

Puerto Rico Tax Alert

FAFAA issues rules to limit the use of certain income tax credits

June 27, 2017

Summary

On June 20, 2017, the Disbursement Authorization and Tax Concession Committee (the "Committee") issued Resolution 2017-05 (the "Resolution 2017-05") establishing rules to limit the use of Granted Credits for the tax year 2017 and subsequent years.

Detail

Overview

Act 2-2017 created the Fiscal Agency and Financial Advisory Authority (the "FAFAA") and empowered FAFAA to issue administrative orders and establish commissions to coordinate policies and procedures related to liquidity and cash management for any governmental agency. FAFAA was further empowered to take all the necessary actions to guarantee all government contracts are aligned with the Puerto Rico government's fiscal plan and PROMESA.

As a result, on March 7, 2017, FAFAA issued Administrative Order OA-2017-01 (the "Order") with the intent to control the issuance and use of tax credits already granted or to be granted under any Puerto Rico incentive law authorizing the issuance of tax credits.

The Order also created the Committee to, among other things, review pending and new tax credit petitions and establish limitations on the use of credits granted and to limit their use for up to four (4) years (the "Limitation Period"). The Committee is constituted by the Director of FAFAA, the Secretary of the Puerto Rico Treasury Department (the "PR Treasury"), and

the Executive Director of the Office of Management and Budget.

On March 22, 2017, the Committee issued Resolution 2017-01 ("Resolution 2017-01") establishing that a Granted Credit may be sold by its Holder or claimed against the income tax of the Holder for the 2016 Tax Year without additional restrictions than those imposed by the Puerto Rico Internal Revenue Code of 2011, as amended (the "Code"), or the special laws applicable to the Granted Credit. Resolution 2017-01 applied only to those credits specifically listed therein.

On June 20, 2017, the Order was amended to grant the Committee the power to extend the Limitation Period for a maximum of three (3) additional years if said action is compatible with the Certified Fiscal Plan and the Liquidity Plan for the General Fund (the "Extension Period") and provide that any balance of a Granted Credit not used within the Limitation Period and the Extension Period, if applicable, will expire.

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Key terms

The terms “Holder” and “Granted Credit” shall have the meaning assigned to such terms in Resolution 2017-01, except that the term Granted Credit shall exclude certain tax credits granted under the PR Code and Act 154-2010. Also, special rules may apply with respect to tax credits granted under Section 5(c) of Act No. 73-2008 and Act No. 183-2001.

Limitations

Granted Credits must be used by their Holders during the Limitation Period, meaning tax year 2017 and the subsequent three (3) tax years. If requested by the Holder and granted by the Committee, pursuant to Resolution 2017-05, a Granted Credit or any balance of such credit may be used during the Extension Period. Any portion of a Granted Credit not used within the Limitation Period and the Extension Period will

expire. Resolution 2017-05 also imposes a limitation on the amount of tax credits that can be claimed against the income tax of the Holder during the Limitation Period and the Extension Period. The amount of Granted Credits that can be claimed in an income tax return during such period shall not exceed twenty five percent (25%) of the income tax liability of the Holder.

Certain Granted Credits available during tax year 2017 may not be subject to these limitations and, therefore, may be fully usable and saleable in tax year 2017.

Effectiveness

Taxpayers who are Holders of a Granted Credit should evaluate how the Order, as amended, and Resolution 2017-05 may affect their current and prospective Puerto Rico income tax liabilities since Resolution 2017-05 is in full force and effect since June 20, 2017.

Contact us

If you would like to discuss this alert in more detail, please contact any of the attorneys below:

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