



Assistance Program to Merchants for Interruption of Operations due to COVID-19

By Federico Aguirre-Rivera

The Coronavirus, Aid, Relief and Economic Security (“CARES”) Act created the Coronavirus Relief Fund (“CRF”) for the benefit of all the states and territories of the United States of America. The U.S. Department of Treasury assigned \$2.2 billion from the CRF to Puerto Rico for certain necessary expenses incurred as part of the emergency created by the COVID-19 pandemic not budgeted by March 27, 2020. Such funds were supposed to be used by December 30, 2020.

With the approval of the CARES Act, Executive Order OE-2020-40 was issued to establish the Strategic Plan of Disbursements of the funds received from the CRF (“the Plan”). Such Plan established several incentive programs, among which were the assistance for self-employed persons, and for small and medium businesses (by its Spanish acronym (“PyMES”) and the Paycheck Protection Program (“PPP”). These programs were available after December 30, 2020. However, after the conclusion of such programs, there are still funds available from the ones received from the CARES Act.

Subsequently, due to the persistence of the pandemic, on December 27, 2020 the Consolidated Appropriations Act, 2021 was enacted. Such Act extended the use of the

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Ph. (787) 999-4400
E. taxadvisors@alvatax.com

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funds granted, pursuant to the CARES Act, to the states and territories until December 31, 2021.

On January 5, 2021, the Governor of Puerto Rico signed Executive Order OE 2021-010 ("OE 2021-10") to, among other things, establish economic stabilization measures to provide financial assistance to certain businesses that have suffered monetary losses as a result of an interruption in operations since March 15, 2020, due to the Covid-19 pandemic. OE-2021-010 stated that the Puerto Rico Department of the Treasury ("Treasury") will determine the type of businesses that will be eligible for this assistance considering with particular emphasis those that have been forced to close because of the emergency measures decreed, such as, but not limited to, bars and restaurants.

On January 29, 2021, the Disbursement Oversight Committee of the CRF approved the Business Interruption Grant Assistance Program ("BIG") and approved the guidelines for said program ("Guides").

In accordance with the foregoing, PR Treasury issued Circular Letter of Internal Revenue 21-04 ("CC RI 21-04") to establish the procedure to request the benefits under the Assistance Program for Merchants for Interruption of Operations in accordance with the Guides.

Eligibility Criteria

The Guides established the following eligibility criteria:

- Be a private sector business, be it an individual business, a partnership or a legal entity;
- The business must have been operating one of the following: restaurant or bar, "chinchorro" or cafeteria, gym or establishment to exercise, spaces for events, concert halls or places dedicated to the presentation of artistic or sporting events, theaters or cinemas or other indoor recreational activities, and support services for arts and events;

- Must have been in operation as of March 15, 2020;
- At any time during the first quarter of calendar year 2020, must have had: (i) no more than 6 employees to whom the business paid wages subject to employer's contributions, or (ii) independent contractors who were paid during the calendar year 2019 at least \$5,000 and the Informative Return for Paid Services (Form 480.6SP) was filed;
- The volume of the business ("VOB") generated during the calendar year 2020 cannot exceed \$3,000,000;
- The business must have a valid Merchant's Registration Certificate and be in operation at the time of requesting the incentive, in addition, the Merchant's Registration Certificate must have at least one of the following NAICS Codes: 72251, 71113, 71312, 71399, 71119, 51212, 51213, 71131, 71132, 71394, 72254, 72241, 71111, 71112, 71219, 71311, 71399, 72121 as its main business activity;
- When the Merchant's Registration Certificate establishes that such merchant is a withholding agent, all monthly sales and use tax returns ("SUT Monthly Return") for the months of January, February and March 2020 must have been submitted (or at least during of the applicable months if the business started during 2020 and have reported taxable sales on said returns);
- Must have submitted the 2019 Income Tax Return (if the business was in operation before January 1, 2020);
- Have not received the loan granted by the Small Business Administration known as the Federal Paycheck Protection Program ("PPP");
- Have incurred monetary losses due to the interruption of business operations due to emergency measures taken by the government as a result of the COVID-19 pandemic, that is, the VOB during calendar year 2020 was less than the one generated during the calendar year 2019 (assuming that the business was in operation during the 12 months of the calendar year 2019);
- The business must have incurred, or plans to incur, expenses related to the emergency caused by COVID-19 that have not been covered by other aid received or pending receipt and that have not been included in any other request for available aid.

ABOUT THE AUTHOR Federico Aguirre-Rivera

Federico is a Senior Manager at Alvarado Tax & Business Advisors LLC. Prior to that, he was a Manager at Zaragoza & Alvarado LLP. His Curriculum Vitae also includes previous experience in the corporate and individual tax advisory area with an international and a local firm.

He provides corporate tax advisory services for clients in the retail, manufacturing and services industries, among others. Among his areas of expertise are consumption tax issues, tax exemptions requests, including municipal tax exemptions, assistance with tax audits and corporate compliance. Federico has been the speaker at tax seminars sponsored by the Puerto Rico Society of Certified Public Accountants and its chapters.

Federico is graduated from University of Puerto Rico with a major in Accounting. He is a member of the Puerto Rico Certified Public Accountants Society and the American Institute of Certified Public Accountants.

The businesses that comply with the above requirements will be considered as an Eligible Business for the BIG.

Allowable Expenses

The funds should be used by the Eligible Business for the costs and expenses incurred due to the interruption in operations or other adverse conditions as a result of the COVID-19 pandemic. The allowable expenses must have been incurred during the period that begun on March 15, 2020 and ends on December 31, 2021. Such costs include, but are not limited, to the following:

- Costs incurred due to business interruption that may be

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classified as a cost related to COVID-19;

- Reimbursement for cost or loss of inventory, equipment (including personal protective equipment and other supplies to promote health and safety), payroll costs, rent, technology to facilitate electronic commerce, professional services acquired (including design and construction of environments necessary to promote physical and social distancing and cleaning and disinfection services);
- Other operating costs in accordance with the administrative regulations applicable in the Guides; and
- Expenses that are reimbursable under the CRF as prescribed by the CARES Act.

Ineligible Expenses

According to the Guide, the following expenses are ineligible regardless of whether they were incurred due to the pandemic:

- Expenses that have already been reimbursed or were included in any other claim related to the COVID-19 emergency, including federal, state or local assistances received or compensation received by private insurance;
- Compensation paid to employees whose primary residence is located outside of Puerto Rico;
- Compensation in excess of \$100,000 annually paid to an employee, as prorated based on the payroll periods that the employer has;
- Employers' payroll taxes including, but not limited to, the employer's portion of social security, state and federal unemployment taxes, and income taxes withheld from employees;
- Payment of sick leave or family leave if said payments were subject to the credit established in the "Families First Coronavirus Response Act";
- Bonuses paid to employees;
- Payment of severance pay;
- Bonuses paid to company executives;
- Costs related to debt refinancing; and

- Any other expenses that were not necessary to continue operations under the COVID-19 emergency.

Calculation of the BIG

The steps to determine the amount of assistance that may be received under the BIG are the following:

Step 1: Calculation of the Total Monetary Loss: Subtract the VOB of 2020 from the VOB of 2019. If the VOB from 2020 is equal or more the eligible business will not qualify.

Step 2: Calculation of the Net Monetary Loss: Subtract the Total Monetary Loss (from Step 1) from any federal, state and/or local assistance received.

Step 3: The Amount of the assistance to be granted will be the lesser of:

1. the Net Monetary Loss; and
2. the following amounts:
 - a. \$5,000: In the case of an EligiBusiness with:
 - i. no employees at any time during the 1st quarter of 2020; and
 - ii. no independent contractors to which the business paid \$5,000 or more during the calendar year 2019.
 - b. \$8,000: Eligible Business with:
 - i. at least 1 (but not more than 2 employees) employee at any time during the 1st quarter of 2020; and
 - ii. at least 1 (but not more than 2 independent contractors) independent contractor to which the business paid \$5,000 or more for services rendered during the calendar year 2019.
 - c. \$15,000: Eligible Business with:
 - i. at least 3 (but not more than 6 employees) employees at any time during the 1st quarter of 2020; and
 - ii. at least 3 (but not more than 6 independent contractors) independent contractors to which the business paid \$5,000 or more for services rendered during calendar year 2019.

Key Contacts at Alvarado Tax & Business Advisors LLC

Juan A. Alvarado-Zayas, Esq., CPA

Managing Member
787-620-7730
jalvarado@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

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
rgarcia@alvatax.com

Edgardo Sanabria-Valentín, CPA

Special Advisor
787-999-3015
esanabria@alvatax.com

the monetary loss may be different for businesses that did not operate for the entire calendar year 2019 or commenced operations in 2020 (but no later than March 15, 2020).

Application for the BIG

The BIG application must be completed through the Internal Revenue Unified System (known by its Spanish Acronym as "SURI"). As part of the application, the business needs to certify that this

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assistance will be used within the terms and conditions of the BIG Guide.

Income Tax Reporting

The amount received from the BIG will be an exclusion from income and as such, will not be subject to income tax including the alternative minimum tax and the alternates basic tax applicable to corporations and individuals, respectively.

ATBA Comments

The BIG may benefit certain types of businesses which have had interruptions in their operations and were in operations as of March 15, 2020. The interruption in the operations will be evidenced by the reduction of income from 2019 to 2020 that was not compensated by certain other federal, state, or local assistance or private insurance.

The BIG is similar to the Puerto Rico Paycheck Protection Program that was effective until December 30, 2020. However, it may benefit businesses that did not qualify for this program because did not have employees but had independent contractors.

If your business complies with the requirements for the BIG (as mentioned above and including not receiving a loan under the Federal PPP), you should apply for it immediately as the funds will be disbursed in the order that the applications are received by the PR Treasury until the funds are exhausted. Contact us for any developments on this area.

At ATBA we have experienced personnel who can provide you more details about this economic assistance. In addition, we may help you with the determination of whether your business is eligible, with the

calculation of the amount to be requested and with the application process.

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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