

Sales and Use Tax Amendments to PR Internal Revenue Code

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An McV Tax Alert

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On April 29, 2017, Governor Ricardo Rosselló signed into law Act 25-2017 (“Act 25”), to amend the Puerto Rico Internal Revenue Code of 2011 (“Code”), as follows:

1. Clarify that the following activities are to be undertaken continuously, recurrently and in the ordinary course of business in order to establish a sales and use tax (“SUT”) nexus:

- Entering into purchase and sale contracts in Puerto Rico;
- Engaging in direct marketing by any means, such as through the internet, electronic commerce, billboards, web portals, social media or any other advertising means;
- Engaging in “mail order sales;” and
- Causing the dispatch of tangible personal property from abroad to any person in Puerto Rico through an internet link, for use, consumption, or distribution in Puerto Rico.

2. Allow non-withholding merchants (i) engaged in mail order sales (i.e., sale of tangible personal property through electronic means, mail or catalogs from abroad into Puerto Rico, among others) and (ii) whose only contact with Puerto Rico is a resident purchaser, to voluntarily elect to collect, report and remit the SUT;

3. Commencing on July 1, 2017, non-withholding merchants engaged in mail order sales to Puerto Rico customers are required to comply with certain reporting and notification requirements as follows:

- Provide the purchaser with a written notice indicating that the purchase could be subject to the SUT and that such purchase must be reported in the corresponding forms along with the SUT payment.
- Send a quarterly report to the Secretary of the Treasury (“Secretary”) detailing the purchases made by Puerto Rico residents during each quarter. The quarterly reports are due on the last day of April, July, October and January. Each quarterly report must include: (i) the name and address of the

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- seller; (ii) name and address of the Puerto Rico purchaser; (iii) dates, amounts and description of each purchase; (iv) the category of the purchase, including its exempt or taxable status, to the extent known; and (v) any other information required by the Secretary. This quarterly report must also indicate that the Puerto Rico purchasers were notified of their obligation to report and pay the SUT on the purchase of tangible personal property.
- Send a notice by January 31st of every year to all purchasers that acquired merchandise from the non-withholding agent indicating: (i) the name and address of the seller; (ii) name and delivery address of the Puerto Rico purchaser; (iii) the total amount paid for purchases of tangible personal property during the preceding calendar year; (iv) dates, amounts and the category of the purchase, including its exempt or taxable status, to the extent known, and (v) any other information required by the Secretary. This annual notice must also indicate that the Puerto Rico purchasers were notified of their obligation to report and pay the SUT on the purchase of tangible personal property.
4. Authorize the Secretary to classify within merchants as withholding or non-withholding agents on the basis of parameters established via regulation, circular letter or any other official pronouncement.
 5. Reduce and eliminate certain penalties imposed by the Code for not complying with SUT reporting and payment, and impose penalties for failing to comply with the reports and notices listed above.
 6. Require that the 1% municipal SUT on imported property be paid and reported to the Secretary of the Treasury.

Except for the newly required reports and notices from non-withholding agents, which are effective on July 1, 2017, all other amendments were effective as of April 29, 2017. No guidance has been issued by the Puerto Rico Department of the Treasury on the new reporting and payment requirement of the 1% municipal SUT to the Secretary of the Treasury, but we anticipate that guidance will be issued during the next few days.

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