



THE POWER OF BEING UNDERSTOOD

ADMINISTRATIVE DETERMINATION 16-11

Year 2016 Issue #11

I. Introduction

On March 28, 2016, the United States District Court of Puerto Rico ("District Court") issued its determination on the case *Wal-Mart Puerto Rico v. Juan C. Zaragoza Gomez*, Civil No. 3:15-CV-03018 (JAF). On its opinion and order, the District Court declared invalid § 1022.03 (b)(2) and (d) of the Puerto Rico Internal Revenue Code of 2011, as amended, ("Code") and prohibited the Secretary of the Treasury of Puerto Rico to collect any taxes under these provisions. Afterward, on August 24, 2016, the United States Court of Appeals for the First Circuit ("Court of Appeals") affirmed the ruling of the District Court. The Puerto Rico government informed that they will not challenge the decision issued by the Court of Appeals.

In summary, § 1022.03 (b)(2) of the Code establishes a second component to the alternative minimum tax (AMT) calculation in Puerto Rico. This additional component consists of the sum of the following: (i) 20% of the expenses paid to, and/or cost transferred by, a related party and/or home office not subject to the withholding or payment of taxes in Puerto Rico; (ii) plus the amount that results from the application of the corresponding percentage to the purchase of personal property from a related party or home office located outside of Puerto Rico and not subject to the payment of taxes in Puerto Rico (hereinafter and collectively called as the "Invalid Component"). On the other hand, § 1022.03(d) of the Code establishes certain exceptions for the application of § 1022.03 (b)(2).

As a result of the court decision, the Puerto Rico Treasury Department ("PRTD") recently issued the Administrative Determination 16-11 dated September 30, 2016 ("AD 16-11") with the purpose of: (i) clarifying the application of the alternative minimum tax (AMT) under § 1022.03 of the Code for the 2016 taxable year; (ii) and establishing the correct procedures to claim a credit for the excess taxes paid, if any, for the 2015 taxable year, as a result of the application of the Invalid Component of the AMT.

II. AMT for Taxable Years Beginning on or after January 1, 2016

Per AD 16-11, the taxpayers subject to AMT should NOT consider the Invalid Component to determine their income tax liability for taxable years beginning on or after January 1st, 2016. However, for taxable years beginning on or after January 1st, 2016 all other elements of the AMT calculation, as included on § 1022.03 (a) of the Code, should continue to be valid. The Schedule A to compute the AMT for taxable years beginning on or after January 1st, 2016 will be amended accordingly.

(Continued)

- Telephone: 787-751-6164
- Fax: 787-751-6865
- Email: tax@rsm.pr
- Webpage: www.rsm.pr

ADMINISTRATIVE DETERMINATION 16-11

(CONTINUED)

Furthermore, in relation to the payments of the estimated taxes related to the 2016 taxable year that are still outstanding, taxpayers should not consider the Invalid Component of the AMT. However, any portion of the 2016 estimated tax already paid related to the AMT that results from the application of the Invalid Component can be fully applied against the 2016 tax liability.

III. AMT for the 2015 Taxable Year

Per AD 16-11, any taxpayer that was subject to AMT due to the Invalid Component, should revise its AMT calculation for the 2015 taxable year excluding that component. If the amount of AMT paid with the income tax return exceeds the revised AMT calculation, the taxpayer will be allowed to claim a credit for the excess amount of AMT paid. Taxpayers will have two options to claim such credit. The taxpayer can either claim the excess tax paid as a credit of AMT in future years, with all the applicable limitations, or the taxpayer can opt to credit the overpayment amount as an estimated tax payment for the 2016 taxable year.

Those taxpayers who choose to claim the excess AMT tax paid as an estimated tax payment for the 2016 taxable year, should file a 2015 Amended Income Tax Return. The amended return should be filed along with Form 483.3 – "Transmittal Form for Schedule A of Corporation – Part V 2015 Taxable Year".

In addition, Per AD 16-11, any 2015 overpayment that results from the application of the Invalid Component of the AMT **cannot** be claimed as a refund. Such overpayment can only be claimed as a credit on the 2016 and subsequent year's income tax returns, until it is fully exhausted.

Additionally, those taxpayers who have not filed the 2015 income tax return and previous to the court decision § 1022.03 (b) (2) should have been applicable, are also required to file the 2015 tax return along with Form 483.3. Also, any taxpayer who has received a 2015 tax deficiency notice from the PRTD, as a consequence of the imposition of the Invalid Component by the agency, that it still outstanding, should complete and file Form 483.3 at the Taxpayer Service Division of the PRTD as the way to clarify the issue.

IV. Other – Application of §1033.17(A)(17) of the CODE

Finally, per AD 16-11 the limitation imposed by § 1033.17(a)(17) of the Code, which establishes that 51% of the expenses paid to a related party or to a home office not doing business in Puerto Rico by its branch in Puerto Rico is nondeductible, continues to be valid.

Please remember that if you have any questions or if you want to further discuss any matter related to the application of the Wal-Mart case and/or AD 16-11, please contact your tax advisor at RSM Puerto Rico.