

PR Treasury Announces Sales Tax Reduction for Certain Food Items

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PRACTICE AREAS

- Sales & Use Tax
- Tax

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As informed in our **McV Tax Alert of December 10, 2018**, Act 257-2018 amended the Puerto Rico Internal Revenue Code of 2011 (“Code”) to, among other matters, exempt certain food items from the 4.5% sales tax surtax, for an effective rate of 7% instead of the general 11.5% sales tax.

On August 2, 2019, the Puerto Rico Department of the Treasury (“PR Treasury”) published Administrative Determination No. 19-03 (“AD 19-03”) to establish: (1) the requirements to qualify for a reduced sales tax rate of 7% on certain food items sold by restaurants beginning on October 1, 2019 (“7% Sales Tax”); and (2) the procedure to obtain the certificate required to sell food items subject to the 7% Sales Tax (“Certificate”).

The 7% Sales Tax will enter into effect on October 1, 2019. Only “restaurants” that obtain authorization to sell the specified food items qualify to collect the reduced 7% Sales Tax. The authorization will be provided by PR Treasury through the Certificate described below, which must be placed in a visible place in the front door of the applicable commercial location.

A “restaurant” is any commercial establishment, including food trucks, mainly engaged in the sale of food and beverages for on-location or off-location consumption, as long as they are served hot and/or with eating utensils, including plates, knives, forks, spoons, glasses, cups, napkins or straws. The 7% Sales Tax will apply **only** to the sale of prepared food items, carbonated beverages, candies and pastry shop items (collectively referred to as “Prepared Foods”) sold by restaurants, but not to alcoholic beverages.

Requirements to Obtain the Certificate

- A valid Merchant’s Registration Certificate (“MRC”) under at least one of the following North American Industry Classification System (“NAICS”) Codes:
 - 72231- Food Service Contractors
 - 72232 - Caterers
 - 72233 - Mobile Food Services
 - 72241 - Drinking Places (Alcoholic Beverages)

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- 72251 - Restaurants and Other Eating Places

PR Treasury will not grant the Certificate to merchants whose MRC does not include one of the above-listed NAICS Codes.

- Compliance with all tax payment and sales and use tax reporting obligations. If the merchant has any outstanding tax debt, it must have an up-to-date payment plan with PR Treasury. Once SURI integrates all type of taxes the merchant may be required to be in compliance with all filing obligations with PR Treasury.
- Have a fiscal terminal in each point of sale in the applicable commercial location, regardless of the merchant's annual sales volume or of the total transactions during the year. Therefore, the aggregate annual sales volume of \$125,000 exception from the requirement of having a fiscal terminal will have to be waived by a merchant seeking to obtain a Certificate.

Procedure to Obtain the Certificate

- On September 23, 2019, merchants that comply with the requirements from Section A. above, will have a certificate of "Authorized Business – Reduced Rate Prepared Foods," Form AS 2995 (i.e., the Certificate), available in SURI for each qualified commercial location. The Certificate will authorize the merchant to collect the 7% Sales Tax on Prepared Foods in the commercial location for which the Certificate was issued, effective October 1, 2019.
- All Certificates will be valid until September 30, 2020 regardless of the issuance date. By September 30 of each year, merchants that continue to be in compliance with the requirements of AD19-03 will automatically have their Certificates renewed in their SURI account.
- Merchants that do not receive the Certificate on September 23, 2019 will be notified via SURI of the reason for denial. Once the merchant is in compliance it can request the Certificate through its SURI account beginning September 24, 2019. AD 19-03 provides that a Certificate request will be evaluated and processed by the next business day.

Merchants that receive a Certificate, but who understand they are ineligible or that, even if in compliance, do not sell Prepared Foods in the commercial location for which the Certificate was issued, must request the cancellation of the Certificate and continue to collect the corresponding sales tax on their business activity. Not cancelling the Certificate when ineligible for it will result in the imposition of interest, surcharges, penalties and fines for failing to comply

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with withholding agent responsibilities under the Code.

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