

**GOVERNMENT OF PUERTO RICO
DEPARTMENT OF THE TREASURY**

TABLE OF CONTENTS

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

CONTENT	PAGE
STATEMENT OF MOTIVES.....	2
Article I.....	3
Article II.....	3
Article III.....	3
Article IV.....	3-8
EFFECTIVENESS.....	8

**GOVERNMENT OF PUERTO RICO
DEPARTMENT OF THE TREASURY**

STATEMENT OF MOTIVES

Regulation No. 7970 is hereby amended to implement the provisions of the new credit under Section 2106 of the Puerto Rico Internal Revenue Code of 1994, as amended, introduced by Act 52-2022, which is available for calendar year 2023 and thereafter, to controlled groups subject to the excise tax established in Section 2101 of the Internal Revenue Code of 1994, as amended, subject to certain limitations and requirements.

In addition, Act 52-2022 introduced provisions that allow exempt businesses that have been subject to the Act 154-2010 excise tax regime to transition into a new income tax framework established in the new Sections 3A of Act 135-1997 and Act 73-2008, as amended and Sections 2062.01(a)(3) and (b)(4) of Act 60-2019, as amended (the “Election”). As of the effective date of the Election, no member of a controlled group of the exempt business, as defined in Section 1123(h)(3) of the Puerto Rico Internal Revenue Code of 1994, as amended, shall be subject to the rules of Section 1123(f)(4)(B), or Sections 2101 through 2106 of the Puerto Rico Internal Revenue Code of 1994, as amended, any successor or similar provision of the Puerto Rico Internal Revenue Code of 2011, as amended, or any substitute or successor provision. Regulation No. 7970 is hereby amended to clarify certain administrative matters related to the treatment of excise tax deposits available upon the Election is made.

Finally, Regulation 7970 is amended to revise the definition of the term “employee baseline” in accordance with the new definition of “direct employees” provided by Act 52-2022. This amendment applies for calendar year 2023 and thereafter.

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Article I. Title.

This Regulation shall be known as the “Regulation to add a paragraph (d) to Art. Reg. § 2102(a)-1, amend subparagraphs (j)(1), (2), and (3) of Art. Reg. § 2102(a)-2(j) and to add a new paragraph (l) to Art. Reg. § 2102(a)-2 of Regulation No. 7970 of December 29, 2010.”

Article II. Legal Grounds.

This amendment is enacted pursuant to Section 6130 of the Puerto Rico Internal Revenue Code of 1994, as amended (“1994 Code”), which authorizes the Secretary of Treasury to adopt the regulations necessary to implement the provisions of the 1994 Code.

Article III. Purpose.

The purpose of this amendment is to implement the provisions of the new credit added by Act 52-2022, which is available for calendar year 2023 and thereafter, to controlled groups subject to the excise tax established in Section 2101 of the Internal Revenue Code of 1994, as amended, subject to certain limitations and requirements. In addition, this amendment establishes the treatment of excess deposits of excise tax upon an election under Act 52-2022 that allow exempt businesses that have been subject to the Act 154-2010 excise tax regime to transition into a new income tax framework established in the new Sections 3A of Act 135-1997 and Act 73-2008, as amended and Sections 2062.01(a)(3) and (b)(4) of Act 60-2019, as amended. Finally, this amendment revised the definition of the term ‘employee baseline’ for calendar year 2023 and thereafter.

Article IV. Amendments.

Article 1. - To add a paragraph (d) to Reg. § 2102(a)-1, of Regulation 7970, as amended:

“Reg. § 2102(a)-1. Collection and Deposit of Tax.

(a) ...

(b) ...

(c) ...

(d) **Treatment of Excess Deposits of Excise Tax upon an Election under the provisions of Sections 3A of Act 135-1997 and Act 73-2008, as amended, or Sections 2062.01(a)(3) and (b)(4) of Act 60-2019 as amended** - In the case where deposits of excise tax under Code sec. 2101 were made by or on behalf of an acquiring member and such acquiring member is no longer liable for any tax under Code sec. 2101 as a result of an election under Sections 3A of Act 135-1997 and Act 73-2008, as amended or Sections 2062.01(a)(3) and (b)(4) of Act 60-2019, as amended, as applicable, such deposits will be treated as estimated payments of tax imposed pursuant to Sections 3A of Act 135-1997 and Act 73-2008, as amended or Sections 2062.01(a)(3) and (b)(4) of Act 60-2019, as amended, as applicable, to the member(s) of the controlled group that made the election. In the case that the election was made by more than one member of the controlled group, the principal member of the controlled group shall indicate to the Secretary of the Treasury, in written, the allocation of the excess deposits between all the members that made the election.”

Article 2. - To amend subparagraphs (j)(1), (2) and (3) of Article 2102(a)-2(j) to read as follow:

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

(1) Employee Baseline Defined. –

(i) Effective for calendar years prior to calendar year 2023, the employee baseline for a controlled group shall be the average number of employees (as defined in subparagraph (j)(2)) engaged in manufacturing or production or manufacturing services in Puerto Rico for the twelve (12) months ended September 30, 2010. Alternately, a controlled group may elect to use as the employee baseline the number of employees engaged in manufacturing and production or manufacturing services in Puerto Rico on September 30, 2010.

For calendar year 2023 and thereafter, the employee baseline of a controlled group shall be the number of direct employees, as such term is defined in subparagraph (j)(2)(iii), that is established as the employment requirement in the tax decree of the member(s) of a controlled group that are engaged in manufacturing and production, or manufacturing services in Puerto Rico for the calendar year.

(ii) Discretionary Adjustment to Employee Baseline. –

Effective for calendar years prior to calendar year 2023 and upon consultation with the Secretary of Economic Development and Commerce, the Secretary may make adjustments to the employee baseline of any controlled group otherwise determined under this subparagraph (j)(1), taking into account local employment and such other matters as may be appropriate.

(I)...

(II)...

(2) Employee Defined. – Effective for calendar years prior to calendar year 2023, for purposes of this article, “employee” means an individual who performs activities in Puerto Rico on behalf of one or more members of a controlled group and is treated as a full-time employee under this subparagraph (j).

(i) ...

(ii) ...

(iii) **Direct Employee.** - the term 'direct employee' means every individual resident of Puerto Rico hired by the exempt business, on a full-time, part-time, or temporary basis, to directly participate in activities covered by the decree issued pursuant to the provisions of Act 135-1997, as amended, Act 73-2008, as amended or Act 60-2019, as amended, as applicable, including employees of other employers or other persons that have been assigned or leased to the exempt business; provided, that such assigned or leased employees are not counted by their employers or other persons to meet the employment requirement under a decree, in accordance with the terms of the exempt business' decree and as annually reported by the exempt business to the Incentives Office in the annual report required by Section 6020.10 of Act 60-2019 and/or any other information return required by the Secretary of the Treasury. For the purposes of determining the number of direct full-time employees maintained by the exempt business during the taxable year, the sum of the total hours worked by all of the direct employees of the exempt business during the taxable year and the resulting amount shall be divided by two thousand eighty (2,080). The result, without considering decimals, shall be the number of direct jobs during said taxable year. For these purposes, vacation or other authorized leaves may be

considered as hours worked. However, overtime in excess of 40 hours per workweek, shall not be considered. In the case of exempt businesses that are members of a controlled group under Section 1010.04 of the Puerto Rico Internal Revenue Code, the average number of direct employees and the number of direct jobs created shall be determined considering the aggregate number of direct jobs of all the members of the controlled group that are exempt businesses.

(3) Limitations on Availability of Credits. – Effective for calendar years prior to calendar year 2023, no credit shall be permitted under Reg. § 2102(a)-2 to any member of a controlled group for a calendar year in which the controlled group has an average monthly number of full-time employees engaged in manufacturing and production, or manufacturing services in Puerto Rico for the twelve (12) months of such calendar year that is less than ninety (90) percent of the controlled group’s employee baseline. Nor shall any credit be permitted under this Reg. § 2102(a)-2 to any member of a controlled group for a calendar quarter in which the controlled group has failed to deposit or pay with the return due for such calendar quarter at least seventy-five (75) percent of the tax due for such calendar quarter under Code sec. 2101.

For calendar year 2023 and thereafter, no credit shall be permitted under Reg. § 2102(a)-2 to any member of a controlled group for a calendar year in which the controlled group is not in compliance with the employment requirement established in the tax decree issued by the Department of Economic Development and Commerce to the member(s) of a controlled group engaged in manufacturing and production, or manufacturing services in Puerto Rico. Compliance with the employment requirement shall be determined considering the aggregate number of direct employees of all the members of the controlled group that are exempt businesses. Nor shall any credit be permitted under this Reg. § 2102(a)-2 to any member of a controlled group for a calendar quarter in which the controlled group has failed to deposit or pay with the return due for such calendar quarter at least seventy-five (75) percent of the tax due for such calendar quarter under Code sec. 2101.”

Article 3. - To add paragraph (l) to Reg. § 2102(a)-2 to read as follow:

“(l) Alternative Credit for Controlled Group with Manufacturing and Production Facilities in at Least Four (4) Municipalities in Puerto Rico

(1) Effective for calendar year 2023 and thereafter, and in lieu of the credits provided in paragraphs (b) through (f), both inclusive, and paragraph (i), a controlled group that, as of June 30, 2022, had more than one member conducting manufacturing and production operations, or manufacturing services in facilities located in Puerto Rico, and operating, as a group, in four (4) or more municipalities, may claim an eight million dollar (\$8,000,000) credit for each one of the operations conducted by said controlled group in said municipalities; provided, that the maximum credit amount allowed with respect to said controlled group shall be thirty-two million dollars (\$32,000,000) per calendar year, subject to the limitation provided in subparagraph (l)(2) below.

(2) The credit in this paragraph (l) may not reduce the excise tax to less than five hundred thousand dollars (\$500,000) for each municipality with respect to which this credit is claimed. Therefore, the controlled group that elect to claim the credit provided under this paragraph (l) will always have a minimum excise tax of four million dollars (\$4,000,000) per calendar year or \$333,333 per month.

(3) The credit used for any calendar month may not exceed the amount of the annual credit divided by twelve (12), adjusted to reflect the amount of any credit in this paragraph (l) that could have been claimed in a prior month in the same calendar year but was not claimed because the amount of such credit exceeded the tax on taxable acquisitions in the prior month or the limitation established in subparagraph (l)(2) above.

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

(5) If the controlled group elects to use the credit provided in this paragraph (l) for any calendar year, the controlled group shall reasonably determine that it will maintain operations in at least four (4) municipalities for the entire calendar year.

(6) If a controlled group claims the credit provided in this paragraph (l), the controlled group shall reasonably project for the entire calendar year the number of direct employees, as such term is defined in subsection (b) of Sections 3A of Act 135-1997 and Act 73-2008, as amended and Section 2062.01(j) of Act 60-2019, as amended, as applicable, engaged in manufacturing or production, and manufacturing services in each municipality, and such projections shall be attached to each quarterly excise tax return, provided that final calculations shall be attached to the quarterly return for the last quarter of the calendar year.

(7) If for any calendar year the controlled group is not in fact eligible for the credit provided by this paragraph (l), the amount of any credit previously claimed for such calendar year shall be treated as a tax arising on account of an acquisition deemed to occur during the month of December of such year.”

Article V. Effectiveness.

This regulation will become effective thirty (30) days after its filing in the Department of State, in accordance with the provisions of Act No. 38 of June 30, 2017, as amended, known as “Uniform Administrative Procedure Act of the Government of Puerto Rico” and its provisions shall be effective for, and applicable to, transactions taking place after December 31, 2022.

Approved in San Juan, Puerto Rico, on _____, 2023.

Secretary of the Treasury