



June 5, 2018

ADMINISTRATIVE DETERMINATION NO. 18-12

ATTENTION: ENTITIES THAT ENTER INTO A MUTUAL ASSISTANCE AGREEMENT WITH THE GOVERNMENT OF PUERTO RICO IN ORDER TO PROVIDE EMERGENCY ASSISTANCE

SUBJECT: TAX TREATMENT OF PAYMENTS MADE IN CONNECTION WITH A MUTUAL ASSISTANCE AGREEMENT

I. Statement of Motives

On March 19, 2018, the Puerto Rico Treasury Department ("Department") issued Administrative Determination No. 18-06 ("AD 18-06") whereas the Department determined the tax treatment of certain payments made to and by Participating Companies that entered into a Mutual Assistance Agreement with the Government of Puerto Rico ("Government") in accordance to Executive Order 2017-73 of December 20, 2017 ("EO 2017-73").

JAA

EO 2017-73 ordered the Secretary of the Puerto Rico Treasury Department ("Secretary") to exempt from income tax the Reimbursements made by the Government to the Participating Companies pursuant to a Mutual Assistance Agreement, taking into consideration that the operations covered under the same are not motivated by a commercial purpose. Likewise, EO-2017-073 provided that the wages earned by employees of Participating Companies will be exempt from Puerto Rico income tax to the extent that they are earned as part of the operations covered by the Mutual Assistance Agreement.

Pursuant to Part III-A of AD 18-06, in order for the tax treatment to be effective, the Participating Companies were required to file in the Department a closing agreement request in accordance with EO 2017-73.

In view of the fact that the 2018 Atlantic hurricane season has already begun, the Department issues this Administrative Determination for the purpose of: (1) establishing the procedure by which Participating Companies may request a Closing Agreement under Section 6051.07 of the Puerto Rico Internal Revenue Code of 2011, as amended ("Code"), with respect to a Mutual Assistance Agreement entered into with the Government, and (2) determine the tax treatment to which the Participating Companies and their employees will be subject.

II. Definitions

The following terms will have the following definitions for purposes of this Administrative Determination:



- JAA*
1. **Mutual Assistance Agreement** — refers to a Memorandum of Understanding formalized between the Government of Puerto Rico and a Participating Company, where the latter agrees to provide aid in restoring and/or maintaining electric utility service when such service have been disrupted by any occurrence for which emergency assistance is deemed to be necessary or advisable (“Emergency Assistance”), in exchange for a reimbursement without commercial purposes nor for the production of profit. This term also includes those agreements subscribed as part of a Memorandum of Understanding between an entity and a state jurisdiction that agreed to assist the Government of Puerto Rico as part of a Mutual Assistance Agreement.
 2. **Closing Agreement** — means a written agreement issued under Section 6051.07 of the Code between the Secretary and a Participating Company with respect to its tax responsibility for purposes of the Code in connection with reimbursements received as part of a Mutual Assistance Agreement.
 3. **Participating Companies** — includes every foreign juridical entity organized or incorporated under the laws of the United States of America (U.S.) or other jurisdictions, that otherwise would not be engaged in trade or business in Puerto Rico and that formalize a Mutual Assistance Agreement with the Government.
 4. **Participating Company Employee** — Puerto Rico nonresident individual, whether or not a U.S. citizen, that has an employee-employer relationship with the Participating Company and that works in the rendering of services under a Mutual Assistance Agreement. Independent contractors of a Participating Companies are not considered Participating Company Employee.
 5. **Reimbursements** — means the amount paid by the Government to a Participating Company as part of a Mutual Assistance Agreement, for ordinary and necessary expenses incurred in connection with the execution of a Mutual Assistance Agreement, without including a profit margin.
 6. **Government of Puerto Rico** — means departments, agencies, administrations, bureaus, boards, commissions, offices, public corporations, and public instrumentalities of the Government of Puerto Rico. This term does not include the municipalities of Puerto Rico.

III. Determinations

A. Closing Agreements

The Department determines that if the Governor of Puerto Rico (“Governor”) declares a State of Emergency through an Executive Order and the Government formally requests Emergency Assistance from the Participating Companies pursuant to a Mutual Assistance Agreement, Participating Companies and Participating Companies’ Employees will be subject to the tax treatment provided in Parts III-B and III-C of this Administrative Determination.



In order for such tax treatment to become effective, every Participating Company must file before the Department's Internal Revenue Area, a draft of a Closing Agreement ("Draft"). Said Draft must be filed on or before the date that the Secretary sets forth through an Internal Revenue Informative Bulletin which will be issued, if needed, as a result of the 2018 Atlantic hurricane season.

The Draft does not have to follow the uniform procedure detailed in Tax Policy Circular Letter No. 14-01. Nevertheless, the Draft must be addressed to the Assistant Secretary for the Internal Revenue Area, and may be filed with the Department by any of the following two (2) methods:

In Person: Sixth Floor, Office 620, Intendente Ramírez Building located at 10 Paseo Covadonga, Old San Juan, Puerto Rico 00901

By Mail: Department of the Treasury, Closing Agreement Request — Mutual Assistance Agreement, Office 620, P.O. Box 9024140, San Juan, P.R. 00902-4140

Furthermore, Participating Companies shall be subject to a service charge of five thousand dollars (\$5,000) in accordance with Article 6 of Regulation 8693 of January 26, 2016, better known as "Regulation for the Imposition of Service Charges for Requests Submitted to the Treasury Department".

JAA

In addition, the Draft must contain a transmittal letter stating that the taxpayer wishes to avail itself of the benefits of this Administrative Determination, as well as the following information and documents:

1. Copy of the Mutual Assistance Agreement;
2. Copy of the Emergency Assistance request sent by the Government;
3. Name, address and employer identification number of the Participating Company; and
4. List of employees that the Participating Company is transferring to Puerto Rico as part of the Mutual Assistance Agreement, including first and last name, and either the last four digits of the social security number or the full employee identification number of each employee.

The Draft, together with the information requested above, must be included in digital format in any external memory device. Furthermore, the Department reserves its authority to request and review any bill or document to ascertain that the Participating Company has only billed for Reimbursements of ordinary and necessary expenses incurred in connection with the execution of a Mutual Assistance Agreement, without including a profit margin.

Also, the Department clarifies that the fact that a Participating Company has subscribed a Mutual Assistance Agreement with the Government does not imply that the tax treatment provided in this Administrative Determination will apply automatically to such Participating



Company. The execution of a Closing Agreement between the Secretary and the Participating Company in connection with the Mutual Assistance Agreement will be an indispensable requirement to obtain such tax treatment.

Those Participating Companies that do not subscribe a Closing Agreement with the Secretary or that fail to comply with the requirement of only billing for the Reimbursement of expenses incurred in the rendering of such services without including a profit margin, will be subject to income tax, as well as withholding at source, and will be exposed to the applicable fines, interests, surcharges and penalties under the Code. Likewise, the Participating Companies' Employees will be subject to income tax and withholding at source to the extent that their employer does not subscribe a Closing Agreement with the Secretary.

B. Tax Treatment of Participating Companies

The Reimbursements made to a Participating Company by the Government as part of a Mutual Assistance Agreement will be exempt from the income taxes imposed by Subtitle A of the Code.

Therefore, pursuant to the Secretary's authority under Section 1062.11(f) of the Code, the Department determines that the Reimbursement paid to a Participating Company will not be subject to income tax withholding at source under Section 1062.11 of the Code.

JAA Likewise, by virtue of Section 1092.06(b) of the Code, every Participating Company is exempted from filing an income tax return, provided that the only Puerto Rico source income that the entity has derived are the Reimbursements made as part of a Mutual Assistance Agreement.

Notwithstanding the above, Participating Companies will not be exempt from their obligation as a Withholding Agent pursuant to Subchapter B of Chapter 6 of Subtitle A of the Code. Therefore, payments made by a Participating Company to subcontracted persons, whether juridical or natural persons, residents or nonresidents of Puerto Rico, will be subject to income tax withholding at source. Consequently, the Participating Companies will be required to deduct and withhold from such payments in accordance with Sections 1062.03, 1062.08 and 1062.11 of the Code, as applicable.

Moreover, Participating Companies must report payments subject to withholding by electronically filling Form 480.6B (Informative Return - Income Subject to Withholding) and Form 480.6C (Informative Return - Income Subject to Withholding - Nonresidents), as applicable, not later than February 28 and April 15, respectively, of the year following the calendar year in which the payments were made.

C. Tax Treatment of Participating Companies' Employees

Compensation paid by a Participating Company to a Participating Company Employee for services rendered in Puerto Rico related to a Mutual Assistance Agreement, will be exempt from the income taxes imposed by Subtitle A of the Code.



Therefore, pursuant to the Secretary's authority under Section 1062.08(a)(4) of the Code, the Department determines that the compensation paid to a Participating Company Employee will not be subject to income tax withholding at source under Section 1062.08 of the Code.


Lastly, taking into consideration that the compensation will not be subject to income tax, and, therefore, will not be subject to withholding of tax at source under Section 1062.08 of the Code, the Department exempts every Participating Company Employee from the obligation to file an income tax return provided that the Participating Company Employee only receives compensation related to a Mutual Assistance Agreement and the employer has subscribed a Closing Agreement in accordance with this Administrative Determination.

IV. Effectiveness

The provisions of this Administrative Determination are effective immediately.

For additional information regarding the provisions of this Administrative Determination, you may contact us at (787) 622-0123, option 8, or you may send an electronic mail to: infosac@hacienda.pr.gov.

Cordially,


Francisco Parés Alicea
Assistant Secretary
Internal Revenue Area

