

## Sales & Use Tax Exempt Period for First Aid Articles and Equipment in Anticipation of the Hurricane Season

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### An McV Sales & Use Tax Practice Team Alert

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On May 6, 2022, Governor Pedro Pierluisi signed into law Act No. 20-2022 (“Act”), which amends the Puerto Rico Internal Revenue Code of 2011 (“Code”) to exempt from the payment of the Sales and Use Tax (“SUT”) several first aid articles and equipment (“Exempt Items”) during the last weekend of every May in anticipation of the hurricane season (“Exemption Period”).

Pursuant to the Act, every year the Secretary of the Puerto Rico Department of Treasury (“Secretary”) will issue a circular letter indicating the specific days of the Exemption Period corresponding to the last weekend of May. However, if the Secretary fails to issue a circular letter, it will be understood that the Exemption Period will begin at 12:01 a.m. of the last Friday of the month on May and will end at midnight of the next Sunday.

### Exempt Items

Although the scope of the exemption can be modified by future guidance issued by the Secretary, the Act provides the following list of articles and equipment that qualify as Exempt Items during the Exemption Period:

#### ■ Articles

- Containers, tanks and storage for fuel and water;
- Storm panels (“tormenteras”);
- Hardware, anchoring and screws;
- Wooden poles and untreated panels;
- Ropes and restraints;
- Construction panels made of zinc;
- Non-perishable food;
- Water;
- Cleaning and sanitizing supplies; and
- Parts and products for repair and maintenance of generators and solar equipment used during emergencies.

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### ■ **Equipment**

- Portable generators with a sales price of up to three thousand dollars (\$3,000) used to provide electricity, communication or preserve food in the event of electric power service interruptions;
- Batteries (AAA, AA, C, D, 6 Volts and 9Volts);
- Battery-operated or alternative energy lamps, flashlights, candles and matches;
- Emergency solar equipment;
- Tools, such as drills, disc saws, hammers and other equipment associated with the process of securing property;
- Gas stoves;
- Gas in cylinders and tanks;
- Emergency ladders;
- Hurricane shutters;
- Axes and machetes;
- Non-electronic can openers;
- Portable coolers for ice and food preservation;
- Fire extinguishers;
- Battery operated smoke or carbon monoxide detectors;
- First aid kits;
- Plastic containers for fuel dispensing;
- Ground anchor systems or ground tie-down kits;
- Reusable or artificial freezer items;
- Cell phone batteries and chargers;
- Portable radios (including, battery operated radios), two-way radios (transceiver) and weather band radios;
- Fans operated by battery or alternative energy;
- Portable stoves;
- Propane gas; and
- Tarps or other flexible and waterproof material of a similar nature.

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## **Tax Treatment of Certain Transactions During the Exemption Period**

The Act also clarifies the tax treatment of the following transactions when they occur during the Exemption Period:

### ■ **Installment Plans**

A sale of an Exempt Item under an installment plan qualifies for the SUT exemption when the final payment under the installment plan is made and the Exempt Item is delivered to the purchaser during the Exemption Period. If the final payment is made, or the item is delivered, after the Exempt Period, the sale will be subject to SUT.

### ■ **Rain Check**

The Act defines a rain check as a voucher that allows the customer to purchase an item at a certain price in the future because the item is sold out. Exempt Items purchased during the Exemption Period with the use of a rain check will qualify for the SUT exemption regardless of when the rain check was issued. However, the issuance of a rain check during the Exemption Period will not qualify an Exempt Item for the exemption if it is actually purchased after the Exemption Period.

### ■ **Mail, Telephone and Electronic Purchases**

When an item is purchased through the mail, by telephone, e-mail, or Internet, through a commerce or platform located in Puerto Rico, the purchase will qualify for the SUT exemption if the Exempt Item is paid for and delivered to the purchaser during the Exemption Period. For purposes of the Act, the purchase of an item is not completed until delivery to the purchaser is completed (after transportation of the item concludes and it arrives to Puerto Rico for its use or consumption). Items that are pre-ordered and delivered to the purchaser during the Exemption Period qualify for the SUT exemption.

### ■ **Gift Cards**

Exempt Items purchased during the Exemption Period using a gift card will qualify for the SUT exemption regardless of when the gift card was purchased. Exempt Items purchased after the Exemption Period using a gift card are subject to SUT, even if the gift card was purchased during the Exemption Period.

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### ■ **Returns**

During the 60 days immediately following the Exemption Period, when a customer returns an item that qualified for the exemption, no credit or refund of the SUT will be given unless the customer provides the receipt or invoice reflecting that the SUT was paid, or the seller has sufficient documentation to show that the SUT was paid on said specific item. Act 20 clarifies that the 60-day period is set solely for the purpose of designating a term during which the customer must provide documentation that SUT was paid on returned merchandise and is not intended to change the selling merchant's policy as to the period during which the seller will accept returns.

### **Record Keeping and Reporting of Sale of Exempt Items During Exempt Period**

The Act provides that a merchant is not required to obtain an Exemption Certificate or Certificate of Exempt Purchases on the retail sale of Exempt Items during the Exemption Period. However, the merchant's records must clearly identify the type of item sold, the date it was sold, the selling price of all the items, and, if applicable, any SUT collected.

Furthermore, the Act establishes that no special reporting procedures are required to report the sale of Exempt Items during the Exemption Period. These sales must be reported in the same manner as exempt sales are reported under the Code and regulations issued by the Secretary.

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