

NUMBER: 9477

DATE: July 5, 2023

Approved: Omar J. Marrero Díaz

Secretary of State



Department of State
Government of Puerto Rico

GOVERNMENT OF PUERTO RICO
DEPARTMENT OF THE TREASURY



Regulation to amend Regulation 7970 of December 29, 2010, titled "*Regulation to implement the provisions of Sections 2101, 2102, 2103 and 2104 of Act No. 120 of October 31, 1994, as amended, known as the "Puerto Rico Internal Revenue Code of 1994, as amended"*", enacted pursuant to Section 6051.11 of the Puerto Rico Internal Revenue Code of 2011, as amended, which authorizes the Secretary of the Treasury to adopt the Regulations necessary to make effective said Code".

**GOVERNMENT OF PUERTO RICO
DEPARTMENT OF THE TREASURY**

TABLE OF CONTENTS

TITLE: Regulation to amend Regulation 7970 of December 29, 2010, titled "Regulation to implement the provisions of Sections 2101, 2102, 2103 and 2104 of Act No. 120 of October 31, 1994, as amended, known as the "Puerto Rico Internal Revenue Code of 1994, as amended", enacted pursuant to Section 6051.11 of the Puerto Rico Internal Revenue Code of 2011, as amended, which authorizes the Secretary of the Treasury to adopt the Regulations necessary to make effective said Code".

CONTENTS	PAGE
STATEMENT OF MOTIVES	2
Article 1	2
Article 2	3
Article 3	3
Article 4	3
Article 5	5
SEPARABILITY	6
EFFECTIVENESS	6



DEPARTMENT OF THE TREASURY
GOVERNMENT OF PUERTO RICO

[Signature]

SECRETARY OF THE TREASURY
DEPARTMENT OF THE TREASURY
GOVERNMENT OF PUERTO RICO

**GOVERNMENT OF PUERTO RICO
DEPARTMENT OF THE TREASURY**

Regulation to amend Regulation 7970 of December 29, 2010, titled *“Regulation to implement the provisions of Sections 2101, 2102, 2103 and 2104 of Act No. 120 of October 31, 1994, as amended, known as the “Puerto Rico Internal Revenue Code of 1994, as amended”*, enacted pursuant to Section 6051.11 of the Puerto Rico Internal Revenue Code of 2011, as amended, which authorizes the Secretary of the Treasury to adopt the Regulations necessary to make effective said Code”.

STATEMENT OF MOTIVES

Regulation No. 7970 of December 29, 2010 is hereby amended to implement the provisions of the new credit under Section 2106 of the Puerto Rico Internal Revenue Code of 1994, as amended, introduced by Act 52-2022, which is available for calendar year 2023 and thereafter, to controlled groups subject to the excise tax established in Section 2101 of the Internal Revenue Code of 1994, as amended, subject to certain limitations and requirements.

In addition, Act 52-2022 introduced provisions that allow exempt businesses that have been subject to the Act 154-2010 excise tax regime to transition into a new income tax framework established in the new Sections 3A of Act 135-1997 and Act 73-2008, as amended and Sections 2062.01(a)(3) and (b)(4) of Act 60-2019, as amended (the “Election”). As of the effective date of the Election, no member of a controlled group of the exempt business, as defined in Section 1123(h)(3) of the Puerto Rico Internal Revenue Code of 1994, as amended, shall be subject to the rules of Section 1123(f)(4)(B), or Sections 2101 through 2106 of the Puerto Rico Internal Revenue Code of 1994, as amended, any successor or similar provision of the Puerto Rico Internal Revenue Code of 2011, as amended, or any substitute or successor provision. Regulation No. 7970 is hereby amended to clarify certain administrative matters related to the treatment of excise tax deposits available upon the Election is made.

Finally, Regulation No. 7970 is amended to revise the definition of the term “employee baseline” for calendar year 2023 and thereafter.

Article 1 - Legal Grounds

Section 3070.01 of the Puerto Rico Internal Revenue Code of 2011, as amended (“2011 Code”) provides that the provisions of Sections 2101 through 2106 of the Puerto Rico Internal Revenue Code of 1994, as amended (“1994 Code”), shall remain in effect after the approval of the 2011 Code. This amendment is enacted pursuant to Section 6051.11 of the 2011 Code, which authorizes the Secretary of Treasury to adopt the regulations necessary to implement the provisions of the 2011 Code.

Article 2 - Purpose

This Regulation add a paragraph (d) to Article Reg.§ 2102(a)-1, amend subparagraphs (j)(1), (2), and (3) of Article Reg. § 2102(a)-2(j) and add a new paragraph (l) to Article Reg. § 2102(a)-2 of Regulation No. 7970 of December 29, 2010.

The purpose of this amendment is to implement the provisions of the new credit added by Act 52- 2022, which is available for calendar year 2023 and thereafter, to controlled groups subject to the excise tax established in Section 2101 of the 1994 Code, subject to certain limitations and requirements. In addition, this amendment establishes the treatment of excess deposits of excise tax upon an election under Act 52-2022 that allow exempt businesses that have been subject to the Act 154-2010 excise tax regime to transition into a new income tax framework established in the new Sections 3A of Act 135-1997 and Act 73-2008, as amended and Sections 2062.01(a)(3) and (b)(4) of Act 60-2019, as amended. Finally, this amendment revised the definition of the term ‘employee baseline’ for calendar year 2023 and thereafter.

Article 3 - Add a paragraph (d) to Reg.§ 2102(a)-1 of Regulation No. 7970, as amended, to read as follows:

“Reg. § 2102(a)-1. Collection and Deposit of Tax.

- (a) ...
- (b) ...
- (c) ...

(d) Treatment of Excess Deposits of Excise Tax upon an Election under the provisions of Sections 3A of Act 135-1997 and Act 73-2008, as amended, or Sections 2062.01(a)(3) and (b)(4) of Act 60-2019 as amended -

In the case where deposits of excise tax under Code sec. 2101 were made by or on behalf of an acquiring member and such acquiring member is no longer liable for any tax under Code sec. 2101 as a result of an election under Sections 3A of Act 135-1997 and Act 73-2008, as amended or Sections 2062.01(a)(3) and (b)(4) of Act 60-2019, as amended, as applicable, such deposits will be treated as estimated payments of tax imposed pursuant to Sections 3A of Act 135-1997 and Act 73-2008, as amended or Sections 2062.01(a)(3) and (b)(4) of Act 60-2019, as amended, as applicable, to the member(s) of the controlled group that made the election. In the case that the electing controlled group has more than one exempt business, the principal member of the controlled group shall indicate to the Secretary of the Treasury, in written, the allocation of the excess deposits between all the exempt businesses of the controlled group.”

Article 4 - Amend subparagraphs (j)(1), (2) and (3) of Reg.§ 2102(a)-2(j) of Regulation No. 7970, as amended, to read as follows:

“Reg. § 2102(a)-2(j) – Definitions and Special Rules. –

(1) Employee Baseline Defined. –

(i) Effective for calendar years prior to calendar year 2023, the employee baseline for a controlled group shall be the average number of employees (as defined in subparagraph (j)(2)) engaged in manufacturing or production or manufacturing services in Puerto Rico for the twelve (12) months ended September 30, 2010. Alternately, a controlled group may elect to use as the employee baseline the number of employees engaged in manufacturing and production or manufacturing services in Puerto Rico on September 30, 2010.

For calendar year 2023 and thereafter, the employee baseline of a controlled group shall be the number of employees established as the employment requirement in the tax decree of the member(s) of a controlled group that are engaged in manufacturing and production, or manufacturing services in Puerto Rico for the calendar year. Provided that, upon the expiration of the current tax decree, the employment requirement of the new tax decree shall be determined based on the number of direct employees, as such term is defined in Section 3A(b) of Act 135-1997, as amended and Act 73-2008, as amended, and Section 2062.01(j) of Act 60-2019, as amended, as applicable, of the member(s) of the controlled group that are engaged in manufacturing and production, or manufacturing services in Puerto Rico.

(ii) Discretionary Adjustment to Employee Baseline. –

Effective for calendar years prior to calendar year 2023 and upon consultation with the Secretary of Economic Development and Commerce, the Secretary may make adjustments to the employee baseline of any controlled group otherwise determined under this subparagraph (j)(1), taking into account local employment and such other matters as may be appropriate.

(I)...

(II)...

(2) Employee Defined. – Effective for calendar years prior to calendar year 2023, for purposes of this article, “employee” means an individual who performs activities in Puerto Rico on behalf of one or more members of a controlled group and is treated as a full-time employee under this subparagraph (j).

(i) ...

(ii) ...

(iii) For calendar years 2023 and thereafter, upon the expiration of the current tax decree, the employment requirement of the new tax decree shall be determined based on the number of direct employees, as such term is defined in Section 3A(b) of Act 135-1997, as amended and Act 73-2008, as amended, and Section 2062.01(j) of Act 60-2019, as amended, as applicable, of the member(s) of the controlled group that are engaged in manufacturing and production, or manufacturing services in Puerto Rico.

(3) Limitations on Availability of Credits. – Effective for calendar years prior to calendar year 2023, no credit shall be permitted under Reg. § 2102(a)-2 to any member of a controlled group for a calendar year in which the controlled group has an average monthly number of full-time employees engaged in manufacturing and production, or manufacturing services in Puerto Rico for the twelve (12) months of such calendar year that is less than ninety (90) percent of the controlled group’s employee baseline. Nor shall any credit be permitted under this Reg. § 2102(a)-2 to any member of a controlled group for a calendar quarter in which the controlled group has failed to deposit or pay with the return due for such calendar quarter at least seventy-five (75) percent of the tax due for such calendar quarter under Code sec. 2101.

For calendar year 2023 and thereafter, no credit shall be permitted under Reg. §2102(a)-2 to any member of a controlled group for a calendar year in which the controlled group is not in compliance with the employee baseline. Nor shall any credit be permitted under this Reg. § 2102(a)-2 to any member of a controlled group for a calendar quarter in which the controlled group has failed to deposit or pay with the return due for such calendar quarter at least seventy-five (75) percent of the tax due for such calendar quarter under Code sec. 2101.”

Article 5. - Add paragraph (l) to Reg. § 2102(a)-2 of Regulation No. 7970, as amended, to read as follows:

“(l) Credit for Controlled Group with Manufacturing and Production Facilities in at Least Four (4) Municipalities in Puerto Rico

(1) Effective for calendar year 2023 and thereafter, and in lieu of the credit provided in paragraph (f), a controlled group that, as of June 30, 2022, had more than one member conducting manufacturing and production operations, or manufacturing services in facilities located in Puerto Rico, and operating, as a group, in four (4) or more municipalities, may claim an eight million dollar (\$8,000,000) credit for each one of the operations conducted by said controlled group in said municipalities; provided, that the maximum credit amount allowed with respect to said controlled group shall be thirty-two million dollars (\$32,000,000) per calendar year, subject to the limitation provided in subparagraph (l)(2) below.

(2) The credit in this paragraph (l) may not reduce the excise tax to less than five hundred thousand dollars (\$500,000) for each municipality with respect to which this credit is claimed. Therefore, the controlled group that elect to claim the credit provided under this paragraph (l) will always have a minimum excise tax of two million dollars (\$2,000,000) per calendar year or \$166,666 per month.

(3) The credit used for any calendar month may not exceed the amount of the annual credit divided by twelve (12), adjusted to reflect the amount of any credit in this paragraph (l) that could have been claimed in a prior month in the same calendar year

but was not claimed because the amount of such credit exceeded the tax on taxable acquisitions in the prior month or the limitation established in subparagraph (l)(2) above.

(4) No unused credit for the calendar year may be carried forward or carried back, nor shall it be refunded.

(5) If the controlled group elects to use the credit provided in this paragraph (l) for any calendar year, at the beginning of said calendar year the controlled group shall reasonably determine that as of June 30, 2022, had more than one member conducting manufacturing and production operations, or manufacturing services in facilities located in Puerto Rico, and operating, as a group, in four (4) or more municipalities and will maintain operations in at least four (4) municipalities for the entire calendar year. Moreover, the controlled group shall reasonably determine that will be in compliance with the employment requirements established in the tax decree issued by the Department of Economic Development and Commerce to the member(s) of the controlled group engaged in manufacturing and production, or manufacturing services in Puerto Rico.

(6) If for any calendar year the controlled group is not in fact eligible for the credit provided by this paragraph (l), the amount of any credit previously claimed for such calendar year shall be treated as a tax arising on account of an acquisition deemed to occur during the month of December of such year.”

SEPARABILITY: If any article, section, subsection, paragraph, subparagraph, clause or provision of this Regulation shall be deemed by any court or competent jurisdiction to be unconstitutional, ineffective or otherwise legally invalid or unenforceable, the resolution, pronouncement or judgment issued to that effect will not affect, harm or invalidate the remainder of this Regulation. The effect of said judgment shall be limited to the part of the Regulation being annulled or found unconstitutional.

EFFECTIVENESS: This regulation will become effective thirty (30) days after its filing in the Department of State, in accordance with the provisions of Act No. 38-2017, as amended, known as “Uniform Administrative Procedure Act of the Government of Puerto Rico”; and its provisions shall be effective for, and applicable to, transactions taking place after December 31, 2022.

Approved in San Juan, Puerto Rico, as of June ~~23~~ 2023.



Francisco Parés Alicea
Secretary of the Treasury

Filed with the Department of State on June 30, 2023.