

March 8, 2017

Tax Update

AAFAF Orders the Suspension of Issuance of Tax Credits

On March 7, 2017, the Puerto Rico Fiscal Agency and Financial Advisory Authority (“AAFAF,” for its Spanish acronym) issued Administrative Order 2017-01 (“AO-2017-01”) affecting tax credits authorized by several acts, including but not limited to the following acts (“Affected Programs”):

- Act 78-1993, known as the “Puerto Rico Tourism Development Act”
- Act 46-2000, known as the “Capital Funds Investment Act of Puerto Rico”
- Act 98-2001, known as the “Tax Credits for Investment in Investment in Housing Infrastructure Act”
- Act 140-2001, known as the “Tax Credits for Investment in New Construction and Rehabilitation of Affordable Housing Act”
- Act 183-2001, known as the “Conservation Easement Act of Puerto Rico”
- Act 212-2002, known as the “Revitalization of Urban Centers Act”
- Act 73-2008, known as the “Economic Incentives for the Development of Puerto Rico Act”
- Act 74-2010, known as the “Puerto Rico Tourism Development Act”
- Act 27-2011, known as the “Economic Incentives for the Development of the Film Industry Act”
- Act 159-2011, known as the “Act to Provide Tax Incentives for Investments in Solid Waste Reduction, Disposal, and/or Treatment Facilities”
- Act 302-2012, which provides a tax credit for donations to foundations of former governors
- Act 77-2015, known as the “Act for Tax Credits for Investment in the Construction or Rehabilitation of Rental Housing Projects for Low or Moderate Income Families and of Tax Credits for the Investment in the Acquisition, Construction or Rehabilitation of Affordable Housing for the Elderly”



For more information on this Legal Update, please contact:

Carlos E. Serrano

cserrano@reichardescalera.com
787.777.8815

Alba I. Joubert Pereira

ajoubert@reichardescalera.com
787.777.8825

Bibiana A. Cruz

bcruz@reichardescalera.com
787.777.8813

Javier J. Bayón

jbayon@reichardescalera.com
787.777.8802

- Credits for purchase of articles manufactured in Puerto Rico under Section 1051.09 of the Puerto Rico Internal Revenue Code of 2011, as amended (“Code”)
- Credits for incremental purchase of agricultural products under Section 1051.07 of the Code
- Tax credits program for the purchase of newly constructed housing under Section 1052.03 of the Code
- Credits for purchase of products manufactured in Puerto Rico under Section 4050.10 of the Code

As drafted, AO-2017-01 seems to prohibit the issuance of new tax credits that are claimed based on multi-year special budget allocations from fiscal years prior to fiscal year 2017 (i.e., the Government’s fiscal year 2016-17). It further would halt the issuance of new credits under the Affected Programs.

AO-2017-01 also creates the Committee for Authorization of Disbursements and Tax Concessions (“Committee”) composed by the AAFAP Director, the Secretary of the Puerto Rico Treasury Department and the Director of the Office of Management and Budget. The Committee will be responsible for analyzing and adjudicating applications for approval and disbursements corresponding to the special assignments of “previous years” (apparently up to the Government’s fiscal year 2015-16).

The Committee is further authorized to evaluate applications that were submitted and not authorized as of March 7, 2017. The Committee is also authorized to establish limitations on the use of the credits granted, and to limit the time of use of such credits up to a maximum of four (4) fiscal years.

Pursuant to AO-2017-01, the Secretary of the Puerto Rico Treasury Department is ordered to make an inventory of the tax credits granted and to require credits’ holders to report the amount of credits granted, in the form and manner established by the Secretary. The credit holder that does not comply with the Secretary’s information request, may not claim such credits. A similar process was followed under previously enacted tax credit moratoriums and the mechanism to report credits granted was an informative return. You may access an example [here](#).

AO-2017-01 indicates it was issued under the authority of Act 2-2017 (the “Act for the Fiscal Agency and Financial Advisory Authority”), Act 5-2017 (the “Puerto Rico Financial Emergency and Fiscal Responsibility Act of 2017”) and the Governor’s Executive Order EO-2017-01. At this point, uncertainties as to the authority, scope and interpretation of AO-2017-01 and as to its application to specific credits, budget allocations and investment projects abound. A thorough analysis of AO-2017-01 is recommended to persons that have undertaken or plan to undertake activities eligible for tax credits under the Affected Programs.

You may access AO-2017-001 (in Spanish) [here](#).

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MCS Plaza, 10th Floor | 255 Ponce de León Avenue | San Juan 00917 | Phone: 787-777-8888 | Fax: 787-765-4225 | www.reichardescalera.com