

September 12, 2013 www.mcvpr.com**TAX ALERT*****Puerto Rico Department of the Treasury Issues Guidance with respect to Amendments to the Sales and Use Tax Provisions***

As informed in our [Tax Alert of July 3, 2013](#), the Puerto Internal Revenue Code of 2011 ("Code"), was significantly amended as a result of the enactment of Act 40-2013 ("Act 40"), Act 42-2013 and Act 46-2013, among others (hereinafter jointly referred to as the "Acts"). The Puerto Rico Department of the Treasury ("Treasury") has issued numerous pronouncements providing guidance with respect to most of the significant amendments to the Code through the Acts, most of them with respect to the sales and use tax ("SUT").

Below we summarize some of the Internal Revenue Informative Bulletins, Circular Letters and Administrative Determinations issued by Treasury since the enactment of the Acts and up to September 4, 2013.

We have organized our summaries below as follows:

- A. Elimination of Resale Exemption and Issuance of Temporary Reseller Certificates;
- B. Eligible Reseller Certificate;
- C. Manufacturer and Eligible Wholesaler Waivers;
- D. Repeal of SUT Exemption to Higher Education Institutions;
- E. Repeal of SUT Exemption to Certain Cooperatives;
- F. SUT Exemption on Taxable Items Acquired by Health Services Facilities;
- G. SUT Exemption on Certain Services Provided by Child Care Centers;
- H. Requirement of Remitting SUT Electronically;
- I. Deposit Account Requirement Suspended;
- J. Bond Requirement and Payment of Use Tax; and
- K. Manufacturing Plant Exemption and Exemption Certificates.

A. Elimination of Resale Exemption and Issuance of Temporary Reseller Certificates

Treasury's Internal Revenue Administrative Determination No. 13-04 of July 2, 2013 ("AD 13-04") provides that the exemption from the collection of SUT on taxable items acquired for resale by merchants holding an exemption certificate ("Resale Exemption"), remained in effect until July 31, 2013. Thus, merchants were not required to collect the SUT with respect to taxable items sold for resale by merchants holding an exemption certificate until July 31, 2013.

According to AD 13-04, as of August 1, 2013, every merchant would have been required to withhold, collect and remit the SUT with respect to taxable items sold by merchants even if for resale.

However, Treasury issued Internal Revenue Administrative Determination No. 13-06 on July 23, 2013 ("AD 13-06"), to extend the expiration date of Reseller Exemption Certificates ("Exemption Certificates") that were about to expire on July 31, 2013, to August 15, 2013.

AD 13-06 was immediately followed by Treasury's Internal Revenue Administrative Determination No. 13-07 of July 23, 2013 ("AD 13-07") which determined, among others, that August 15, 2013 was the uniform date of expiration of all Exemption Certificates issued.

As a result of the elimination of the Exemption Certificates, in lieu of the SUT exemption on purchases for resale, resellers holding the newly created Reseller Certificate are entitled to claim a credit for the SUT paid on purchases of taxable items acquired for resale from August 16, 2013. Such credit is generally limited to 70% (see Section I. below, in connection with the possibility of a 100% credit) of the SUT liability reflected in the applicable SUT return. The Secretary could, via regulation or other pronouncement of general applicability, allow crediting a higher percentage of the SUT paid on taxable items acquired for resale. Any excess credits may be carried forward until exhausted or may be refunded under certain circumstances.

AD 13-07 also indicates that Treasury has been evaluating the records of merchants to which an Exemption Certificate had been issued in order to determine whether such merchants are eligible for the new Reseller Certificate, and issue a Temporary Reseller Certificate ("Temporary Certificate"), while Treasury completes the evaluation of their eligibility. Nonetheless, a merchant must request a Reseller Certificate before the expiration of a Temporary Certificate.

Treasury further determined in AD 13-07 that the SUT credit will be allowed on the portion that Treasury collects (6%) and not on the 1% municipal portion of the SUT, since, as determined by Treasury in AD 13-07, the Reseller Certificate and the Temporary Certificate will also be used as an exemption certificate to acquire taxable items for resale exempt from the 1% municipal portion of the SUT. Consistent with this determination, merchants will not be required to withhold the 1% municipal portion of the SUT with respect to sales made to a holder of a Reseller Certificate or Temporary Certificate.

On September 4, 2013, Treasury issued Internal Revenue Circular Letter No. 13-18 ("CL 13-18") setting forth the procedure to be followed by merchants located in Participating Municipalities who sell to both merchants that have a Reseller Certificate and merchants that do not have such a certificate, to claim adjustments in the Monthly Sales and Use Tax Return, Form AS 2915.1.

Per CL 13-18, the Participating Municipalities to date are: Aguadilla, Aibonito, Arroyo, Barranquitas, Bayamón, Ciales, Culebra, Hatillo, Juncos, Lajas, Lares, Maricao, Maunabo, Naguabo, Patillas, Peñuelas and Rincón.

B. Eligible Reseller Certificate

Section 4030.02 of the Code provides that "Eligible Resellers" may request from Treasury an Eligible Reseller Certificate exempting them from the SUT on purchases for resale of taxable items to be sold to merchants that can acquire such taxable items exempt from the SUT ("Eligible Sales"). An Eligible Reseller is a merchant that purchases taxable items principally for resale to persons exempt from the SUT or for export.

On July 23, 2013, Treasury issued Internal Revenue Circular Letter No. 13-10 ("CL 13-10") to clarify the provisions of Section 4030.02 of the Code and to establish the requirements to request and obtain an Eligible Reseller Certificate.

On September 4, 2013, Treasury issued Internal Revenue Informative Bulletin No. 13-19 ("CL 13-19") to inform taxpayers of the publication of Form SC 2914F, "Application for Eligible Reseller

Certificate,” and to indicate that, as of September 5, 2013, the same would have to be used to request an Eligible Reseller Certificate, substituting the application procedure set forth in CL 13-10. Nonetheless, applications filed prior to September 5, 2013, following the procedure set forth CL 13-10 will be evaluated by Treasury without the applicants having to submit Form SC 2914F.

C. Manufacturer and Eligible Wholesaler Waivers

Act 40 amended Section 4020.05 of the Code to allow, among other things, a waiver from the collection of the SUT to a manufacturer that sells taxable items to a wholesaler distributor (“Manufacturer Waiver”). On July 24, 2013, Treasury issued Internal Revenue Circular Letter No. 13-11 (“CL 13-11”) setting forth the procedure to be followed to request the Manufacturer Waiver. On August 20, 2013, Treasury issued Internal Revenue Circular Letter No. 13-12 (“CL 13-12”) to: (1) repeal Treasury’s CL 13-11; (2) to clarify the meaning of the term “wholesale distributor”; and (3) to establish the new requirements for the issuance of a Manufacturer Waiver. Later, on August 14, 2013, Treasury issued Internal Revenue Administrative Determination No. 13-11 (“AD 13-11”) administratively creating, effective August 16, 2013, a new waiver from the collection of the SUT to a wholesaler that imports tangible personal property or acquires it from a local manufacturer and later resells it to Qualified Resellers (“Eligible Wholesaler Waiver”).

Qualified Resellers that acquire tangible personal property for resale from a Manufacturing Plant or an Eligible Wholesaler that has been issued a Manufacturer or Eligible Wholesaler Waiver, as applicable, will not be subject to the SUT on such purchases.

1. Manufacturer Waiver

CL 13-12 establishes that for purposes of the Manufacturer Waiver, the term wholesale distributor will have same meaning as “Wholesaler” under Section 4010.01(w) of the Code, which includes a duly registered merchant that is a “retail dealer” or “retailer,” as defined by Section 3050.01(a)(1)(C) of the Code. Note that retail dealer or retailer excludes a merchant whose principal business activity is the rendering of services, regardless of whether such merchant acquires tangible personal property to undertake such services.

Pursuant to CL 13-12, to request the Manufacturer Waiver, the merchant, as defined in Section 4010.01(cc) of the Code, must submit a request by letter to Treasury accompanied by a sworn statement indicating, among other things, the following:

- a. That at least 80% of its sales are made to holders of Temporary Certificates, Reseller Certificates or Eligible Reseller Certificates (“Qualified Resellers”); and
- b. a general description of the tangible personal property manufactured or any other tangible personal property acquired by the Manufacturing Plant for resale, including information of the manufactured products and the products acquired for resale for the immediately preceding taxable year, and a percentage segregation of the same by category from the total merchandise manufactured or acquired for resale.

2. Eligible Wholesaler Waiver

A disparity was created among Puerto Rico wholesalers selling tangible personal property for resale having to collect 6% SUT on sales for resale and wholesalers that either (a) import from a remote seller or (b) acquire tangible personal property from a local manufacturer for resale, neither of which has to collect 6% SUT on sales for resale. To mitigate this disparity, AD 13-11 waived Eligible Wholesalers from the collection of the SUT on their sales to Qualified Resellers (“Eligible Wholesaler Waiver”) by means of the Eligible Wholesaler Waiver.

Pursuant to AD 13-11, an “Eligible Wholesaler” is a duly registered merchant that:

- a. imported or acquired from a local manufacturer at least 90% of its merchandise; and
- b. at least 80% of its sales are made to Qualified Resellers.

To request an Eligible Wholesaler Waiver the merchant must submit a letter to Treasury accompanied by a sworn statement indicating, among other things, the following:

- a. That it is a Qualified Reseller, the validity period of its Temporary Certificate, Reseller Certificate or Eligible Reseller Certificate, as applicable, and that such certificate is valid at the time of requesting the Eligible Wholesaler Waiver; and
- b. A general description and breakdown by category of the tangible personal property acquired from a manufacturer or imported during the immediately preceding taxable year.

Treasury's Internal Revenue Informative Bulletin No. 13-18 of August 27, 2013, clarifies that any Eligible Wholesaler Waiver issued to any merchant that does not possess at least 90% of merchandise available for resale that was imported by such merchant (*i.e.*, such merchant is the importer of record) or acquired from a local manufacturer, will be void immediately.

3. Rules Applicable to both, Eligible Wholesalers and Manufacturing Plants

CL 13-12 and AD 13-11, respectively, determine that Manufacturer and Eligible Wholesaler Waivers to be initially issued by Treasury, will only be valid for a 45-day period ("Provisional Manufacturer and Eligible Wholesaler Waivers"). During such period, Treasury will review the Manufacturer and Eligible Wholesaler Waiver requests and will determine whether or not to issue such waivers for a period of 12 months.

During the provisional period, Treasury may revoke the Provisional Manufacturer and Eligible Wholesaler Waivers if the merchant does not meet the requirements set forth in CL 13-12 and AD 13-11 or for failure to comply with the filing of any return or report or the payment of any tax.

Once the 12-month Manufacturer and Eligible Wholesaler Waivers are issued, the Manufacturing Plant or the Eligible Wholesaler may request its renewal following the same steps for issuance and submitting an Agreed Upon Procedure prepared by a CPA licensed in Puerto Rico and participating in a peer review program, certifying compliance with the requirements to be considered an Eligible Wholesaler, and, in the case of a Manufacturing Plant, certifying compliance with the required percentage of sales made to Qualified Resellers.

On August 27, 2013 Treasury issued Internal Revenue Informative Bulletin No. 13-17 of ("IB 13-17"), providing additional guidance about the obligations of Eligible Wholesalers and Manufacturing Plants with respect to their sales to Qualified Resellers:

- a. Eligible Wholesalers and Manufacturing Plants are still required to deduct, withhold and remit to Treasury, the SUT with respect to the sale of tangible personal property to any person that is not a Qualified Reseller.
- b. Article 2407-1 of Regulation 7249 of November 14, 2006 ("Regulation") continues to apply to exempt sales to Qualified Resellers. Consequently, Eligible Wholesalers and Manufacturing Plants will have to document the exempt nature of every transaction by obtaining from a Qualified Reseller:
 - a. A Certificate of Exempt Purchases, Form AS 2916.1 duly executed;

- b. A copy of the Merchant's Registration Certificate; and
- c. A copy of a valid Temporary Certificate, Reseller Certificate or Eligible Reseller Certificate, as applicable.

IB 13-17 further provides that pursuant to Article 2407-1(d)(4) of the Regulation, Eligible Wholesalers and Manufacturing Plants must exercise a degree of care sufficient to prevent a purchaser from acquiring taxable items using a Temporary Certificate, Reseller Certificate or Eligible Reseller Certificate, as applicable, when based on the information of the purchaser's industry or business activities, as reflected on such certificates, it would be unreasonable to think that such taxable items could be acquired exempt from the SUT.

D. Repeal of SUT Exemption to Higher Education Institutions

Treasury's Internal Revenue Informative Bulletin No. 13-06 of July 2, 2013 ("IB 13-06") provides that upon the repeal of Section 4030.18 of the Code, taxable items acquired by higher education institutions as defined in the Code, will be subject to the SUT. However, IB 13-06 indicates that educational services, including tuition, will continue to be exempt from the SUT, as provided under the Code.

E. Repeal of SUT Exemption to Certain Cooperatives

Treasury's Internal Revenue Informative Bulletin No. 13-09 of July 2, 2013 ("IB 13-09") provides that upon the repeal of the SUT and excise tax exemption provided to cooperatives organized under the provisions of Act 239-2004 (except for housing cooperatives) and Act 255-2002, taxable items and articles acquired by such cooperatives will be subject to the SUT and excise taxes .

On August 27, 2013, Treasury issued Internal Revenue Informative Bulletin No. 13-16, to (1) clarify the scope of the provisions requiring the payment of the SUT and excise taxes with respect to articles and services acquired by cooperatives; (2) clarify that housing cooperatives will continue to enjoy the SUT and excise tax exemption on articles acquired for rendering the services for which said cooperatives were organized, but not with respect to taxable services acquired by the housing cooperatives; and (3) to repeal Treasury's Internal Revenue Informative Bulletins Nos. 06-08, 09-09 and IB 13-09.

F. SUT Exemption on Taxable Items Acquired by Health Services Facilities

Treasury's Internal Revenue Informative Bulletin No. 13-08 of July 2, 2013 ("IB 13-08") provides that the SUT exemption under Section 4030.19 of the Code applicable with respect to machinery, medical-surgical material, supplies, items, equipment and technology used to provide health services and acquired by health services facilities, including grantees under Act No. 168 of June 30, 1968, applies solely to taxable items acquired for the exclusive use of health services facilities for the purposes of diagnosing and treating human diseases.

IB 13-08 also indicates that the SUT exemption provided under Section 4030.19 of the Code does not cover taxable items acquired for use in other operational or administrative phases, including the operation of parking lots, medical office buildings and pharmacies.

G. Sales and Use Tax Exemption on Certain Services Provided by Child Care Centers

Treasury's Internal Revenue Informative Bulletin No. 13-10 of July 2, 2013 provides that the SUT exemption provided by Section 4030.15 of the Code with respect to enrollment and child care monthly payments made to Child Care Centers ("Centers"), does not apply to payments made for the acquisition of taxable items by such Centers, taxable items sold by the Centers or to services that are of educational or recreational nature, which may nevertheless be exempt under other provisions of the Code.

The exempt services provided by the Centers are to be reported in their Monthly Sales and Use Tax Return, Form AS 2915.1.

H. Requirement of Remitting Sales and Use Tax Electronically

Act 40 amended Section 4042.04 of the Code to reduce the annual volume threshold required to file and remit the SUT electronically from \$200,000 to \$100,000. Treasury's Internal Revenue Informative Bulletin No. 13-13 of July 23, 2013, informs that merchants with an annual volume of \$100,000 or more, will be required to file and remit the SUT electronically, commencing with the SUT reporting period of July 2013.

I. Deposit Account Requirement Suspended

Act 40 added Section 6054.02 of the Code to require merchants to maintain a deposit account for the purpose of remitting the SUT to Treasury ("Account") and amended 4050.04 of the Code to allow a 100% credit on the SUT paid on purchases of tangible personal property for resale to merchants that maintain such an Account ("100% Credit").

As provided by Section 6054.02 of the Code, the Secretary of the Treasury ("Secretary") is required to establish through regulations the form in which the Account will be established.

Treasury's Internal Revenue Informative Bulletin No. 13-12 of July 22, 2013, informs that compliance with the requirement of the Account has been suspended until applicable regulations with respect to the Account are issued by the Secretary and enter into effect. As a result of the suspension of the Account requirement, merchants will not be able to claim the 100% Credit until the Secretary issues such regulations.

J. Bond Requirement and Payment of Use Tax

Treasury's Internal Revenue Informative Bulletin No. 13-14 of July 23, 2013 ("IB 13-14"), informs that the bond and the declaration required by Section 3020.10 of the Code with respect tangible personal property introduced into Puerto Rico for use, consumption or storage, will commence 30 days after the Secretary issues regulations regarding the form and manner in which the bond will be submitted.

IB 13-14 further informs that until such regulations are issued, merchants will continue to report tangible personal property introduced for use, consumption or storage, in the Monthly Sales and Use Tax Return (Form AS 2915.1), no later than the 10th day of the month following the month in which the tangible personal property was introduced.

K. Manufacturing Plant Exemption and Exemption Certificates

Treasury's Internal Revenue Informative Bulletin No. 13-15 of August 19, 2013, clarifies that the SUT exemption on taxable items acquired for manufacturing provided by Section 4030.06 of the Code was not amended and that the Manufacturer's Exemption Certificates issued to manufacturing plants (for the purchase of raw materials and machinery and equipment used as part of the manufacturing process) continue to be valid.

For updates on this matter, you may contact any of the attorneys of our Tax Practice Group listed below:

Carlos E.Serrano	787-250-5698	ces@mcvpr.com
Roberto L.Cabañas	787-250-5611	rlc@mcvpr.com
Esteban R. Bengoa	787-250-5626	erb@mcvpr.com
Isis Carballo	787-250-5691	ici@mcvpr.com
Lourdes Fontanillas López	787-250-5655	ldf@mcvpr.com

Yamary González	787-250-5687	yg@mcvpr.com
Leyla González	787-250-5696	lqi@mcvpr.com
Angel S. Ruiz	787-250-2602	asr@mcvpr.com
Alba I. Joubert	787-250-5649	aj@mcvpr.com
Rubén Muñiz	787-250-5655	rm@mcvpr.com

The content of this McV Alert has been prepared for information purposes only. It is not intended as, and does not constitute, either legal advice or solicitation of any prospective client. An attorney-client relationship with McConnell Valdés LLC cannot be formed by reading or responding to this McV Alert. Such a relationship may, be formed only by express agreement with McConnell Valdés LLC.