



A PUBLICATION FROM THE TAX DIVISION

TEMPORARY EXEMPTION OF THE SALES AND USE TAX TO CERTAIN MERCHANTS



Please contact your account service partner should you have any questions or comments or if you need additional information regarding these matters.

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On November 8, 2017, the Governor of Puerto Rico issued Executive Order No. 2017-068 ("EO 2017-068") to order the Secretary of the Treasury to temporarily exempt those small and medium-sized enterprises ("SMEs") that meet certain requirements from the collection of the sales and use tax ("SUT") in the sale of goods or services, including the payment of SUT for purchases of inventory for resale. According to EO 2017-068, the exemption will be temporary, for the duration of the declared state of emergency. For this purpose, EO 2017-068 directs the Secretary to establish the eligibility requirements to qualify for the IVU exemption and warns eligible SMEs that they will not be able to transfer to the consumer any fees related to the collection of the SUT in the sale of goods or services that are exempted by the Secretary.

In accordance with the foregoing, the Department of the Treasury (the "Department") issued Administrative Determination No. 17-26 ("AD 17-26") to temporarily establish an exemption from the collection of the SUT for certain SMEs whose annual sales volume does not exceed \$1,000,000, and which are not considered Large Taxpayers (as defined in Section 1010.01 (a)(35) of the 2011 Internal Revenue Code ("the Code"), as amended). This exemption will only cover the period from November 20, 2017 to December 31, 2017 ("Temporary Period").

Annual Sales Volume Requirement

To determine if the merchant meets the annual sales volume requirement, the Department will consider the total sales volume (including exempt and taxable sales) reported by the merchant in the SUT Monthly Returns filed for the twelve (12) months comprised from August 2016 to July 2017.

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(continued)**

Annual Sales Volume Requirement (continued)

In the case of merchants that started operations after August 31, 2016 but before July 31, 2017, the determination of whether or not their annual sales volume exceeds one million dollars (\$1,000,000) will be made by adding the total sales reported in the SUT Monthly Returns filed for the months in which it was operating within said period; dividing the total sales between the number of months and multiplying the result by twelve (12).

A new merchant that started a business after July 31, 2017 and completed its registration in the Merchant Registry through the Unified Internal Revenue System ("SURI", by its Spanish acronym), will be considered an Exempt Merchant. Therefore, those merchants will not be required to charge SUT on their sales during the Temporary Period, regardless of their sales volume.

Merchants whose Registration Certificate indicates that they are withholding agents must have complied with their obligation to file all the SUT Monthly Returns until the July 2017 period to be eligible for the SUT exemption established by AD 17-26.

Temporary Exempt Merchant Certificates

The Department will issue a Temporary Exempt Merchant Certificate to qualifying merchants. The certificate will be issued automatically through SURI and will replace and be equivalent to the Merchant's Registration Certificate during the Temporary Period. Exempt merchants must submit the Monthly SUT Return in the manner established by the Code. However, sales subject to the SUT exemption must be informed in the corresponding Part D box, *Exempt Sales*, of the SUT return.

Exempt Merchants must exhibit the Temporary Exempt Merchant Certificate in a visible place to notify customers that sales will be exempt from the payment of the SUT during the Temporary Period. Failure to place the Temporary Exempt Merchant Certificate in a visible place may result in the revocation of the exemption provided by AD 17-26.

In the case of a business established after August 31, 2016, the Department will evaluate the SUT Monthly Returns filed for the months in which said merchant was operating to annualize said sales and determine if the merchant qualifies as an Exempt Merchant.

Temporary Exemption for Inventory Purchased for Resale

AD 17-26 also grants an exemption from the use tax established in Sections 4020.02 and 4210.02 of the Code, but only on purchases of inventory for resale.

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(continued)**

Temporary Exemption for Inventory Purchased for Resale (continued)

To qualify for this exemption, the Exempt Merchant must complete the Certificate of Exempt Purchases and Services Subject to the Special 4% SUT (Form SC 2916) and present it together with a copy of the Exempt Merchant Certificate. Merchants who sell taxable items during the Temporary Period to an Exempt Merchant and receive Form SC Form 2916 duly completed and signed, together with a copy of the Exempt Merchant Temporary Certificate, will not be required to collect the SUT. In cases when the purchase of inventory for resale is introduced from abroad, the Exempt Merchant may declare the same in SURI following the instructions provided by the system.

This temporary exemption does not apply to the use tax established in Sections 4020.02 and 4210.02 of the Code in connection with the purchase of tangible personal property for use or in the payment of services received by the Exempt Merchant. Therefore, all Exempt Merchants will be subject to the payment of the SUT in the purchase of tangible personal property for use, including imports, and in the payment of services received from other merchants or merchants outside of Puerto Rico.

Applicability of the Exemption Based on Accounting Method

For merchants that use accrual basis and in the ordinary course of their business do not receive payments at the time of sale, the transactions invoiced during the Temporary Period will be considered exempt if sold by an Exempt Merchant.

For Exempt Merchants that use cash basis for SUT purposes, the transactions that will be considered exempt will be those whose collection or payment is received during the Temporary Period.

Penalties

Merchants that withhold the SUT on exempted transactions will be subject to a penalty of \$100 for each receipt, invoice, ticket or other evidence of sale, as provided in Section 6043.06 of the Code. In addition, Exempt Merchants that continue charging the SUT during the Temporary Period will be obliged to deposit the SUT collected. In case of non-compliance, merchants will be subject to the penalties, interest and surcharges imposed by the Code.

The provisions of AD 17-26 will become effective on November 20, 2017 and will be in effect until December 31, 2017.

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