected by financial institutions, shall be payable to the Secretary by the person responsible for remitting the payment, not later than the twentieth (20th) day of the month following the month in which the collection of said tax takes place, or in that other date or manner, as established by the Secretary regarding the form, time and conditions regulating the payment or deposit of said withheld taxes.

(ii) Payment of sales tax in biweekly installments.

(A) Effective July 2017 and until June 2022, any person who complies with the following provisions, must remit the sales tax to the Secretary in two biweekly installments during

the month in which the event giving rise to the imposition and payment of sales tax arises: (1) the person is a Large Taxpayer, as this term is defined in Section 1010.01(a)(35) of the Code; or (2) the person is a merchant whose average monthly sales tax deposited during the previous calendar year exceeds two thousand (2,000) dollars ("\$2,000 Criteria"). The deadline to make the payments of the first biweekly installment must be deposited on or before the fifteenth (15th) day of the period (month) and the deadline to make the payment of the second biweekly installment shall be the last day of the period (month).

(I) For purposes of the \$2,000 Criteria, the term "deposited" refers to the sum of the SUT deposited on the import and purchase of inventory for resale and the SUT deposited on the sales made by said merchant, in accordance with the following:

(1) Merchants selling taxable items subject to the 10.5% SUT.- Any merchant selling taxable items and whose sales for the calendar year immediately prior to the determination exceed \$228,600 (i.e., \$2,000 divided by 10.5% and the result multiplied by 12 months and rounded to the nearest hundred), will meet the \$2,000 criteria and will therefore be required to deposit the SUT in biweekly installments. For merchants who have started operations during the previous calendar year, they will be considered to meet the \$2,000 Criteria if the total average monthly sales during the months that the merchant was in business during that previous calendar year exceeds \$19,050 (i.e. \$228,600 divided by 12 months).

(2) Merchants engaged exclusively in the sale of services business to business of professional designated services subject to the SUT of 4%. Those merchants who only sell services to other merchants or that provide designated professional services subject to the SUT of 4% and whose sales of services subject to SUT payment for the calendar year immediately prior to the year of the determination exceed \$600,000 (i.e. , \$2,000 divided by 4% and the result multiplied by 12 months), will meet the \$2,000 criteria and will be required to deposit the SUT within biweekly installments. In the case of a merchant who has started operations during the previous calendar year, he or she will be considered to meet the \$2,000-Criteria if the total average monthly sales during the months the merchant was in business during that previous calendar year exceeds \$50,000 (i.e. \$600,000 divided by 12 months). In the case of merchants selling taxable items subject to the SUT of 10.5% and services subject to the SUT of 4%, they will be subject to the SUT's biweekly installments when the sum of their sales of taxable items and services subject to SUT for the immediately previous calendar year exceeds \$228,600.

(B) The determination of whether a merchant is required to deposit SUT in biweekly installments shall be made annually based on total sales subject to payment of the SUT made during the preceding calendar year. Once it is determined that the merchant is required to make payment of the SUT in biweekly installments for a calendar year, he must comply with that requirement throughout the calendar year. For purposes of determining the obligation to make SUT deposits in biweekly installments, it shall be used the information on total sales subject to payment of the SUT as reflected in the Sales and Use Tax Monthly Returns filed by the merchant during the preceding calendar year, Form SC 2915 ("SUT Monthly Returns").

(C) Examples:

(I) Example 1: Merchant "A" is engaged in the repair and maintenance of air conditioners and incidentally sells spare parts and filters for such conditioners. During the 2016 calendar year (i.e., January to December 2016), as reported in the SUT Monthly Returns, "A" had a total of sales of air conditioner repair and maintenance services of \$350,000 and total parts sales of \$115,000, for a total sales of \$465,000 (\$350,000 plus \$115,000). In this case, as the services provided by "A" are subject to the 10.5% SUT, "A" is required to deposit the SUT in biweekly installments, because the total of its sales exceeds the annual limit amount of \$228,600.

(II) Example 2: Merchant "B" is a supermarket that started operations on May 15, 2016. The total sales that "B" had between May and December 2016, as reflected in the SUT Monthly Returns, was \$100,000. For calendar year 2017, "B" is not required to deposit SUT in biweekly installments, because the monthly average of its sales was \$12,500 (\$100,000 divided by the 8 months that "B" was operating), which does not exceed the monthly limit amount of \$19,050.

(III) Example 3: Merchant "C" is engaged in the provision of consulting services to business and the government. During calendar year 2019 (i.e., January to December 2019), as reported in the SUT Monthly Returns, "C" had a total sales of services exempted from \$450,000 and a total of services paid to other merchants subject to the SUT of 4% of \$250,000, for a total sales of \$700,000 (\$450,000 plus \$250,000). In this case, as the total sales of services subject to the SUT of 4% does not exceed the amount of \$600,000, "C" is not required to deposit the SUT in biweekly installments.

(D) For purposes of this clause (ii), the biweekly installment will be payable on the fifteenth (15th) day of each natural month, so merchants will be required to remit the lesser of:

(i) eighty percent (80%) SUT charged on sales made on days 1 to 14 of each month, net of the credits available under Sections 4050.02, 4050.03 and 4050.04 of the Code ("Applicable Credits"), or (ii) half of seventy percent (70%) SUT submitted, net of the Applicable Credits, according to the SUT Monthly Return for the same taxable period of the previous calendar year. Pursuant to Section 4042.03(a)(2)(A)(iii) of the Code, the merchant subject to the payment of sales tax in biweekly installments shall be deemed to have fulfilled his obligation to deposit them, if the sum of the two biweekly payments deposited with the Department during the month totaled at least any of the following amounts:

(I) eighty (80) percent of the SUT Collected for that month. The term "SUT charged" means the "Total Determined SUT" in the SUT Monthly Return, after deducting the credits available under Sections 4050.02, 4050.03 and 4050.04 of the Code; or

(II) seventy (70) per cent of total sales tax remitted during the same month of the previous calendar year. The term "remitted" means the "Total SUT Determined" in the SUT Monthly Return for the same taxable period of the previous calendar year, after discounting the credits available under Sections 4050.02, 4050.03 and 4050.04 of the Code.

(E) For purposes of item (D) above, the term "SUT Collected" refers, in the case of merchants reporting the SUT based on the cash basis, the SUT that is collected at the time of receipt of payment. For merchants reporting the SUT based on the accrual method, the term "SUT Collected" means the SUT that is included in the invoice when billing customers.

(F) Examples:

(I) Example 1: For the July 2018 taxable period, the total SUT Collected by Merchant "C" under that month's SUT Monthly Return was \$4,000; \$2,000 of the \$4,000 between July 1 and July 14, 2018, and the remaining \$2,000 between July 15-31, 2018. For the July 2017 taxable period (which was filed on August 20, 2017), the total SUT deposited by "C" as reflected in the SUT Monthly Return for that month, net of the Applicable Credits, was \$5,000. Based on the information for both periods, on July 15, 2018, "C" must refer the Department as the First biweekly installment for the month of July 2018 at least \$1,600 (i.e. \$2,000 multiplied by 80%, which is less than \$2,500 times 70%). Considering that the sum of the first and second installments should total at least \$3,200 (i.e., \$4,000 multiplied by 80%, which is less than \$5,000 multiplied by 70%), on July 31, 2018 "C" you must deposit with the Department as the second

biweekly installment for the month of July 2018, at least \$1,600 (i.e., \$3,200 minus the \$1,600 deposited on July 15, 2018).

(II) Example 2: Following the facts of Example 1, but in this case by the nature of the "C" business the total SUT Collected occurred between July 15 and 31, 2018. Based on the information for both periods, on July 15, 2018, "C" must refer the Department as the first biweekly payment for the month of July 2018 \$0 (i.e. \$0 sales multiplied by 80%, resulting in less than \$2,500 multiplied by 70%). Considering that the sum of the first and second installments should total at least \$3,200 (i.e., \$4,000 multiplied by 80%, which is less than \$5,000 multiplied by 70%), on July 31, 2018 "C" you must refer to the Department as the second biweekly installment payment for the month of July 2018, at least \$3,200 (i.e., \$3,200 minus the \$0 deposited on July 15, 2018).

(III) Example 3: Following the facts in Example 1, but in this case the total SUT Collected by "C" under the SUT Monthly Return for July 2017 was zero. Based on the information for both periods, the total amount of the biweekly installments that "C" must refer to the Department in July 2018 is zero (i.e. the result of 70% for the total SUT paid on the July 2017 SUT Monthly Return which was \$0). In this case, the total SUT Collected during the month of July 2018 must be deposited together with the filing of the SUT Monthly Return for that month, no later than August 20, 2018.

(G) The biweekly payments sent to the Secretary pursuant to clause (ii) of subparagraph (2) of paragraph (a) of this Article shall be applied or credited against sales and use taxes payable to the Secretary pursuant to clause (i) of subparagraph (2) of paragraph (a) of this Article for the period in which sales tax payments were submitted in biweekly installments and any excess may be credited against sales taxes payable use in future periods. Any biweekly payment made by a merchant for a particular period must be applied to that particular period before being applied to interest, surcharges, penalties or other periods.

(H) Any person required to deposit sales tax in biweekly installments as established in clause (ii) of subparagraph (2) of paragraph (a) of this Article shall be subject to the imposition of a ten (10) percent penalty on the total amount of the tax that was due to be deposited during the month and which was not deposited in the biweekly installments in accordance with this clause (ii). This penalty shall be in addition to any other penalty imposed by the Code, but the Secretary may waive, in whole or in part, the penalty imposed here to any merchant who

demonstrates that the non-compliance with the biweekly installments on the particular period was due to reasonable cause or circumstances beyond his control.

(I) Payments of sales tax within in biweekly installments in accordance with clause (ii) of subparagraph (2) of paragraph (a) of this Article shall be forwarded to the Secretary in that form and in accordance with the conditions established by the Secretary, including the requirement that they be sent by electronic means exclusively.

(J) The payment of the sales tax in biweekly installments shall not apply to the municipal tax that the municipalities are authorized to collect pursuant to Section 6080.14 of the Code.

(K) On those cases in which the expiration date of the corresponding biweekly installment is Saturday, Sunday or a federal or state holiday, the deadline to make the payment of the biweekly installment will be the next business day.

(L) The requirement under Act 46-2017, which establishes the payment of the sales and use tax to the Department must be made in two biweekly installments, will never apply to the following merchants:

(I) Merchants with a Payment Agreement under a Department program, where it is established that they must deposit the sales tax in weekly installments.

(II) Mail order sales merchants according to the definition in Section 4020.08(d) of the Code, when the only contact of the merchant with Puerto Rico is that the buyer of the taxable items is a resident or person engaged in industry or business in Puerto Rico. To be exempt from the biweekly sales tax deposit, the mail order sales merchant must not have any business location in Puerto Rico. This includes that the Merchant cannot be part of a group of entities that are actively participating in business operations in Puerto Rico and with locations in Puerto Rico, including a controlled group of corporations as defined in Section 1010.04 of the Code or a group of related entities or persons as defined in Section 1010.05 of the Code.

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

(i) Example 1 (paragraph (a)(1)(i)): Merchant "F" uses a shipping company to import taxable items for resale worth \$129,000. "F" is not a bonded importer as defined in Section 4042.03(b)(3) of the Code. The use tax for imported taxable items is \$13,545, which will have to be paid before taking possession of the property.

(ii) Example 2 (paragraph (a)(1)(ii)(A)(I)): The same facts in Example 1, except that

"F" is a bonded importer as defined in Section 4042.03(b)(3) of the Code. The amount of the bond at the time of importing taxable items for resale, following adjustments for increases and reductions authorized by Section 4042.03(b) of the Code, is \$20,000. The use tax for taxable items imported of \$13,545. Since the use tax that "F" has to pay on imported taxable items (\$13,545) is covered by the amount of the bond posted (\$20,000), "F" will be subject to the payment of the use tax on or before the tenth (10th) day of the month following the date the goods are introduced. In this case "F", must file the Import Declaration with charge to the bond at the time of importing the goods, and file the Tax on Imports Monthly Return with the payment of the tax on or before the (10th) day of the month following the month.

(iii) Example 3 (paragraph (a)(1)(ii)(A)(I)): The same facts in Example 1, except that "F" is a trader entrenched as defined in Section 4042.03(b)(3) of the Code. The amount of the bond at the time of importing taxable items for resale, following adjustments for increases and reductions authorized by Section 4042.03(b) of the Code is \$5,000. The use tax for imported taxable item is \$13,545. Since the use tax that "F" has to pay on imported taxable items (\$13,545) is not covered by the amount of the bond posted (\$5,000), "F" is not considered a bonded importer so will be required to pay the use tax in full before taking possession of the goods imported.

(iv) Example 4 (paragraph (a)(1)(ii)(A)(III)): The same facts in Example 1, except that "F" used the Federal Postal Service to import taxable items. Since "F" used the Federal Postal Service to import taxable items, it will be subject to the payment of the use tax on or before the tenth (10th) day of the month following the date the goods were introduced.

(v) Example 5 - Company "C" is headquartered in the city of Atlanta, Georgia. Company "C" has no products stored in Puerto Rico, no place of business, and no employees in Puerto Rico. Company "C" makes all of its sales to users in Puerto Rico only from its own website (CompanyC.com) and sends them to buyers with a Puerto Rico address by mail or private mail. Company C closes its annual accounting period on a calendar year basis. On the year ended December 31, 2021, the Company achieved sales of more than two million (\$2,000,000) dollars per month. However, merchant C will not be required to deposit the SUT in biweekly installments as established in Section 4042.03(a)(2)(A)(i) of the Code. Company C is a mail order sales merchant, as said term is defined in Section 4020.08(d) of the Code, whose only contact with Puerto Rico is that the buyers of taxable items are residents or persons

engaged in the industry or business in Puerto Rico with a Puerto Rico address; or because following Article 4020.03-1 of this Regulation, entitled Rules for determining the source of income generated by the sale of taxable items, it is determined that the source of income generated by the sale of taxable items in Puerto Rico. Therefore, the obligation to deposit the sales tax in biweekly installments never apply and will continue to deposit the sales tax on or before the twentieth (20th) day of the month following that in which the sale of the taxable item arises.

(b) Extension for payment of use tax on items introduced by merchants after July 31, 2014.

(1) The Secretary may extend the time set out in Subtitle D of the Code for the payment of the tax on taxable items introduced to Puerto Rico by a bonded importer and authorize the importer to take possession of them, before making payment of the tax, taking into account the volume or frequency of imports, as well as its history or projection in the payment of the use tax; providing that the authorization to remove taxable items introduced into Puerto Rico without prior payment of the use tax in the case of a bonded importer will depend on whether the amount of the bond available to that merchant at the time of the introduction of that property is sufficient to guarantee payment of the entire applicable use tax.

(2) Amount of The Bond Available to Take Possession of Taxable Items Introduced to Puerto Rico. The bond provided by a bonded importer will include an amount to guarantee payment of the corresponding use tax and another amount, equivalent to twenty-five (25) percent of the above amount, which will be available to guarantee payment of any surcharges, interest or administrative fines imposed on that trader. The Bonded Importer may never use the amount of the available bond to guarantee the payment of surcharges, interest or administrative fines to take possession of the taxable items introduced to Puerto Rico. The share of the bond available for taking possession of taxable item introduced to Puerto Rico will increase and be reduced as follows:

(i) increases. this portion of the bond will increase by:

(A) the amount of the original bond available for taking possession of taxable item introduced to Puerto Rico;

(B) any amendment to the bond to increase that portion; and

(C) any use tax payments made with the Import Declaration and the Tax on Imports Monthly Return; and

(ii) Reductions. this portion of the bond will be reduced by:

(A) the amount of the use tax corresponding to any Import Declaration for which the use tax was not paid; and

(B) any amendment to the bond to reduce that portion.

(3) Bonded Importer. For the purposes of this section a bonded importer is any registered merchant who:

(i) request in writing on the form and in compliance with the requirements provided by the Secretary and

(ii) to post a bond to satisfaction of the Secretary, as established by the Secretary, to guarantee the payment of the full applicable use tax and any surcharges, interest, penalties or administrative fines imposed to the merchant for not paying them within the time prescribed in Subtitle D and DDD of the Code. Such bond must be provided to the Secretary by cash deposit, letter of credit or through bond issued by a company duly authorized in accordance with the laws of Puerto Rico to provide bonds.

(c) If the payment due date as established in this Article, except in the event that payment is required before taking possession of the Article, follows on a Saturday, Sunday, or federal or state holiday, payment will be accepted if it is made on the next business day.

Article 4060.01-1

**Clause (vi) of subsection (2) of paragraph (h) of Section 4060.01-1 is hereby amended to read as follows:**

"Article 4060.01-1.- Merchants' Registry

(a)...

(b)...

...

(h) Issuance of the Merchants' Registration Certificate.- The Secretary shall issue a Merchants' Registration Certificate for each registered business location. The certificate will be sent electronically to the merchant through the system established by the Department for such purposes. Said certificate will indicate whether or not the merchant will be obliged to withhold the SUT; that is, if you are a "withholding agent" or "non-withholding agent".

(1) ...

(2) ...

(i) ...

...

(vi) Any person engaged in the business of mail order sales of taxable items as defined in paragraph (a) of Article 4020.08-1, whose only contact with Puerto Rico is that the buyer is a resident or person engaged in trade or business in Puerto Rico. and that does not comply with any of the substantial nexus rules established in clause (vi) of subsection (1) of paragraph (d) of Article 4010.01(h)-1 of this Regulation;

(vii) ...

...

Article 6080.14(a)(2)-1

**Article 6080.14(a)(2)-1 is amended to read as follows:**

“Article 6080.14(a)(2)-1.- Collection of the Municipal Tax by the Secretary

(a) The Secretary is authorized to collect and charge the tax of one (1) percent on the use of taxable items imported from abroad, in accordance with Section 6080.14 of the Code. Once the Secretary has determined the amount that belongs to each municipality, according to the information provided by the merchant in the Import Declaration in accordance with Article 4041.02-1 of this Regulation, the Department will send or transfer to the Municipal Financing Corporation (“COFIM”), or to a Trustee appointed by COFIM, as established in Articles 7.300 to 7.305 of Act No. 107 of 2020, as amended (“Puerto Rico Municipal Code”), on or before the last day of the second month following the month for which the deposit is made, who, in turn, will remit and/or deposit it monthly to all seventy-eight (78) municipalities, according to the information notified by the person responsible for the payment of the tax at the time of submitting the payment. Together with the remittance or deposit for this concept, the Secretary will send to COFIM, who in turn will inform each municipality, a report that includes the details of the income of the use tax on imports for the corresponding period, segregated by municipality. Similarly, the Secretary will issue said report on the website of the Department. No municipality, autonomous or not, of the Government of Puerto Rico, may collect the one (1) percent tax on the use of a taxable item imposed by said municipality pursuant to Section 6080.14 of the Code.

(b) Regarding the one (1) percent tax on Mail Order Sales of taxable items from Merchants pursuant to Section 4020.08 of the Code that do not have a commercial location in Puerto Rico collected by the Department, the Secretary will determine the proportion that

corresponds to each and every one of the seventy-eight (78) municipalities using the latest financial data available for each municipality.

(1) The Department will determine the percentage that corresponds to each municipality of the Mail Order Sales, using as a basis the total gross collections corresponding to the Sales and Use Tax Income of each of these municipalities, as can be seen from the last audited financial report published on the FAC page, <https://facdissem.census.gov/>; this in accordance with Circular No. A-133 of the Office of Management and Budget (OMB), revised on June 27, 2003.

(2) For these purposes, for each fiscal year, the Department will determine the percentage of participation that will correspond to each Municipality for this concept, using the latest audited financial report published on the FAC page, <https://facdissem.census.gov/>, as of January 15 of each calendar year. Sales sent by mail will be attributed (pro rata) and the corresponding distribution will be made for each Municipality based on the determined percentage of participation—using as a basis the total gross collections corresponding to the Sales and Use Tax Revenues of each Municipality, according to the latest audited financial report published on the FAC website—for the corresponding fiscal year. The Secretary will issue an informative bulletin, no later than March 15 of each year, informing the percentage of participation corresponding to each municipality of sales dispatched by mail that will apply for the next fiscal year.

(3) Once the Secretary has determined the amount of Municipal SUT on sales dispatched by mail corresponding to each municipality, he will submit to the COFIM, who in turn will inform each municipality, a relationship or report containing the distribution of these funds and will print said relationship or report on the website of the Department. Furthermore, it will transfer said amounts to the COFIM or to a Trustee appointed by the COFIM, who, in turn, will remit and/or deposit it monthly to each municipality, according to the information provided by the Secretary and in compliance with the provisions under the Articles 7.300 to 7.305 of the Municipal Code of Puerto Rico.

(4) If there is any amount of Municipal SUT from previous years that has not been distributed corresponding to the COFIM or to a Trustee appointed by the COFIM, the distribution will be made as established on this article. The Secretary must have deposited the corresponding

amounts to COFIM or to a Trustee appointed by COFIM on or before the last day of the second month following the month for which the deposit is made.

(5) The distributions and sharing percentages established here will be carried out regardless of whether or not the Municipality is a resigning Municipality from COFIM.

SEPARABILITY: If any Article, section, paragraph, subparagraph, clause, subclause, item, phrase, sentence or part of the Code or this Regulation is declared null, ineffective or unconstitutional by a court of competent jurisdiction, the judgment given for that purpose shall not affect, prejudice, or invalidate, the remainder of the Code or this Regulation, being its effects limited to the Article, Section, paragraph, subparagraph, clause, subclause, item, phrase, sentence or part of the Code or this Regulation declared null, ineffective or unconstitutional.

EFFECTIVENESS: This Regulation shall become in effect thirty (30) days after its filing with the Puerto Rico State Department, in accordance with the provisions of Law 38-2017, as amended, referred to as the "Uniform Administrative Procedure Act of the Government of Puerto Rico". Accordingly, this Regulation will begin to govern immediately after its submission.

Approved in San Juan, Puerto Rico, as of \_\_\_ December 2023.

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Hon. Francisco Parés Alicea

Secretary of the Treasury