

**SALES AND USE TAX ALERT  
SALES AND USE TAX UNIFORMITY  
August 8, 2007**

As previously reported, effective August 1, 2007, a 1.5% municipal sales and use tax applies to all taxable transactions in Puerto Rico regardless of the location of the merchant's establishment and whether a municipal ordinance imposing such tax has been approved. The municipal sales tax is intended to be mandatory and uniform; that is, imposed on all transactions subject to the state 5.5% tax, on the same basis, and subject to the same exemptions and limitations as the state sales tax. See Act Number 80 of July 29, 2007 (the "Act").

The Puerto Rico Treasury Department ("Treasury") has issued new Regulations (Regulation Number 7392; the "New Regulations"), to provide guidance as to the collection of the 7% sales and use tax under the Act. The New Regulations are effective immediately and apply to transactions made after July 31, 2007. The following are some highlights:

- (a) The mandatory and uniform nature of the 1.5% municipal sales and use tax of 1.5%, is emphasized. Merchants are instructed to collect 7% on the taxable price, remit to Treasury the 5.5% state tax and .5% of the municipal, for a total of 6%, and to remit the remaining 1% of the municipal tax to the municipality where the merchant's business location is established. The 1% sales and use tax to be remitted to non-Participating Municipalities (see paragraph (b) below) will be computed on the basis of the information reported on Treasury's monthly sales and use tax return and must be remitted directly to the municipality.
- (b) The total amount of municipal and state sales and use tax (7%) is to be remitted to Treasury with respect to those municipalities who have entered into a collection agreement with Treasury (the "Participating Municipalities"). The following are already Participating Municipalities: Aguadilla, Aibonito, Arroyo, Bayamón, Ciales, Comerío, Culebra, Dorado, Fajardo, Hatillo, Juncos, Lajas, Lares, Maunabo, Naguabo, Naranjito, Peñuelas, Rincón, and Trujillo Alto. We will keep you updated on any developments regarding Participating Municipalities.
- (c) Merchants will be required to use a revised monthly sales and use tax form (to be issued by Treasury) to report post-August 1<sup>st</sup> sales (due on or before September 20, 2007). The revised form will be available on September 1, 2007. Merchants required to submit the return and payment by electronic means are still required to do so, but a waiver mechanism is established in certain cases.
- (d) The annual sale and use tax return filing requirement is deferred until calendar year 2008.

- (e) Merchant's Registration Certificates and Exemption Certificates will be issued exclusively by Treasury and all municipalities must recognize the validity of such certificates. Similarly, all forms related to the administration of the sales and use tax will be issued and processed by Treasury.
- (f) The receipts to be issued to customers must continue to separately state the taxable price and the sales and use tax. However, the merchant is no longer required to separately disclose the municipal and the state tax. If the merchant opts for separate disclosure, the receipt must show a 1% municipal tax amount and a 6% amount to be remitted to Treasury. The New Regulations provide specific instructions as to how these taxes are to be disclosed in the receipts.
- (g) For sales and use tax purposes, Puerto Rico will be considered one jurisdiction, without regard to the municipal territorial limits. Thus, the nexus and sourcing rules established in Subtitle BB of the Puerto Rico Internal Revenue Code (the "PR Code") will be used to determine the registration and collection requirements applicable to non-Puerto Rico merchants and not to determine which municipality is entitled to collect sales taxes on a particular transaction involving local parties.
- (h) New examples of the application of the sourcing rules are provided and a new sourcing rule option is established for mobile calls or prepaid cellular phones, as well as for transportation services.
- (i) Telecommunication services and cable or satellite television services rendered after July 31, 2007, must be attributed to the municipality where the merchant's commercial establishment(s) is(are) located as indicated in the monthly sales and use tax return filed by such merchant.
- (j) Treasury and the municipalities will electronically exchange taxpayer information.
- (k) The discretionary 1% municipal sales and use tax on food and ingredients for food, as defined in Section 2301(a) of the PR Code, will be separately collected by the imposing municipality upon the enactment of a municipal ordinance.
- (l) Sales and use tax uniformity provisions of the Act will prevail over inconsistent provisions in any municipal ordinance. Municipalities have the option to adopt ordinances consistent with the provisions of the PR Code and the New Regulation, effective August 1, 2007.

If you have any questions or comments, or wish additional information regarding the matters discussed herein, please contact any of the attorneys listed below, all members of our Tax Practice Group:

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