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11 de enero de 2016

Sr. Alberto Bacó Bague  
Secretario  
Departamento de Desarrollo Económico y Comercio  
P.O. Box 362350  
San Juan, Puerto Rico 00936-2350

Estimado señor Bacó:

Tenemos a bien informarle que el **23 de diciembre de 2015**, quedó radicado en este Departamento, a tenor con las disposiciones de la Ley Núm. 170 de 12 de agosto de 1988, según enmendada, el siguiente reglamento:

Número: **8678**      **Regulation to amend the provisions of Regulation No. 8313 "Regulation to implement the provisions of Act 20 of January 17, 2012, as amended, also known as the 'Law to promote the export of services'(The "Act"), issued under the authority of Article 15of the Act, which authorizes the Secretary of Economic Development and Commerce to Adopt the Regulations necessary to make effective said Act".**

Conforme a la Ley 149 de 12 de diciembre de 2005, el Departamento de Estado radicará una copia a la Biblioteca Legislativa. Incluimos copia del reglamento numerado.

Cordialmente,

Francisco J. Rodríguez Bernier  
Secretario Auxiliar de Servicios

Anejos

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*Francisco J. Bernier*

DEPARTMENT OF STATE

No: 8678

Date: December 23, 2015

Approved: Hon. Víctor A. Suárez Meléndez

Secretary of State



By: Francisco J. Rodríguez Bernier  
Assistant Secretary for Services

DEPARTMENT OF ECONOMIC DEVELOPMENT AND COMMERCE OF PUERTO RICO  
San Juan, Puerto Rico

REGULATION TO AMEND THE PROVISIONS OF REGULATION NO. 8313  
"REGULATION TO IMPLEMENT THE PROVISIONS OF ACT 20 OF JANUARY 17,  
2012, AS AMENDED, ALSO KNOWN AS THE 'LAW TO PROMOTE THE EXPORT OF  
SERVICES' (THE "ACT"), ISSUED UNDER THE AUTHORITY OF ARTICLE 15  
OF THE ACT, WHICH AUTHORIZES THE SECRETARY OF ECONOMIC  
DEVELOPMENT AND COMMERCE TO ADOPT THE REGULATIONS NECESSARY TO  
MAKE EFFECTIVE SAID ACT"

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**I. PURPOSE**

The Purpose of this Regulation is to amend the provisions that regulate the scope of "Export Services" that qualify as services for which the provider of such services may be eligible for a Grant of Tax Exemption under the Act in an effort to clarify what constitutes the rendering of Export Services for the benefit of a customer or client in the situations discussed herein.

**II. Legal Basis**

This Regulation is adopted pursuant to Article 15 of the Act and the Administrative Procedures Act, Act No. 170-1998.

**III. Amendment to Article IV. Definitions**

Paragraph O. of Article IV. of Regulation 8313 issued by the Department of Economic Development and Commerce, dated December 27, 2012, is hereby amended so that it reads as follows:

*AB*

"O. **Export Service** - To qualify for the benefits of the Act as an Eligible Service or a Promotional Service, a service must satisfy the definition of an Export Service. An Eligible Service is an Export Service when it has no Nexus to Puerto Rico and is rendered to or for the benefit of a customer or client described in this paragraph. A Promotional Service is an Export Service when it is rendered for the benefit of a customer or client described in this paragraph.

1. An individual that is not a resident of Puerto Rico;

...

5. An entity that does not have an office or fixed place of business in Puerto Rico at the time the services are rendered.

6. An entity that has an office or fixed place of business in Puerto Rico directly or through a subsidiary or affiliate at the time the services are

rendered, provided that the holder of the Grant demonstrates with clear and convincing evidence to the satisfaction of the Secretary of Economic Development and Commerce at the time of application, or upon amendment to a tax exemption grant issued under the Act, that such services have no connection or relationship to that office or fixed place of business. It will be presumed that services rendered to an Entity that has an office or fixed place or business in Puerto Rico directly or through a subsidiary or affiliate have a connection to that office or fixed place of business, unless the holder of a Grant demonstrates that the services rendered are not for the benefit of the entity that has an office or fixed place of business in Puerto Rico, but for the benefit of said entity's clients outside of Puerto Rico. For purposes of this paragraph:

*GB*

(i) a service has a connection to a Puerto Rico office or fixed place of business if it benefits that office or fixed place or business in any material way, including but not limited to, affecting the production processes and costs of any products sold by or to the Puerto Rico office or fixed place of business; and

(ii) a service rendered from a Puerto Rico office or fixed place of business ("Provider") to a Puerto Rico office or fixed place of business that is actually rendering or will render Export Services under the provisions of the Act ("Recipient"), will be considered as not having a connection or relationship to the office or fixed place of business of the Recipient if Provider demonstrates to the satisfaction of the Secretary of Economic Development and Commerce, either at the time of its application, or upon amendment to a tax exemption grant issued under the Act, that:

a. such customer or client would have satisfied the requirements of subsections 1 through 5, above, but for the fact that such client became engaged in the rendering of Export

Services under the Act directly or through a subsidiary or affiliate; and

- b. said services rendered by the Provider to the Recipient are intrinsically related to the Export Services of Recipient.

In all cases under this subparagraph (6), a sworn statement should be filed with the application, or amendment to a tax exemption grant issued under the Act, and any other document required by the Secretary, providing a detailed description of the activities the Applicant purports to be covered by the Act, pursuant to the provisions of the Act and this regulation.

The provisions of this subsection may be illustrated by the following examples:

 Example 1: Company A holds a Grant under the Act and provides Eligible Services to Corporation X. Corporation X has a factory facility in Maryland that sells its output solely within the United States and an office or fixed place of business in Puerto Rico. The services Company A renders to Corporation X relate solely to advice regarding the management of raw materials and work in process in its Maryland facility and have no connection to Corporation X's Puerto Rico office or fixed place of business. Those services may qualify as Export Services.

Example 2: Assume the same facts as in Example 1, except that the products produced in Corporation X's Maryland factory are sold, in part, to or through Corporation X's Puerto Rico office or fixed place of business. The services Company A renders to Corporation X do not qualify as Export Services.

Example 3: Company A holds a grant under the Act and provides Eligible Services to Corporation X. Corporation X satisfies the requirements of subsections 1 through 5, of paragraph O of Section IV of this Regulation. Corporation X has or will have directly or through a subsidiary or affiliate

an office or fixed place of business in Puerto Rico for Export Services under the provisions of the Act. Company A continues to render services to Corporation X for the benefit of the customers or clients of Corporation X, and said services rendered by Company A are intrinsically related to the Export Services rendered by Corporation X. Corporation X, in turn, satisfies the requirements of subsections 1 through 5, of paragraph 0 of Section IV of this Regulation. Company A's services may qualify as Export Services.

AB

Example 4: Company A holds a grant under the Act and provides Eligible Services to Corporation Z, a foreign corporation that complies with the requirements of subsection 1 through 5 of paragraph 0 of Section IV of this Regulation. Corporation Z is a wholly owned subsidiary of Corporation Y, organized in Puerto Rico, but, not conducting any business in Puerto Rico except for holding the ownership of Corporation Z. Corporation Y is a wholly owned subsidiary of Company A. For business reasons not related to Puerto Rico taxation, the Eligible Services rendered to Corporation Z are invoiced and paid by Corporation Y with funds it receives or it will receive from Corporation Z. Company A's services may qualify as Export Services for services rendered to Corporation Z.

IV. Effectiveness

This Regulation shall enter into force thirty (30) days after the date of its submission to the Department of State and after compliance with the provisions of Act No. 170 of August 12, 1988, as amended, the "Uniform Administrative Procedure Act of the Commonwealth of Puerto Rico."

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ALBERTO BACÓ BAGUÉ

Secretario

Departamento de Desarrollo Económico y Comercio

Date: December 23, 2015