

(H. B. 1668)
(Conference)

(No. 210-2024)

(Approved September 17, 2024)

AN ACT

To add a subsection (iii) to Section 4010.01 of Act No. 1-2011, as amended, known as the “Internal Revenue Code for a New Puerto Rico,” for the purpose of including a new paragraph (3) to establish the concepts “Delivery Network Company” and “Local Merchant”; exclude said concepts from the term “Marketplace Facilitator” in order to make online transactions accessible to consumers and conform the legal framework to the online sales systems of local entities solely offering products and services from entities and stores established in Puerto Rico, thus promoting local small- and medium-sized businesses; and for other related purposes.

STATEMENT OF MOTIVES

As part of the public policy on economic development, there is a commitment to promote local business initiatives and help them reach their fullest potential. Thus, it is necessary to strengthen the tools that facilitate doing business in Puerto Rico.

Act No. 40-2020, introduced several amendments to Act No. 1-2011 as amended, known as the “Internal Revenue Code for a New Puerto Rico,” (hereinafter, the Internal Revenue Code) for the purpose of incentivizing economic growth through the continuous revision of the tax provisions in effect and ensuring that such provisions are consistent with the legislative intent and not subject to interpretations contrary thereto.

Consistent with the foregoing, the concepts “Marketplace Facilitator” and “Marketplace Seller” were incorporated into the Internal Revenue Code as part of

the definition of Merchants or persons engaged in the business of selling taxable items in Puerto Rico. Thus, under the Internal Revenue Code, a person is considered a Merchant when:

“... ”

(11) the person is a marketplace facilitator or a marketplace seller who sells or sends, or causes to be sent, tangible personal property **from any state or foreign 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 and consumed in Puerto Rico...See Section 4010.01(h) of Act No. 1-2011, *supra*. Emphasis added.

Based on the above-cited statutory provision, the duty to collect the Sales and Use Tax (SUT) on sales made through Marketplace Facilitators or Marketplace Sellers was established in our code of laws. Initially, the purpose of creating these two concepts was to tackle the non-collection of the SUT on sales facilitated by foreign merchants not registered in the jurisdiction of Puerto Rico.

As a result of the impact of the natural, social, and economic events that we have experienced in the past years, Puerto Rico has developed new online sales models. These models are mostly developed by local small- and medium-size businesses seeking to make it easier for their customers to purchase goods through a link on an Internet website.

In view of the competition of “online sales” platforms that import and deliver goods by mail, the Island’s merchants, including shopping centers, are creating alternatives to promote that such sales be made physically in Puerto Rico and help local merchants. Likewise, this type of sales has a multiplier effect on the local economy through the creation and retention of jobs.

Many businesses and shopping centers, which are currently registered with the Department of the Treasury of Puerto Rico, could create online platforms that can facilitate the exhibition and sale of local inventory by authorized and registered merchants through a central platform, which individually registers the sale in the store that made it. By having the sale recorded in the physical cash register of each business, the duty to collect and pay the SUT to the Department of the Treasury is fulfilled. It must be stressed that, there is a wide variety of local, national, and international (small, medium, and large) businesses in Puerto Rico's shopping centers that are complying with their tax obligations to the Department of the Treasury, including withholding and remitting the SUT, by recording their sales at the store.

However, under the provisions of the Internal Revenue Code currently in effect, it is necessary to establish a concept that better adapts to a platform created for the delivery of merchandise purchased online from a local store at a shopping center in Puerto Rico, where each product or merchandise would be billed individually by each store; therefore, each store shall meet its duty to withhold the SUT in each transaction. At present, this activity, which would be carried out in this type of platform, is not defined under the Code and should not be considered a taxable transaction, therefore, the concept "Marketplace Facilitator" established in Section 4010.01 (ddd) should not apply thereto. Thus, it is necessary to define a new concept for this type of platforms under the Code.

Therefore, this Legislative Assembly has identified the need to revise the tax provisions currently in effect and ensure that they are consistent with the legislative intent and not subject to interpretations contrary thereto. Using as a model the legislation adopted by other jurisdictions of the United States of America, such as the states of Florida, Tennessee, and California, the concepts "Delivery Network

Company” and “Local Merchant” are hereby adopted and incorporated into the Internal Revenue Code.

These new definitions are introduced for the purpose of clarifying the duty of each of these entities to withhold and pay the SUT in order to make online transactions accessible to consumers and conform the legal framework to the online sales systems of local entities solely offering products and services from entities and stores established in Puerto Rico.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:

Section 1.- A subsection (iii) is hereby added to Section 4010.01 of Act No. 1-2011, as amended, to read as follows:

“Section 4010.01.- General Definitions.

For the purposes of this Subtitle, the following terms, words, and phrases shall have the general meaning expressed below, except when the context clearly indicates otherwise:

(a) ...

...

(iii) ‘Delivery Network Company’ – The term Delivery Network Company’

(1) means any person, including a person or related entity, that meets the following requirements:

(A) is engaged in providing delivery services through its mobile application platform, internet website, or any other electronic medium, for taxable items sold at retail by stores located in shopping centers in Puerto Rico, for which it may collect a service fee for the purposes of covering operating costs related to such services,

(B) facilitates delivery services on sales exclusively from persons considered ‘Local Merchants’ that are in shopping centers in Puerto Rico.

(C) upon receiving an order, it proceeds to purchase a taxable item, on behalf of its customer, pick it up from a ‘Local Merchant’, and deliver it to the customer through transactions for which the ‘Local Merchant’ withholds the tax imposed under Subtitle D and Subtitle DDD, and for which the ‘Delivery Network Company’ is reimbursed by the client the cost of the taxable item and the tax imposed under Subsection D and Subtitle DDD, and

(D) does not facilitate delivery of ‘Prepared Foods’ as such term is defined in Section 4010.01(b);

(E) A person or entity that is deemed a Delivery Network Company for the purposes of this definition is not a Marketplace Facilitator, as such term is defined in Section 4010.01(ddd) of the Code.

(2) ‘Local Merchant’ means any person other than a Delivery Network Company that is a ‘Merchant’ as such terms are defined in Section 4010.01(h), and has obtained and holds a valid Merchant Registration Certificate.’

(3) Without prejudice to this definition, any person or entity that qualifies to be deemed a Delivery Network Company, as established in this paragraph, may elect to be deemed a Marketplace Facilitator pursuant to subsection (ddd) of this Section. The Department shall adopt regulations as are necessary to establish the criteria necessary for a Delivery Network Company to obtain or retain an election to be deemed a marketplace facilitator pursuant to subsection (ddd).

Section 2.- Rulemaking and Administrative Determinations

The Department of the Treasury is hereby authorized and directed to adjust existing regulations and adopt regulations as are necessary to enforce the provisions of this Act. Likewise, the Department of the Treasury shall have authority to and be responsible for adopting administrative determinations or circular letters as are necessary to implement the provisions herein.

Section 3.- Interpretation

The Department shall liberally interpret and apply subsection (iii) of Section 4010.01 of Act No.1-2011, as amended in this Act, to recognize the exclusion of the term Delivery Network Company from the definition of the term “Marketplace Facilitator” established in the Code.

Section 4.- Severability Clause

If any Section or provision of this Act were held to be void or unconstitutional by any Court of competent jurisdiction, the judgment entered to such effect shall not affect or invalidate the remainder of this Act. The effect of said judgment shall be limited to the paragraph, section, part or provision thus held to be void or unconstitutional.

Section 5.- This Act shall take effect upon its approval.

CERTIFICATION

I hereby certify to the Secretary of State that the following **Act No. 210-2024 (H. B. 1668) (Conference)** of the **7th Regular Session** of the **19th Legislative Assembly of Puerto Rico:**

AN ACT to add a subsection (iii) to Section 4010.01 of Act No. 1-2011, as amended, known as the “Internal Revenue Code for a New Puerto Rico,” for the purpose of including a new paragraph (3) to establish the concepts “Delivery Network Company” and “Local Merchant”; exclude said concepts from the term “Marketplace Facilitator” in order to make online transactions accessible to consumers and conform the legal framework to the online sales systems of local entities solely offering products and services from entities and stores established in Puerto Rico, thus promoting local small- and medium-sized businesses; and for other related purposes.

has been translated from Spanish to English and that the English version is correct.

In San Juan, Puerto Rico, on this 11th day of October, 2024.

Jonathan E. Pérez Cora, Esq.
Director