

## Puerto Rico Treasury issues Guidance on SUT Applicability to Medical Cannabis

### ATTORNEYS

- Yamary I. González-Berríos
- Rubén Muñiz-Bonilla
- Lillian Toro-Mojica
- Mariana M. Contreras-Gómez
- Leyla González-Ibarría
- Xenia Vélez
- Isis Carballo-Irigoyen

### PRACTICE AREAS

- Tax

### An McV Tax Alert

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The Puerto Rico Treasury Department (“Treasury”) recently issued Administrative Determination No. 17-06 (“AD 17-06”) to establish the applicability of the sales and use tax (“SUT”) to medical cannabis and by-products, and to clarify SUT compliance requirements for merchants engaged in this industry.

Pursuant to AD 17-06, medical cannabis and by-products are considered “tangible personal property” for SUT purposes and, thus, taxable items subject to the SUT. Merchants engaged in this industry must therefore (1) comply with the SUT reporting and remittance obligations of the Puerto Rico Internal Revenue Code of 2011 (the “Code”), and (2) provide every customer with at least two payment alternatives as required by Department of Consumer Affairs (“DACO” for its Spanish acronym) Regulation No. 8851. These merchants must also segregate the SUT from the purchase price on the receipt, invoice or other evidence of purchase and disclose separately the state and municipal portion of the SUT. As provided by AD 17-06, failure to separately disclose the SUT from the purchase price and to segregate the state portion from the municipal portion may result in a \$100 penalty per violation.

AD 17-06 establishes that any merchant engaged in an activity related to the medical cannabis industry must register in Treasury’s Merchant’s Registry and obtain a Merchant’s Registration Certificate (“Certificate”) through Treasury’s Internal Revenue Unified System (“SURI” for its Spanish acronym), under one of the following North American Industry Classification System (“NAICS”) codes:

#### **NAICS Code**

#### **Description**

#### **Commercial Activity**

11141

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Food Crops Grown in Greenhouses

Agriculture

42459

Wholesalers of Other Farming and Livestock Raw Materials

Production and distribution

45399

Other Miscellaneous Product Retailers

Dispensaries

54138

Testing Laboratories

Laboratory quality tests

48422

Specialized Local Freight Transport (except relocation)

Transportation

AD 17-06 also provides that merchants engaged in the medical cannabis industry that currently hold a Certificate issued under a NAICS code that is not one of those listed above, must update their registration by August 31, 2017. Otherwise, they may be subject to the \$500 penalty for failing to update the information in the application for their Certificate.

Even though under Treasury's Administrative Determination No. 15-20 only merchants with annual sales volume in excess of \$125,000 are required to have a fiscal terminal at each point of sale, AD 17-06 requires that merchants engaged in the cannabis industry have a fiscal terminal at each point of sale even if their annual sales volume is less than \$125,000. Failure to comply may result in the imposition of the generally applicable \$20,000 penalty per violation.

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AD 17-06 also establishes that the following SUT exemptions **will not** apply to the medical cannabis industry:

- food and food ingredients exemption, since it is considered neither under the Code;
- prescription medication exemption, as medical cannabis is not prescribed, but rather recommended, and thus is not considered a prescribed medication under the Code;
- *bona fide* farmer exemption, since merchants engaged in the cannabis industry are not considered *bona fide* farmers;
- manufacturing plant exemption, inasmuch as the production of a cannabis product is not considered a manufacturing activity under the Code;
- exemption for medical equipment, supplies and articles used in medical services, since merchants engaged in the cannabis business are not eligible for the hospital unit exemption.

Nonetheless, merchants engaged in the medical cannabis industry that purchase cannabis products for resale may request a Reseller and Municipal SUT Exemption Certificate (“Reseller Certificate”), subject to compliance with the requirements for such a certificate, as determined in AD 17-06. As such, holders of a Reseller Certificate will be able to claim the SUT credit and municipal SUT exemption on medical cannabis imported or purchased for resale.

You may access Treasury’s AD 17-06 on this [link](#).

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