

February 4, 2011 [www.mcvpr.com](http://www.mcvpr.com)**TAX ALERT*****Technical Amendments to the Puerto Rico Internal Revenue Code of 1994 dealing with the Source of Income Rule and Excise Tax Act No. 154 and Treasury Guidance with respect to the Deposit of the Excise Tax***Act 2 of January 31, 2011 ("Act 2")

Act 2 adopted several technical amendments to the Puerto Rico Internal Revenue Code of 1994, as amended ("1994 Code"), to clarify the scope and content of several sections dealing with the Source of Income Rule and Excise Tax Act No. 154 that were not repealed by Act No. 1 of January 31, 2011, which adopted a new Puerto Rico Internal Revenue Code ("2011 Code"), and to retroactively authorize the Secretary to issue regulations 7970 and 7971. Its highlights are:

**A. Exclusion of Income from Resale of Personal Property or Services**

The Act amends the 1994 Code to exclude from gross income any income derived by a tax payer from the resale of personal property or services the acquisition of which by taxpayer was subject to excise tax under Section 2101.

**B. Section 2101 Technical Taxpayer**

The Act amends the 1994 Code to establish that where one member of a controlled group contracts directly with another member of the controlled group to acquire beneficial ownership of particular personal property or services, the acquiring member would be liable for the tax imposed. In cases where more than one member acquires an interest in the beneficial ownership, each such member shall be liable for the tax imposed on such member's pro rata beneficial interest in the particular property or services.

**C. Exclusion from "Tangible Property"**

Beverage ingredients and canned tuna were excluded from the term "tangible property" in Section 2101.

#### D. Authorize the Secretary to Issue Regulations

A new Section 2106 was added authorizing the Secretary to promulgate regulations concerning the application of Chapter 7 of Subtitle B on the Imposition of Excise Tax on Certain Acquisitions of Personal Property and Services (“Excise Tax”) among related parties, including regulations for credits that may be used by a person subject to the tax imposed by Section 2101.

#### E. Determination Appeals Procedure

Act 2 amends the 1994 Code to establish that whenever a taxpayer challenges a notice of deficiency of the Excise Tax, it must file a complaint within thirty (30) days following the date of deposit in the mail of the notice of the final determination and require that the taxpayer pay the totality of the deficiency, plus the interest, surcharges and any other addition to the tax on the deficiency. It establishes that these requirements are of a jurisdictional nature.

Under limited exceptions, a bond may be posted to continue litigation.

Be advised that the provisions of Section 3010.02 of the 2011 Code.

#### Informative Bulletin No. 11-03 (“IB 11-03”)

On February 4, 2011 the Treasury issued guidance with respect to the deposit of the excise tax under Section 2101(a) of the 1994 Code. Its highlights are:

##### A. Due Dates

The first monthly deposit shall be made on or before February 15, 2011 for acquisitions made during the month of January 2011.

Afterwards, the tax collected during any calendar month must be deposited, **not later than the 15th day of the following month.**

##### B. Electronic Payment Requirement

Every person required to collect and deposit the excise tax must complete and submit a Monthly Excise Tax Deposit Form (Form 480.36) for each member of the controlled group that made taxable acquisitions during the previous month electronically, together with the required payment.

##### C. Access to Online System

To access Treasury’s online system, the person making the deposit must be registered at the “Colecturía Virtual”.

#### D. Identification Number of the Controlled Group

Each controlled must have an identification number that will identify all members of the controlled group. Only one member of the controlled group should make the request and communicate the assigned identification number to the other members of the controlled group.

#### E. Penalties

The person that does not collect or timely deposit the tax collected shall be subject to penalties.

IB 11-03 is available by clicking on the following link:

<http://www.hacienda.gobierno.pr/downloads/pdf/boletines/11-03.pdf>.

If you have any questions or would like our assistance to submit your comments, you may call any of the following members of our [Tax](#) and [Tax Exemption](#) groups:

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