



Complaint

Alternate Method for the Expedite Resolution of Sales and Use Tax Administrative Fines and Penalties

By: **Yesenia Sánchez Quiles**

The Puerto Rico Treasury Department (hereinafter “PRTD”), has issued the Internal Revenue Circular Letter No. 17-09, “*Conciliation Program of Controversies for Notices Related to Fines and Penalties Assessed by the Tax Consumption Bureau*” (IR CC 17-09), to inform the creation of The Program of Conciliation of Controversies and Complaints related to Administrative Fines and Penalties Notified by the Tax Consumption Bureau (hereinafter the “Conciliation Program”). The PRTD created this program to promote a less formal method as an alternative to clarify disputes on an expedite, fair and economic manner. This is based on the applicable provisions included on Article 4 of Regulation No. 7389 of July 13, 2007, and Act No. 170-1988, as amended, better known as “The Uniform Administrative Procedure Act” (hereinafter “Act 170”).

Act 170 provides taxpayers the opportunity to file a complaint against an adverse final determination issued by the PRTD. The complaints that are presented to the Office of Adjudicative Procedures of the PRTD go through a formal adjudicative process that is

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conducted under the provisions of the Act 170 and Regulation No. 7389. The formal adjudicative process for the complaints includes meetings and conferences with the PRTD officials, analysis of the evidence, formal administrative hearings, and the corresponding appeal process before the court, among others. The Conciliation Program proposes an interesting alternative that may facilitate the process to obtain an expedite resolution of SUT related complaints filed, and as we will discuss below, in some instances avoid even filing a complaint.

Conditions of Eligibility for the Conciliation Program

CC 17-09 establishes that the following cases may be eligible to participate in the Conciliation Program:

1. Taxpayers that have received an adverse notice of final determination for SUT related to an administrative fine or penalty assessed by the Tax Consumption Bureau.
2. Taxpayers that have filed a complaint before the Office of Adjudicative Procedures related to an adverse notice of final determination for a SUT related administrative fine or a penalty assessed by the Tax Consumption Bureau, but that is yet to receive a citation for an administrative hearing (hereinafter the "Notice of Hearing").
3. Taxpayers that have filed a complaint before the Office of Adjudicative Procedures related to an adverse notice of final determination for an administrative fine, or a penalty assessed by the Tax Consumption Bureau, and having received the Notice of hearing elect to participate in the Conciliation Program.

However, it also establishes that in those cases where there is a public interest to complete the adjudicative process due to the nature of the case, the PRTD reserves the right to follow the formal process and disallow the taxpayer's participation under the Conciliation Program.

Requirements to Participate in the Conciliation Program

Furthermore, CC 17-09 establishes additional requirements for those taxpayers that meet the above-mentioned conditions to be allowed to participate in the Conciliation Program:

1. The taxpayer is in good standing with the PRTD (i.e. its certificate of debt from the PRTD does not reflect debts except for the ones being disputed under the Conciliation Program).
2. The taxpayer has not disregarded any of the provisions of the Internal Revenue Code of 2011, as amended, on more than three (3) instances during the past three (3) calendar years.

Conciliation Process

Those taxpayers who want to take advantage of the Conciliation Program, must submit the Form SC 3219 "Application Form to Participate in the Conciliation Program of Controversies and Complaints" (hereinafter the "Application") within thirty (30) days of the issuance date of the SUT related administrative fine or penalty notice. If the taxpayer has already submitted the complaint to the Office of Adjudicative Procedures, and has not received the Notice of Hearing, it can submit the Application at any time before such notice is received. The Application may be either hand delivered, filed electronically or by regular mail.

The Conciliation Program will assign a date for a private meeting with the taxpayer or representative to discuss the controversy and if an agreement cannot be reached, the taxpayer will have thirty (30) days to file a complaint to the Office of Adjudicative Procedures. If a complaint was already submitted and no agreement was reached in the meeting, the case will continue with the original formal process. If an agreement is reached through the Conciliation Program, then the PRTD and the taxpayer will enter into a written agreement to cover such matters.

The Conciliation Program is voluntary and started on June 1, 2017.

ATBA Comments

Since the formal adjudicative process required to clarify complaints filed with the Office of Adjudicative Procedures can be

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Yesenia is a Manager at Alvarado Tax & Business Advisors (ATBA). Prior to that, she was Manager at Zaragoza & Alvarado LLP. Her Curriculum Vitae also includes previous experience in the corporate and individual tax advisory area working as senior tax associate in a local accounting firm providing tax services to different types of industries. She started her career at the Puerto Rico Treasury Department.

At ATBA Yesenia provides corporate tax and government resolution services for clients in the manufacturing, service, wholesale, telecommunication, energy and retailing industries, among others. She also manages a government and corporate tax resolution practice specializing in tax audits from the Puerto Rico Department of Treasury, the United States Internal Revenue Service, and municipalities including, sales and use tax, volume of business, real and personal property resolution services for individuals and businesses. She also works to obtain licenses and permits required to operate regulated lines of business such as distribution or retail of alcohol, imports license, fire arms, public services such as maritime, road or air transportation, security services, certain energy production, distribution, retailing and communication services.

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difficult, time consuming and, in some cases, expensive, the Conciliation Program could be an option to consider. At ATBA, we have experienced personnel that can assist you managing disputes to determine if the Conciliation Program may be right for you. You may contact one of our representatives to assist you determining which alternative may be the best fit for your situation.

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