

September 17, 2007

INFORMATIVE BULLETIN FROM INTERNAL REVENUE NO. 07-20

ATTENTION: MERCHANTS WITH A COMMERCIAL ESTABLISHMENT IN A NON-PARTICIPATING MUNICIPALITY, MERCHANTS WITH A COMMERCIAL ESTABLISHMENT IN A PARTICIPATING MUNICIPALITY AND MERCHANTS THAT DO NOT HAVE A COMMERCIAL ESTABLISHMENT IN PUERTO RICO

SUBJECT: COLLECTION AND PAYMENT OF THE SALES AND USE TAX

The Treasury Department (Department) has received numerous queries regarding a merchant's obligation to collect and pay the sales and use tax (SUT) when said merchant, in accordance with the dispositions of Section 2301(j) of the Puerto Rico Internal Revenue Code of 1994, as amended (Code), is considered to be in the business of selling taxable items in Puerto Rico (i.e., merchant that has created a nexus with Puerto Rico), but lacks a presence that can be interpreted as a commercial activity in any municipality. This Informative Bulletin summarizes the dispositions related to the collection and payment of the SUT by merchants who have a commercial establishment in a municipality that has entered into a tax collection agreement with the Department (Participating Municipality) and in a Non-Participating Municipality. In addition, this Informative Bulletin provides information about the dispositions related to the obligation to collect and pay the SUT by merchants who do not have a commercial establishment in Puerto Rico.

I. Imposition and Collection of the Sales and Use Tax Established by Sections 2401 and 6189 of the Code

As established by Article 2401-2(b) of Regulation No. 7249 of November 16, 2006, as amended (Regulation), Section 2401 of the Code indicates that a sales tax of five point five (5.5) percent of the sales price of taxable items in Puerto Rico shall be levied, collected and paid. Additionally, Section 6189 of the Code indicates that a fixed tax rate of one point five (1.5) percent shall be imposed, collected and paid, in a uniform and obligatory manner, in accordance with the same base, exemptions

and limitations included in Subtitle BB of the Code, without the need of approving a municipal ordinance to such effect. Therefore, all merchants shall impose, collect and pay a total combined sales tax of seven (7) percent of the sales price of taxable items in Puerto Rico.

II. Administration of the Sales and Use Tax Established by Section 6189 of the Code

The administration of the one point five (1.5) percent tax rate established by Section 6189 of the Code, shall be exclusive and obligatory, based on a point five (0.5) percent by the Secretary of the Treasury (Secretary) and:

1. as a general rule, the remainder of one (1.0) percent by the municipalities, except
2. in the case of Participating Municipalities, in which the Secretary will also administer the remainder of one (1.0) percent, and will therefore administer the total tax of one point five (1.5) percent established by Section 6189 of the Code.

III. Payment of the Sales and Use Tax

As established by Section 2602 of the Code, all merchants have the obligation to file the SUT Monthly Return (Monthly Return), no later than the twentieth (20th) day of the calendar month following the month during which the tax was collected.

A. Monthly Returns for Commercial Establishments Located in Non-Participating Municipalities

Every merchant who has the obligation to collect and pay the SUT in accordance with Sections 2404, 2405 y 2604 of the Code, shall be responsible for the collection and payment to the Secretary of both the tax of five point five (5.5) percent and the equivalent of point five (0.5) percent of the one point five (1.5) percent tax rate indicated in Section 6189 of the Code, for a total payment of six (6) percent.

As established by the Regulation, in order to comply with the requirements of Section 2706(f) of the Code, the Secretary will allocate to the corresponding municipality, the collection of point five (0.5) percent. Therefore, all merchants will have the obligation to report the remainder of the tax of one point five (1.5) percent indicated in Section 6189 of the Code (one (1) percent of the tax of one point five (1.5) percent) to the same municipality in which the commercial

establishment for which a Monthly Return is being filed with a payment of six (6) percent, is located.

To that effect, all merchants who have a commercial establishment in a Non-Participating Municipality shall file the Monthly Return in the following manner:

1. Electronic Means

In the "Choose Municipality" section, said merchants will select the municipality in which the commercial establishment for which they are filing the Monthly Return is located, and will remit the combined tax of six (6) percent to the Department.

2. Paper Form

Said merchants will use line 16 (SUT 6%) of the Monthly Return to calculate the tax due, and will remit the payment of the combined tax of six (6) percent to the Department.

3. Municipal Filing and Payment

They will use those methods established by the Non-Participating Municipality in which the commercial establishment for which they are filing the Monthly Return is located, and will remit the payment of the remainder of the tax of one point five (1.5) percent indicated in Section 6189 of the Code (one (1) percent of the tax of one point five (1.5) percent) to said municipality.

B. Monthly Returns for Commercial Establishments Located in Participating Municipalities

Every merchant who has the obligation to collect and pay the SUT in accordance with Sections 2404, 2405 y 2604 of the Code and has a commercial establishment in a Participating Municipality, shall be responsible for the collection and payment to the Secretary of both the combined tax of six (6) percent and the remainder of one (1) percent of the tax indicated in Section 6189 of the Code, for a total payment of seven (7) percent.

As established by the Regulation, in order to comply with the requirements of Section 2706(f) of the Code, the Secretary will allocate to the corresponding municipality, the collection of point five (0.5) percent. Therefore, by reporting and paying a total of seven (7) percent in the case of commercial establishments

located in Participating Municipalities, the Secretary will allocate the remainder of the tax of one point five (1.5) percent indicated in Section 6189 of the Code (one (1.0) percent of the tax of one point five (1.5) percent) to the same municipality in which the commercial establishment for which a Monthly Return is being filed, is located.

To that effect, all merchants who have a commercial establishment in a Participating Municipality shall file the Monthly Return in the following manner:

1. Electronic Means

In the "Choose Municipality" section, said merchants will select the Participating Municipality in which the commercial establishment for which they are filing the Monthly Return is located, and will remit the total tax of seven (7) percent directly to the Department.

2. Paper Form

Said merchants will use lines 16 (SUT 6%) and 17 (SUT 1% Participating Municipalities) of the Monthly Return to calculate the tax due, and will remit the total payment directly to the Department.

C. Monthly Returns for Merchants Who Do Not Have a Commercial Establishment in Puerto Rico

The above mentioned obligations of collection and payment of the SUT will be applicable to all merchants who for any reason have created a nexus with Puerto Rico, including but not limited to, nexus due to: (i) the execution of direct marketing or purchases by mail, radio, distribution of unsolicited catalogs, through computers, television or any other electronic means, or advertisements in magazines or newspapers, or other means; (ii) the existence of an agreement or reciprocity with their origin jurisdiction; (iii) the merchant's acceptance, expressly or implicitly, of the tax levied by Subtitle BB of the Code; and (iv) the creation of a sufficient connection or relationship with Puerto Rico or its residents of some sort with the purpose or objective of creating a sufficient nexus with Puerto Rico to impose on the merchant the responsibility of collecting the SUT.

The same rules that apply to a merchant who has a commercial establishment located in a Participating Municipality, will apply to merchants who have the obligation to collect and pay the SUT in accordance with Sections 2404, 2405 and 2604 of the Code, but do not have a commercial establishment in Puerto

Rico. Therefore, said merchants have the responsibility of collecting and paying to the Secretary both the total combined tax of six (6) percent and one (1) percent of the tax indicated in Section 6189 of the Code, for a total payment of seven (7) percent.

To that effect, all merchants who have created a nexus with Puerto Rico, but do not have a commercial establishment in any municipality, shall file the Monthly Return in the following manner:

1. Electronic Means

In the "Choose Municipality" section, said merchants will select the "999 - Others" option, and will remit the total tax of seven (7) percent directly to the Department.

2. Paper Form

Said merchants will use lines 16 (SUT 6%) and 17 (SUT 1% Participating Municipalities) of the Monthly Return to calculate the tax due, and will remit the total payment directly to the Department.

For additional information regarding the dispositions of this Informative Bulletin, please call toll free (1) (888) 721-5551.

Cordially,

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