



Circular Letter
No. OEI 2015-003

December 23, 2015

TO THE GRANTEES, APPLICANTS, REPRESENTATIVES OF GRANTEES AND APPLICANTS OF TAX EXEMPTION UNDER THE PROVISIONS OF ACT 20-2012 AND 22-2012, AS AMENDED

Approval of Act 187-2015 Amending Act 20-2012 and Act 22-2012, as amended

I. Legal Basis

Pursuant to Article 10(a)(ii)(G) of Act 20-2012, as amended, and Administrative Order No. OA-03-2012 of August 13, 2012, the Secretary of the Department of Economic Development and Commerce of the Commonwealth of Puerto Rico authorized the Executive Director of the Office of Industrial Tax Exemption to carry on administrative duties of all nature, related with grants of tax exemption issued under the provisions of Act 20. Further, pursuant to Administrative Order No. OA-04-2012 of August 13, 2012, the Secretary delegated in the Director of the OITE any administrative procedures for the filing and processing of the applications for tax exemption issued under Act 22-2012, as amended.

On November 17, 2015, the Governor of the Commonwealth of Puerto Rico, Honorable Alejandro García Padilla, approved Act 187-2015 ("Act 187"). Act 187 creates the *Interagency Validation Portal for the Issuance of Puerto Rico Economic Development Incentives* to adopt a platform to gather and share data compiled by multiple agencies that manage economic development incentives laws. The Department of Economic Development and Commerce ("DEDC") and the Office of Industrial Tax Exemption ("OITE") have received multiple inquiries regarding the new mandates provided under Articles 103 and 106 of said Act, which amend Article 10(b)(i) of Act 20 and adds a last paragraph to Article 3(a) of Act 22, respectively. The purpose of this communication is to clarify the rules that will be implemented in order to comply with the aforementioned legislative mandate. Specifically, it is hereby determined the following in connection to the job creation requirement under Act 20 and the residential property acquisition and evidence of bank account required under Act 22.

II. Act 20-2012

Article 103 of Act 187 amends Article 10(b)(i) of Act 20 to provide that a direct job requirement of five (5) direct employees will apply to Act 20 applications filed on and after December 1, 2015. Act 187 further provides that this requirement is indispensable for the issuance of an Act 20 Grant. Said legislative

mandate is compatible with the public policy implemented by the DEDC since 2013 to require a minimum of three (3) jobs in Puerto Rico to obtain a grant of tax exemption under Act 20.

With the purpose of adopting the new mandate of requiring five (5) employees per Act 20 application, it is hereby determined that applications filed after November 30, 2015 with one applicant will be subject to a five (5) direct job requirement on and after two (2) years from commencement of operations and for the remaining exempted period, in the activities covered by the Grant. Within said period of two (2) years, those cases will be subject to the three (3) job requirement on and after six (6) months from commencement of operations. The adoption of this period allows both local and foreign companies a reasonable time to comply with the provisions of Act 187, while increasing the effectiveness of Act 20 as an economic development and job creation tool. The inclusion of co-grantees¹ to all Act 20 Grants (those filed prior to and after December 1, 2015) will be subject to a general rule of employment commitment of three (3) employees per new co-grantee, subject to the rules adopted by the DEDC and the OITE.

III. Act 22-2012

Article 106 of Act 187 amends Article 3(a) of Act 22 to require applicants that file their Act 22 applications on and after December 1, 2015 to provide evidence of a personal or commercial bank account in a financial institution or credit union with presence in Puerto Rico (“Bank Account”) and to acquire residential property (“Residential Property Acquisition”) as an indispensable requirement for the issuance of an Act 22 Grant. The OITE has received multiple inquiries regarding the implementation of the aforementioned legislative mandates.

The aforementioned provision requiring a Bank Account adopts the public policy incorporated by the DEDC during 2015 that requires applicants to provide evidence of a bank account in a local financial institution. If an applicant has not moved to Puerto Rico at time of application, he or she must submit this evidence as soon he or she resides in Puerto Rico in order to have an effective Act 22 grant.

In connection with the Residential Property Acquisition, it is hereby determined that applications filed after November 30, 2015 will have to comply with the Residential Property Acquisition within two (2) years from date of notification of residency. The Act 22 Grantee shall provide to OITE evidence of execution of the Deed of Purchase and Sale to comply with the Real Estate Acquisition within two (2) years from the date of notification of residency. Failure to comply with said requisite will subject Grantee to the procedures in Article 3(b) and 3(d) of Act 22, which includes the revocation of the Act 22 Grant. Moreover, any net income computed, previously reported as exempt income under Act 22, shall be subject to the taxes imposed under the provisions of the Internal Revenue Code of Puerto Rico, as amended (“PR Code”). The tax owed in such case shall become due and payable with interest from the date on which such taxes would have become due, if it were not for the Act 22 Grant, and shall be assessed and collected by the Secretary of the Treasury in accordance with the provisions of the PR Code.

¹ For purposes of a tax exemption grant issued under Act 20-2012, the term “co-grantee” includes separate legal entities (including corporations and limited liability companies) and series.

IV. Date of Filing

The DEDC and the OITE launched the DDEC Online Applications Platform (“Platform”) on May 1, 2015. This web-based application portal is used to submit applications of Act 20 and 22 to OITE. The receipt of applications on the Platform is subject to a multi-step process that culminates in the filing of an application. In order to ensure a fair and reasonable application of the new requirements of Act 187, the DEDC and the OITE hereby determine that Act 20 and Act 22 applications on the Platform as of November 30, 2015 will be considered filed on said date for purposes of the provisions of Articles 103 and 106 of Act 187, respectively, if said applications are duly completed, sworn and issued the applicable filing fee as of December 23, 2015. Applications that are not duly completed, sworn and issued the applicable filing fee as of said date will be subject to the provisions of this circular letter in connection to the job creation requirement under Act 20 and the Residential Property Acquisition and Bank Account required under Act 22.

Thank you for your attention to this matter. Do not hesitate to contact our Offices at 787-764-6363 if you have any questions.

Cordially,



Elizabeth Aponte Rivera
Executive Director