

The Tax Advisor

Special Bulletin on Latest Tax News

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Sales and Use Tax Reduction on the Sale of Prepared Foods

By: Edwin López Hernández

As you may know, on December 10, 2018, the Governor of Puerto Rico signed Act 257-2018 which includes numerous amendments to the Puerto Rico Internal Revenue Code of 2011, as amended (the "Code"). One of the most noteworthy amendments to the Sales and Use Tax ("SUT") provisions is an exemption on transactions taking place after October 1, 2019 on the sale of certain taxable items sold by "restaurants" that obtain the proper authorization and certification from the Secretary of Treasury of Puerto Rico ("Secretary"). The exemption will only be applicable on the sale of taxable items that are considered prepared foods, carbonated beverages, confectionery products, and candies. It is important to note that such exemption is not applicable to the sale of alcoholic beverages. As a result, such taxable items would be subject to a SUT rate of seven percent (7%) instead of the eleven and a half percent (11.5%).

In addition, for purposes of the exemption, the Code defines the term "restaurant" as any commercial establishment, including food trucks, that sells food and beverages to be consumed on location or to be consumed off location, as long as they are served hot and/or with eating utensils, including plates, knives, forks, spoons, glasses, cups, napkins or straws.

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For information visit us at:
www.alvatax.com or contact one of our Tax Professionals for an appointment:

Ph. (787) 999-4400
[E. taxadvisors@alvatax.com](mailto:taxadvisors@alvatax.com)

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On August 2, 2019, the Puerto Rico Treasury Department ("PRTD") issued Administrative Determination 19-03 ("AD 19-03") with the purpose of establishing the requirements to qualify for the exemption and the procedure to obtain the required authorization and certification from the Secretary.

Who is eligible?

Pursuant to AD 19-03 merchants that comply with the following requirements will be eligible to obtain authorization to collect and remit the reduced SUT rate of 7%:

- Must have a valid Merchant's Registration Certificate with at least one of the following codes of the North American Industry Classification System ("NAICS"):
 - 72231 – Food Service Contractors;
 - 72232 – Caterers;
 - 72233 – Mobile Food Services;
 - 72241 – Drinking Places; or
 - 72251 – Restaurants and Other Eating Places.
- Must be in compliance with the filing of all the SUT returns and applicable declarations. Note that once all taxes are integrated into the Internal Revenue Unified System (known by its Spanish Acronym as "SURI"), the PRTD may require that the merchant be up to date with the filing of all applicable returns.
- Should not have any outstanding debt with the PRTD unless it is under a payment plan.
- Must be in compliance with the requirement of installing, possessing, and maintaining a fiscal terminal in each point of sale regardless of their volume of business or yearly transactions.

What is the process to obtain authorization for the reduced SUT rate?

On September 23, 2019, those merchants that comply with all the requirements listed above will be able to obtain through SURI, a certificate of "Authorized Business – Reduced Rate on Prepared Food" (the "Certificate") for each commercial location that complies with the above requirements. This certification authorizes the merchant to collect, as of October 1, 2019, the reduced 7% SUT rate on the sale of prepared foods, carbonated beverages, confectionery products, and candies.

If on September 24, 2019, a merchant that complies with the above requirements has not received the Certificate on such date, it will receive a communication through its SURI account indicating the reason it did not receive the Certificate. Once the merchant is up to date with the requirements indicated in such communication, it may request the Certificate through SURI under its "Sales and Use" account.

Furthermore, a Merchant that erroneously received the Certificate must request its cancellation through SURI.

How long is the Certificate valid?

The Certificate will be valid through September 30, 2020, regardless of the date it was issued. However, on September 30th of each year, those merchants who continue to comply with all the requirements established above, will automatically have available through their SURI account, the renewed Certificate that corresponds for such year.

ATBA Comments

It is important to note, that to avoid any delays in the process of obtaining the Certificate, merchants should make sure that they comply with the above requirements. Additionally, we recommend merchants to obtain a Certification of Filing the SUT Returns, to confirm its compliance with the filing and payment of such returns and applicable declarations. We also recommend that merchants obtain a Debt Certificate from the PRTD to confirm that it reflects any outstanding debts with the PRTD that must be cleared in time to have a negative certificate of debt from the PRTD by September 1, 2019.

In addition, even though AD 19-03 does not mention the payment method available for consumers to benefit from the reduced

ABOUT THE AUTHOR Edwin López Hernández

Edwin is a Manager at Alvarado Tax & Business Advisors LLC, a limited liability company dedicated to tax and business consulting services and has over six years of experience in the corporate and individual tax advisory areas. He provides corporate and individual tax services for clients in the retail, manufacturing, and service industries, among other.

Edwin has a Bachelor in Business Administration with a major in Accounting from the University of Puerto Rico, Rio Piedras Campus. He is a member of the Puerto Rico Certified Public Accountants Society and the American Institute of Certified Public Accountants.

SUT rate, the PRTD has recently indicated that all payment methods (cash, credit, debit, etc.) will be available for consumers to benefit from such reduced rate.

Finally, the Certificate must be on a visible place at the entrance door of the commercial location, so that the consumer recognizes that it is an authorized business to collect the reduced SUT rate.

We will keep you posted of any developments in this area. At ATBA we have experienced personnel that can assist you with the compliance of AD 19-03 and other tax related matters.

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Key Contacts at Alvarado Tax & Business Advisors LLC

Juan A. Alvarado-Zayas, Esq., CPA

Managing Member
787-620-7730
jalvarado@alvatax.com

Juan Zaragoza-Gómez, CPA

Member
787-620-7740
jzaragoza@alvatax.com

Felipe Mariani-Franco, CPA

Member
787-620-7736
fmariani@alvatax.com

Sandra Marie Torres- Martínez, CPA

Member
787-620-7728
storres@alvatax.com

Edgardo Sanabria-Valentín, CPA

Member
787-999-3015
esanabria@alvatax.com

Carlos R. González-Martínez, CPA

Member
787-620-7739
cgonzalez@alvatax.com

César De Jesús-Umpierre, CPA

Member
787-620-7734
cdejesus@alvatax.com

Rosirma García-Rivera, CPA

Member
787-620-7733
rvgarcia@alvatax.com

Alvarado Tax & Business Advisors LLC

104 Acuarela Marginal Street
Martinez Nadal Expressway
Guaynabo PR 00969

PO Box 195598
San Juan PR 00919-5598

T. 787.999.4400
F. 787.999.4646
E. taxadvisors@alvatax.com
www.alvatax.com
www.taxand.com

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