
The following is an English translation of Regulation No. 9237 dated from December 8, 2020.

In case of discrepancies between the Spanish and English versions of the Regulation, the Spanish version will prevail for all legal purposes.

**GOVERNMENT OF PUERTO RICO
TREASURY DEPARTMENT**



REGULATION TO AMEND ARTICLES 4010.01(h)-1, 4010.01(rr)-1, 4010.01(xx)-1, 4020.03-1, 4020.05-1, 4020.08-1, 4041.02-1, 4042.03-1, 4060.01-1, 4210.01(c)-6 AND TO ADD ARTICLES 4010.01(gg)-2, 4010.01(hhh)-1, 4010.01(iii)-1, 4020.05-2, 4020.05-3, 4020.05-4, 4041.03-1, 6043.03-1, 6043.03-2, 6043.04-1, 6043.04-2, AND 6080.14(a)(2)-1 TO REGULATION NO. 8049 OF JULY 21, 2011, BETTER KNOWN AS "REGULATION OF THE INTERNAL REVENUE CODE OF 2011" ("REGULATION"), TO ENFORCE THE PROVISIONS OF SECTIONS 4010.01, 4020.03, 4020.05, 4020.08, 4041.02, 4042.03, 4060.01, 4210.01, 6043.03, 6043.04, AND 6080.14 OF ACT 1-2011, AS AMENDED, KNOWN AS THE "PUERTO RICO INTERNAL REVENUE CODE OF 2011" ("CODE"), ENACTED PURSUANT TO SECTION 6051.11 OF THE CODE THAT ENABLES THE SECRETARY OF THE TREASURY TO ADOPT THE NECESSARY REGULATIONS TO ENFORCE THE CODE.

**GOVERNMENT OF PUERTO RICO
TREASURY DEPARTMENT**

INDEX

TITLE: Regulation to amend Articles 4010.01(h)-1, 4010.01(rr)-1, 4010.01(xx)-1, 4020.03-1, 4020.05-1, 4020.08-1, 4041.02-1, 4042.03-1, 4060.01-1, 4210.01(c)-6 and add Articles 4010.01(gg)-2, 4010.01(hhh)-1, 4010.01(iii)-1, 4020.05-2, 4020.05-3, 4020.05-4, 4041.03-1, 6043.03-1, 6043.03-2, 6043.04-1, 6043.04-2, and 6080.14(a)(2)-1 to Regulation No. 8049 of July 21, 2011, better known as “Regulation of the Puerto Rico Internal Revenue Code of 2011” (“Regulation”), to implement the provisions of Sections 4010.01, 4020.03, 4020.05, 4020.08, 4041.02, 4042.03, 4060.01, 4210.01, 6043.03, 6043.04, and 6080.14 of Act 1-2011, as amended, known as the “Puerto Rico Internal Revenue Code of 2011” (“Code”), enacted pursuant to Section 6051.11 of the Code that enables the Secretary of the Treasury to adopt the necessary regulations to enforce the Code.

CONTENTS	PAGE
Article 4010.01(h)-1.- Merchant.....	1
Article 4010.01(gg)-2.- Specified Digital Products.....	7
Article 4010.01(rr)-1.- Us.....	8
Article 4010.01(xx)-1.- Eligible Reseller.....	9
Article 4010.01(hhh)-1.- Marketplace Facilitators.....	10
Article 4010.01(iii)-1.- Marketplace Seller.....	13
Article 4020.03-1.- Rules for determining the source of the income generated for the sale of taxable items.....	13
Article 4020.05-1.- Tax Collection.....	22
Article 4020.05-2.- Tax Collection – Voluntary Withholding Agent	23
Article 4020.05-3.- Examples.....	24
Article 4020.05-4.- Marketplace Seller SUT Collection Waiver.....	28
Article 4020.08-1.- Collection of Sales Taxes on Mail Order Sales.....	29
Article 4041.02-1.- Import Declaration and Tax on Imports Monthly Return.....	31
Article 4041.03-1.- Information required of any merchant other than a withholding agent.....	36
Article 4042.03-1.- Time to remit the sales and use tax.....	39
Article 4060.01-1.- Merchants’ Registry.....	49
Article 4210.01(c)-6.- Services provided by Merchants whose volume does not exceed a quantity	59
Article 6043.03-1.- Reserved.....	64
Article 6043.03-2.- Penalties for Violations to the Provisions of Chapter 6 of Subtitle D – Marketplace Facilitators.....	64
Article 6043.04-1.- Reserved.....	64
Article 6043.04-2.- Failure to remit the sales and use tax: Marketplace Facilitators	64
Article 6080.14(a)(2)-1.- Collection of Municipal use tax by the Secretary.....	65
Separability.....	65
Effectiveness.....	66

**GOVERNMENT OF PUERTO RICO
TREASURY DEPARTMENT**

Regulation to amend Articles 4010.01(h)-1, 4010.01(rr)-1, 4010.01(xx)-1, 4020.03-1, 4020.05-1, 4020.08-1, 4041.02-1, 4042.03-1, 4060.01-1, 4210.01(c)-6 and add Article 4010.01(gg)-2, 4010.01(hhh)-1, 4010.01(iii)-1, 4020.05-2, 4020.05-3, 4020.05-4, 4041.03-1, 6043.03-1, 6043.03-2, 6043.04-1, 6043.04-2, and 6080.14(a)(2)-1 to Regulation No. 8049 of July 21, 2011, better known as “Regulation of the Puerto Rico Internal Revenue Code of 2011” (“Regulation”), to implement the provisions of Sections 4010.01, 4020.03, 4020.05, 4020.08, 4041.02, 4042.03, 4060.01, 4210.01, 6043.03, 6043.04, and 6080.14 of Act 1-2011, as amended, known as the “Puerto Rico Internal Revenue Code of 2011” (“Code”), enacted pursuant to Section 6051.11 of the Code that enables the Secretary of the Treasury to adopt the necessary regulations to enforce the Code..

Amendments to Article 4010.01(h)-1

To amend clause (vi) of subparagraph (1) of paragraph (d) of Article 4010.01(h)-1, to read as follows:

“(vi) the person creates a substantial nexus with Puerto Rico, including, but not limited to:

(A) In general:

(I) granting of sale contracts in Puerto Rico;

(II) direct marketing by any means, including, but not limited to, mail, radio, television, cyber portals, e-commerce or other electronic means, distribution of unsolicited catalogs, or advertisements from magazines, newspapers, billboards, cyber portals, websites, social media or other advertising means of distribution in Puerto Rico, whether electronic or not; and

(III) mail order sales, as defined in Article 4020.08-1 of this Regulation.

(B) For purposes of this clause, the activities described herein must be carried out by the person on an ongoing, recurring basis and in the regular course of business.

(I) In the case of the award of sales contracts in Puerto Rico, it will be understood that such activity is carried out on a continuous, recurring basis and in the regular course of

business if the merchant has a gross sales in Puerto Rico in excess of ten thousand dollars (\$10,000).

(II) In the case of direct marketing by any means it will be understood that these activities are carried out on a continuous, recurring basis and in the regular course of business if the merchant carries out these activities in Puerto Rico directly, or indirectly for the purpose of selling tangible personal property, including specific digital products and services, in Puerto Rico or establishing a market in Puerto Rico.

(III) In the case of mail order sales by entities that do not have a physical location in Puerto Rico, these activities will be understood to be carried out on an ongoing, recurring basis and in the ordinary course of business if the merchant has volume of business, that is, total gross sales, in Puerto Rico in excess of one hundred thousand dollars (\$100,000) or carries out at least two hundred (200) transactions during his accounting year.

(C) Determination of the Volume of Business for members of a controlled group.- In the case of entities members of a controlled group, as defined in Section 1010.04 of the Code, the amount of the volume of business shall be determined by adding the volume of business of the transactions considered from Puerto Rico sources of all members of the controlled group. Partnerships, special partnerships and corporations of individuals will be considered as corporations under Section 1010.04 of the Code to determine whether they are members of the same controlled group for SUT purposes.

(D) Once a merchant establishes a nexus, such merchant shall be required to register in the Merchant's Registry set out in Article 4060.01-1 of this Regulation and shall be considered a merchant until he ceases activities and withdraws his Merchant's Certificate in accordance with said Article."

To amend clause (ix) of subparagraph (1) of paragraph (d) of Article 4010.01(h)-1 to read as follows:

"(ix) the person, other than a transport company, haul or third party intermediary acting on such capacity, sells and sends or causes it to be shipped, tangible personal property, including specific digital products and services, of any foreign state or country to any person in Puerto Rico through a link on a website, for use, consumption, or distribution in Puerto Rico, or for storage to be used or consumed in Puerto Rico. For purposes of this clause, the activities described herein must be carried out by the person on an ongoing, recurring basis and in the

ordinary course of business. Such activities shall be deemed to be carried out on a continuous, recurring basis and in the ordinary course of business if the merchant has volume of business, that is total gross sales, in Puerto Rico in excess of one hundred thousand dollars (\$100,000), or if he carries out at least two hundred (200) transactions during his accounting year.

(A) Determination of the Volume of Business for members of a controlled group.- In the case of entities members of a controlled group, as defined in Section 1010.04 of the Code, the amount of the volume of business shall be determined by adding the volume of business of the transactions considered from Puerto Rico sources of all members of the controlled group. Partnerships, special partnerships and corporations of individuals will be considered as corporations under Section 1010.04 of the Code to determine whether they are members of the same controlled group for SUT purposes.

(B) Once a merchant establishes a nexus, such merchant shall be required to register in the Merchant's Registry set out in Article 4060.01-1 of this Regulation and shall be considered a merchant until he ceases activities and withdraws his Merchant's Certificate in accordance with said Article."

To add clause (xi) of subparagraph (1) of paragraph (d) of Article 4010.01(h)-1 to read as follows:

"(xi) the person is a marketplace facilitator or a marketplace seller who sells and sends, or causes to be shipped, tangible personal property, including specific digital products, and services from any state, territory or foreign country to anyone in Puerto Rico via a link on an Internet page, for use, consumption, or distribution in Puerto Rico, or for storage to be used or consumed in Puerto Rico. Such activities shall be deemed to be carried out on an ongoing, recurring basis and in the ordinary course of business if the marketplace facilitator or marketplace seller has volume of business, that is total gross sales, in Puerto Rico in excess of one hundred thousand dollars (\$100,000), or if he carries out at least two hundred (200) transactions during his accounting year. In the case of the marketplace seller, for these purposes, only those sales that are not made through a marketplace facilitator will be taken into account.

(A) Determination of the Volume of Business for members of a controlled group.- In the case of entities members of a controlled group, as defined in Section 1010.04 of the Code, the amount of the volume of business shall be determined by adding the volume of business

of the transactions considered from Puerto Rico sources of all members of the controlled group. Partnerships, special partnerships and corporations of individuals will be considered as corporations under Section 1010.04 of the Code to determine whether they are members of the same controlled group for SUT purposes.

(B) Once a merchant establishes a nexus, such merchant shall be required to register in the Merchant's Registry set out in Article 4060.01-1 of this Regulation and shall be considered a merchant until he ceases activities and withdraws his Merchant's Certificate in accordance with said Article."

To add a subparagraph (6) to paragraph (f) of Article 4010.01(h)-1 to read as follows:

"(6) The dispositions of clauses (vi), (ix) y (xi) of subparagraph (1) of paragraph (d) are illustrated by the following examples:

(i) Example 1: Merchant "V", a non-resident person from Puerto Rico who is not engaged in industry or business in Puerto Rico, is engaged in the sale buttons, wholesale and retail, through an internet page. Merchant "V" has no property, employees, or business activities in Puerto Rico, nor does it engage in direct or indirect marketing activities by any means, including those described in clause (vi) of subparagraph (1) of paragraph (d) of this Article 4010.01(h)-1. Merchant "C" is a resident of Puerto Rico who discovers Merchant "V" through an internet search and decides to buy buttons from Merchant "V" through his website. Merchant "C" is the only person who periodically purchases from Merchant "V" and such transactions do not exceed 200 in the economic year or annual accounting period of Merchant "V", nor did the total amount of sales to Trader "C" exceeded \$100,000 in that year. Merchant "V" has no sales representatives in Puerto Rico and does not have an agreement with any resident of Puerto Rico in exchange for commission. Nor does it have a telemarketing service to place ads in Puerto Rico or position its website to gain greater knowledge of its products to residents of Puerto Rico. In this case the Merchant "V" is not considered to be engaged in the sale of taxable items business in Puerto Rico, and therefore has no link with Puerto Rico, as the online sales activities carried out within Puerto Rico are not continuous and recurring, even when these are done in the regular course of business.

(ii) Example 2: The facts are the same as Example 1, except that Merchant "V" is engaged in direct or indirect marketing activities by any means, including those described in clause (vi) of subparagraph (1) of paragraph (d) of Article 4010.01(h)-1, for the purpose of

selling its products in Puerto Rico. Merchant "V" is considered to have a nexus with Puerto Rico, because regardless of the volume of business generated, it carries out direct or indirect marketing activities in Puerto Rico by any means, on a continuous, recurring basis and in the ordinary course of business. Merchant "V" shall be deemed to be engaged in the business of sale of taxable items in Puerto Rico until direct or indirect marketing activities cease and cancels its Merchant's Certificate.

(iii) Example 3: The facts are the same as Example 1, except that Merchant "C" makes 30 purchases to Merchant "V" for the total amount of \$150,000. Merchant "V" is considered to be engaged in the taxable item sales business in Puerto Rico, and therefore has a link with Puerto Rico, as the online sales activities it carries out with Puerto Rico are considered continuous, recurring and in the ordinary course of business for exceeding the amount of \$100,000, regardless of the fact that Merchant "V" does not do direct or indirect marketing activities to persons residing in Puerto Rico. Merchant "V" shall be deemed to be engaged in the sale of taxable items in Puerto Rico.

(iv) Example 4: Merchant "Y" only engages in direct or indirect marketing activities by any means, including those described in clause (vi) of subparagraph (1) of paragraph (d) of Article 4010.01(h)-1 for the purpose of selling its products in Puerto Rico. Merchant "Y" is considered to be engaged in the sale of taxable items in Puerto Rico, and therefore has a link with Puerto Rico, as Merchant "Y" carries out direct or indirect marketing activities by any means, even if it does not generate volume of business by sales to or in Puerto Rico. Merchant "Y" shall be deemed to be engaged in the business of selling taxable items in Puerto Rico until direct or indirect marketing activities cease and cancels the Merchant's Certificate.

(v) Example 5: Merchant "X", has a cyber-portal (website) where individuals, including residents of Puerto Rico, may purchase taxable items at third-party auctions or online sales whose sole business relationship with Merchant "X" is that they pay an amount or charge for participating in the auction of, or included in, the website ("Participating Third Party Merchants"). Individuals who purchase taxable items on the "X" Merchant cyber portal do not purchase them from the Merchant, but from participating Third Party Merchants, but the sale is made through the "X" Merchant website. Merchant "X" carries out direct or indirect marketing activities by any means, including those described in clause (vi) of paragraph (1) of

paragraph (d) of Article 4010.01(h)-1. Merchant "X" is considered to be engaged in the taxable games business in Puerto Rico, so it has a nexus with Puerto Rico.

(vi) Example 6: Merchant "Z" is a marketplace facilitator that owns a website where individuals, including residents of Puerto Rico, can purchase taxable items online from third parties whose only trading relationship with Merchant "Z" is that they pay an amount to be included in their website. Merchant "Z" collects sales tax from transactions of sale of tangible personal property provided through the Merchant "Z" website. Seller "S" has footballs available for sale in the Merchant "Z" market. A buyer in Puerto Rico buys a football included in the Seller "S" list in the market of Merchant "Z" website. The football is delivered to the address of the buyer's home in Puerto Rico. Merchant "Z" is considered to be engaged in the taxable items business in Puerto Rico, so it has a nexus with Puerto Rico. The result is the same regardless of whether Seller "S" is located in Puerto Rico and regardless of the sales volume of Seller "S" in Puerto Rico.

A paragraph (g) is added to Article 4010.01(h)-1 to read as follows:

“(g) Other provisions relating to clauses (vi), (ix) and (xi) of subparagraph (1) of paragraph (d) of this Article 4010.01(h)-1

(1) The fact that a Merchant establishes nexus under clauses (vi), (ix) and (xi) of subparagraph (1) of paragraph (d) of this Article 4010.01(h)-1, it shall not, on its own, establish an obligation to obtain an internal revenue license in regards to products whose sale, distribution, traffic, use or possession in Puerto Rico requires one of the internal revenue licenses as established on Subtitle C of the Code or any other special law.

(2) In the case of merchants who, in accordance with clauses (vi), (ix) and (xi) of subparagraph (1) of paragraph (d) of this Article 4010.01(h)-1, have no nexus to Puerto Rico but have agreements in place for the distribution of its products in Puerto Rico under which they exercise substantial control over the marketing of their trademarks, or if the distribution of their products in Puerto Rico is sufficient to establish a market in Puerto Rico according to (vi) (ix) and (xi) of subparagraph (1) of paragraph (d) of this Article 4010.01(h)-1, where such merchants sell taxable items by mail or electronic means to Puerto Rico, they shall be deemed to be engaged in the sale of taxable items in Puerto Rico and have established a link with Puerto Rico under clauses (vi) (ix) and (xi) of subparagraph (1) of paragraph (d) of this Article 4010.01(h)- 1.

(3) Once a merchant establishes nexus under any of the clauses in subparagraph (1) of paragraph (d) of this Article 4010.01(h)-1, such merchant will be obligated to register in the Merchants' Registry in accordance to the requirements established on Article 4060.01-1 of this Regulation and shall be considered a merchant until the activities which gave rise to the establishment of nexus cease and the merchant cancels his Merchant's Certificate in accordance with such Article."

Article 4010.01(gg)-2

Article 4010.01(gg)-2 is added to read as follows:

"Article 4010.01(gg)-2.- Specific Digital Products

(a) It means electronically transferred digital audiovisual works, digital audio works, or other digital products, provided that a digital code grants a buyer the right to obtain the product will be treated in the same way as a specific digital product.

(1) Digital audiovisual work means a series of related images that, when displayed in succession, convey an impression of movement, along with the sounds that accompany it, if any.

(2) Digital audio work means a work that results from the fixation of a series of musical, spoken or other sounds, including a ringtone.

(3) The English term "*Ringtone*" means a digitized sound file that is downloaded to a device and can be used to alert the buyer to a communication.

(4) Digital Codes- A digital code is a code that comes packaged with a physical product eligible for movies accessible anywhere, such as a DVD or Blu-ray. Buyer can redeem digital movie codes anywhere for a digital version of the movie, which can add movies to their collection and be accessible anywhere.

(5) The term "Electronically Transferred" means that it was obtained by the buyer by means other than tangible means of storage.

(6) Other Digital Products may include: greeting cards, images, video or electronic games or entertainment, electronic group memberships to obtain exclusive electronic or audiovisual data, including but not limited to theatrical products, music products, including concerts or videos, adult audio-visual content material, news or information products, digital storage products, computer software applications, and any other products that may be considered a digital product.

Amendments to Article 4010.01(rr)-1

Paragraph (h) of Article 4010.01(rr)-1 is amended to read as follows:

“(h) The term "use" shall not include:

(1) for purposes of the SUT payable to Municipalities, the possession of a taxable item when said item has been introduced to Puerto Rico with the purpose of being an object of commerce in the ordinary course of business by a merchant holding a Reseller Certificate pursuant to Article 4050.04-1 of this Regulation; provided that for these purposes, the phrase “object of commerce” means the sale of a taxable item in Puerto Rico;

(2) the use of taxable items that constitute regular travel clothing and equipment of the tourists or visitors that arrive to Puerto Rico;

(3) the use of taxable items with an added value that does not exceed five hundred (500) dollars introduced by residents of Puerto Rico who arrive to Puerto Rico from abroad;

(4) the use of taxable items introduced temporarily to Puerto Rico which are directly related to the production of films, construction, trade shows, seminars, conventions or other purposes and which are re-exported from Puerto Rico;

(5) the use of taxable items acquired (i) in an occasional or sporadic sale, as such term is defined in art. 4010.01(y)-1(b) of this Regulation, or (ii) acquired as a result of a tax free exchange under Subtitle A of the Code or in the sale or exchange of all or substantially all the assets of a business, outside the ordinary course of the business, under paragraph (b) of Article 4010.01(ss)-1 of this Regulation;

(6) the involuntary conversion of tangible personal property, due to the effects of hurricanes, earthquakes, fires, landslides, floods or other acts of God or as the result of vandalism or malicious damage where there is no guilt or negligence of the taxpayer, as evidenced by a complaint or claim filed to such effect stating the damages caused;

(7) the use of taxable items introduced to Puerto Rico by carrier companies consisting of articles used recurrently to hold, tie and facilitate the transportation of merchandise (for example, pallets and straps) to and from Puerto Rico;

(8) free services rendered to nonprofit entities duly certified by the Department; y

(9) the use of taxable items acquired by purchase or sale, which would otherwise have been subject to sales tax, unless: (i) the item or service is not considered or excluded from the definition of tangible personal property or taxable service, as the case may be; (ii) the

taxable item is exempt from sales tax, or (iii) the transaction, which would otherwise be considered a sale under Article 4010.01(ss)-1(a) of this Regulation, it is not considered a sale pursuant to subparagraphs (4) to (8) of Article 4010.01(ss)-1(b) of this Regulation or by any other article of this Regulation or section of the Code that does not consider a purchase or sale transaction as such for SUT purposes.”

Article 4010.01(rr)-1 is amended to add paragraph (i) to read as follows:

“(i) For purposes of the use tax, Puerto Rico is a single jurisdiction, so a merchant who paid the use tax when the taxable item was imported will be subject to the use tax only once, at the time that the taxable item is imported into Puerto Rico.”

Amendment to Article 4010.01(xx)-1

Article 4010.01(xx)-1 is amended to read as follows:

“Article 4010.01(xx)-1 Eligible Reseller

(a) General Rule. - That duly registered merchant who purchases taxable items mainly (i) for sale to persons that may acquire said items exempt from the payment of the sales and use tax according to Chapter 3 of Subtitle D of the Code, (ii) for sale as nontaxable items according to Chapter 1 of Subtitle D of the Code or for exportation or (iii) for export. For these purposes, the term “mainly” means that during the period of three (3) taxable years immediately before the year of the determination, an average of (80) percent or more of the inventory has been removed by merchant for sales to persons that may acquire the taxable item exempt from the payment of sales and use tax according to Chapter 3 of Subtitle D of the Code or for export. Provided, that the Secretary is authorized to treat as eligible reseller those duly registered merchants who have a level of removal from inventory lower than eighty (80) percent provided herein, taking into consideration all their facts and circumstances. For purposes of determining whether a reseller is an Eligible Reseller, sales made by a Marketplace Seller with a Marketplace Seller SUT Collection Waiver, under Section 4020.05-4 of the Regulations, through a market of a Market Facilitator are considered non-taxable items. In these cases, if 1 taxable year has not elapsed since you obtained the SUT Collection Waiver, for the purpose of determining whether you qualify as an Eligible Reseller you must use a sales projection for a period of 1 year. In cases where more than one taxable year has elapsed since you obtained the SUT Collection Waiver, but less than the 3 taxable years required for the analysis, you must use the average sales of the elapsed period that is less than 3 taxable years. In cases

where 3 or more taxable years have elapsed since you obtained the SUT Collection Waiver, you must use the average sales for the last three (3) taxable years. To be considered an Eligible Reseller, said merchant shall obtain an Eligible Reseller Certificate from the Secretary according to Code sec. 4030.02 and art. 4030.02-1 of this Regulation.

To add subparagraph (8) to paragraph (c) of Article 4010.01(xx)-1 to read as follows:

(c) Examples.- The provisions of this article are illustrated with the following examples:

(1) ...

...

(8) Example 8: Merchant "R" is a clothing designer located in Puerto Rico, who originally made 100% of his sales of retail products on orders to customers, so he registered as a Merchant in the Department and charges SUT in all its sales. In 2019, Merchant "R" launched a low-cost clothing line, which is sold 100% through Marketplace Facilitators who are responsible for promoting the line, marketing it online and performing the entire process of selling the clothing line. The low-cost clothing line has been very successful and has become 90% of the sales of Merchant "R", who is a Marketplace Seller. From January 1, 2021, the Marketplace Facilitators informed Merchant "R" that they would be responsible for the collection and deposit of the SUT on Puerto Rico sales. In January 2021, Merchant "R" requested and obtained a Marketplace Seller SUT Collection Waiver issued by the Department in which he included all the Market Facilitators he uses to sell his clothing line. In 2021, Merchant "R" may apply to be considered an Eligible Reseller, because sales made as a Marketplace Seller with a SUT Collection Waiver through Marketplace Facilitator markets are considered non-taxable items for purposes of determining whether you are an Eligible Reseller and such sales represent 90% of all its projected sales for a period of 1 year."

Article 4010.01(hhh)-1

Add Article 4010.01(hhh)-1 to read as follows:

"Article 4010.01(hhh)-1 Marketplace Facilitator:

(a) It means any person, including a related person or entity that facilitates the sale of tangible personal property, specific digital products, or taxable services that meet the following requirements:

(1) The person performs directly or indirectly any of the following activities:

(i) Publishes, makes available or promotes the sale of tangible personal property, specific digital products or services on behalf of a "marketplace seller", in a medium owned, operated or controlled by the Marketplace Facilitator.

(ii) Facilitates the sale of the seller's products through a market, by transmitting or communicating an offer or acceptance of sale to the retailer of tangible personal property, specific digital products or taxable services between a Marketplace Seller and a buyer in a medium that can include a store, counter, catalogue, website or some similar means.

(iii) Owns, rents, makes available or operates any electronic or physical infrastructure or any property, process, method, copyright, trademark or patent that connects Marketplace Sellers with buyers in order to make retail sales of tangible personal property, specific digital products or taxable services.

(iv) Provides or facilitates a market to sell tangible personal property, specific digital products or taxable services regardless of ownership or control of tangible personal property, specific digital products or taxable services that are subject to sale at retail.

(v) Provides development of computer programs ("software") or research and development activities related to any activity described in this paragraph, if such development of computer programs or research and development activities are directly related to the physical or electronic market provided by a Marketplace Facilitator.

(vi) Provides or offers compliance services or storage to a Marketplace Seller.

(vii) Sets prices for sale of tangible personal property, specific digital products or taxable services by marketplace seller.

(viii) Provides customer service to a marketplace seller or a marketplace seller's customers, or accepts or helps take orders, returns or exchanges of tangible personal property, specific digital products or taxable services by a marketplace seller.

(2) The person performs directly or indirectly any of the following activities:

(i) Collects sales and use tax on sale at retail of tangible personal property, specific digital products or taxable services.

(ii) Provides payment-processing services in the sale at retail of tangible personal property, specific digital products or taxable services.

(iii) Invoice, charge or otherwise receive sales charges, listing fees, reference charges, closing fees, charges for inserting or making available tangible personal property,

specific digital products or taxable services in a market or other consideration for facilitating a sale to tangible personal property, specific digital products or taxable services, regardless of the membership or control of tangible personal property , specific digital products or taxable services that are sold at retail.

(iv) Through the terms and conditions, agreements or arrangements with a third party, it collects payment in connection with a sale of tangible personal property, specific digital products or taxable services from a buyer and transmits that payment to the marketplace seller, regardless of whether the person who collects and transmits such payment receives compensation or other consideration in exchange for the service.

(v) Provides a virtual currency that buyers can use to purchase tangible personal property, specific digital products, or taxable services.

(b) The provisions of this article are illustrated by the following examples:

(1) Example 1: Company "A" facilitates sales by advertising local restaurants in its brochures and advertisements. Customers order food from restaurants by calling Company "A". Company "A" processes customer payments and provides a delivery service for restaurant food to customers. Company "A" does not own restaurant franchises. In 2019, the total value of the sales price of sales provided by company "A" originating in Puerto Rico, combined among all its marketplace sellers, exceeded \$100,000 in total volume of business. Company "A" is a marketplace facilitator and is therefore required to remit sales and use tax to the Department on all sales it provides on behalf of other sellers in Puerto Rico.

(2) Example 2: Company "B" facilitates sales by advertising local restaurants on its website and mobile app. Customers place food orders from restaurants on the Company's "B" website or mobile app. Company "B" processes customer payments through its website or mobile app and delivers food to customers. Company "B" is a marketplace facilitator.

(3) Example 3: SomosAmigos.com, a social media network, provides a forum in which people who use the network can buy and sell used tangible personal property. SomosAmigos.com works only as an advertising platform that joins buyers and sellers. Once the buyer and seller have contacted through the network, they must negotiate the sale and make payment arrangements between themselves. While the forum provided by SomosAmigos.com could be considered a market, SomosAmigos.com is not considered a marketplace facilitator because it is not dedicated to completing the sale, collecting the

customer's payment and does not transmit the payment to the marketplace seller as described in Section 4010.01(ddd) of the 2011 Code.

Article 4010.01(iii)-1

Article 4010.01(iii)-1 is added to read as follows:

“Article 4010.01(iii)-1 Marketplace Seller

(a) It means a seller who makes sales at wholesale or retail through any physical or electronic market owned, operated or controlled by a marketplace facilitator, even if that seller had not been required to collect and pay sales and use tax if the sales had not been made through that market.

(b) The provisions of this article are illustrated by the following examples:

(1) Example 1: Merchant "A" does not live in Puerto Rico and is not registered as a Merchant in the Merchant Registry of the Puerto Rico Treasury Department. Merchant "A" manufactures and sells doll clothes only through an Internet market for artisans. Merchant "A" has been notified by the marketplace facilitator that, as of January 1, 2021, the marketplace facilitator will collect and remit Puerto Rico's sales and use tax on all Merchant "A" sales to buyers whose delivery address for tangible personal property purchased is in Puerto Rico. Because Merchant "A" does not live or have business operations located in Puerto Rico and exclusively makes its sales through a marketplace facilitator, it does not need to take any action with the Puerto Rico Treasury Department.

(2) Example 2: Merchant "B" has a business outside Puerto Rico that sells fishing items through a marketplace facilitator and also from its own website. In the case of sales made through the marketplace facilitator, the facilitator collects and remits Puerto Rico's sales and use tax on sales made through its market. However, if merchant "B" gross sales to Puerto Rico buyers from its own website are in excess of \$100,000 or has more than 200 separate transactions with Puerto Rico buyers during its accounting year through its own website, Merchant "B" has nexus and therefore must register with the Merchant Registry of the PR Treasury Department to collect and remit sales and use tax on all Puerto Rico's sales made from its own website.

Amendments to Article 4020.03-1

Article 4020.03-1 is amended to read as follows:

“Article 4020.03-1.- Rules for determining the source of the income generated for the sale of taxable items.-

(a) The source of the income generated by the sale of tangible personal property, except specific digital products, shall be determined, for SUT purposes, using the rules set out below. For the purposes of the state sales tax of ten-point five (10.5) per cent of the sale price of taxable items in Puerto Rico and the fixed contribution rate of one (1) per cent of the municipal sales tax imposed under Section 6080.14 of the Code and administered jointly between the Department and the municipalities, there is only one tax jurisdiction within the territorial boundaries of the Commonwealth of Puerto Rico. In order for a sale of tangible personal property to be subject to the SUT in Puerto Rico, it has to be from Puerto Rico sources according to the rules set out herein.

(b) The rules for determining the source of income set forth herein may also, with the consent of other jurisdictions in the United States or other countries whose cooperation is necessary, affect sales transactions made outside Puerto Rico for consumption in Puerto Rico. These rules will be applied in a hierarchical manner. The source of income shall first be determined in accordance with subparagraph (1). If under subparagraph (1) the source of income cannot be determined, then the other subparagraphs will be taken into account in their respective order.

(1) When the property is delivered to the buyer at the seller's premises, the source shall be deemed to be such premises.

(i) The provisions of this subparagraph (1) are illustrated by the following examples:

(A) Example 1: "A" buys a TV from the "B" store. "B" has its store in Puerto Rico. "B" delivers the TV to "A" at the store. The income generated by this transaction is determined by this subparagraph and is attributable to the jurisdiction in which the "B" store is located, Puerto Rico.

(B) Example 2: "A" buys a TV from the "B" store. "B" has its store in Puerto Rico. "B" delivers the TV to "A" at home. "A" lives in the Dominican Republic. The source of the income generated by this transaction cannot be determined by this subparagraph, so one of the other subparagraphs of this article shall apply in hierarchical order.

(2) Where the property is not delivered to the buyer at the seller's premises, the source shall be deemed to be the location where it is received by the buyer, including the

address indicated by the buyer to the seller for the purposes of transporting and delivering the property. This shall apply only where the seller is aware of the place where the buyer will receive ownership, regardless of whether the property is delivered by the seller or by a third party.

(i) The provisions of this subparagraph (2) are illustrated by the following examples:

(A) Example 1: As indicated in Example 2 of subparagraph (1) of this paragraph, "A" purchases a TV from the "B" store. "B" has its store in Puerto Rico. "B" transports and delivers the TV to "A" in your home. "A" lives in the Dominican Republic. The source of the income generated by this transaction will be the jurisdiction in which the house of "A" is located, Dominican Republic.

(B) Example 2: "A", a resident of Puerto Rico, buys a TV from the "B" store. "B" has its shop in the municipality of Ponce. "B" does not provide transportation services. "C" collects in the name of "A" the TV in store "B" without indicating the address to which the delivery would be made. "B" keeps in its archives the address of "A", according to it was provided in the ordinary course of business. "C" transports and delivers that TV to "A" at home. The source of the revenue generated by this transaction cannot be determined by this subparagraph, so subparagraph (3) of this paragraph shall apply.

(3) If subparagraphs (1) and (2) do not apply, the source of the proceeds from the sale shall be the address of the buyer as recorded in the records maintained by the seller in the ordinary course of his business, where the use of that address does not constitute an act of bad faith. In this case, the seller will use the address he has obtained from the buyer in the ordinary course of his business, either in previous sales or in the current sale.

(i) The provisions of this subparagraph (3) are illustrated by the following example:

(A) Example: "A" buys a TV from the "B" store. "B" has its store in Puerto Rico. "B" does not provide transportation services. "C" collects in the name of "A" the TV in the store of "B" without indicating the address to which it would make the delivery, although "B" keeps in its files the address of "A", as provided in the ordinary course of business. "C" transports and delivers that TV to "A" at home. "A" lives in St. Thomas. The source of the income generated by this transaction is determined on the basis of the address that "B", in good faith, has obtained from "A" in the ordinary course of its business, St. Thomas.

(4) If subparagraphs (1) to (3) do not apply, the source of the sale shall be deemed to be the address of the buyer obtained in the process of consummation of the current sale, including the address reflected in the buyer's payment instrument, if no other is available, to the extent that the use of such address does not constitute an act of bad faith.

(i) The provisions of this subparagraph (4) are illustrated by the following example:

(A) Example: "A" buys a TV from the "B" store. "B" has its store in Puerto Rico. "B" does not provide transportation services. "C" picks up the TV in the "B" store in the name of "A" without indicating the address to which it would make the delivery. "B" does not keep the address of "A" in its files. However, "A" paid "B" with a check that bears the postal address of "A" in print. "C" transports and delivers that TV to "A" at home. "A" lives in St. Thomas. The source of the income generated by this transaction is determined on the basis of the postal address of "A" that "B", in good faith, has obtained from the check of "A", St. Thomas.

(5) Where none of the above subparagraphs applies, including the situation in which the seller does not have sufficient information to apply such rules, then the source of the sale shall be determined in reference to the address from which tangible personal property was delivered or shipped.

(i) The provisions of this subparagraph (5) are illustrated by the following examples:

(A) Example 1: "A" buys a TV from the "B" store. "B" has its store in the state of New York and has its warehouse in a municipality in Puerto Rico. "A" is not a regular "B" customer, paid in cash for his TV and indicated that "C" would pick him up at the "B" warehouse to give to "A". "B" does not have sufficient information to apply any of the above rules. The source of the revenue generated by this transaction will be Puerto Rico, the jurisdiction in which the "B" warehouse is located from which the TV is dispatched.

(B) Example 2: "A," a resident of Wisconsin, buys a TV from the "B" store. "B" has its store and warehouse in Puerto Rico. "A" is not a regular "B" customer, paid in cash for his TV and indicated that "C" would pick him up at the "B" warehouse to give to "A". "B" does not have sufficient information to apply any of the above rules. The source of the revenue generated by this transaction will be the jurisdiction in which the "B" warehouse is located.

(c) The source of the sale of services, except telecommunications, cable or satellite television, leasing of tangible personal property and bank charges, will be the location where the services are performed. In the case of the sale of property transportation services from

outside Puerto Rico or outside Puerto Rico, which are not related to a sale of tangible personal property, nor are considered delivery charges, as defined in Section 4010.01(g)-1 of this Regulation, such services shall be presumed to have been paid at the place or places where most of the costs attributable to such transportation occur, even if it's outside Puerto Rico.

(1) The provisions of this paragraph (c) are illustrated by the following examples:

(i) Example 1: "O" is a company dedicated to the fumigation and residential extermination of insects with main office in San Juan, Puerto Rico. "O" has a sales force of fifty (50) persons in Puerto Rico and the U.S. Virgin Islands. The source of income for the provision of residential fumigation services will be the place where "O" provides residential fumigation services. Therefore, the source of income for the provision of residential fumigation services within the territorial limits of the Commonwealth of Puerto Rico will be the Commonwealth of Puerto Rico and "O" shall comply with its obligation related to the SUT by deposit the SUT collected on all its sales in Puerto Rico, as indicated in this Regulation. However, "O" will not be subject to collect and remit SUT on sales of its services provided in the U.S. Virgin Islands.

(ii) Example 2: "U" is a company dedicated to the maritime freight transport service between Puerto Rico and the state of Florida. "A" is an individual not engaged in industry or business in Puerto Rico and is a resident of Puerto Rico. "A" contracts "U" transportation services to send the moving to his brother "B", a Florida resident. The source of income from the provision of transportation services will be attributable to Florida as it is the place where most of the costs attributable to such transportation occurred.

(2) Notwithstanding paragraph (c), even if the source of the sale of the service is determined to be from outside Puerto Rico, the sale of the service shall be subject to the provisions of Section 4020.04(c) of the Code. See Articles 4210.01(c)-2(a)(3) and 4210.02(c)-1 of the Regulation.

(d) The source of the sale of telecommunications services will be as follows:

(1) Telecommunications service provided wired or wireline.- In the case of the telecommunications service provided wired or wireline, the source will be the place where two of the following three events occur: where the service originates, ends or is billed.

(i) The phrase "through a wire or wireline" refers to the rendering of telecommunications services sold by call or sales made in what is known as a "call-by-call basis".

(ii) It is considered that a telecommunications service is sold call by call, when any method in which the price is measured based on individual calls is used for billing such services.

(iii) The "location where the telecommunication service is invoiced" shall mean the location of the telephone number charged for the call.

(iv) The provisions of this subparagraph (1) are illustrated by the following examples:

(A) Example 1: "V" is a company dedicated to the provision of telecommunications services in Puerto Rico. "V" sells and bills its services call by call. "C", residential client of "V", resides in the municipality of Guaynabo, Puerto Rico. "C" originates a call from his residence received by "M," a resident of New York State. The call will be billed to the phone number of "C". The source of the sale of the telecommunication service will be Puerto Rico as it is the jurisdiction in which the call originated and where the telephone number to which the call is billed is located.

(B) Example 2: The same facts in Example 1, except that the call from "C" to "M" was with charges reverted to "M". The source of the sale of the telecommunication service will be New York as it is the jurisdiction in which the call was received and where the telephone number to which the call is billed is located.

(C) Example 3: "V" is a company dedicated to the provision of telecommunications services in Puerto Rico. "V" sells and bills your services at a fixed rate that does not vary by individual calls. "C", residential client of "V", resides in the municipality of Guaynabo, Puerto Rico. "C" originates a call that is received by "M", resident of the state of New York. Since the service is not sold from call to call, the source of the sale of the telecommunication service will not be determined by this subsection.

(D) Example 4: "A" generates a call to "B" from your home phone, whose service is billed based on each call basis. "A" requests that the call be billed to her sister's phone number "C". The source of the sale of the telecommunications service shall be determined in accordance with the provisions of post-paid services set out in paragraph (b) of Article 4020.03-2 of this Regulation.

(2) Wireless telecommunications service sold at a fixed price. In the case of wireless telecommunications service, including prepaid service, or sold at a fixed price that does not depend on the number of individual calls; the source will be the location of the customer's primary place of use, which will be the customer's residential or commercial address.

(i) In the case of mobile telecommunications services, the "primary place of use of the customer" must be within the license or service area of that customer's service provider according to the definition of "home service provider" included in Section 124(5) of the Mobile Telecommunications Sourcing Act, PL 106-252; 4 USC §§ 116 et seq.

(ii) Provided that in the case of the sale of prepaid mobile or cellular call service, the source may be determined using as an alternative the location associated with the mobile or cell phone number.

(iii) The provisions of this subparagraph (2) are illustrated by the following examples:

(A) Example 1: "A" is a residential customer of "V", a telecommunications service provider in Puerto Rico. "V" sells its telecommunications services through unlimited consumer offers for a fixed price. "A" resides in the municipality of Ponce, Puerto Rico. The source of the sale of telecommunications services to "A" will be in Puerto Rico, as it is the jurisdiction where "A" has its residential physical address.

(B) Example 2: "A" is a "V" customer, a telecommunications service provider in Puerto Rico, and uses a cell phone or mobile phone activated with it. "V" sells its telecommunications services through unlimited consumer offers for a fixed price and is considered the "home service provider" of "A". "A" resides in the municipality of Ponce, Puerto Rico. "A" is went on a trip to the state of Texas and generates or originates phone calls from his hotel to various residents of the state of Texas. The source of the sale of telecommunications services to "A" will be in Puerto Rico, because is the jurisdiction that is considered as the "home service provider".

(e) In the case of cable or satellite television services, the source shall be the customer's place of primary use, which shall be the customer's residential or commercial address.

(1) The provisions of this paragraph (e) are illustrated by the following example:

(i) Example: "C" is a satellite television service provider with offices in San Juan, Puerto Rico and customers in the seventy-eight (78) municipalities and in the U.S. Virgin

Islands. "B" is a "C" customer, resident of the U.S. Virgin Islands, who subscribes to its satellite television service with "C". The source of the sale of satellite television service will be in the U.S. Virgin Islands.

(f) In the case of leasing tangible personal property, the source of the sale will be as follows:

(1) In the case of leases or rentals that require recurring periodic payments, the source of income of the first payment shall be determined in accordance with the provisions applicable to the sale of tangible personal property established in paragraph (b) of this Article. The source of income of the subsequent payments shall be in accordance with the primary location of the leased or rented property during the period covered by the payment. The primary location of the leased or rented property shall be the one indicated by the lessee and it shall be available for the lessor in the files that he or she keeps in the ordinary course of business, insofar as the use of such address does not constitute an act of bad faith. The primary location of the leased or rented property shall not be considered to be altered by intermittent or temporary use of the leased or rented property at another location as would be the case of leased or rented commercial property carried by an employee during a business trip.

(i) The provisions of this subparagraph (1) are illustrated by the following example:

(A) Example: "A" leased a computer at "B" store for six (6) months. As part of the lease, "A" has to make periodic monthly payments. "A" picked up the computer at the "B" store. "B" has its store in a jurisdiction other than jurisdiction where "A" will use the computer primarily, as "A" indicated to "B". In addition, for work reasons, "A" will also use the computer temporarily in various other jurisdictions. The source of income for the first payment generated in this transaction shall be determined in accordance with the provisions of paragraph (b) of this Article. The source of income for subsequent payments will be the primary location of computer usage during the lease period. This is the case, regardless of the fact that "A" will be using the computer temporarily in other jurisdictions.

(2) In the case of leases or rentals that do not require periodic payments, their source shall be determined in accordance with the provisions applicable to the sale of tangible personal property established in paragraph (b) of this Article.

(i) The provisions of this subparagraph (2) are illustrated by the following example:

(A) Example: "A" leased a computer in the "B" store for six (6) months. As part of the lease, "A" had to make a single payment when you signed that contract. "A" picked up the computer at the "B" store. "B" has its store in a jurisdiction other than jurisdiction where "A" will use the computer primarily, as "A" indicated to "B". In addition, for work reasons, "A" will also use the computer temporarily in various other jurisdictions. The source of income from the payment generated in this transaction will be determined in accordance with the provisions of paragraph (b) of this Article, regardless of the primary location or temporary of the computer during the lease period.

(g) In the case of the sale of services consisting in banking charges, as described in paragraphs (nn)(2)(A)(i) and (bbb)(1)(A) of Section 4010.01 of the Code and in Article 4010.01(nn)-2 of this Regulation, the source where charges occur shall be determined by using the address of the financial institution's branch where the bank account is registered (that is, where it was domiciled). In case that a bank account cannot be attributed to a specific branch, the source of the charges shall be the principal office of the financial institution.

(h) For purposes of determining the municipality where the sale occurs in the case of telecommunications and satellite or cable television services, there shall be used the address of the customer to whom the services are billed. As an exception to that rule, in the case of telecommunications and satellite or cable television services, there shall be used the address of the customer to whom the services are billed.

(i) For the purposes of the sale of admission rights, the source of income of such sale shall be the location where the event for which the admission fee is charged takes place, including shows and performances. In the case of any taxable item that, due to its nature, could be considered an admission fee or a transportation service, and which is not provided or rendered at a fixed location, the source of income shall be determined in accordance with paragraph (c) of this Article.

(j) For the purposes of the sale of specific digital products, as defined in Article 4010.01(gg)-2 of this Regulation, the source of income from such sales shall be the physical address of the buyer to whom the sale is made. In the event that the seller does not have the physical address of the buyer, the seller must use the buyer's postal address as the source of income for the sale. In the event that the seller does not receive any of his/her physical or postal addresses from the buyer, the seller must use the bank account or credit card

information of the buyer or the branch of the financial institution where the bank account is registered (that is, where it was domiciled) with which he/she makes the purchase of the specific digital products. In the event that the bank account cannot be attributed to a specific branch or location, the source of the charges will be the main office of the financial institution. The source of income from the payment generated in the sales of specific digital products shall be determined in accordance with the provisions of this paragraph, regardless of the physical location of any server from which the specific digital product is reproduced or downloaded or any other factor related to the sale thereof.

(k) It is hereby provided that the rules established in this article shall be of exclusive application to the imposition of the SUT and that they shall not apply nor can they be used in a supplementary manner for income tax purposes under Subtitle A of the Code.

Amendments to Article 4020.05-1

To add subparagraphs (4) and (5) to paragraph (b) of Article 4020.05-1 to read as follows:

“(b) ...

(1) ...

...

(4) Any merchant engaged in the mail order sales business, as defined in Article 4020.08-1 of this Regulation whose only contact with Puerto Rico is that the buyer is a person resident or engaged in trade or business in Puerto Rico, and who, pursuant to paragraph (2) of paragraph (h) of Article 4060.01-1 of this Regulation, is classified as a non-withholding agent, shall not be required to collect taxes set by Subtitles D and DDD of the Code. A merchant who qualifies as a non-withholding agent may voluntarily apply to be a withholding agent, in which case he shall be obliged to collect the taxes set by Subtitles D and DDD of the Code and shall be subject to those terms and conditions imposed by the Code and its regulations for such purposes and shall be subject to those terms and conditions imposed by the Secretary by agreement between the parties in accordance with the situation of such merchant.

(5) Notwithstanding the foregoing, any mail order sale transaction made after December 31, 2019 by a marketplace facilitator performing at least one of the activities detailed in Article 4010.01(hhh)-1 of this Regulation, will be considered a taxable transaction and, therefore, such marketplace facilitator shall be deemed a withholding agent and shall be

required to collect the taxes set by this Subtitle on behalf of the seller. Any certification or exemption held by a marketplace seller shall not apply to sales made through a marketplace facilitator unless the marketplace facilitator itself has such certification. This includes, but is not limited to, the certification under Section 4210.01(a)(1) of the Code.”

To add subparagraph (4) to paragraph (c) of Article 4020.05-1 to read as follows:

“(c) ...

(1) ...

...

(4) In the case of sales from merchants who do not have a physical location in Puerto Rico and remit the Municipal portion of the SUT, when segregating the amount of the sales tax, the merchant may totalize the SUT in a single line. In such cases, the line showing the tax shall have the name of phrases as follows:

“IVU”. “SUT” o “Tax”

Amendments to Article 4020.05-2

Add Article 4020.05-2 to read as follows:

“Article 4020.05-2.- Tax Collection – Voluntary Withholding Agent

(a) A merchant who, pursuant to paragraph (2) of paragraph (h) of Article 4060.01-1 of this Regulation, is classified as a non-withholding agent, but who is interested in voluntarily becoming a withholding agent, may do so subject to compliance with the following:

(1) The merchant must submit a written application to the Assistant Secretary of Internal Revenue and/or Tax Policy, as the case may be under the Department’s structure at the time of making the request, which will include the following information:

(i) Name, employer identification number or social Security number, physical and postal address, telephone number and taxpayer identification number if applicable;

(ii) Description of the business activities carried out by the merchant in the ordinary course of business;

(iii) An assertion that the merchant's only contact with Puerto Rico is that the buyer is a resident or is an entity engaged in trade or business in Puerto Rico;

(iv) An assertion that the merchant voluntarily wishes to be classified as a withholding agent and be subject to all obligations and responsibilities imposed by the Code on a withholding agent;

(v) A draft of the closing agreement pursuant to the provisions of Section 6051.07 of the Code, in which the Secretary authorizes and agrees that such merchant shall be considered as a voluntary withholding agent requesting it in accordance with the provisions of this Article; and

(vi) Any other information or requirements that the Secretary deems necessary.

(2) If the application is approved, and once the closing agreement has been granted, the merchant shall be deemed a withholding agent for the purposes of Subtitles D and DDD of the Code and shall be subject to all obligations and responsibilities imposed by the Code on withholding agents, including but not limited to collecting, reporting and remitting sales and use tax, state and municipal, in relation to sales mailed to persons or buyers who are residents of Puerto Rico or who are engaged in industry or business in Puerto Rico.

(3) The Secretary may exempt the merchant from submitting the application set out in Article 4020.05-1(b)(4)(i) and enter directly into a closing agreement where, in the Secretary's judgment and judgment, it is in the best interests of Puerto Rico.

(4) A merchant who voluntarily chooses to remit the SUT to the Secretary pursuant to this Article shall only be required to file the Monthly Sales and Use Tax Return in the manner established by the Code and in accordance with Article 4041.02-1 of this Regulation, as of the date set out in the closing agreement.

(5) The merchant shall collect the SUT, including the municipal portion of the tax in accordance with Section 6080.14 of the Code, on the sale price of the taxable item in accordance with Article 4020.01-1 of this Regulation, as of the date set out in the final agreement. However, the payment of SUT collected, including the municipal portion of the tax, will be deposited with the Secretary along with the filing of the Monthly Sales and Use Tax Return.

(6) Mail order sales for which a merchant who, pursuant to subparagraph (4) to paragraph (b) of this Article 4020.05-1, has become a Voluntary Withholding Agent, collects sales tax, will not be subject to the use tax because they were subject to sales tax at the time the sale transaction took place, that is, previously pursuant to Section 4020.02 of the Code."

Article 4020.05-3

Add Article 4020.05-3 to read as follows:

"Article 4020.05-3 Examples

(a) The provisions of Article 4020.05-1(b)(4) are illustrated by the following examples:

(1) Example 1: Merchant "A" is not located in Puerto Rico, but generates \$200,000 in gross sales revenue from Puerto Rico. Merchant "A" makes its sales of Puerto Rico exclusively through a Marketplace Facilitator that collects the tax on sales of Puerto Rico. Merchant "A" is a Marketplace Seller who does not need to register as a merchant in Puerto Rico or submit a Monthly Sales and Use Tax ("SUT Return") Return. The Marketplace Facilitator will report the sales tax on the SUT Return on all Sales of Puerto Rico from the Marketplace Facilitator. The Marketplace Facilitator is considered to be engaged in the business of selling taxable items in Puerto Rico, so it has an economic nexus with Puerto Rico.

(2) Example 2: Merchant "B" is a business located outside Puerto Rico that sells jewelry. Merchant "B" sells only through a Marketplace Facilitator. Because the company has more than \$100,000 in sales to Puerto Rico buyers or makes more than 200 separate transactions with Puerto Rico buyers during its annual accounting period, Merchant "B" is registered in Puerto Rico to collect the SUT of Puerto Rico. As of January 1, 2021, the Marketplace Facilitator began charging and remitting the SUT of Puerto Rico on sales of Merchant "B" jewelry to Puerto Rico buyers through the market. Merchant "B" will no longer directly collect or remit Puerto Rico's sales and use tax on jewelry sales across the market.

(3) Example 3: Company "C" is headquartered in the city of Atlanta, Georgia. Company "C" has no products stored in Puerto Rico or employees in Puerto Rico. Company "C" makes sales to Puerto Rico users only from its own website (CompanyC.com). Company "C" accounting period is based on a calendar year. In the year ending December 31, 2020, Company "C" had sales of more than \$100,000 so it has an economic nexus and must register to collect and remit Puerto Rico's sales and use tax as of January 1, 2021.

(4) Example 4: Merchant "D" has \$200,000 in gross revenue from Puerto Rico sales. Merchant "D" makes all his sales of Puerto Rico through a Marketplace Facilitator that collects the sales tax from Puerto Rico. Merchant "D" does not need to register as a merchant in Puerto Rico or submit an SUT Return on Puerto Rico's sales to the extent that all of its Puerto Rico sales are made through a Marketplace Facilitator duly registered with the Department, which collects the SUT from Puerto Rico buyers. The Marketplace Facilitator will report sales tax on its SUT Return for all sales in Puerto Rico. The Marketplace Facilitator is considered

to be engaged in the business of selling taxable items in Puerto Rico, so it has a nexus with Puerto Rico.

(5) Example 5: Seller "E" has \$426,000 in gross revenue from Puerto Rico sales. Seller "E" gets \$325,000 from these sales through a Market Facilitator who collects sales tax and use of Puerto Rico's sales. The remaining \$101,000 in gross revenue comes from sales made through Seller "E"'s website. Seller "E" is considered to be engaged in trade or business in Puerto Rico, has a nexus with Puerto Rico, and must register as a Merchant in Puerto Rico, must collect and remit Puerto Rico's sales tax on the \$101,000 in sales made through its own website. In its SUT Return for Puerto Rico, Seller "E" must declare \$426,000 in gross sales, but Seller "E" may report as exempt sales the \$325,000 for sales in which the Marketplace Facilitator collected the SUT on Puerto Rico's sales to the extent that it has a Marketplace Seller Collection Waiver under Article 4020.05-4.

(6) Example 6: Seller "F" is a Puerto Rico-based company with properties and personnel located in Puerto Rico. Seller "F" has \$80,000 in gross revenue from Puerto Rico's sales. Seller "F" earns \$10,000 of gross revenue from Puerto Rico's sales through a Marketplace Facilitator who collects applicable Puerto Rico sales tax. The remaining \$70,000 in gross revenue comes from Puerto Rico's sales made directly through Seller "F" from their physical location in Puerto Rico. Seller "F" must collect and remit Puerto Rico's sales and use tax on \$70,000 in off-market sales. On its Puerto Rico sales tax return, Seller "F" must report \$80,000 in gross sales. Seller "F" may report as exempt sales the \$10,000 for sales in which the Marketplace Facilitator collected Puerto Rico's sales and use tax to the extent that it has a Marketplace Seller Collection Waiver under Article 4020.05-4.

(7) Example 7: Company "G" is headquartered in Georgia. Company "G" has no products stored in Puerto Rico, neither employees nor Representatives in Puerto Rico. Company "G" makes its own sales to Puerto Rico buyers from its own website (GCompany.com). The "G" Company also facilitates sales from other Marketplace Sellers using the website (GCompany.com). The "G" Company processes all payments for all sales made on its website. The "G" Company is a Marketplace Facilitator. In the accounting year ending December 31, 2019, the "G" Company had revenues from its own sales to Puerto Rico totaling \$75,000 that it made in a total of 125 transactions, so it had no economic nexus with Puerto Rico, did not register as a Merchant in Puerto Rico, nor did it charge the SUT for sales

made to Puerto Rico-directed buyers. Sales made by Marketplace Sellers in GCompany.com in accounting year 2019 to Puerto Rico buyers totaled \$255,000, but Company "G" did not retain the SUT in these sales, because it understood that tax liability lay with Marketplace Sellers. Company "G" is a Marketplace Facilitator, so it will be considered to be engaged in the sale of taxable item in Puerto Rico, has a nexus with Puerto Rico and is required to collect and remit de SUT on both, the sales made by its company, as well as for those made by Marketplace Sellers in GCompany.com. Company "G" must register as a Merchant with the Department must collect and remit the SUT on all sales of Puerto Rico made through the website GCompany.com.

(8) Example 8: Pepe Pérez residing in San Juan, Puerto Rico, decided to sell his bike on a website where people, including people residing in Puerto Rico, can sell and purchase taxable items at auctions or online sales, on the Merchant portal "X". Pepe Pérez is a university student, is not a registered merchant in Puerto Rico, nor is he engaged in the sale of taxable items on internet portals, so he is not considered a Marketplace Seller. The sale of Pepe Pérez's bicycle is an occasional sale. Merchant "X" is a Marketplace Facilitator, so it is required to register as a Merchant with the Department, and must collect and remit the SUT on all sales made on its Portal that are from Puerto Rico sources, as set out in Article 4020.03-1, including the occasional sale of Pepe Pérez's bicycle.

(9) Example 9: Merchant *I.com* is a food delivery company that operates a website and mobile app where customers can order food at a local restaurant and receive it from *I.com*. "J" Restaurant is a local restaurant that sells its food on the website and the *I.com*. *I.com* charges a mandatory service fee of \$5.00 on all orders placed through your website or app. Customer "K" makes an order for "J" Restaurant using the *I.com*. *I.com* also charges for delivery, which changes depending on the amount of food requested and the distance the driver must travel. Suppose both *I.com* and "J" Restaurant have nexus in Puerto Rico.

Customer "K" makes the following delivery order from "J" Restaurant:

3 large pizzas.	\$20.00 each = \$60.00
3 orders of breadsticks . . .	\$7.50 each = \$22.50
5 bottles of soda.	\$2.50 each = \$12.50
Food Total:	\$95.00
Service fee	\$5.00

Delivery fee. \$7.50

TOTAL (pre-tax): \$107.50

The total tax owed is \$12.36 = 11.5% of sales and use taxes on \$107.50. Therefore, the total Customer “K” must pay for the order is \$119.86.

Customer “K” makes the order and schedules the Delivery through the website of *I.com*. *I.com* collects the total amount of \$119.86. From said amount, *I.com* keeps the service fee of \$5.00 and the delivery fee of \$7.50. Through its agreement with “J” Restaurant, *I.com* also must withheld the 10% of the sales price charged for the sale of the products of “J” Restaurant.

Here, the total selling Price of “J” Restaurant ("Total Food Cost") is \$ 95, 00. Therefore, *I.com* withholds \$9.50 (\$95.00 x 10%) and send to “J” Restaurant the remaining \$85.50. Here, *I.com* is responsible for the collection and remittance of the SUT of \$12.36, to the Department of Treasury, regardless of the fact that the majority of the sales Price was sent to “J” Restaurant. *I.com* is a Marketplace facilitator and the sales of “J” Restaurant through the *I.com* site are Marketplace sales. Therefore, *I.com* must collect and remit the sales and use taxes on all of its sales on the market and the service fee and Delivery fee of \$12.36. In this example, “J” Restaurant has no obligation to collect or remit payments in regards to the purchase of Customer “K”

The commission paid, as detailed in this example, is considered a service provided from a business to another business and will be considered as such, even if the merchant who is paying the commission is a business not engaged in trade or business in Puerto Rico. , This type of service is subject to the SUT rate of four (4) per cent as set forth in Section 4210.01(c) of the Code. For more details on commissions, refer to Article 4210.01(c)-3(a)(1) of this Regulation.

Article 4020.05-4

Article 4020.05-4 is added to read as follows:

“Article 4020.05-4.- SUT Collection Waiver for Marketplace Seller registered as a Merchant

(a) In the case of a Marketplace Seller, who is registered as a Merchant with the Department, he or she must complete a request for waiver on SUT collection for sales made through Marketplace Facilitators. Such SUT Collection Waiver will include all sales made by

said merchant through Marketplace Facilitators that are duly registered in the Department's Merchant Registry.

(b) In order to complete the SUT Collection Waiver request, the Marketplace Seller must obtain from each Marketplace Facilitator used by the Marketplace Seller, a copy of the Department's Merchant Registration Certificate, and must include the Marketplace Facilitator information in its waiver request

(c) The Department shall establish the specific procedure for a Marketplace Seller's waiver request by circular letter or any other publication of a similar nature.

(d) The Secretary is authorized to require merchants by regulation, circular letter, administrative determination, informative bulletin or any other official document to file any other documents that may be necessary in the process of obtaining the SUT Collection Waiver for Marketplace Seller registered as a Merchant.

Article 4020.08-1

Article 4020.08-1 is amended to read as follows:

“Article 4020.08-1.- Collection of sales tax on mail order sales.-

(a) For purposes of Subtitles D y DDD of the Code, the term “mail order sales” means the sale of tangible personal property, ordered by any means, ordered by any means, including but not limited to mail, catalogs, portals, e-commerce, the Internet or other means of communication, whether electronic or not, from a merchant who receives the order outside of Puerto Rico. Any person engaged in the mail-dispatched sales business as defined in paragraph (a) of this Article, whose sole contact with Puerto Rico is that the buyer is a person resident or engaged in industry or business in Puerto Rico, shall be classified as a non-retaining agent and shall be subject to comply with the notifications and reports set forth in Article 4041.03-1 of this Regulation; provided that no payment or charge shall be imposed on such trader for carrying out any of the activities set out in paragraph (a) of this Article and transports the tangible personal property or causes the tangible personal property to be transported, either by mail or otherwise, from any place within or outside of Puerto Rico, to a person in Puerto Rico, regardless of whether that person is the one who ordered the tangible personal property. Similarly, this term shall also include any sale of tangible personal property, specific digital products, or taxable services made by a marketplace seller through a marketplace facilitator performing at least one of the activities detailed in Article 4010.01(hhh)-1 of this Regulation.

(b) Any person engaged in the mail order sales business as defined in paragraph (a) of this Article, whose sole contact with Puerto Rico is that the buyer is a person resident of, or an entity engaged in trade or business, in Puerto Rico, shall be classified as a non-withholding agent and shall be subject to comply with the notifications and reports set forth in Article 4041.03-1 of this Regulation; provided that no payment or charge shall be imposed on such merchant for carrying out any of the activities set out in paragraph (a) of this Article.

(c) However, any person engaged in the mail order sales business who is engaged in the sale of taxable items in Puerto Rico in accordance with paragraphs (1) to (5), (7), (8), (10) or (11) of section (h) of Section 4010.01 of the Code, will be considered a merchant and will be required to comply with all the requirements of Subtitle D and DDD of the Code in relation to the collection and declaration of the SUT.

(d) It is also provided that, transactions taking place on or after January 1, 2020 through a Marketplace Facilitator that includes any of the activities detailed on Article 4010.01(hhh)-1, will be subject to the collection of the SUT and the Marketplace Facilitator shall be responsible for the collection and remittance of the tax on all mail order sales as defined in paragraph (a) of this Article, including own sales.

(e) The tax to be collected under Subtitle D and DDD of the Code, and any other amount, whether or not part of the tax, which is not returned to a buyer, but which was collected from the buyer on the representation that it was a tax, constitute funds of the Government of Puerto Rico from the time of its collection.

(f) The provisions of this article are illustrated by the following example:

(1) Example 1: The Company "Y" is engaged in the sale of shoes online and is dedicated to the sale of such items in Puerto Rico. Under Section 4010.01(h) of the Code, "Y" is considered a merchant under Subtitle D of the Code and is required to comply with all requirements of such Subtitle. "Y" transports shoes by mail from Miami, FL to its customers in Puerto Rico. The company "Y" is obliged to charge the SUT in the sale of the shoes to its customers in Puerto Rico.

(g) Any merchant engaged in the mail order sales business that is classified as a non-withholding agent shall inform the buyer in Puerto Rico of that buyer's obligation to pay the use tax established in Section 4020.02 of the Code in relation to the tangible personal property acquired from that merchant, as provided for in Article 4041.03-1 of this Regulation.

The non-withholding agent merchant shall include this notice in the invoice, receipt or other document, physical or electronic, which demonstrates the purchase of tangible personal property and such notice shall be written in the Spanish or English languages, as applicable, and as exemplified below:

“You have purchased an article that may be subject to the payment of sales and use taxes in Puerto Rico and you have the responsibility of reporting the purchase to the corresponding taxing authority and declare and pay any applicable tax. Failure to declare the article and pay the corresponding tax may result in the imposition of civil and/or criminal penalties.”

(h) Any non-merchant individual who purchases taxable items from a merchant engaged in the mail order sales business who is not classified as a withholding agent, for any reason who has not collected sales tax on such purchase because the merchant is a non-withholding agent, shall be required to pay the use tax to the Secretary in the form and time established by the Code and this Regulation.”

Amendments to Article 4041.02-1

Paragraph (a) of Article 4041.02-1 is amended to read as follows:

“(a) Declaration of Imports. — Every person who imports into Puerto Rico tangible personal property subject to the use tax shall submit a Declaration of Imports as a requirement for taking possession of any tangible personal property introduced from abroad by sea. In case of tangible personal property introduced by other means, the Import Declaration may be submitted after taking possession of the same and on or before the deadline for the payment of use tax, as provided in Code sec. 4042.03. This declaration shall include the portion of the municipal use tax that will be collected by the Secretary pursuant to Section 6080.14 of the Code, in relation to all tangible personal property introduced from abroad, so no additional return needs to be filed for the purposes of the municipal portion of the sales and use tax. In addition, the Secretary will allow all persons to claim in the Import Declaration the sales tax collected by the seller, including a person classified as a Non-Withholding Agent, pursuant to Section 4020.08, who have reached an agreement with the Secretary to collect such tax. The Declaration shall be completed in its entirety and accompanied with those documents required therein, as established below.

(1)...

(2)....

...”

To amend subclause (C) of clause (ii) of subparagraph (3) of paragraph (a) of Article 4041.02-1 to renumber it as subparagraph (4) and to read as follows:

“(4) The Import Declaration shall be submitted electronically, as a general rule, or using any form provided by the Secretary in case the electronic system is not available. In case of property imported by maritime carrier, the importer shall describe in the same the merchandise for which authorization is wanted to take possession by transportation or carrier company by day of manifest delivery. Said Declaration shall be submitted as a prior requirement for taking possession of said merchandise. In addition, the Import Declaration shall include the portion of the municipal sales and use tax that will be collected by the Secretary pursuant to Section 6080.14 of the Code, in relation to all tangible personal property introduced from abroad, so no additional return needs to be filed for the purposes of the municipal portion of the sales and use tax.”

To amend subparagraph (4) of paragraph (a) of Article 4041.02-1 to renumber it as subparagraph (5) and to read as follows:

“(5) Tangible personal property introduced into a foreign trade zone.- As established in Code sec. 4010.01(aaa), any tangible personal property introduced into Foreign Trade Zones, as such term is defined in Code sec. 3010.01(a)(16), shall be understood as introduced or that has arrived to Puerto Rico when the same loses its Free Zone status and/or is understood to have entered the customs territory of the United States in Puerto Rico and the related documents are presented. Therefore, the merchant must present the Declaration of Imports when the tangible personal property is removed from the foreign trade zone and introduced into Puerto Rico.”

To amend paragraph (b) of Article 4041.02-1 to read as follows:

“(b) Tax in Imports Monthly Return –

(1) Every person who imports tangible personal property subject to the use tax, by any means, including, air carrier or postal service system, shall file a Tax on Imports Monthly Return not later than the tenth (10th) day of the month following the month in which the transaction subject to the tax takes place. The Imports Return shall include a summary of the Declarations of Imports submitted during the period for which the return is filed.

(2) An individual who is not a merchant is not required to file the Tax on Imports Monthly Return, even though said individual is required to file the Declarations of Imports for a particular month.

(3) The Imports Return shall include a summary of the Declarations of Imports filed for the preceding month, including declarations filed in said month related to prior periods.

(4) If the deadline of the Tax on Imports Monthly Return falls on Saturday, Sunday, or federal or state holiday, the return shall be accepted if it is filed on the next business day.

(5) The filing of the Tax on Imports Monthly Return will not be a prerequisite for the release of imported tangible personal property; provided that, this form shall also include the portion of the municipal use tax to be collected by the Secretary pursuant to Section 6080.14 of the Code, in relation to all tangible personal property introduced from abroad, so no additional return needs to be filed for the purposes of the municipal portion of the sales and use tax. The total municipal use tax must be reported in both, the Import Declaration and the Tax on Imports Monthly Return separately.

(6) The use tax that was paid with the Import Declaration or that will be paid upon filing of the Tax on Imports Monthly Return (in the case of bonded importers) shall be reported by commercial location, as the case may be, and to the extent that the merchant becomes aware of the proportion and commercial location to which, ultimately, will be the tangible personal property destination. The Tax on Imports Monthly Return to be filed by a merchant will include a Schedule showing a detail of the tangible personal property imported by location, as the case may be.

(i) To the extent that the imported tangible personal property has not been transported to the commercial establishment where it will ultimately be intended or stored, the merchant shall report the tax on municipal use for the commercial establishment where the tangible personal property is stored at the date of filing the Tax on Imports Monthly Return.

(ii) To the extent that at the date of filing the Tax on Imports Monthly Return the imported tangible personal property is stored or parked in a third-party commercial establishment and has not been transported to a merchant's commercial establishment, the merchant shall report the use tax on the Tax on Imports Monthly Return as attributable to its main commercial establishment. In these cases, the merchant will determine what is his main commercial establishment, which will be that office, establishment, branch or fixed place of

business from where the merchant performs the main administrative functions for his operation in Puerto Rico.

(iii) The commercial establishments reported by the merchant in the Tax on Imports Monthly Return, in accordance with this paragraph (b), will be used by the Secretary as a shipping address for purposes of determining the municipality for which he will deposit the use tax established in Section 6080.14 of the Code.

(7) The provisions of this paragraph (b) are illustrated by the following examples:

(i) Example 1: "C" renders legal services and orders from outside Puerto Rico the paper with his letterhead used in his office. In the month in which "C" receives the paper with letterhead by mail, he shall report said purchase as a purchase subject to use tax on the Tax on Imports Monthly Return.

(ii) Example 2: "A" is a salaried employee and orders by catalog, outside Puerto Rico, a sound equipment for his residence. "A" also orders periodically films in DVD format from a video club in the United States. When "A" receives the equipment and the films through air carrier, he shall be required to file an Import Declaration regarding the use tax on such equipment and films, using the corresponding method. Notwithstanding, "A" is not required to file the Tax on Imports Monthly Return.

(iii) Example 3: "B" is a merchant engaged in the sale of furniture and gets his inventory from a company outside Puerto Rico. During the period x, "B" did not receive imported merchandise. Therefore, "B" is not required to file an Imports Declaration or a Tax on Imports Monthly Return for that period.

(8) Pursuant to section 4041.02(b) of the Code, the Secretary may exempt from the requirement of filing the Tax on Imports Monthly Return any person who has paid the full use tax at the time of filing the Import Declaration. Under this power, the Secretary shall exempt merchants who meet the following requirements:

(i) The merchant must submit a written application to the Assistant Secretary of Internal Revenue and/or Tax Policy, as the case may be under the Department's structure at the time of making the request, which will include the following information:

(A) Name, employer identification number or social Security number, physical and postal address, telephone number and taxpayer identification number if applicable;

(B) Description of the business activities carried out by the merchant in their ordinary course of business.

(ii) The merchant cannot be a bonded importer or will have to give up being a bonded importer. To the extent that any debt or a form not filed appears, for any concept, that is the subject of any administrative process, the merchant shall submit a document from the relevant office within de Department providing that the debt or non-filing is the subject of an administrative review process.

(iii) Upon evaluation of the application, the Secretary shall issue the corresponding authorization by means of an official document and from the effective date of such authorization, the merchant shall be relieved to file the Tax on Imports Monthly Return. The authorization granted to the merchant under this Article shall be automatically revoked if the merchant fails to comply with the payment of the SUT in the Import Declarations in three (3) consecutive taxable periods or in three (3) taxable periods within a period of twelve (12) months, which occurs first.”

To add paragraph (i) to Article 4041.02-1 to read as follows:

“(i) Sales and Use Tax Monthly Return- Marketplace Facilitators.-

(1) In general- Any Merchant who is registered in the Merchant Register and is a Marketplace Facilitator shall follow the general provisions on the Monthly Sales and Use Tax Return as set out in paragraph (c) of this Article.

(2) Sales and Use Tax Monthly Return- Marketplace Facilitator - Each Marketplace Facilitator must report its own market sales separately from third-party sales made through its market. For this purpose, the facilitator must complete a Monthly Return for his own sales and another Monthly Return under the Marketplace Facilitator SUT account that will be available after following the Marketplace Facilitator Merchant Registration process, where he must include all third-party sales made through his market.

(3) Sales of Marketplace Sellers with SUT Collection Waiver as established in Article 4020.05-4 of this Regulation.- In cases where the Marketplace Facilitator has Marketplace Sellers with a SUT Collection Waiver where he has included as a Marketplace Facilitator, the Facilitator will have to include with his Monthly Return a detail of the sales of said Marketplace Sellers with SUT Collection Waiver made through his market, and such detail shall be included for both any taxable sale and exempt sales.

(4) The Department will establish specific instructions on the procedure for completing this Monthly Return through SURJ by circular letter or any other publication of a similar nature.”

To add paragraph (j) to Article 4041.02-1 to read as follows:

“(j) Sales and Use Tax Monthly Return of Marketplace Sellers with SUT Collection Waiver as established on Article 4020.05-4 of this Regulation -

(1) In general- Any Merchant who is registered in the Merchant Register and who holds a Marketplace Seller SUT Collection Waiver shall follow the general provisions on the Sales and Use Tax Monthly Return as established in paragraph (c) of this Article.

(2) Sales and Use Tax Monthly Return of Marketplace Sellers with SUT Collection Waiver. - A Merchant considered a Marketplace Seller must include its own sales in its Monthly Return and in the case that he or she has a SUT Collection Waiver he or she must report sales made through a Marketplace Facilitator that has been included by the Marketplace Seller in its SU Collection Waiver application, on a line that will be separate for those purposes in its Monthly Return. The merchant must include with the Monthly Return a detail of the sales made through each Marketplace Facilitator included in the SUT Collection Waiver.

(3) The Department will establish specific instructions on the procedure for completing this Monthly Return through SURJ by circular letter or any other publication of a similar nature.

Article 4041.03-1

To add Article 4041.03-1, to read as follows:

“Article 4041.03-1. - Information required of any merchant other than a withholding agent.-

(a) In general. -

(1) As a general rule, any merchant engaged in mail order sales who is classified as a non-withholding agent under Articles 4020.08-1(b) and 4060.01-1(h)(2)(vii) of this Regulation, will only be subject to comply with the notices and reports set forth in this Article and will not be required to comply with the requirements of Subtitle D of the Code in connection with the declaration and collection of the SUT, so there will be no requirement to file Import Declarations, Tax on Imports Monthly Return and Sales and Use Tax Monthly Return, to report certain transactions, unless the merchant voluntarily choose to be a withholding agent under

Section 4020.05-1(b)(4) of this Regulation. However, such non-withholding agent merchant shall be required to submit quarterly reports and notices as established in Section 4041.03 of the Code and this Article.

(2) A merchant who does not comply with this Article shall be subject to the penalties set forth in Section 6043.06 of this Code.

(b) Notifications and Reports of Non-Withholding Agents. Commencing on July 1, 2017, the non-withholding agent pursuant to Section 4060.01-1(h)(2)(vii) of this Regulation will be required to present and submit the following notifications and reports:

(1) Notification to the Buyer - Any non-withholding agent merchant shall notify each buyer in Puerto Rico in writing that items purchased may be subject to sales and use tax in Puerto Rico and that the corresponding Import Declaration and Tax on Imports Monthly Return must be filed, as applicable, to report the purchase and pay sales and use tax due on such purchases. A merchant who does not provide this notice, in the absence of just cause, shall be subject to the penalty set forth in Section 6043.06(e) of the Code.

(i) The notification to Buyer may be made by physical means or electronic means at the discretion of the merchant and shall be send in English or Spanish, as set forth in Article 4020.08-1(f) of this Regulation.

(ii) The merchant shall maintain evidence of having complied with the Notification to Buyer in accordance with the document retention period established by Sections 4060.06 and 4060.07 of the Code.

(2) Quarterly Report. -

(i) Any non-withholding agent merchant shall submit to the Secretary a Quarterly Report with information relating to purchases made by buyers in Puerto Rico during the relevant quarter. The Quarterly Report should include:

- (A) seller's name and address;
- (B) name and delivery address of each buyer in Puerto Rico;
- (C) the dates of purchases, the quantities of each purchase and the description of each purchase;
- (D) any other information required by the Secretary; and

(E) An statement certifying that for each sale transaction to Puerto Rico buyers the notification for the buyer was provided in accordance to the requirements established on subparagraph (1) of paragraph (b) of this Article.

(ii) Each Quarterly Report must be filed as detailed below:

(A) April 30 - the report for the quarter ended March 31.

(B) July 31 - the report for the quarter ended June 30.

(C) October 31 - the report for the quarter ended September 30.

(D) January 31 following - the report for the quarter ended December 31.

(iii) The Quarterly Reports shall be filed with the Secretary electronically on the platform established by the Department by regulation, administrative determination, circular letter or informative bulletin.

(iv) The merchant shall maintain evidence of having complied with the Quarterly Reports in accordance with the document retention period established by Sections 4060.06 and 4060.07 of the Code.

(v) The merchant who does not comply with the filing of any of the reports required by subparagraph (2) of paragraph (b) of this Article, in the absence of just cause, shall be subject to the penalty set forth in Section 6043.06(e) of the Code.

(3) Annual Notice. -

(i) On or before January 31 of each year, any non-withholding agent merchant must provide an Annual Notice to each buyer in Puerto Rico who acquired tangible personal property from the buyer. This annual notification will contain the following information:

(A) seller's name and address;

(B) name and delivery address of each buyer in Puerto Rico;

(C) the total amount paid for tangible personal property purchases made in the previous calendar year,

(D) dates of purchases, the quantities of each purchase,

(E) if known by the non-withholding agent if the items purchased are exempt or taxable;

(F) mention that in Puerto Rico the buyer is required to file an Import Declaration informing the purchases made and paying the SUT for purchases of tangible personal property and the Tax on Imports Monthly Return, as applicable; and

(G) any other information required by the Secretary.

(ii) The Annual Notice shall be sent to buyers separately, via first-class mail or any other electronic means, and shall not be included with any good. Outside the envelope, or other means of packing of the Annual Notice, the merchant shall include the name of the non-withholding agent and the following words: "important tax document is included" in Spanish or English.

(iii) All non-withholding agents must submit to the Secretary a copy of this Annual Notice on the same prescribed date established to send the notice to the buyers.

(iv) A non-withholding agent merchant will not have to comply with the shipment and submission of the Annual Notice if he did not sell tangible personal property to anyone in Puerto Rico during the calendar year.

(v) A merchant who does not comply with the submission to buyers of the Annual Notice required by subparagraph (3) of paragraph (b) of this Article or with sending a copy to the Secretary, in the absence of just cause, shall be subject to the penalty set forth in Section 6043.06(e) of the Code.

(c) Exception.- A merchant who is classified as a retaining agent and who is required to comply with the requirements of Subtitle D of the Code in connection with the declaration and collection of the SUT, including the establishment of Import Declarations, Tax on Imports Monthly Returns and Sales and Use Taxes Monthly Returns, is not required to comply with the notifications and reports required by this Article.”

Article 4042.03-1

Article 4042.03-1 is amended to read as follows:

“Article 4042.03-1.- Time to remit the sales and use tax-

(a) The taxes fixed by Subtitle D of the Code, shall be payable to the Secretary by the person responsible for remitting the payment, on the dates indicated below:

(1) Use Tax. –

(i) General Rule – As a general rule, the use tax applicable to taxable items imported into Puerto Rico by any person, except items introduced by air carrier or postal service system, shall be paid before the taxpayer takes possession of the article, including the municipal use tax established on Section 6080.14 of the Code. The use tax applicable to taxable items imported into Puerto Rico, including the municipal use tax under Section 6080.14

of the Code, by any person will only be paid once. Therefore, a taxable item that was subject to use tax at the time it was imported, will not be subject to the use tax subsequently.

(ii) Exceptions - As an exception to the general rule mentioned above, any person must pay the corresponding use tax, including the municipal use tax under Section 6080.14 of the Code, on the days and under the circumstances listed below:

(A) payment of the use tax on or before the tenth (10th) day of the month following the month in which the merchandise subject to the tax is introduced- In the following cases, the use tax shall be paid on or before the tenth (10th) day of the month following the month in which the merchandise subject to such tax is introduced:

(I) when the person is a bonded merchant, as such term is defined in Code sec. 4042.03(b)(3) and in paragraph (b)(3) of this article, and the use tax, including the municipal use tax under Section 6080.14 of the Code, corresponding to the imported tangible personal property is covered by the posted bond;

(II) when due to a correction of an amount reported on the Declaration of Imports, the payment made by a person, including a merchant, prior to taking possession of any property introduced into Puerto Rico, as established in clause (i) of subparagraph (1) of this paragraph, is not enough to cover the total amount payable of the use tax as established in Subtitle D of the Code. After the information is corrected, the person shall pay any difference not later than the tenth (10th) day of the month following the month in which the transaction subject to tax took place or together with the filing of the Tax on Imports Monthly Return;

(III) when any person introduces tangible personal property subject to the payment of use tax, including the municipal use tax use tax under Section 6080.14 of the Code, through air carrier or postal service system, except as indicated in subclause (C) below; and

(IV) when any person acquires tangible personal property subject to the payment of use tax via electronic transmission or copied from an electronic page.

(B) payment of the use tax, including the municipal use tax under Section 6080.14 of the Code, on or before the twentieth (20th) day of the month following the month in which the event subject to the imposition and payment of use tax takes place – In the following cases, the use tax shall be paid on or before the twentieth (20th) day of the month following the month in which the described event takes place:

(I) when a merchant has introduced tangible personal property consisting of inventory and has withdrawn it for: personal use, use in the business, distribution as samples or promotion articles, or distribution as gift;

(II) when a merchant has introduced tangible personal property consisting of inventory and it has been lost due to wear or tear, or by fire, hurricane, earthquake or other fortuitous cause.

(C) Payment of the tax to the seller. As an exception to the general rule provided in paragraph (a) of this article, when any person receives tangible personal property from abroad, due to a purchase through the drop shipment method via any method of transportation except by sea, such person shall not be required to pay the use tax to the Secretary, instead said person is required to pay a sales tax to the seller. In case of transportation by sea, see Art. 4020.05-1(a)(1) of this Regulation.

(2) Sales Tax –

(i) General Rule - The sales tax fixed by Subtitle D of the Code, including the applicable sales tax on bank charges to be collected by financial institutions, shall be payable to the Secretary by the person responsible for remitting the payment, not later than the twentieth (20th) day of the month following the month in which the collection of said tax takes place, or in that other date or manner, as established by the Secretary regarding the form, time and conditions regulating the payment or deposit of said withheld taxes.

(ii) Payment of sales tax in biweekly installments –

(A) Any person who complies with the following shall remit sales tax to the Secretary in biweekly installments during the month in which the event giving rise to the imposition and payment of sales tax arises: (1) the person is a Large Taxpayer, as defined in Section 1010.01(a)(35) of the Code; or (2) the person is a merchant whose monthly average sales tax volume deposited during the preceding calendar year exceeds two thousand (2,000) dollars ("2,000-Criteria"). The deadline to make the payment of the first biweekly installment is the fifteenth (15th) day of each period (month) and the deadline to make the payment of the second biweekly installment shall be the last day of the period (month).

(I) For purposes of the 2,000-Criteria, the term "deposited" refers to the sum of the SUT deposited in the import and purchase of inventory for resale and the SUT deposited on sales made by that merchant, as follows:

1. Merchants selling tangible personal property or taxable services subject to the SUT of 10.5%.- Any merchant selling tangible personal property or taxable services whose sales for the calendar year immediately prior to the determination exceed \$228,600 (i.e., \$2,000 divided by 10.5% and the result multiplied by 12 months and rounded to the nearest hundred), will meet the \$2,000-Criteria and will therefore be required to deposit the SUT in biweekly installments. For merchants who have started operations during the previous calendar year, they will be considered to meet the \$2,000-Criteria if the total average monthly sales during the months the merchant was in business during that previous calendar year exceeds \$19,050 (i.e. \$228,600 divided by 12 months).

2. Merchants engaged exclusively in the sale of services business to business of professional designated services subject to the SUT of 4%.- Those merchants who only sell services to other merchants or that provide designated professional services subject to the SUT of 4% and whose sales of services subject to SUT payment for the calendar year immediately prior to the year of the determination exceed \$600,000 (i.e. , \$2,000 divided by 4% and the result multiplied by 12 months), will meet the \$2,000-Criteria and will be required to deposit the SUT within biweekly installments. In the case of a merchant who has started operations during the previous calendar year, he or she will be considered to meet the \$2,000-Criteria if the total average monthly sales during the months the merchant was in business during that previous calendar year exceeds \$50,000 (i.e. \$600,000 divided by 12 months). In the case of merchants selling taxable items subject to the SUT of 10.5% and services subject to the SUT of 4%, they will be subject to the SUT's biweekly installments when the sum of their sales of taxable items and services subject to SUT for the immediately previous calendar year exceeds \$228,600.

(B) The determination of whether a trader is obliged to deposit de SUT in biweekly installments shall be made annually based on total sales subject to payment of the SUT made during the preceding calendar year. Once it is determined that the merchant is required to make payment of the SUT in biweekly installments for a calendar year, he must comply with that requirement throughout the calendar year. For purposes of determining the obligation to make SUT deposits in biweekly installments, it shall be used the information on total sales subject to payment of the SUT as reflected in the Sales and Use Tax Monthly Returns filed by the merchant during the preceding calendar year, Form SC 2915 ("SUT Monthly Returns").

(C) Examples:

(I) Example 1: Merchant "A" is engaged in the repair and maintenance of air conditioners and incidentally sells spare parts and filters for such conditioners. During the 2016 calendar year (i.e., January to December 2016), as reported in the SUT Monthly Returns, "A" had a total of sales of air conditioner repair and maintenance services of \$350,000 and total parts sales of \$115,000, for a total sales of \$465,000 (\$350,000 plus \$115,000). In this case, as the services provided by "A" are subject to the 10.5% SUT, "A" is required to deposit the SUT in biweekly installments, because the total of its sales exceeds the annual limit amount of \$228,600.

(II) Example 2: Merchant "B" is a supermarket that started operations on May 15, 2016. The total sales that "B" had between May and December 2016, as reflected in the SUT Monthly Returns, was \$100,000. For calendar year 2017, "B" is not required to deposit SUT in biweekly installments, because the monthly average of its sales was \$12,500 (\$100,000 divided by the 8 months that "B" was operating), which does not exceed the monthly limit amount of \$19,050.

(III) Example 3: Merchant "C" is engaged in the provision of consulting services to business and the government. During calendar year 2019 (i.e., January to December 2016), as reported in the SUT Monthly Returns, "C" had a total sales of services exempted from \$450,000 and a total of services paid to other merchants subject to the SUT of 4% of \$250,000, for a total sales of \$700,000 (\$450,000 plus \$250,000). In this case, as the total sales of services subject to the SUT of 4% does not exceed the amount of \$600,000, "C" is not required to deposit the SUT in biweekly installments.

(D) For purposes of this clause (ii), the biweekly installment will be payable on the fifteenth (15th) day of each natural month, so merchants will be required to remit the lesser of: (i) eighty percent (80%) SUT charged on sales made on days 1 to 14 of each month, net of the credits available under Sections 4050.02, 4050.03 and 4050.04 of the Code ("Applicable Credits"), or (ii) half of seventy percent (70%) SUT submitted, net of the Applicable Credits, according to the SUT Monthly Return for the same taxable period of the previous calendar year. Pursuant to Section 4042.03(a)(2)(A)(iii) of the Code, the merchant subject to the payment of sales tax in biweekly installments shall be deemed to have fulfilled his obligation

to deposit them, if the sum of the two biweekly payments deposited with the Department during the month totaled at least any of the following amounts:

(I) eighty (80) percent of the SUT Collected for that month. The term "SUT charged" means the "Total Determined SUT" in the SUT Monthly Return, after deducting the credits available under Sections 4050.02, 4050.03 and 4050.04 of the Code; o

(II) seventy (70) per cent of total sales tax remitted during the same month of the previous calendar year. The term "remitted" means the "Total SUT Determined" in the SUT Monthly Return for the same taxable period of the previous calendar year, after discounting the credits available under Sections 4050.02, 4050.03 and 4050.04 of the Code.

(E) For purposes of item (D) above, the term "SUT Collected" refers, in the case of merchants reporting the SUT based on the cash basis, the SUT that is collected at the time of receipt of payment. For merchants reporting the SUT based on the accrual method, the term "SUT Collected" means the SUT that is included in the invoice when billing customers.

(F) Examples:

(I) Example 1: For the July 2018 taxable period, the total SUT Collected by Merchant "C" under that month's SUT Monthly Return was \$4,000; \$2,000 of the \$4,000 between July 1 and July 14, 2018 and the remaining \$2,000 between July 15-31, 2018. For the July 2017 taxable period (which was filed on August 20, 2017), the total SUT deposited by "C" as reflected in the SUT Monthly Return for that month, net of the Applicable Credits, was \$5,000. Based on the information for both periods, on July 15, 2018, "C" must refer the Department as the First biweekly installment for the month of July 2018 at least \$1,600 (i.e. \$2,000 multiplied by 80%, which is less than \$2,500 times 70%). Considering that the sum of the first and second installments should total at least \$3,200 (i.e., \$4,000 multiplied by 80%, which is less than \$5,000 multiplied by 70%), on July 31, 2018 "C" you must deposit with the Department as the second biweekly installment for the month of July 2018, at least \$1,600 (i.e., \$3,200 minus the \$1,600 deposited on July 15, 2018).

(II) Example 2: Following the facts of Example 1, but in this case by the nature of the "C" business the total SUT Collected occurred between July 15 and 31, 2018. Based on the information for both periods, on July 15, 2018, "C" must refer the Department as the first biweekly payment for the month of July 2018 \$0 (i.e. \$0 sales multiplied by 80%, resulting in less than \$2,500 multiplied by 70%). Considering that the sum of the first and second

installments should total at least \$3,200 (i.e., \$4,000 multiplied by 80%, which is less than \$5,000 multiplied by 70%), on July 31, 2018 "C" you must refer to the Department as the second biweekly installment payment for the month of July 2018, at least \$3,200 (i.e., \$3,200 minus the \$0 deposited on July 15, 2018).

(III) Example 3: Following the facts in Example 1, but in this case the total SUT Collected by "C" under the SUT Monthly Return for July 2017 was zero. Based on the information for both periods, the total amount of the biweekly installments that "C" must refer to the Department in July 2018 is zero (i.e. the result of 70% for the total SUT paid on the July 201 SUT Monthly Return which was \$0). In this case, the total SUT Collected during the month of July 2018 must be deposited together with the filing of the SUT Monthly Return for that month, no later than August 20, 2018.

(G) The biweekly payments sent to the Secretary pursuant to clause (ii) of subparagraph (2) of paragraph (a) of this Article shall be applied or credited against sales and use taxes payable to the Secretary pursuant to clause (i) of subparagraph (2) of paragraph (a) of this Article for the period in which sales tax payments were submitted in biweekly installments and any excess may be credited against sales taxes payable use in future periods. Any biweekly payment made by a merchant for a particular period must be applied to that particular period before being applied to interest, surcharges, penalties or other periods.

(H) Any person required to deposit sales tax in biweekly installments as established in clause (ii) of subparagraph (2) of paragraph (a) of this Article shall be subject to the imposition of a ten (10) per cent penalty on the total amount of the tax that was due to be deposited during the month and which was not deposited in the biweekly installments in accordance with this clause (ii). This penalty shall be in addition to any other penalty imposed by the Code, but the Secretary may waive, in whole or in part, the penalty imposed here to any merchant who demonstrates that the non-compliance with the biweekly installments on the particular period was due to reasonable cause or circumstances beyond his control.

(I) Payments of sales tax within in biweekly installments in accordance with clause (ii) of subparagraph (2) of paragraph (a) of this Article shall be forwarded to the Secretary in that form and in accordance with the conditions established by the Secretary, including the requirement that they be sent by electronic means exclusively.

(J) Merchants classified as a Voluntary Withholding Agents under Article 4020.05-1 of this Regulation, and who have entered into a Closing Agreement with the Secretary to voluntarily collect the SUT on mail order sales, will not be subject to the requirement under Act 46-2017, which states that the payment of the SUT to the Department must be made in biweekly installments.

(K) Payment of sales tax in biweekly installments shall not apply to the municipal portion of the sales tax that municipalities are authorized to collect under Section 6080.14 of the Code.

(L) In cases where the due date of the corresponding biweekly installment is Saturday, Sunday or federal or state holiday, the deadline for payment of the biweekly installment will be the next business day.

(M) In the case of new merchants, the requirement the biweekly installments for the deposit of the SUT will not apply during the months of the calendar year during which operations began, regardless of total monthly sales. However, for the following calendar year, sales will be taken into account during the months it was in operation during the immediately preceding calendar year to determine whether it will be subject to payment of the SUT in biweekly installments.

(I) Example: Merchant "D" is a clothing store that started operations on May 9, 2017. During calendar year 2017, "D" is not subject to payment of SUT in biweekly installments regardless of its taxable sales. The total sales that "D" had between May and December 2017, as reflected in the SUT Monthly Returns, was \$160,000, for monthly average sales of \$20,000. For the 2018 calendar year, "D" is required to submit the SUT in biweekly installments, because the monthly average of its sales was \$20,000 (\$160,000 divided by the 8 months that "D" was operating), which exceeds the monthly limit amount of \$19,050.

(3) The provisions of this paragraph (a) are illustrated by the following examples:

(i) Example 1 (paragraph (a)(1)(i)): Merchant "F" uses a shipping company to import tangible personal property for resale worth \$129,000. "F" is not a bonded importer as defined in Section 4042.03(b)(3) of the Code. The use tax for imported tangible personal property is \$13,545, which will have to be paid before taking possession of the property.

(ii) Example 2 (paragraph (a)(1)(ii)(A)(I)): The same facts in Example 1, except that "F" is a bonded importer as defined in Section 4042.03(b)(3) of the Code. The amount of the

bond at the time of importing taxable items for resale, following adjustments for increases and reductions authorized by Section 4042.03(b) of the Code, is \$20,000. The use tax for tangible personal property imported of \$13,545. Since the use tax that "F" has to pay on imported tangible personal property (\$13,545) is covered by the amount of the bond posted (\$20,000), "F" will be subject to the payment of the use tax on or before the tenth (10th) day of the month following the date the goods are introduced. In this case "F", must file the Import Declaration with charge to the bond at the time of importing the goods, and file the Tax on Imports Monthly Return with the payment of the tax on or before the (10th) day of the month following the month.

(iii) Example 3 (paragraph (a)(1)(ii)(A)(I)): The same facts in Example 1, except that "F" is a trader entrenched as defined in Section 4042.03(b)(3) of the Code. The amount of the bond at the time of importing taxable items for resale, following adjustments for increases and reductions authorized by Section 4042.03(b) of the Code is \$5,000. The use tax for imported tangible personal property is \$13,545. Since the use tax that "F" has to pay on imported tangible personal property (\$13,545) is not covered by the amount of the bond posted (\$5,000), "F" is not considered a bonded importer so will be required to pay the use tax in full before taking possession of the goods imported.

(iv) Example 4 (paragraph (a)(1)(ii)(A)(III)): The same facts in Example 1, except that "F" used the Federal Postal Service to import tangible personal property. Since "F" used the Federal Postal Service to import tangible personal property, it will be subject to the payment of the use tax on or before the tenth (10th) day of the month following the date the goods were introduced.

(b) Extension for payment of use tax on items introduced by merchants after July 31, 2014.-

(1) The Secretary may extend the time set out in Subtitle D of the Code for the payment of the tax on taxable items introduced to Puerto Rico by a bonded importer and authorize the importer to take possession of them, before making payment of the tax, taking into account the volume or frequency of imports, as well as its history or projection in the payment of the use tax; providing that the authorization to remove tangible personal property introduced into Puerto Rico without prior payment of the use tax in the case of a bonded importer will depend on whether the amount of the bond available to that merchant at the time

of the introduction of that property is sufficient to guarantee payment of the entire applicable use tax.

(2) Amount of The Bond Available to Take Possession of Tangible Personal Property Introduced to Puerto Rico.— The bond provided by a bonded importer will include an amount to guarantee payment of the corresponding use tax and another amount, equivalent to twenty-five (25) percent of the above amount, which will be available to guarantee payment of any surcharges, interest or administrative fines imposed on that trader. The Bonded Importer may never use the amount of the available bond to guarantee the payment of surcharges, interest or administrative fines to take possession of the tangible personal property introduced to Puerto Rico. The share of the bond available for taking possession of tangible personal property introduced to Puerto Rico will increase and be reduced as follows:

(i) increases.- this portion of the bond will increase by:

(A) the amount of the original bond available for taking possession of tangible personal property introduced to Puerto Rico;

(B) any amendment to the bond to increase that portion; y

(C) any use tax payments made with the Import Declaration and the Tax on Imports Monthly Return; and

(ii) Reductions. - this portion of the bond will be reduced by:

(A) the amount of the use tax corresponding to any Import Declaration for which the use tax was not paid; and

(B) any amendment to the bond to reduce that portion.

(3) Bonded Importer.- For the purposes of this section a bonded importer is any registered merchant who:

(i) request in writing on the form and in compliance with the requirements provided by the Secretary and

(ii) to post a bond to satisfaction of the Secretary, as established by the Secretary, to guarantee the payment of the full applicable use tax and any surcharges, interest, penalties or administrative fines imposed to the merchant for not paying them within the time prescribed in Subtitle D of the Code. Such bond must be provided to the Secretary by cash deposit, letter of credit or through bond issued by a company duly authorized in accordance with the laws of Puerto Rico to provide bonds.

(c) If the payment due date as established in this Article, except in the event that payment is required before taking possession of the Article, follows on a Saturday, Sunday, or federal or state holiday, payment will be accepted if it is made on the next business day.”

Article 4060.01-1

Article 4060.01-1 is amended to read as follows:

“Article 4060.01-1.- Merchant’s Registry. -

(a) Requirement to register in the Merchants' Registry- Every person, as this term is defined in Code sec. 4010.01(bb) who does or wishes to do business of any kind in Puerto Rico, including itinerant or temporary businesses, shall request registration in the Merchants' Registry at least thirty (30) days before starting operations. In the case of exhibitors, they shall register before the convention or exhibition begins. Every nonprofit entity or person that, even though not doing business, sells taxable items, whether or not it has a tax exemption in accordance with the provisions of Code sec. 1101.01, shall also register.

(b) For purposes of this paragraph, the following persons shall not have the obligation to register because they are considered neither doing business nor selling taxable items in the Commonwealth of Puerto Rico:

(1) pension plans, provided that they shall be considered merchants under Subtitles D and DDD of the Code regardless of whether registered or not in the Merchants' Registry;

(2) graduating classes, associations or entities of similar nature that comply with the following requirements:

- (i) are composed of underage persons;
- (ii) carry out sales in Puerto Rico without a permanent commercial purpose;
- (iii) are neither organized as a legal entity nor represent an specific group or legal entity;
- (iv) are not affiliated with national commercial organizations or which have presence outside of Puerto Rico;
- (v) use sales proceeds only to promote activities among the members of the group;
- (vi) do not accumulate surplus from sales proceeds; and
- (vii) do not own the real property used in trade or business or for the production of income in Puerto Rico;

(3) Puerto Rico Traditional Lottery tickets sellers whose only sources of income are from the sale of Puerto Rico Traditional Lottery tickets, wages, social security or pensions;

(4) independent distributors who form part of a multilevel business selling network with an approval issued by the Secretary authorizing the independent distributors who form part of the selling network to not be considered merchants for purposes of collecting and remitting the SUT.

(c) The provisions of this paragraph (b) are illustrated with the following example:

(1) Example: Association "C" is a corporation organized with the purpose of representing the titleholders of Condominium "Z". "C" derives its income from the fixed monthly fees paid by the titleholders of "Z", and uses such fees to subsidize, among others, the maintenance and security costs of "Z". "C" does not do business in the Commonwealth of Puerto Rico nor does it sell taxable items. However, "C" will be required to register in the Merchants' Registry.

(d) Application for Merchants' Registration Certificate. The Application for Merchants' Registration Certificate is the document through which a merchant requests to be registered in the Merchants' Registry. The application for the Merchants' Certificate can only be made by electronic manner in the platform to be established by the Department therefor through information bulletin, circular letter, administrative determination, regulation or any other document of general character. The municipality shall accept the forms issued by the Department for all purposes required as part of the administration of the SUT, including the Merchants' Registry Certificate and cannot issue any other type of Merchants' Certificate at the municipal level.

(1) As part of the Registration, the merchant shall file electronically an Application for Merchants' Registration Certificate, which shall include a list of all the merchant's commercial establishments. For the purposes of registration in the Merchants' Registry, a vending machine and a billboard shall not be considered a commercial establishment for purposes of the Merchants' Registry. In the case of merchants who are individuals doing business as sole proprietors, they shall file one Application per individual. Said application shall be available at the electronic filing platform in the Department's webpage.

(i) The provisions of this subparagraph (1) are illustrated by the following examples:

(A) Example 1: Corporation "X" is in the business of selling furniture. Its headquarters are in Bayamón and it has furniture stores in Bayamón (which is the same location of its main office), Caguas, Mayaguez and Ponce, and one warehouse in Guaynabo. "X" shall only fill out one Application as a merchant, but he shall include in it information about each commercial establishment. In this case, as established in paragraph (d) of this Article, the Secretary shall issue five (5) Merchants' Registration Certificates, one for the headquarters and the furniture store located in Bayamón, one for the warehouse located in Guaynabo and one for each of the furniture stores located in Caguas, Mayaguez and Ponce..

(B) Example 2: "T" is an individual doing business as a sole proprietor and the owner of the following businesses: a gas station, a bakery, and a shoe store, located in different commercial establishments. Although "T" has three (3) different businesses, he shall only fill out one Application as a merchant, but he shall include the information of each business. "T" shall include the information of each business in the spaces on the Application that would otherwise be used for listing commercial establishments. In this case, as established in paragraph (d) of this article, the Secretary shall issue three (3) Merchants' Registration Certificates, one for each commercial establishment.

(C) Example 3: "A" and "B" are married and both are business owners independently. "A" is a mechanical engineer and "B" is an interior decorator. "A" and "B" shall fill out two (2) separate Applications. "A" shall register as a mechanical engineer and shall receive a Merchants' Registration Certificate for such business. On the other hand, "B" shall register as an interior decorator and shall receive a Merchants' Registration Certificate for such business.

(D) Example 4: "C" and "D" are married. "C" is a salaried individual and does not have a business of his own. "D" is a self-employed individual. "C" shall not have to fill out an Application, but "D" shall fill out an Application for her self-employment business. "D" shall receive a Merchants' Registration Certificate for such business.

(E) Example 5: "E" is an operator of ten (10) vending machines. "E" shall only fill out one Application. "E" shall not have to include information regarding each vending machine in the Application, since such machines are not considered a commercial establishment for purposes of registration in the Merchants' Registry. "E" shall receive one Merchants' Registration Certificate for his business.

(F) Example 6: "F" engages in the renting of five (5) commercial properties. "F" shall only fill out one Application as a lessor, but he shall include in it the information about each property rented. In this case, as established in paragraph (d) of this Article, the Secretary shall issue six (6) Merchants' Registration Certificates, one for "F"'s principal office, and one for each of the rented properties.

(2) Information to be submitted in the Application for Merchants' Registration::

- (i) applicant's legal name (corporation, partnership, sole proprietor, or other);
- (ii) social security number or employer identification number, as applicable;
- (iii) postal address;
- (iv) physical address (in the case of merchants who are doing business as sole proprietors, itinerant and temporary businesses, they shall provide the owner's residential address);
- (v) telephone number;
- (vi) electronic mail address;
- (vii) type of organization;
- (viii) date of incorporation or creation (in the case of merchants who are doing business as sole proprietors, they shall provide the commencement date of operations of their business or principal commercial activity);
- (ix) accounting period closing date;
- (x) business volume as provided below:
 - (A) in case of merchants using calendar year, they shall provide aggregate business volume at the end of the calendar year immediately prior to the Application for Merchants' Registration Certificate;
 - (B) in case of merchants who uses a fiscal year, they shall provide aggregate business volume at the end of the last fiscal year immediately prior to the Application for Merchants' Registration Certificate;
 - (C) in case of merchants who did not operate during the twelve (12) months immediately prior to the Application, the merchant shall provide the annualized business volume; or
 - (D) in the case of new businesses, they shall provide the estimated business volume;

(xi) indicate whether the entity is a concessionaire of a decree, concession or tax exemption under any tax incentive law, any provision of the Code or any law that grants exemption from taxes in Puerto Rico to the merchant;

(xii) information on the owners, partners, shareholders or any other person owning fifty (50) percent or more interest in the business, including:

(A) name;

(B) title;

(C) social security number or employer identification number, as applicable;

(D) percentage of participation; and

(E) if the business provides services, indicate if the owner, partner or shareholder owns fifty (50) percent or more interest in another business, and indicate the name and employer identification number of the other business;

(xiii) information on the natural person responsible for the SUT related transactions, including:

((A) name;

(B) title;

(C) social security number;

(xiv) information about the commercial establishments operated by the business:

(A) type of Merchants' Registration Certificate requested;

(B) commercial name or "DBA" (*doing business as*);

(C) indicate if tangible personal property will be sold;

(D) physical address;

(E) telephone number;

(F) description of the activity;

(G) code under the North American Industry Classification System ("NAICS");

(H) business volume following the rules established in clause (x) of this subparagraph;

(I) starting date of operations; and

(xv) any other information that the Secretary should deem relevant.

(3) In addition to providing the information described in subparagraph (2) of this paragraph, the merchants whose information does not appear in the Department's systems

shall provide a copy of the certificate of incorporation, and any document issued by the U.S. Internal Revenue Service (IRS) confirming the employer identification number (EIN) or individual taxpayer identification number (ITIN) assigned to the merchant, as applicable. In the case of individuals, they shall provide the social security number issued by the Social Security Administration. In the case of foreign entities, they shall provide the authorization to operate and do business issued by the Puerto Rico State Department.

(4) Methods for submitting Information- Every merchant shall submit the Application for Merchants' Registration Certificate to the Department using the electronic filing platform established by the Department through its webpage.

(5) Notification of incomplete Information- The Secretary shall notify the merchant of any information that has not been submitted or that has been incorrectly submitted. For this purpose, the Secretary shall use the merchant's last known address.

(e) Types of Merchants' Registration Certificate- The Secretary shall issue the following types of Certificate:

(1) Merchant. - This type of Merchants' Registration Certificate shall be issued to every natural or juridical person who wishes to do or does business of any kind in Puerto Rico, whether or not he or she has the obligation to collect and remit the SUT, except for exhibitors, itinerant businesses and temporary businesses.

(2) Exhibitor. - This type of Merchants' Registration Certificate shall be issued to an exhibitor, defined as every person authorized through an agreement to sell taxable items at a convention or exhibition during a specified period. The provisions related to the exhibitors are included in Article 4060.04-1 of this Regulation.

(3) Itinerant business.- This type of Merchants' Registration Certificate shall be issued to every business that, permanently, sells taxable items without a fixed commercial establishment, in mobile units, on foot, or from locations that are not attached to any place or real property.

(4) Temporary business.- This type of Merchants' Registration Certificate shall be issued to every business that operates for a period of no more than six (6) consecutive months during the year.

(5) Provisional.- This type of Merchants' Registration Certificate shall be issued to every business that, even though being organized, will not begin its commercial activity within

thirty (30) days immediately after the application for the certificate. This type of Merchant Registration Certificate will be issued for a period of six (6) months that may be extended up to six (6) additional months.

(6) Consolidated Merchants.- Merchants who are members of the same controlled group or related entities, as defined in Sections 1010.04 and 1010.05 of the Code, and that none of the member entities of the controlled group have a commercial establishment in Puerto Rico or where only one of the member entities of the controlled group has a commercial establishment in Puerto Rico , may choose to be treated as a single merchant, provided that (1) all the member entities of the controlled group are engaged in the same activity or (2) the activity carried out by each of the member entities of the controlled group constitutes a component that when integrated with the activities of the other member entities of the controlled group, together, constitute a single activity. A Consolidated Merchant will be required to report and collect the SUT as a single merchant, but will be required to report transactions and SUT related to the activities of all member entities of the controlled group as a whole, and in a single Import Declaration, Tax on Imports Monthly Return and Sales and Use Tax Monthly Return, as the case may be.

(f) The provisions of this paragraph (e) are illustrated with the following examples:

(1) Example 1: "C" is a company that provides accounting services. Its offices are located in San Juan. "C" shall request a Merchants' Registration Certificate under the merchant classification.

(2) Example 2: "P" is in the business of selling baked potatoes during the twelve (12) months of the year, and does not have a fixed commercial establishment. "P" shall request a Merchants' Registration Certificate under the itinerant business classification.

(3) Example 3: "L" provides at-home car wash services and does not have a fixed commercial establishment. "L" shall request a Merchants' Registration Certificate under the itinerant business classification.

(4) Example 4: "S" is a salaried employee who sells "pasteles" during the months of November, December and January. "S" shall request a Merchants' Registration Certificate under the temporary business classification, because he will conduct sales for a period of three (3) months.

(g) In some cases, even if a merchant is eligible for a Merchants' Registration Certificate under the temporary business classification, it could prove beneficial for such merchant to request a Certificate under the merchant classification. For example, if a merchant sells Christmas trees only during the months of November and December, such merchant would be eligible to request the Certificate under the temporary business classification. However, if such merchant sells Christmas trees every year, he or she could request the Certificate under the merchant classification, and he or she would not have to request the Certificate under the temporary business classification every year, because the Certificate under the merchant classification would be effective until the business stopped operating. However, once the merchant receives the Certificate under the merchant classification, he or she would have to file the Monthly Return every month even if there is no balance due in the return.

(h) Issuance of the Merchants' Registration Certificate.- The Secretary shall issue a Merchants' Registration Certificate for every commercial establishment included in the Application for Merchants' Registration Certificate. The Certificate shall be sent electronically to the merchant through the system established by the Department for such purposes. Said Certificate shall indicate whether or not the merchant has the obligation to collect the SUT, that is, if it is a "withholding agent" or "non-withholding agent".

(1) A withholding agent is a merchant who will be required to collect, withhold, report and remit the SUT, including the municipal tax under Section 6080.14 of the Code, as established in Subtitles D and DDD of the Code and any other applicable provisions of the Code in connection with the collection of the SUT.

(2) A non-withholding agent is a merchant who will not be required to collect, withhold, report and remit the SUT, including the municipal tax under Section 6080.14 of the Code, because it is not engaged in the sale of taxable items in Puerto Rico and it is evidenced in its Merchants Registry Certificate. Merchants engaged in the following activities will be considered non-withholding agents and will not be required to collect, withhold, report and remit the SUT, including the municipal tax under Section 6080.14 of the Code:

(i) An association of condominium and development holders dedicated to the management of maintenance fees, provided that it is not engaged in the business of selling taxable items;

(ii) A non-profit person or entity that holds the tax exemption under the provisions of Section 1101.01 of the Code, provided that it is not engaged in the business of selling taxable items;

(iii) A business exempted under a tax exemption decree issued under Law 20-2012, dedicated exclusively to the activities covered by its exemption decree;

(iv) Persons engaged in the provision of health services, as defined in Article 4010.01(nn)-1(b)(1)(viii), provided that it is not engaged in the business of selling taxable items;

(v) Persons engaged in the provision of legal services as defined in Section 4010.01(II)(11)(B) of the Code;

(vi) Any person engaged in the mail order sales business as defined in paragraph (a) of Article 4020.08-1, including a merchant described in sections (6) or (9) of Section 4010.01(h) of the Code, whose sole contact with Puerto Rico is that the buyer is a resident or entity engaged in trade or business in Puerto Rico , except, any person engaged in the mail order sales business and deemed to be engaged in the sale of taxable items in Puerto Rico in accordance with paragraphs (1) to (5), (7), (8),(10) or (11) of section 4010.01 of the Code;

(vii) Any merchant dedicated exclusively to the provision of services to a Government agency of Puerto Rico, municipalities or the federal government including its agencies and instrumentalities; and

(viii) Any other activity determined by the Secretary results in Puerto Rico's best interests under the authority conferred in Section 4060.01(d) of the Code. In the case of the Secretary, he shall issue an administrative determination, circular letter, informative bulletin or any other document of general character establishing the activity to be classified as a non-withholding agent.

(3) The Secretary may request any relevant information for the purpose of determining whether a merchant, including those listed in this paragraph (h), should be classified as a non-withholding agent in accordance with all the circumstances surrounding the merchant's activities.

(i) Effectiveness of the Merchants' Registration Certificate.-

(1) Merchant, Exhibitor, Itinerant Business, Consolidated Merchants.- The registration certificates of Merchants, Exhibitors, Itinerant Businesses, Consolidated

Merchants shall be effective for two (2) years, except in case of certificates issued during the year 2016, which may be effective for less than two (2) years, as determined by the Secretary. Determination of an effective date for such certificates, except in case of certificates issued in 2016, shall be based on the last digit of the social security number or employer identification number of merchant, as applicable, according to the following table:

Last digit of social security number	Month in which the certificate expires
1	January
2	February
3	March
4	April
5	May
6	June
7	July
8	August
9	September
0	October

It will be the responsibility of the merchant to renew the Certificate using the electronic filing platform provided by the Department for these purposes.

(2) Temporary business.- This certificate shall be effective for no more than six (6) months.

(3) Provisional certificate.- This certificate shall be effective, with no extension, for six (6) months from the issuance date. If the merchant expects to begin its commercial operation prior to the expiration of the provisional certificate, said merchant must apply for the Merchants Certificate, through the electronic system that the Department provides for such purposes, at least thirty (30) days prior to beginning the commercial operation.

(4) Ceasing of operations or sale of business.- Notwithstanding, if the merchant ceases operations or sells its business before the expiration date of the certificate, the merchant must notify this information to the Department not later than thirty (30) days after the ceasing or the sale. No ceasing notices with date retroactive to the filing date of such notice

shall be accepted. The provisions of this subparagraph (4) are illustrated with the following examples:

(i) Example 1: "T" has been operating a flower shop as sole proprietor and has his Merchants Registration Certificate in effect. "T" decides to retire, and transfers the business to his daughter. "T" shall report the cease of operations to the Department thirty (30) days after the cease, and his daughter shall request a new Merchants' Registration Certificate in her name.

(ii) Example 2: An individual who is doing business as sole proprietor sells his business to another person, who will operate the business under the same name. Even though the business will continue to operate under the same name, the seller shall notify the sale of the business to the Department thirty (30) days after the sale, and the purchaser shall have to request a new Merchants' Registration Certificate.

(j) Penalties.- Every merchant who knowingly provides false information in the Application shall be subject to the penalty established in Section 6043.03(c) of the Code. In addition, any person who in any way forges a Merchants' Registration Certificate or who knowingly possesses a fraudulent Certificate shall be subject to the penalty established in Section 6043.03(e) of the Code.

Amendments to Article 4210.01(c)-6

To amend paragraph (a) of Article 4210.01(c)-6 to read as follows:

"Article 4210.01(c)-6.- Services rendered by merchants whose volume of business does not exceed fifty thousand (50,000) dollars.-

(a) In general.- Services rendered by merchants whose volume of business does not exceed fifty thousand (50,000) dollars, including merchants engaged in providing designated professional services, shall be exempt from the sales and use tax. These services are described, also, in art. 4010.1(nn)-1(b)(1)(ix) of the Regulation. This exemption applies to the service provider as well as the service receiver. That is, if the person that renders the service is a merchant whose Merchant's Registration Certificate indicates that he/she/it is a merchant with volume of business of fifty thousand (50,000) dollars or less and is not required to withhold the tax, then the sale of services by said merchant shall be exempt from the payment of the sales and use tax, regardless of who is the client receiver of the service. Therefore, in case of services provided by merchants whose volume of business does not

exceed fifty thousand (50,000) dollars, a copy of the Merchant's Registration Certificate shall be provided, at the request of the service receiver, as evidence of such exemption.

(1) Services provided to other merchants.- In the case of services paid to other merchants, instead of the \$50,000 limit set forth in paragraph (a) of this Article, the following limits in the volume of business shall apply for the exemption provided for in Section 4010.01(bbb)(7) of the Code and this Article:

(i) Until February 28, 2019, the amount of the volume of business in accordance to Section 4010.01(bbb)(7) of the Code shall be fifty thousand (\$50,000);

(ii) From March 1, 2019 to June 30, 2020, the amount of the volume of business in accordance to Section 4010.01(bbb)(7)(A) of the Code, will be two hundred thousand (\$200,000); and

(iii) Starting July 1, 2020, the amount of volume of business in accordance to Section 4010.01(bbb)(7)(B) of the Code shall be three hundred thousand (\$300,000).

(2) Designated Professional Services.- In the case of designated professional services, instead of the \$50,000 limit set forth in paragraph (a) of this Article, the following volume of business limits shall apply for the exemption provided for in Section 4010.01(II)(12) of the Code and this Article:

(i) Until February 28, 2019, the amount of the volume of business in accordance to Section 4010.01(II)(12) of the Code shall be fifty thousand (\$50,000); and

(ii) Starting March 1, 2019, the amount of volume of business in accordance to Section 4010.01(bbb)(7)(A) of the Code, will be two hundred thousand (\$200,000).

(b) This exemption applies to both the service provider and the recipient. That is, if the person providing the service is a merchant whose Merchant Registration Certificate indicates that he is a merchant with volume of business as established on paragraph (a) of this Article and is not required to withhold the tax, then the sale of services by that merchant will be exempt from the payment of sales and use taxes, regardless of who is the receiving customer of the service. Therefore, in the case of services provided by merchants whose volume does not exceed the volumes according to the parameters set out in paragraph (a) of this Article, they must, at the request of the person receiving the service, provide a copy of the Certificate of Registration of Merchant, as evidence of such exemption.

(c) Determination of volume of business for exemption.- To determine whether a merchant's volume of business does not exceed the parameters established on Sections 4010.01(nn)(3)(H), 4010.01(bbb)(7) and 4010.01(ll)(12) of the Code, the aggregate volume of business generated during the preceding reporting year shall be taken into account immediately. Where a merchant belongs to a controlled group, as defined in Section 1010.04 of the Code, the aggregate volume of business of that merchant shall be determined taking into account the volume of business of all members of the controlled group. Partnerships, special partnerships, and corporations of individuals, will be considered as corporations under Section 1010.04 of the Code to determine whether they are members of the same controlled group for SUT purposes.

(1) Example 1: Individual "M", an architect who works on his own, is the sole shareholder of corporations "A" and "B", dedicated to the provision of services in Puerto Rico. For purposes of determining the aggregate volume of business of Individual "M" and the volume of each of the corporations "A" and "B", the volume of business of each of the corporations and the volume of business of the individual's activity as a product of his or her self-employment must be aggregated to determine whether that volume of business exceeds the amount in accordance to paragraph (a) of this Article. If the aggregate volume of business of "M" and corporations "A" and "B" exceeds those amounts, both the individual and corporations will be considered as withholding agents required to charge the SUT for their services provided that are subject to the SUT.

(c) Determination of volume of business in case of merchants who are individuals.-

(1) Merchants with more than one activity or business.- In case of a person that is an individual, the volume of business shall be determined taking into consideration the volume of business of all his/her activities of trade or business or for the production of income. For these purposes, the phrase "activities of trade or business or for the production of income" does not include wages, dividends, interest or incidental capital gains. In addition, if the merchant's activities include both the provision of taxable services and the provision of services to other businesses or designated professional services, in order to determine whether the merchant will be considered a withholding agent required to charge the SUT for his services provided, the major exemption shall be applied.

(i) Example 1: During 2018, "X", an engineer dedicated to industry and business in Puerto Rico, generated revenue from the following activities: Gross income from a property, as reported in Schedule N of his income tax return of \$36,000; gross income from professional services, as reported in Schedule M of his income tax return, for \$35,000, interest income and dividends of \$2,500; wages for \$27,000. In this case, the aggregate volume of business of "X" is \$71,000 (rent of \$36,000 + professional services of \$35,000) so the services are subject to the SUT of 4%. Wage income, interest, and dividends received will not be considered to determine the aggregate volume of business of "X". However, as of March 1, 2019, "X" will not be required to collect the SUT because its aggregate volume of business does not exceed \$200,000, the limit applicable to merchants engaged in the provision of designated professional services.

(ii) Example 2: During 2020, "Y" an individual who is self-employment offers several types of services. "Y" offers pool-cleaning services to both residences and condominiums. In addition, "Y" has an accounting services office where it offers bookkeeping service to other businesses, and is certified as a Tax Returns Specialist that offers the returns preparation service to individuals and businesses. "Y" has its Merchant Registration Certificate and in that certificate has the NAICS Codes corresponding to both businesses. In this case, "Y" offers taxable services (cleaning of swimming pools to residences), serves other merchants (book holding service) and provides designated professional services (the preparation of returns as a Tax Returns Specialist). The total volume of business generated during 2020 by all its self-employment businesses was \$250,000. To determine whether or not "Y" is a withholding agent required to collect the SUT for the services it provides to individuals and businesses, "Y" shall consider the exemption applicable to services business to business of \$300,000, as this exemption is higher than the exemption applicable to designated professional services of \$200,000 or to taxable services of \$50,000. In this case, as the total aggregate volume of "Y"'s business did not exceed \$300,000 in 2020; "Y" will not be required to collect the SUT for services it provides during 2021.

(2) Married individuals who file joint form.- In the case of married taxpayers who file joint form, each spouse shall determine the volume of business separately to determine whether their individual volume of business is in excess of the limits established in Section 4010.01(bbb)(7).

(i) Example 1: Spouses "A" and "B" file jointly return and both are self-employed. "A" is a fumigator that provides services in residences and generates gross annual income of \$75,000 and "B" is a stylist that generates gross annual income of \$40,000. The income reported by "A" and by "B" in each of the Schedules M of the income tax return should be taken into consideration separately to determine the volume of business of each individual for SUT purposes. In this case, spouse "A" will be considered as a withholding agent of the SUT, and spouse B will be considered a non-withholding agent of the SUT.

(3) Married individuals doing business through self-employment jointly.- In case of married individuals doing business through self-employment jointly, but in which each spouse reports in his/her income tax return his/her interest in said business separately, shall be considered a single merchant for purposes of the registered business' determination of volume of business. Therefore, in case of married taxpayers who generate income from the same self-employment and said business, for purposes of the Merchants' Registry, is a single business, the fact that each spouse reports his/her interest in said business separately, does not convert the business in two different merchants for purposes of the exemption provided in Sections 4010.01(nn)(3)(H) , 4010.01(II)(11)(A), 4010.01(II)(12) and 4010.01(bbb)(7) of the Code. In this case, the business is a single merchant and the total volume of business of both spouses is determined jointly in determining whether said merchant is a withholding agent for purposes of SUT.

(i) The total volume of business from self-employment of which both spouses are owners, including rental business, shall be included as part of the volume of business of both spouses in determining whether they are withholding agents under the SUT. In case that the spouses are married under the separation of property regime, only the spouse owner of the business shall include the volume of said business in determining whether he/she is a withholding agent.

(A) Example 1: Spouse "A" is an engineer and generates an annual gross income of \$175,000. Spouse "B" is an accountant and generates an annual gross income of \$35,000 per year. Both spouses, married under the conjugal property partnership regime, have a commercial property leased, which generates \$60,000 per year. Spouse "A"'s volume of business, to determine whether he or she qualifies as a withholding agent, is \$235,000

(\$175,000 + \$60,000). However, spouse "B"'s volume of business to determine if he or she qualifies as a withholding agent, is \$95,000 (\$35,000 + \$60,000).

Articles 6043.03-1 al 6043.03-2

Article 6043.03-1 is added to read as follows:

“Article 6043.03-1.- Reserved.”

Article 6043.03-2 is added to read as follows:

“Article 6043.03-2- Penalties for Violations of the Provisions of Chapter 6 of Subtitle D: Marketplace Facilitators

(a) Pursuant to Section 6043.03 of the Code, the Secretary is authorized to impose penalties for violations of the provisions of Chapter 4 of the Subtitles D and DDD.

(1) The Secretary may waive penalty imposed under paragraph (a) to any person who demonstrates that the non-compliance was due to circumstances beyond his control, i.e. demonstrates just cause for such non-compliance.

(b) Any Marketplace Facilitator, as defined in Article 4010.01(hhh)-1 of this Regulation, who, pursuant to Section 4020.08, is considered a withholding agent shall be subject to the penalties provided for in Section 6043.03 of the Code including the penalty for non-registration in the Department's Merchant Registry. However, the Department will not impose the penalty set forth in Section 6043.03(a) of the Code if the Marketplace Facilitator completes its merchant registration with the Department and obtains its Merchant Registration Certificate on or before December 31, 2020.”

Articles 6043.04-1 al 6043.04-2

Article 6043.04-1 is added to read as follows:

“Article 6043.04-1.- Reserved.”

Article 6043.04-2 is added to read as follows:

“Article 6043.04-2- Failure to remit the sales and use tax: Marketplace Facilitators

(a) Any Market Facilitator as defined in Article 4010.01(hhh)-1 of this Regulation, who begins to collect the SUT for sales of Marketplace Sellers or any sale of tangible personal property made by any occasional seller who uses the services of the Marketplace Facilitator and such transaction is from Puerto Rico sources as set out in Article 4020.03-1 of this Regulation, must remit the Sales and Use Tax to the Department in accordance with the provisions of the Applicable Code and Regulations. If the SUT collected is not deposited

accordingly, all applicable penalties established in Subtitle F of the Code will be imposed on, including the penalty for failure to deposit the SUT in accordance to Section 6043.04 of the Code.”

Articles 6080.14(a)(2)-1

Article 6080.14(a)(2)-1 is added to read as follows:

“Article 6080.14(a)(2)-1.- Collection of Municipal use tax by the Secretary.

(a) Pursuant to Section 6080.14 of the Code, the Secretary is authorized to collect and charge the tax of one (1) percent on the use of a taxable item that the municipalities shall impose according to this Section 6080.14 of the Code. The tax of one (1) percent on the use of taxable tangible personal property imported from abroad collected or charged by the Secretary shall be deposited monthly to the municipalities, based on the delivery address notified by the person responsible for the payment of the tax at the time of making the payment. No municipality, autonomous or otherwise, of the Government of Puerto Rico may collect or charge the tax of one (1) percent on the use of a taxable item imposed by said municipality according to Section 6080.14 of the Code.

(b) The Secretary shall remit the tax of one (1) per cent on the use of taxable tangible personal property imported from abroad to the relevant municipality, based on information provided monthly by merchants in the Tax on Imports Monthly Return in accordance to Article 4041.02-1 of this Regulation. Once the Secretary has determined the amount to be sent to the relevant municipality for the month concerned, he will make the necessary arrangements to deposit the amounts attributable to each municipality on a monthly basis. The Secretary shall have deposited the amounts corresponding to each municipality on or before the last day of the second month following the month for which the deposit is made. It shall be an essential requirement for the Secretary to be able to deposit the tax of one (1) per cent on the use of taxable tangible personal property imported from abroad with the relevant municipality, which the municipality has entered into an agreement for the uniformity of the collection of the SUT with the Secretary. Until such agreement is entered into the relevant municipality, the Secretary may not make any deposit of tax of one (1) per cent on the use of taxable tangible personal property imported from outside the relevant municipality.”

SEPARABILITY: If any Article, section, paragraph, subparagraph, clause, subclause, item, phrase, sentence or part of the Code or this Regulation is declared null, ineffective or

unconstitutional by a court of competent jurisdiction, the judgment given for that purpose shall not affect, prejudice, or invalidate, the remainder of the Code or this Regulation, being its effects limited to the Article, Section, paragraph, subparagraph, clause, subclause, item, phrase, sentence or part of the Code or this Regulation declared null, ineffective or unconstitutional.

EFFECTIVENESS: This Regulation shall become in effect thirty (30) days after its filing with the Puerto Rico State Department, in accordance with the provisions of Law 38-2017, as amended, referred to as the "Uniform Administrative Procedure Act of the Government of Puerto Rico".

Approved in San Juan, Puerto Rico, as of December ___ 2020.

Hon. Francisco Parés Alicea
Secretary of the Treasury

Filed with the State Department on December ___ 2020.