

(H. B. 2199)

(No. 220-2014)

(Approved December 16, 2014)

AN ACT

To amend Section 4010.01 and paragraph (4) of subsection (a) of Section 4050.04 of Act No. 1-2011, as amended, better known as the “Internal Revenue Code for a New Puerto Rico,” in order to establish certain particularities for resellers that constitute voluntary chains of retailers of goods and services; and for other related services.

STATEMENT OF MOTIVES

Act No. 80-2014 introduced to the Puerto Rico Internal Revenue Code several amendments that change the collection and oversight process of the Sales and Use Tax (SUT) originally implemented in 2006. Since the implementation of the SUT, the Department of the Treasury has been constantly improving the collection of this tax. Among the changes made are the elimination of the certificate of exemption for resellers, the imposition of the SUT in sales for resale subject to certain exceptions, and the collection of the use tax on items that are not for resale prior to their release from the pier.

It is a well-known fact that local business have been stricken by the world and the local economic crisis. This Legislative Assembly recognizes the importance of addressing the particular needs of this sector to help it stay afloat and bear its financial burden.

Voluntary chains have been created in Puerto Rico to group various merchants, specifically small- and medium-size business, for the purpose of acquiring an inventory larger than what they would be able to acquire individually. These chains basically operate without profit margins, because they transfer to

partner or member retailers the acquired goods at the cost thereof. Furthermore, their income derives from sales made abroad of the excess of goods purchased. It is necessary to revise the SUT payment on purchases for resale to these chains, since it is not reasonable for them to be required to pay when they are unable to recover it entirely, through a credit on their income tax returns. This would affect their cash flow and, therefore, take them out of the market.

These amendments seek to strike a balance in the commercial sector for business that operate with an extremely low profit margin such as the food industry. This shall also prevent these new tax measures from adversely affecting our citizens' consumption of food as a result of a disruption in the supply chain of these goods. Moreover, we do justice to Puerto Rican businesspersons whose profits compared to their counterparts with higher profits are lower, thus promoting the stability of their finances by incentivizing the creation of new jobs and capital investment in Puerto Rico.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:

Section 1.— Section 4010.01 of Act No. 1-2011, as amended, is hereby amended to read as follows:

“Section 4010.01.— General Definitions

(a) ...

...

(xx) Eligible Reseller

(1) General Rule.- A duly registered merchant that acquires taxable items principally for purposes of selling such items to persons that may acquire them exempt from the Sales and Use Tax, as provided in Chapter 3 of Subtitle D of the Code, to be sold as nontaxable items as provided in Chapter 1 of Subtitle D of the Code or for export. For these purposes, the term ‘principally’ means that during the three (3) taxable years immediately preceding the determination year,

it is established, to the satisfaction of the Secretary, that the merchant has withdrawn an average of eighty percent (80%) or more of his inventory to be sold to persons that may acquire the taxable item exempt from the Sales and Use Tax, as provided in Chapter 3 of Subtitle D of the Code, or to be exported. Provided, that the Secretary shall be authorized to treat as eligible resellers duly registered merchants who, despite having a level of inventory withdrawal for sale to persons that may acquire taxable items exempt from the Sales and Use Tax, lower than the eighty percent (80%) provided herein, taking into account all of their particular facts and circumstances, it can be determined that they are engaged principally in the resale of taxable items to persons that may acquire such items exempt from the Sales and Use Tax. Provided, further, that the merchant may, following all the procedures prescribed by law, reorganize himself and operate an entity exclusively for export purposes. In such case, to determine that the merchant has withdrawn an average of eighty percent (80%) or more of his inventory to be sold to persons that may acquire taxable items exempt from the Sales and Use Tax, the volume of the controlled group of corporations or of a related person shall not be considered, but rather only the average inventory withdrawn by the entity engaged in export.

(2) ...

(A) ...

(B) ...

(C) Merchants that constitute a program of voluntary chains of retailers of goods and services organized pursuant to the provisions of Act No. 77 of June 25, 1964, as amended, or a program with a similar structure created under Act No. 239-2004, as amended, to which the Secretary may issue a Certificate of Eligible Reseller to cover the sales of tangible personal property made to their members or partners and property acquired to be sold abroad.”

Section 2.– Paragraph (4) of subsection (a) of Section 4050.04 of Act No. 1-2011, as amended, is hereby amended to read as follows:

“Section 4050.04.– Credit for Taxes Paid by a Reseller.-

(a) Credit Claim and Limitation:

(1) ...

(4) The credit shall be claimed in the Sales and Use Tax Monthly Return for the period in which the tax on the sale was paid up to a maximum of seventy-five percent (75%) of the tax liability shown in said return. Except that, in the case of taxpayers principally engaged in the sale of unprepared foods and provisions, the credit to be claimed in the Sales and Use Tax Monthly Return for the period in which the tax on the sale was paid may be up to a maximum of one hundred percent (100%) of the tax liability shown on said return. Except that, in the case of taxpayers principally engaged in the sale of unprepared foods and provisions, the credit to be claimed in the Sales and Use Tax Monthly Return for the period in which the tax on the sale was paid may be up to a maximum of one hundred percent (100%) of the tax liability shown on said return.

(A) Definitions- For purposes of this paragraph:

(i) the term ‘principally’ means that during three (3) taxable years immediately preceding the determination year, an average of seventy percent (70%) or more of its retail sales constituted retail sale of unprepared food and provisions;

(ii) Notwithstanding the foregoing, the term ‘taxpayer engaged in retail sale’ include businesses commonly known as ‘Cash & Carry’; and

(iii) the term ‘provisions’ excludes the sale of appliances, toys, beauty, school, office, and hardware supplies, shoes, apparel, and alcoholic beverages.

To claim the applicable credit, the merchant shall meet the documentation requirements prescribed by the Secretary through regulations.

(5) ...

(b) ...”

Section 3.— Effectiveness

This Act shall take effect immediately after its approval.

CERTIFICATION

I hereby certify to the Secretary of State that the following **Act No. 220-2014 (H. B. 2199)** of the **4th Regular Session** of the **17th Legislative Assembly of Puerto Rico**:

AN ACT to amend Section 4010.01 and paragraph (4) of subsection (a) of Section 4050.04 of Act No. 1-2011, as amended, better known as the “Internal Revenue Code for a New Puerto Rico,” in order to establish certain particularities for resellers that constitute voluntary chains of retailers of goods and services; and for other related services.

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

In San Juan, Puerto Rico, on this 8th day of March, 2018.

Orlando Pagán-Ramírez
Director