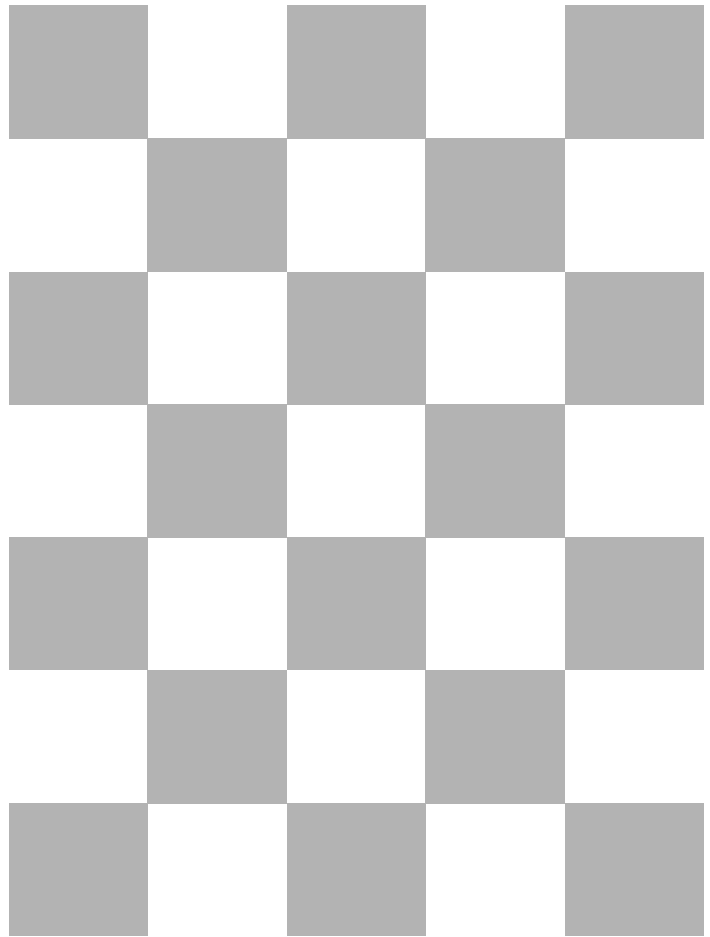


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**GENERAL
CONCEPTS OF THE
SALES AND USE
TAX**



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GENERAL CONCEPTS OF THE SALES AND USE TAX

The Sales and Use Tax (SUT), which was included in the Puerto Rico Internal Revenue Code of 1994, as amended, by Act No. 114 of July 4, 2006, takes effect on November 15, 2006. Both merchants and consumers need to become familiar with this new tax.

This guide, prepared by the Department of the Treasury (Department), summarizes the general concepts related to the SUT and explains the application of said tax.

GENERAL PROVISIONS

1. What is the rate of the state sales tax?

The rate of the state sales tax is 5.5%.

2. What is the rate of the state use tax?

The rate of the state use tax is 5.5%.

3. Which transactions will be subject to the sales tax?

As a general rule, the sales tax shall be applied, collected, and paid on all transactions of taxable items in Puerto Rico. The sales tax shall be applied to the total sales price of each transaction.

4. Which transactions will be subject to the use tax?

As a general rule, a use tax shall be applied, collected, and paid for the use, storage, or consumption of taxable items in Puerto Rico. The use tax shall be applied to the total purchase price of each transaction.

5. What is the difference between the sales tax and the use tax?

The sales tax applies to every sales transaction of a taxable item in Puerto Rico, and the use tax applies to the use, storage, or consumption of a taxable item in Puerto Rico.

Therefore, the use tax shall apply to purchases made by individuals and merchants to merchants located outside of Puerto Rico, for example, purchases made through the Internet, by mail, or by catalog. In this case, the purchaser shall be responsible for paying the use tax directly to the Department.

Example:

Mrs. Rivera purchased several books and music records through the Internet. Mrs. Rivera shall be responsible for paying to the Department the use tax for the books and music records introduced to Puerto Rico.

Also, the use tax shall apply to those items that a merchant has purchased without paying the sales tax, with an Exemption Certificate and a Certificate for Exempt Purchases, and has later used for non-exempt purposes in Puerto Rico (for example, for personal or business use, and not for resale). In this case, the merchant shall be responsible for paying the use tax directly to the Department.

Example:

Mr. Ruiz owns a toy store. The week before Christmas, Mr. Ruiz removes several toys from his inventory to give them to his children as gifts. Since he acquired said toys for resale, exempt from payment of the SUT, and he is now removing them from the store's inventory for personal use, this removal shall be considered use. Mr. Ruiz shall pay to the Department the use tax applicable to the toys that were removed from inventory.

6. What does the term "use" include?

The term "use" includes the exercise of any right or power over a taxable item.

Example:

A company is engaged in the business of distributing computers. It removes a computer from its inventory of merchandise for resale to use it in its Accounting Department. Said removal shall be considered business use by the company, and it shall pay the use tax for the cost of the computer removed from inventory.

The term "use" does not include:

- when the taxable item is later used for resale;
- the use of taxable items that constitute normal travel clothing and equipment used by tourists or visitors who arrive in Puerto Rico;
- the use of taxable items with an aggregate value that does not exceed \$500 introduced by residents of Puerto Rico who arrive in Puerto Rico from abroad;
- the use of taxable items introduced temporarily to Puerto Rico that are directly related to the production of films, construction, trade shows,

seminars, conventions, or other purposes, and which are re-exported from Puerto Rico by the person who imported them;

- the involuntary transformation of taxable items, including theft and destruction due to fires, floods, or other natural causes; and
- the materials, containers, labels, sacks, bags, or similar items that may accompany an item sold to a purchaser, without which the delivery of the product would be impossible due to the nature of the contents, and which are used only once for the packaging of taxable items or for the convenience of the purchaser.

7. What are taxable items?

Taxable items are: tangible personal property (items or goods), taxable services, admission fees, and bundled transactions.

The term "taxable item" excludes, among other things:

- bets, raffles, bingos, or any type of legally authorized private or public lottery, such as "Lotería Tradicional," "Lotería Electrónica," and all other lotteries managed or authorized by the Commonwealth of Puerto Rico;
- the payment of maintenance fees made by residents to a residents association;
- the payment of fees made by individuals to a professional association;
- the stamps issued by professional associations; and
- the stamps issued by the Commonwealth of Puerto Rico and the Federal Government.

8. What is tangible personal property?

For the purposes of the SUT, the term tangible personal property refers to items or personal property that can be seen, weighed, measured or touched, or in any other way perceptible to the senses, or that is susceptible to appropriation, regardless of the means of delivery or transfer.

Example:

Professor "C" acquired several books, including an audio book, in bookstore "D." "C" also downloaded a book from a web page. Both the books acquired by "C" at the bookstore and the book downloaded from the web page shall be considered tangible personal property.

The term "tangible personal property" includes, but is not limited to:

- furniture;
- clothing;
- toys;
- computer software;
- prepaid calling cards;
- prepaid cellular phones; and
- motorcycles.

The term "tangible personal property" excludes the following:

- money or the equivalent of money, stocks, bonds, notes, bills, mortgages, insurances, securities, or other obligations;
- automobiles, truck tractors, buses, and trucks;
- intangibles;
- gasoline, aviation fuel, gas oil or diesel oil, crude oil, partially-processed and finished products derived from oil, and any other hydrocarbon mixture;
- the electricity generated by the Electric Power Authority or any other electricity-generating entity; and
- the water supplied by the Aqueduct and Sewer Authority or any other entity authorized by it to supply water.

9. What are taxable services?

The term "taxable services" includes any service rendered to any person, except for the following:

- services rendered to a person engaged in business;
- services provided by the Government of the Commonwealth of Puerto Rico and the Federal Government;
- educational services (including registration costs);
- interest or other charges for the use of money;
- charges for services provided by financial institutions;
- insurance commissions and services;
- health or medical hospital services;

- services rendered by persons whose annual volume of business does not exceed \$50,000; and
- designated professional services.

10. What is an admission fee?

The term "admission fees" includes the amount paid for:

- admission of one person or vehicle with persons inside it into any place of entertainment, sports, or recreation;
- the privilege of entering or remaining in any place of entertainment, sports, or recreation, including, but without being limited to movie theaters, theaters, shows, exhibitions, games, races, or any place where the fee is charged through the sale of tickets, entrance fees, charges for seats, charges for exclusive area, charges for season tickets, charges for participation, or other charges;
- the receipt of any thing of a measured value in the admission or entrance, or duration of stay or accommodation in any location of an exhibition, entertainment, sport, or recreation; and
- the fees and charges paid to private clubs and membership clubs that provide recreation facilities, including, but without being limited to golf, tennis, swimming, sailing, athletic canoeing, exercise and physical exercise facilities, except those that do not operate for profit, and the exercise facilities property of, or operated by, any hospital.

The term "admission fees" excludes the following:

- the amount of money paid to admit one person or vehicle to the collective transportation systems provided by the Commonwealth of Puerto Rico, such as the Metropolitan Bus Authority, the Ports Authority, the Department of Transportation and Public Works, or by their operators or subcontractors, including persons certified by the Commonwealth of Puerto Rico, its agencies or instrumentalities, to offer such services. This includes the services that may be considered auxiliary to the services of the Metropolitan Bus Authority, such as the services of taxis, shopping cars, or public carriers duly authorized by the Commonwealth of Puerto Rico;
- the fees charged by the ticket office or for ticket services. The ticket service fees that are not included in the admission fees stated on an admission ticket, shall be identified separately in the ticket as taxable services; and
- the portion of the entrance price of an admission fee which may be considered a donation or charitable gift.

11. What is a bundled transaction?

In general terms, a bundled transaction is the retail sale of two or more tangible personal properties or services, in which the tangible personal properties or services are different and identifiable, and are sold at a total, non-itemized price.

12. What is the sales price of a taxable item?

The sales price is the total amount of the consideration paid in cash, credit, property, or service in a sale of taxable items.

In the case that the consideration is paid with tangible personal property, the sales price shall be the market value of the property used as payment. In the case that the consideration is paid with services, the sales price shall be the price that the purchaser merchant would charge for his or her services in the ordinary course of business.

The sales price includes the following:

- the cost of the property sold, including excise taxes and taxes levied by the Code on such property;
- the cost of materials, labor and service, interest, losses, transportation, taxes, and any other cost incurred by the seller;
- the charges billed by the seller for any service needed to complete the sale, other than delivery charges;
- delivery charges attributed to the taxable tangible personal property;
- installation charges;
- the value of exempt personal property given to the purchaser when taxable and exempt tangible personal property have been sold in a bundled transaction; and
- gratuities and other charges imposed by a merchant as part of the sales price of the taxable item. These shall only be included in the sales price when they are obligatory.

Example:

A group of four persons had lunch at a restaurant and included a voluntary gratuity of 15% in the bill. Said voluntary gratuity shall not be included in the sales price.

The sales price shall **not** include the following:

- discounts allowed by the seller and used by the purchaser in a sale, including cash discounts, coupons, rebates, or any other mechanism that reduces the sales price, but through which the seller does not receive a rebate from a third party;
- interest and finance charges, if they appear separately in the invoice or any similar document given to the purchaser;
- any tax or charge legally imposed on the consumer, if the amount appears separately in the invoice or any similar document given to the purchaser;
- the value assigned to goods received by the merchant ("trade-in") as credit or partial payment of the sold taxable item's sales price; and
- every service that is part of the sale, such as warranty service and extended warranty service, insofar as they are considered insurance under Subtitle BB of the Code.

13.If I acquire an item with a discount coupon, will such discount be considered part of the sales price for calculating the SUT?

The amount established in a discount coupon shall not be considered part of the sales price when calculating the SUT, provided that the seller does not receive a rebate of said discount from a third person (for example, the manufacturer).

Example:

Juan del Barrio acquires a computer at the "Computer Store" ("CS") whose regular price is \$900, but Juan del Barrio presents to "CS" a coupon for \$100 at the moment of purchasing the computer. "CS" will not receive a refund from said discount from a third person. The sales receipt for this transaction shall reflect a sales price of \$800 and a SUT of \$44.

However, if "CS" receives a \$100 refund from the computer's manufacturer, the sales receipt for the transaction shall reflect a sales price of \$900 and a SUT of \$49.50. The sales price shall be satisfied with the purchaser's presentation of the \$100 coupon and \$849.50 in cash or other payment method.

14. If a purchaser gives the seller used equipment in “trade in” when purchasing new equipment, how will the sales price used to calculate the SUT be determined?

In this case, the sales price shall not include the value assigned to the used equipment received in “trade in.” If the seller later sells the equipment received in “trade in,” he or she shall calculate the SUT in accordance with the sales price of said equipment.

Example:

A purchaser gives a seller a used computer as a "trade-in" for the purchase of a new computer priced at \$1,000. The seller assigns a value of \$200 to the computer received in "trade-in." The sales receipt for this transaction shall reflect a sales price of \$800 and a SUT of \$44. If the seller subsequently sells the computer received in "trade-in" for \$250, the sales price of said computer, for purposes of the SUT, shall be \$250.

15. In the case of items acquired at special sales, what will be the sales price used to calculate the SUT?

When a person acquires items at a special sale, the sales price shall be the price paid for the item.

Example:

A person goes to a department store to purchase a shirt. The regular price is \$20 and the special price is \$15. In this case, the seller shall calculate the SUT using the special price of \$15.

16. What is the purchase price of a taxable item?

The purchase price of a taxable item shall mean the same as the sales price.

SERVICES

17. What services are excluded from paying the SUT?

As mentioned above, the following services shall not be subject to the SUT:

- services rendered to a person engaged in business;
- services provided by the Government of the Commonwealth of Puerto Rico and the Federal Government;
- educational services (including registration costs);
- interest or other charges for the use of money;

- charges for services provided by financial institutions;
- insurance commissions and services;
- health or medical hospital services;
- services rendered by persons whose annual volume of business does not exceed \$50,000; and
- designated professional services.

18. What are designated professional services?

Designated professional services are all the services rendered by the following professionals, when such professionals are regulated by Examining Boards assigned to the Puerto Rico State Department or by the Supreme Court:

- agronomists;
- architects and landscape architects;
- certified public accountants;
- realtors, sales representatives, and real estate companies;
- professional draftspersons;
- professional real estate evaluators;
- geologists;
- engineers and surveyors; and
- attorneys.

19. What educational services will be excluded from the SUT?

The following educational services, including registration costs, shall not be subject to the SUT:

- courses offered by entities regulated by the General Education Council or the Council on Higher Education;
- courses or tutoring offered by teachers who are certified by the Department of Education of Puerto Rico to teach the subject on which the tutoring is given; and
- continued education courses offered by professional colleges or associations.

However, the materials used to provide such services shall not be considered educational services if they appear separately in the invoice or similar document given to the purchaser.

20. Will services rendered by one business to another business be subject to the SUT?

The services rendered by one business to another business shall not be subject to the SUT. The following requirements shall be fulfilled in order to claim this exclusion:

- in general, both the seller and the purchaser shall be registered in the Department's Merchants' Registry;
- payments for such services are regular and necessary expenses paid or incurred by the business, or for the production of income of the purchaser merchant;
- the seller who is exempt from collecting the SUT shall document each transaction by obtaining the Certificate for Exempt Purchases (Form AS 2916.1) filled out and signed by the purchaser; and
- the seller shall keep said Certificate in his or her files for a period of 6 years. If the service is rendered on a continuous basis, it will not be necessary to request the Certificate for Exempt Purchases with each transaction.

Collection of the SUT

21. Who is responsible for paying the SUT?

Any person who purchases, uses, consumes, or stores a taxable item in Puerto Rico is responsible for paying the SUT.

However, when a transaction is subject to the SUT and the merchant has the obligation to collect the sales tax as withholding agent of the Department, the merchant shall be mainly responsible for paying the tax.

22. How will the merchant report the SUT collected from the purchaser?

Every merchant who is responsible for collecting the SUT shall state it separately in any sales receipt, invoice, bill, or other evidence of sale.

23. Will there be a penalty for merchants who do not retain the SUT?

Yes. Merchants who do not retain the SUT shall be subject to a penalty of \$20,000 for every infraction.

24. If a merchant wrongfully charges me for the SUT, to whom shall I direct my claim?

If a merchant wrongfully collects the SUT, the purchaser shall make the corresponding claim to the merchant, provided that the payment was made to the merchant. The merchant is responsible for returning the wrongfully collected amount to the purchaser.

25. In the case of the purchase of gift certificates, who will be responsible for paying the sales tax?

The purchase of gift certificates shall not be subject to the SUT because a gift certificate is considered a money equivalent. When the gift certificate holder carries out a purchase, he or she shall have to pay the SUT over the sales price of every transaction made with the gift certificate.

26. I'm a veterinarian; will I have to collect the SUT for my services?

No. Veterinary services are considered health or medical hospital services, and are not subject to the SUT.

27. When I visit the doctor at his or her office, will I be charged the SUT for the doctor's services?

No. A visit to the doctor is considered a health or medical hospital service, and shall not be subject to the SUT.

28. Will a parking service business have to collect the SUT from its customers?

A parking business shall collect the SUT if its annual volume of business exceeds \$50,000.

However, parking spaces that are acquired as part of a real property lease or rental contract for commercial purposes, and which have no hourly rate, shall not be subject to the SUT.

29. I own a horse racing agency; do I have to collect the SUT when I sell horse race bets (*papeletas*)?

Bets are not considered taxable items for SUT purposes. Therefore, horse race bets (*papeletas*) shall not be subject to the SUT.

30. I operate a cafeteria at a private school. The school contracts me to provide said services. I do not charge for the foods served to the students, since the registration fees include them. Do I have to charge the SUT to the school for my services?

You shall not charge the SUT for the cafeteria services provided to the school, because this is a transaction of services rendered from business to business. This exclusion of services rendered from business to business requires that both the seller merchant and the purchaser merchant be registered in the Merchants' Registry. To claim this exclusion from paying the SUT, the school shall give you the Certificate for Exempt Purchases (Form AS 2916.1).

31. Citizen "H" took his automobile to an auto body shop to repair the driver-side door, which had been damaged in an accident. The body shop worker used materials, paint, and provided labor to repair the door, then billed "H" for the work done. Is the auto body shop service subject to the SUT?

The repair of an automobile is considered a taxable service, so the repair shop worker shall charge "H" the SUT. The repair shop worker shall itemize in the invoice the materials, paint, and labor, and shall only charge the SUT over the part of the invoice that refers to the price of the labor.

However, if the repair shop worker's annual volume of business does not exceed \$50,000, then he will not have to charge the SUT for the auto body shop services.

32. I'm a sales representative for a multilevel business; do I need to register in the Merchants' Registry and remit the SUT to the Department?

A multilevel business may request from the Secretary of the Treasury (Secretary) that the independent distributors who are part of its sales network not be considered merchants for the purposes of the Merchants' Registry and the remittance of the SUT to the Department.

If such request is granted, the obligation to remit the SUT shall fall on the multilevel business and not on its independent distributors. The multilevel business shall provide its independent distributors with a letter or certification identifying them as independent distributors of the multilevel business authorized to collect the SUT from the final consumer.

33. I purchased an airline ticket and the travel agency charged me a service charge; do I have to pay the SUT?

Air transportation tickets for passengers are not subject to the SUT. However, the service charge is subject to the SUT, provided that the annual volume of business of the travel agency exceeds \$50,000.

34. I'm an artisan participating in the Industrial Development Company's Artisanry Development Program; do I have to charge the SUT when I sell my works? Am I entitled to an Exemption Certificate to purchase materials and any other raw materials?

As an artisan participating in the Industrial Development Company's Artisanry Development Program, you will not have the obligation to collect and remit to the Department the SUT for the sale of the craftwork that you create. However, you shall be subject to the SUT in the purchase of materials and the equipment and machinery needed for your artisan activity.

35. I am engaged in the business of construction; will I have to pay the SUT when I acquire construction materials?

A merchant shall be considered a reseller when the tangible personal property purchased is sold as tangible personal property. Therefore, a contractor who acquires materials to build a residence shall not be considered a reseller and will have to pay the SUT for the purchase of construction materials.

36. I own a vending machine; how will I collect the SUT?

You may collect the SUT together with the sales price of the tangible personal property sold in the vending machine. This is a provisional authorization and shall be effective from November 15, 2006 to December 31, 2006.

Therefore, all vending machine operators shall renew their authorizations to collect the SUT together with the sales price no later than January 1st, 2007 by filing and sending an application to such effects to the Secretary, including the information required by the Secretary.

37. I'm going to sell a real property in Puerto Rico. At the moment of the sale, do I need to collect the SUT?

No. The sale of real property shall not be subject to the SUT.

38. I'm a taxi driver; do I have to charge my passengers for the SUT?

No. The services that may be considered auxiliary to the Metropolitan Bus Authority (AMA, in Spanish), such as the services of duly authorized taxis, shopping cars, or common carriers shall be exempt from the SUT.

39. I own a home that is rented to a person who uses it as his main residence; do I have to charge the SUT over the rental rate?

No. The rental rate paid for real property by an individual for his or her main residence shall not be subject to the SUT.

40. I'm a merchant who sells certain items to the government of the Commonwealth of Puerto Rico. When I bill the government of the Commonwealth of Puerto Rico, will I have to charge the SUT?

No. All the items acquired for official use by the agencies and instrumentalities of the Government of the Commonwealth of Puerto Rico shall be exempt from paying the SUT. To claim this exemption, the government agency shall give the Certificate for Exempt Purchases (Form AS 2916.1) to the seller merchant.

41. My retail sales business has a volume of business lower than \$50,000; do I have to collect the SUT?

Merchants who sell tangible personal property at retail shall collect the SUT regardless of their annual volume of business.

42. I own a maintenance services business and I provide services to companies and to individuals; do I have to collect the SUT?

Services rendered by one business to another business shall not be subject to the SUT, provided that they meet the requirements of the exclusion for services rendered from business to business. However, if their annual volume of business exceeds \$50,000, the services rendered to an individual who is not a merchant shall be subject to the SUT.

EXEMPTIONS FROM PAYMENT OF THE SUT

43. What are the exemptions from payment of the SUT?

The application of the SUT shall be subject to the following exemptions:

- exemption for resale;
- exemption for exportation;
- exemption for in-transit taxable items;
- exemption for items for manufacturing;
- exemption for items sold in air or maritime terminal stores to persons leaving Puerto Rico;
- exemption for taxable items acquired by government agencies;
- exemption for taxable items that constitute a change of domicile;
- exemption for admission fees;
- exemption for foods;
- exemption for prescribed medicaments; and
- exemption for real property lease or rental.

44. What is the procedure that a merchant must follow to claim the exemption for resale and the exemption for items for manufacturing?

To be able to opt for the exemption for resale and the exemption for items for manufacturing, the merchant shall apply for an Exemption Certificate using Form AS 2914.1 (Application for Merchants' Registration Certificate and Exemption Certificate). Refer to the Merchants' Registry Guide.

45. What is the Exemption Certificate?

The Exemption Certificate is the document issued by the Secretary to a merchant who is registered in the Merchants' Registry to evidence that the merchant is a reseller of tangible personal property or a manufacturing plant entitled to an exemption.

On every occasion that a merchant makes a first sale to a holder of an Exemption Certificate, the seller merchant shall document the exempt nature of the transaction by reviewing the original copy of the purchaser's Exemption Certificate and keeping a copy of such Certificate.

The seller merchant shall keep the copy of the Exemption Certificate in his or her files for a period of 6 years, from and after the date of the filing of the Sales and Use Tax Monthly Return in which said exempt transaction was reported.

46. What is the Certificate for Exempt Purchases?

The Certificate for Exempt Purchases (Form AS 2916.1) is a form provided by a person who is entitled to purchase taxable items without paying the SUT, to confirm to the merchant from whom the person acquires such items his or her condition as the holder of such certificate.

When a merchant makes sales, including the first sale and all subsequent sales, to a holder of an Exemption Certificate, the seller merchant shall document the exempt nature of each transaction by obtaining the Certificate for Exempt Purchases, filled out and signed by the purchaser.

Also, in the first sale, the seller merchant shall make sure that the data included in the Certificate for Exempt Purchases coincides with the Exemption Certificate and, in subsequent sales, he or she shall make sure that the data included in the Certificate for Exempt Purchases coincides with the original data submitted in the previous transaction.

It's important to emphasize that a seller merchant may request that the Secretary allow him or her to document the exempt nature of the transaction through an alternative method.

The seller merchant shall keep the Certificate for Exempt Purchases or the alternative document in his or her files for a period of 6 years from and after the date of the filing of the Monthly Return in which said exempt transaction was reported. The seller merchant shall keep a filing system that associates the Certificate for Exempt Purchases or the alternative document for each transaction with the invoice, receipt, or other corresponding evidence of sale.

47. I'm a merchant who sells merchandise for exportation; will I collect the SUT in said transaction?

The taxable items that are sold for use or consumption outside of Puerto Rico shall be exempt from payment of the SUT, even when the sale takes place in Puerto Rico.

For these purposes, a taxable item that consists of tangible personal property shall be considered sold for use or consumption outside Puerto Rico when the purchaser of such taxable item takes possession of it outside Puerto Rico.

The purchase of a taxable item that consists of taxable services shall be considered sold for use or consumption outside Puerto Rico when the purchaser of such item receives the benefit of the rendering of such services outside Puerto Rico.

Said taxable items may remain in Puerto Rico for a period of 60 days from and after the date of the sale without losing the right to the exemption.

48. What does the exemption for in-transit taxable items include?

All taxable items introduced to Puerto Rico temporarily, which are directly related to the production of films, constructions, trade shows, conventions, seminars, or for other purposes, and which are re-exported from Puerto Rico by the same person who imported them, shall be exempt from paying the use tax.

The merchant who will introduce such taxable items shall request from the Secretary in writing to be exempted from paying the sales and use tax, and shall accompany such request with the documents required by the Secretary.

49. What items are covered by the exemption for items for manufacturing?

All manufacturing plants shall be exempt from payment of the SUT in the purchase of raw materials, excluding hydraulic cement, and the machinery and equipment used in manufacturing in the elaboration of finished products or products used in the manufacturing of such products.

50. Are the items sold in air or maritime terminal stores exempt from the sales tax?

The taxable items sold in air or maritime terminal stores to persons who are traveling outside the jurisdictional borders of Puerto Rico shall be exempt from the SUT. Any person who is entitled to claim this exemption shall certify to the merchant his or her condition as an exempt person by showing the merchant a document that confirms that the person is leaving Puerto Rico on the day of the purchase, such as his or her boarding pass.

51. Do the government agencies and instrumentalities of the Commonwealth of Puerto Rico have to pay the SUT?

The government agencies and instrumentalities of the Commonwealth of Puerto Rico and the Government of the United States are exempt from payment of the SUT for taxable items acquired for official use.

52. Do persons who move to Puerto Rico to establish their residence here have to pay the use tax for the personal items that constitute a change of domicile?

Any individual who is not a resident of Puerto Rico, or persons in the Armed Forces of the Government of the United States or the Government of the Commonwealth of Puerto Rico who are officially transferred to provide their services in Puerto Rico, who wish to establish or reestablish their residence in Puerto Rico, shall be entitled to introduce, without having to pay the use tax, the used taxable items that reasonably constitute, in effect, a change of domicile.

53. Are the tickets sold for a baseball game sponsored by a university subject to pay the SUT?

No. The admission fees for entertainment, recreation, or sports events that are fully sponsored by public or private elementary schools, intermediate schools, high schools, universities or colleges that provide educational services shall not be subject to the SUT.

This exemption shall be claimed by the entity that will carry out the activity when it requests approval for the tickets. Also, any institution that wishes to claim the exemption shall be registered in the Department's Merchants' Registry. In the case of public educational institutions, since they are not considered merchants, they do not need to be registered in the Merchants' Registry to claim this exemption.

54. Are the foods acquired at a market, supermarket, or any other establishment that sells them, taxable?

As a general rule, foods and food ingredients (foods that are not prepared) shall not be subject to the SUT. However, the following products shall not be considered foods and food ingredients and shall be subject to the SUT, regardless of where they are acquired:

- dietary supplements;
- alcoholic beverages;
- tobacco and products derived from it;
- candies;
- pastry shop items;
- carbonated beverages, and
- prepared foods.

55. What is a prepared food?

To determine whether a food is considered prepared food, at least one of the 3 factors listed below shall be met. Prepared foods are:

- foods sold hot or heated by the seller. The term "hot" means any temperature that is higher than the room temperature of the establishment where the foods are sold;
- two or more food ingredients that are mixed or combined by the seller to be sold as only one item or product, except for foods that are merely cut, repackaged, or pasteurized by the seller, and eggs, fish, beef, poultry, and foods that contain said foods uncooked and require cooking by the consumer, as recommended by the Food and Drug Administration to prevent food-borne diseases; and
- foods sold with eating utensils by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws. A food shall be considered to be sold with eating utensils when the seller normally has utensils available in the establishment for consumers to use.

Examples:

A purchaser acquires a frozen pizza at a fast food establishment. The seller heats the pizza before giving it to the purchaser. Said pizza shall be considered prepared food because it was heated by the seller.

A purchaser acquires a can of spaghetti and meatballs from the canned goods section of a supermarket. Said can was mixed and prepared by a third party, not by the supermarket. Hence, it shall not be considered prepared food.

A purchaser acquires a pound of ham cut in slices and packaged by the meat department of a supermarket. Said pound of ham was only sliced by the seller and shall not be considered prepared food.

A purchaser acquires fruits and vegetables in the supermarket's fruits and vegetables section. Said fruits and vegetables shall not be considered prepared foods merely because the "deli" section of said supermarket has eating utensils available for consumers to use.

A purchaser acquires a coleslaw salad at a fast food establishment that normally has a counter with eating utensils and napkins available for consumers to use. Said salad was not mixed by the seller, and is not served hot. However, it will be considered prepared food because the establishment has eating utensils and napkins available for the consumer

56. Are there any sales tax exemptions for prepared foods?

The following prepared foods shall not be subject to the SUT:

- prepared foods served to patients or residents of any hospital or other installation or facility designed and operated mainly for the care of persons who are sick, elderly, mentally or physically disabled, or who require special care and attention, provided that they are part of a bundled transaction of the sale of health or medical hospital services;
- prepared foods served to students in school cafeterias and those that are part of a bundled transaction of the sale of educational services;
- prepared foods that are served by an all-inclusive hotel, provided that they are part of a bundled transaction subject to the Room Occupancy Tax established by the Puerto Rico Tourism Company.

57. Will all medicaments be exempt from payment of the SUT?

No. Only controlled medicaments that are to be consumed by a human being, and which can be acquired solely and exclusively with a medical prescription, shall be exempt from the SUT. Patients may acquire controlled medicaments without paying the SUT provided that they are prescribed by a physician or health professional and dispatched by a pharmacist.

Also, physicians, health professionals, and hospitals may acquire controlled medicaments or receive them as samples without paying the SUT.

58. Will medicaments sold over the counter be exempt from payment of the SUT?

No. Any medicament that can be acquired without a medical prescription (over the counter) shall be subject to the SUT.

59. In addition to prescribed medicaments, what other items will be exempt from payment of the SUT?

The following medical items shall also be exempt from payment of the SUT:

- hypodermic needles and syringes;
- prostheses, including frames and corrective lenses for eyeglasses, corrective contact lenses, and dental prostheses;
- insulin;
- oxygen; and
- chemical compounds in test kits used to perform, among others, diabetes tests, urine tests, and pregnancy tests.

60. Which real property leases or rentals shall be exempt from payment of the SUT?

The following shall be exempt from the SUT:

- the rate of a real property lease or rental for commercial purposes paid by a merchant registered in the Merchants' Registry;
- the rate for the lease or rental of real property paid by a student, for his or her student housing; and
- the rate for the lease or rental of real property paid by an individual, for what constitutes his or her main residence.

TIME AND FORM OF PAYMENT OF THE SUT

61. What forms shall be used to report the SUT to the Department?

Merchants and individuals shall use the following forms to report the sales tax and the use tax, as applicable, to the Department:

- Sales and Use Tax Monthly Return
- Sales and Use Tax Annual Return
- Use Tax Annual Return

62. Who has the obligation to file the Sales and Use Tax Monthly Return?

Any person who sells a taxable item shall have the obligation to file a Monthly Return. Also, any merchant who wishes to claim any exemption corresponding to taxable items shall have the obligation to file the Monthly Return and claim the exemption in it.

Merchants with a sales volume of \$500,000 or greater shall file the Monthly Return by electronic means.

Example:

"C" owns a drugstore where she sells, among other items, medicaments for human consumption that can only be dispatched with a prescription. Section 2512 of the Code provides an exemption for prescription medicaments. "C" shall have to file the Monthly Return and report the amount received during the month for the sale of such medicaments covered by the exemption.

63. When shall the Monthly Return be sent to the Department?

The Monthly Return shall be sent to the Department no later than the 20th day of the calendar month following the month during which the sales occur. Therefore, the first Monthly Return related to the sales made in November is due on December 20, 2006.

64. Who does not have the obligation to file the Monthly Return?

Merchants whose Merchants' Registration Certificate (Red Certificate) indicates that they are not collectors of the SUT shall not have the obligation to file the Monthly Return to reflect their exempt sales.

However, insofar as they sell taxable items during a month, they shall have the obligation to file the corresponding Monthly Return. Also, when these merchants acquire taxable items subject to the use tax, they shall file the Monthly Return.

Example:

"B" is engaged exclusively in the business of providing legal services. Legal services are excluded from the definition of taxable services and, therefore, these services do not constitute a taxable item. "B" shall not have the obligation to file the Monthly Return and report in it the amount of legal services rendered during the month.

However, during the month of January of 2007, "B" orders the headed paper that he uses in his office from outside of Puerto Rico. "B" shall report such purchase as a purchase subject to the use tax in the Monthly Return that is due on February 20, 2007.

65. Who has the obligation to file the Sales and Use Tax Annual Return?

Any merchant who has failed to file one or more Monthly Returns reflecting his or her total sales shall file an Annual Return for taxable years beginning after December 31, 2006.

In the case of merchants who are duly registered in the Merchants' Registry, an Annual Return shall not be required for taxable years beginning during calendar year 2006.

66. When shall the Sales and Use Tax Annual Return be sent to the Department?

The Annual Return shall be sent to the Department no later than the 15th day of the third month following the closing of the taxable year.

67. Who has the obligation to file the Use Tax Annual Return?

In the case of persons who are not merchants, who acquire taxable items for use or consumption in Puerto Rico, and who have the obligation to pay the corresponding use tax, they shall file an annual use return in the form approved by the Secretary for such purposes, no later than the 15th day of the third month following the closing of the calendar year, or on the date of filing of their Income Tax Return, including extensions, as applicable.

Example:

"A" is a salaried employee and he orders by catalog, from outside of Puerto Rico, a sound system to be used at his residence. "A" also orders movies in DVD format regularly from a video club in the United States.

When "A" receives the equipment and the movies, he shall not have the obligation to file a Monthly Return for the use tax on the equipment and the movies. However, "A" shall have the obligation to report the purchase of the equipment and the movies, and the corresponding SUT, in the annual use return in the form provided by the Secretary.

68. When shall the collected sales tax be sent to the Department?

The sales tax shall be payable to the Secretary no later than the 20th day of the calendar month following the month during which the sales occur. Payment shall be sent together with the Monthly Return.

69. When shall the use tax be sent to the Department?

In the case of persons who have a Merchants' Registry number and have purchased taxable items subject to the use tax, they shall remit the SUT together with the Monthly Return no later than the 20th day of the calendar month following the month during which the transaction subject to the tax occurs.

In the case of persons who do not have a Merchants' Registry number and have purchased taxable items subject to the use tax, they shall remit the SUT together with the annual use return, no later than the 15th day of the third month following the closing of the calendar year, or on the date of filing of their Income Tax Return, including extensions, as applicable.

70. What are the forms of payment of the SUT?

The SUT shall be paid by postal or bank money order, legal tender, checks, debit card, or electronic transfer.

Any merchant with a sales volume equal or greater than \$500,000 a year shall remit the SUT by electronic transfer.

CREDITS AND DEDUCTIONS

71. Which credits and deductions can a merchant claim in the Sales and Use Tax Monthly Return?

A merchant may claim the following credits and deductions:

- deduction for return of taxable items;
- credit for sale of the merchant's property;
- credit for bad debts; and
- credit for taxes paid by the merchant.

72. Who can request a refund for the SUT from the Secretary?

The following persons may request the refund of the SUT from the Secretary:

- a merchant who pays an excessive SUT in his or her Sales and Use Tax Monthly Return; and
- any person who pays the use tax wrongfully or excessively to the Secretary.

73. What form should I use to apply for a refund of the SUT from the Secretary?

The refund for the SUT paid wrongfully or excessively shall be requested in Form AS 2923.1, Application for Sales and Use Tax Refund. You may not claim a refund in the Sales and Use Tax Monthly Return.

74. From whom can I request a refund of the SUT if a merchant charged me wrongfully or excessively for it?

You shall make a claim directly to the merchant and not to the Secretary, because the payment was made to the merchant.

TRANSITORY PROVISIONS

75. Will the contracts executed before October 31, 2006 be subject to payment of the SUT?

Retail sales of tangible personal property covered by contracts executed or bids awarded before October 31, 2006 shall be excluded from the SUT.

However, in the case of the sale of taxable services, they shall be subject to the SUT if they are rendered after October 31, 2006, regardless of whether or not they were contracted, or are part of a bid awarded before that date.

Examples:

On January 15, 2006, "A" agreed, for a set amount and price, and through a written contract, that "B" would provide taxable services to him for a period of 12 months. Even though the contract was executed before October 31, 2006, the taxable services provided by "B" to "A" after November 14, 2006 shall be subject to the SUT.

On January 15, 2006, "A," through a written contract, agreed that he would buy from "B," during a period of 12 months, a set amount of household cleaning items at a set price. The household cleaning items that "A" receives after November 14, 2006, pursuant to such contract shall be excluded from payment of the SUT, because the contract was executed before October 31, 2006.

On October 15, 2006, "A" executed a lay-away sales contract in writing, for a period of 6 months, with "B," for the acquisition of tangible personal property at a set price. The payments made by "B" to "A" for the acquisition of the tangible personal property shall not be subject to the SUT, because the contract was executed before October 31, 2006.

76. What should a purchaser do to claim this exclusion from payment of the SUT?

In order to claim the exclusion, the person who wishes to purchase tangible personal property covered under a contract executed before October 31, 2006 has the obligation to present the Certificate for Purchases Covered by a Qualified Contract (Form AS 2920.1) to the seller.

77. What should a seller merchant do to be released from the requirement to collect and deposit the SUT in the sales of tangible personal property covered by a contract executed before October 31, 2006?

To be released from the requirement to collect and deposit the SUT, the merchant shall:

- obtain from the purchaser a Certificate for Purchases Covered by a Qualified Contract (Form AS 2920.1);
- remit to the Secretary, no later than the 20th day of every month, a copy of every Purchase Certificate for a Qualified Contract received during the previous month, grouped by purchaser and by contract with that purchaser; and
- deliver to the Secretary, no later than the 20th day of the calendar month following the month of the first sale covered by the contract, and which occurred later than November 14, 2006, a copy of such contract.