
The following is an English translation of the draft regulation. In case of discrepancies between the Spanish and English versions of the draft regulation, the Spanish version will prevail for all legal purposes.

**GOVERNMENT OF PUERTO RICO
TREASURY DEPARTMENT**



REGULATION TO AMEND ARTICLES 4010.01(aa)-1, 4020.03-1, 4041.02-1 AND 4042.03-1, TO ADD ARTICLE 4010.01(aa)-2 AND TO REPEAL 4010.01(gg)-2 AND 4041.03-1 TO REGULATION NO. 8049 OF JULY 21, 2011, BETTER KNOWN AS “REGULATION OF THE INTERNAL REVENUE CODE OF 2011” (“REGULATION”), 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.

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TREASURY DEPARTMENT**

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Title: Regulation to amend Articles 4010.01(aa)-1, 4020.03-1, 4041.02-1, and 4042.03-1, to add Articles 4010.01(aa)-2 and to repeal 4010.01(gg)-2 and 4041.03-1, 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(aa), 4041.02 and 4042.03, 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.

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**GOVERNMENT OF PUERTO RICO
TREASURY DEPARTMENT**

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Article 4010.01(aa)-1

To amend Article 4010.01(aa)-1, to read as follows:

“Article 4010.01(aa)-1.- Taxable Items

(a) Means tangible personal property, taxable services, admission fees and mixed transactions.

(b) The term taxable item includes specific digital products, as said term is defined in Article 4010.01(aa)-2 of this Regulation.

(c) The term “taxable item” excludes:

(i) Any activity or plan in which there is a payment or a promise of payment in exchange for the opportunity to participate for a prize through chance or luck, including bets, raffles, bingos or any type of legally authorized private or public lottery, such as “Traditional Lottery”, “Electronic Lottery”, and all other lotteries managed or authorized by the Commonwealth of Puerto Rico;

(ii) the payment of maintenance fees made by residents to a residents association or a titleholders' association;

(iii) the payment of fees made by persons to:

(iv) a professional association, business league, chambers of commerce, real estate boards or boards of trade;

(v) a labor union, association or brotherhood; and

(vi) to private clubs and membership clubs except those described in subparagraph (4) of paragraph (a) of art. 4010.01(l)-1 and on the subparagraph (7) of paragraph (a) of Article 4010.01(aa)-2 of this Regulation;

(vii) the stamps issued by professional associations;

(viii) the stamps issued by the Commonwealth of Puerto Rico and the Federal Government;

(ix) security paper used for the printing of stamps and vouchers;

(x) those articles which, pursuant to Code sec. 4020.06 and art. 4020.06-1 of this Regulation, have had the tax included in the sales price, so that the SUT is not levied over said total price;

(xi) air and maritime transportation tickets for passengers; and

(xii) human blood, tissues, and organs.

(d) The provisions of this Article are illustrated with following examples:

(1) Example 1: Developer “A” sold a residence to family “B”. Since real property is not a taxable item for the purposes of Subtitle D of the Code, the sale of the residence by “A” to “B” shall not be subject to the SUT.

(2) Example 2: “C”, a pre-designed homes company, sold to family “D” the architectural plans and construction materials to build a residence. The sale of the construction materials by “C” to “D” shall be considered a sale of tangible personal property. On the other hand, the sale of the architectural plans shall be considered a sale of a service and shall be subject to the provisions related to taxable services, as such term is defined in art. 4010.01(nn)-1 of this Regulation.

Article 4010.01(aa)-2

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

“Article 4010.01(aa)-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, including digital products in the format or means of a non-fungible token or "NFT".

(1) Digital Audiovisual Work means a series of related images which, when displayed in succession, convey an impression of movement, together with accompanying sounds, if any. Examples, movies, television series, documentaries, concerts, music, podcasts, games and any other material that can be considered an audiovisual work.

(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 media. Some examples of an electronically transferred product include:

- (i) download ("download") a product from the internet
- (ii) view a product that is transmitted over the internet ("streaming")
- (iii) receive a product by email from the seller.

(6) The term "Electronically Delivered" means delivery by download, email or other method; while accessed electronically, delivery is via online access, usually accompanied by a password or code.

(7) Other Digital Products may include: greeting cards, images, video or electronic games or entertainment, internet group memberships to obtain exclusive internet 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, whether electronically or digitally delivered, transmitted or accessed.

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

(1) Example 1: Mr. “P” obtains music through Company A, which offers a monthly subscription service to its internet site or application where it offers a variety of music and podcasts. Mr. P pays a monthly fee to Company A and this allows him to access from his computer, mobile or any other electronic device all the music content and other types of multimedia technology available offered by Company A. In this case, both music as the other type of multimedia technology that Mr. P accesses through the payment of a monthly subscription to Company A is considered a specific digital product because it is an audiovisual work perceptible to the senses electronically transferred to Mr. P, therefore, it is a taxable item subject to the Sales and Use Tax (“SUT”).

(2) Example 2: Speedy.com, is an Internet-based company that provides electronic streaming service for some of the latest and greatest shows and movies the entertainment industry has to offer. Speedy has different service plans with different monthly costs that vary depending on several factors, including: the number of data users, the type of data the user wishes to access, and similar factors. In addition, it offers the service of charging a fixed fee per movie, program, documentary, series episode or song. The data transmission service offered by Speedy is considered download or electronic transfer of audiovisual material, this is a specific digital product, therefore it is considered a taxable item that will be subject to the SUT for users who receive Speedy services in Puerto Rico

Article 4010.01(gg)-2

Article 4010.01(gg)-2 RESERVED

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) ...

(b) ...

...

(i) ...

(j) For the purposes of the sale of specific digital products, as defined in Article 4010.01(aa)-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) ...”

Article 4041.02-1

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

“Article 4041.02-1- Import Declaration and Sales and Use Tax and Tax on Imports

Monthly Return

(a) ...

(1)...

...

(5)....

...

(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. After October 1, 2021, the Import Tax Monthly

Return must be filed no later than the twentieth (20th) day of the month following the one in which the taxable transaction occurred, together with the Sales and Use Tax Monthly Return, which will include a summary of the Import Declarations submitted during the period for which it is filed. The Imports Return shall include a summary of the Declarations of Imports submitted during the period for which the return is filed.

(2) ...

...

(8) ...

(c) ...

...

(j)...

..."

Article 4041.03-1

Article 4041.03-1 RESERVED

Article 4042.03-1

To amend subparagraph (2) of paragraph (a) of Article 4042.03-1 to read as follows:

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

(a) ...

(2) ...

(i) ...

(ii) Payment of sales and use tax in biweekly installments –

(A) ...

...

(J) Merchants who will not be required to deposit the SUT in biweekly installments as established in Section 4042.03(a)(2)(A)(i) of the Code.

(I) Merchants with a payment agreement under a department program, where it is established that they must deposit the sales and use tax in weekly installments.

(II) Merchants that make sales delivered by mail according to said term as defined in Section 4020.08(d) of the Code, when the only contact of the merchant with Puerto Rico is that the buyer of the taxable items is a resident, or a person dedicated to the industry or business in Puerto Rico. In order to be exempt from the biweekly deposit of the sales tax, the merchant who makes sales delivered by mail must not have any business location in Puerto Rico. This includes that the merchant cannot be part of a group of entities that are actively participating in business operations in Puerto Rico and with locations in Puerto Rico, including a controlled group of corporations as defined in Section 1010.04 of the Code or a group of related entities or related persons as defined in Section 1010.05 of the Code.

(K) ...

...

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

(i) ...

...

(v) Example 5: Company "C" is headquartered in the city of Atlanta, Georgia. Company "C" has no products stored in Puerto Rico, no place of business, and no employees in Puerto Rico. Company "C" makes all sales to Puerto Rico only from its own website (CompañíaC.com) and sends the merchandise to buyers with a Puerto Rico address by postage mail or private mail. Company C closes its annual accounting period on a calendar year basis. On the year ended December 31, 2021, Company C had sales to Puerto Rico for an amount greater than two million (\$2,000,000) dollars, so its average monthly sales tax exceeds two thousand (\$2,000) dollars per month. However, Merchant C will not be required to deposit the SUT in biweekly installments as established in Section 4042.03(a)(2)(A)(i) of the Code. Company C is a merchant that makes sales delivered by mail according to said term as defined in Section 4020.08(d) of the Code, whose only contact with Puerto Rico is that the buyers of taxable items are residents or persons engaged in the industry or business in Puerto Rico with a Puerto Rico address; or because following Article 4020.03-1 of this Regulation - Rules for determining the source of income generated by the sale of taxable items, it is determined that the source of income generated by the sale of taxable items is Puerto Rico. Therefore, the obligation to deposit the SUT in biweekly installments do not apply and

Company C will continue to deposit the SUT on or before the twentieth (20) day of the month following that in which the sale of the taxable item arises.

(b) ...

(1) ...”

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 Act 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 January __, 2022.

Hon. Francisco Parés Alicea
Secretary of the Treasury

Filed with the State Department on January __, 2022.