



## Sales and Use Tax Changes Per Act 52-2022

By: Awilda M. Figueroa-Lebrón and Denisse M. Galarza-Mora

Sales and Use Tax nexus (“SUT”) with Puerto Rico has become broader over the years. Businesses with no presence in Puerto Rico could be required to register, collect, and remit SUT to the Puerto Rico Treasury Department. In addition, the due dates to remit the SUT have also been changed through the years. Today, while nexus is broader, the remittance of the SUT gets simplified with the recent enactment of Act 52-2022 signed by the Governor of Puerto Rico on June 30, 2022. Whether your business is already registered as a merchant in Puerto Rico or if you sell to consumers that reside in Puerto Rico, these changes may apply to you.

### Are you collecting SUT on Digital Product sales?

Back in 2020, SUT provisions included the terms “Market Facilitator” and “Market Seller” to define and require the registration of businesses that digitally sell tangible personal property, including digital products and taxable services to consumers in Puerto Rico. Thresholds for the requirement to register consist of sales in excess of \$100,000 or transactions in excess of 200 per year. Nonetheless, if the business recurrently advertises itself within the Puerto Rico market it is considered to have nexus for SUT purposes in Puerto Rico even if sales or transactions are under the mentioned thresholds. Act 52-2022 introduces additional terms to the Puerto Rico Internal Revenue Code of 2011, as

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amended (“PRIRC”) to expand on the taxability of digital products. The defined terms include “Digital Products”, “Specified Digital Products” and “Other Digital Products”. Also, it amends the definition of “taxable personal property” to include digital products as a new category within taxable transactions.

<b>DEFINED</b>	
<b>Any product transferred digitally or electronically to a customer by download, streaming, or other electronic means. Either by purchasing or subscription.</b>	
<b>EXAMPLES</b>	
Non Fungible Tokens (“NFTs”) Digital Audiovisual Work  Digital Audio Work Ringtones Greeting Cards Image/Photos Games Videos Music Electronic Entertainment	Digital Concerts Digital Videos  Digital Audiovisual Material News Memberships Digital Information Digital Storage Digital Devices Software Applications Audiobooks E-Books

The sourcing rules on digital products sales will be:

1. The customer’s physical address.
2. If the seller does not have a physical address, will use the customer’s mailing address.
3. If the customer does not provide physical and mailing addresses, the seller will use the address of the bank account, credit card, or the branch location where the customer’s bank account is registered.
4. If the customer’s bank account branch location is not available, the source of the income will be the bank headquarters location.

The abovementioned rules only apply for SUT and should not be considered for income tax purposes.

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**Awilda** is a Consultant at Alvarado Tax & Business Advisors LLC, with over 30 years of experience in corporate and individual tax advisory areas. She provides corporate and individual tax services for clients in retail, distribution, and service industries, among others.

Prior to joining us, Awilda worked for more than ten years in the private sector, including six years as a Tax Manager and a fifteen-year career in a local accounting firm. She also worked for two years as a Manager in Outsourcing Services Inc. a division of Zaragoza & Alvarado Group, engaged in providing finance, accounting, and payroll services.

Awilda is a graduate of the University of Puerto Rico with a Bachelor’s degree in Business Administration with a Major in Accounting. She is a Certified Public Accountant licensed in Puerto Rico and a member of the Puerto Rico Society of Certified Public Accountants.

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With regards to the areas of technical experience and consulting, Denisse has provided Sales and Use Tax consulting services to various municipalities, governmental agencies, and private industry clients. She has also assisted multiple corporate clients with the implementation of the recent changes to the Sales and Use Tax dispositions, which provide for the collection and remittance of this tax. Denisse has worked with manufacturers and wholesalers in obtaining sales tax waivers from the Puerto Rico Treasury Department to allow them to continue buying and selling their goods without Sales and Use Tax, has represented clients before the Puerto Rico Treasury Department on income and Sales and Use Tax investigations, participated in the preparation of closing agreements and ruling requests, and has assisted clients in the identification of potential areas to improve from the tax compliance standpoint.

Denisse has a Bachelor’s degree in Business Administration with Majors in Accounting and Finance from the University of Puerto Rico. She has been the speaker of various tax seminars sponsored by the Puerto Rico Society of Certified Public Accountants of which she has been a member since 2008.

**Admission Fees and Public Show Endorsements**

Promoters of public shows in Puerto Rico will now be required to inform the percentage of admission fees that will be subject to discounts.

Also, Act 52-2022 includes admission fees as part of the taxable transactions of Market Facilitators and Marketplace Sellers as a clarification of its taxable treatment. In addition, Act 52-2022 established a new filing deadline for the informative return of public show endorsement (“informative return”). The public event promoter may start selling and collecting the admission tickets after filing the informative return through the SURI platform. Therefore, the forty-eight (48) hours term for filing the informative return before the first day of selling and collecting the admission tickets is no

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longer required. A twenty-five percent (25%) fine of the sales tax due will apply if they fail to timely file the public show informative return.

An administrative fine of \$20,000 and the event cancellation will be imposed on companies or promoters who are not licensed as ticket agents. As well as on any authorized representatives of a promoter who sells tickets through a company not registered with the "OSPEP" (la Oficina de Servicios de Productores de Espectáculos Públicos").


### SUT Bi-Monthly Payments

Act 46 of July 19, 2017, amended the PRIRC to establish the requirement to pay the SUT in two monthly installments. Act 52-2022 eliminates this requirement simplifying the remittance of the SUT collected by merchants. Effective July 2022, the SUT liability is due no later than the twentieth day (20th) of the following month and there will be no need to make the two installments.

### ATBA Comments:

Is your business selling digital products or admission fees to customers in Puerto Rico? If it does, your business must evaluate its current SUT compliance to ascertain the correct application of these rules, as they may apply to your industry. Our tax professionals at Alvarado Tax and Business Advisors LLC are ready to assist you in identifying how Act 52-2022 may impact your business and tax planning for the future.

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