



Tax newsletter

We want to be part of your success



This is our last issue of the year 2008. We hope this publication has been a useful resource to keep you updated with the latest tax legislation and new developments that affect your business.

We at Kevane Grant Thornton are committed to offering services of excellence. We will continue providing you with the correct tools to help you manage your business in a successful way.

The year 2009 promises to be a year of changes in the economic environment, especially those areas related to the income tax provisions of the Puerto Rico Internal Revenue Code.

In this issue, we provide a summary of the amendments to the Low Income Housing Tax Credits

Act. With these amendments the Legislative Body of Puerto Rico expects to increase the construction of housing for low income families, which is needed to cover the increased demand of social interest housing. We also include the major changes made to the 2008 Form 990, applicable to nonprofit entities exempt from US income taxes. This new Form will be filed by entities whose taxable year commenced during 2008.

Finally, but not less important, we provide some important tax matters to keep in mind during the first quarter of the year 2009.

María de los A. Rivera
Tax Partner



Our Tax Department wishes you Happy Holidays and a Prosperous New Year!



Amendments to the Tax Credits for Investment in the Low Income Housing Construction or Rehabilitation Act

On August 13, 2008, the Governor of Puerto Rico signed Act #261, which amends the Tax Credit for Investment in Housing Leased to Low Income Families Act (“Act #140”). The principal purpose of Act #261 is to create and facilitate the construction of housing for low income families, especially for the elderly population and for single parents.

Although Act #140 provided a tax credit of 50% of the eligible investment used in the construction or rehabilitation of low income housing, the benefits established by the act had not been used to its full potential.

One of the principal drawbacks of the law was that the tax credits generated cannot be combined with the tax credits provided by the Federal Low Income Housing Tax Credit Program. This caused the developers to prefer to use the

benefits provided by such Federal Program due to the fact that the tax credits were 15% to 25% higher than the credits provided by Act #140. Another disadvantage of Act #140 was that the term “eligible investment” did not include the cost of the building to be rehabilitated, causing the tax credit to be substantially lower than the total investment made.

As a result of these disadvantages, of the total of \$90 million dollars available since the year 2001, only \$2 million had been used. In order to resolve this situation and to incentive the construction of low income housing projects, Act #261 provides the following:

- to consider within the amount of eligible investment the acquisition costs of structures to be rehabilitated.
- to allow the combination of

federal credits under Section No. 42 of the US Internal Revenue Code and this credit. This will allow the developer to finance the project up to 90% of the total eligible cost with credits provided by the State and Federal Government.

- to allow the transfer to the following year of excess credits not granted during a fiscal year (up to 50%). The maximum credits available for each fiscal year is \$15 million dollars.
- provides for a period of 180 days to lease the total units to low or moderate income families. If the units leased are equal or more than the 75% of the total certified units, then those units will be the base to prorate the amount of credits included in the certification. This amount will be the maximum amount of credits available to be claimed by the owner of the

project or the buyer of the credits. If the total amount of leased units does not reach the 75% of the total certified units, then the credits will not be available. The period of 180 days can be extended up to 120 days with previous

- authorization.
- at least 75% of the certified units has to be leased to low or moderate income families for a period of 180 days for each year and for at least 10 consecutive years.



Redesigned Form 990 applicable for 2008 taxable years

The Internal Revenue Service (“IRS”) has redesigned the format and content of the Return of Organization Exempt from Income Tax - Form 990 effective for taxable years that began during the year 2008. The new form consists of an 11-page, 11-part core form that is required to be completed by all organizations that file Form 990, and 16 supplemental schedules to be completed by those organizations that satisfy the applicable requirements for each schedule.

Basically, the IRS wants more disclosure. A checklist of required supplemental schedules provides the IRS more information about the transactions with insiders or members of the family of the board of directors, political campaign activities, lobbying activities, etc.

Some of the information previously required by the old form has been eliminated or revised, and the new Form requires information not previously required by the prior Form. As explained by the IRS, there are three principal reasons for the change:

- to enhance the transparency of the organization’s mission, financial information, operations and use of resources;
- to obtain more compliance by the exempt organizations;
- to minimize the administrative burden to the exempt organizations.

There are four areas of reporting impact:

- governance issues – the new Form requires certain information about the compositions of the board of directors or governing body and the governing policies and practices followed by the entity. The primary concern is that the assets of the organization are being used to accomplish the exempt purpose of the organization and the persons responsible for the management of the organization are following the applicable procedures to conduct the exempt activities. Another new requirement is to describe the process to determine the compensation of the CEO, executive director, other officers and key employees.

- programmatic areas – detail information of the activities carried on to accomplish the organization’s mission.
- financial information - detail information of how the entity is obtaining the funds to carried on its operations and how the money obtained is being used to accomplish its exempt activities.
- tax compliance .

Additional disclosure required by the new Form is related to the expenses paid to the officers and directors, CEO, etc. such as first class and charter travel, companion travel, discretionary spending accounts, housing allowances, health or social clubs dues, personal services.

In order to smooth the transition to the new Form, the IRS has increased the thresholds filings. For tax years beginning in 2008, if an organization has **gross receipts** of less than \$1,000,000 and **total assets** at the end of the year of less than \$2,500,000, it may choose to file Form 990-EZ, Short Form Return of Organization Exempt From Income Tax, instead of Form 990. These

threshold filing will be gradually decreased until 2010, where the filing requirement for Form 990-EZ is gross receipts of less than \$200,000 and total assets of less than \$500,000.

On the other hand, if an organization normally has **gross receipts** of \$25,000 or less, it must file Form 990-N, Electronic Notice (e-Postcard) for Tax-Exempt Organizations not Required To File Form 990 or 990-EZ.

Tax exempt organizations must pay attention to the information disclosed in the new Form 990. It is important to examine closely the answers to the questions that require descriptions of your procedures, policies and practices. The new Form requires that the board of directors describes the procedures used to review the Form 990. Board education is a must.

Act to prohibit the imposition of additional charges for the use of credit cards

Due to the economic recession we are experiencing during the past years, many merchants have opted to impose additional charges for the use of credit cards. This has increased the cost of living for the consumers, taking into consideration that the use of credit cards to acquire goods has increased significantly over the past years. In order to protect the consumers, on August 4, 2008, the Governor of Puerto Rico signed Act #150 (“Act #150”).

This act prohibits the merchants to impose surcharges to the consumers that prefer to pay for the acquisition of property or services by means of a credit card. On the other hand, Act #150 allows the merchant to offer discounts to the consumer if the payment to acquire the goods is made through cash, checks or any other similar method.

These discounts are provided with the intention to promote the payment with any method, except

credit cards. It is important to mention that such discount has to be offered to any potential buyer.

Any person who violates the dispositions of this Act, upon conviction will be punished with a fine not more than \$500 or by imprisonment for a period not more than 6 months, or both at the discretion of the court.

Important Reminders for 2009

- the maximum earnings subject to Social Security taxes will increase to \$106,800 for 2009. The percentages will remain the same as for 2008.
- the due date to file the Forms W-2 with the Puerto Rico Treasury Department is January 31, 2009. There is an extension available for 30 additional days, which is requested using Form SC 2727. Also, please keep in mind to match your employees’ names as shown on their Social Security card with the name to be shown

- on the W-2.
- remember to obtain your 2009 “Total or Partial Relief of Withholding Certificate” and deliver it to your clients on time in order to avoid any excess withholdings.
- the last estimated tax installment in the case of individuals for the 2008 year is due on January 15, 2009.
- every merchant that did not file one or more of the monthly sales and use tax returns, will be required to file the Annual Sales and Use Tax Return. This return is due on the 15th day of the third calendar month following the close of the taxable year. This requirement is applicable for taxable years that commenced after December 31, 2007. For calendar years, this return is due on March 15, 2009.
- an incorrect due date is printed in the 2008 General Instructions for Forms 1099, 1098, 5498, and W-2G, and in the instructions on the reverse side of Copy C of the 2008 Forms 1099-B, 1099-MISC, and 1099-S. The correct due date for furnishing the 2008 Copy B to

- recipients is as follows:
- February 17, 2009 - for Forms 1099-B and 1099-S
 - February 17, 2009 - for Form 1099-MISC if substitute payments are reported in box 8 or gross proceeds paid to an attorney are reported in box 14. If no such payments are reported, February 2, 2009, remains the due date for furnishing Copy B of Forms 1099-MISC to recipients.
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Act to prohibit the imposition of additional charges for the use of credit cards – cont.

Charitable contributions substantiation for US income tax purposes

Proposed regulations have been issued on Substantiation and Reporting Requirements for Cash and Noncash Charitable Contribution Deductions. Now, in order to deduct a charitable cash donation, regardless of the amount, you must have a bank record or written communication from the nonprofit entity showing the name of the charity, the date and the amount of the contribution.

Acceptable bank records include canceled checks, bank or credit union statements containing the name of the charity, the date and the amount of the donation.

These requirements for monetary donations do not change or alter the long-standing requirement that a taxpayer obtain an acknowledgment from a charity for each deductible donation (either money or property) of \$250 or more. However, one statement containing all of the

required information may meet the requirements of both provisions.

Under the previous rules, records such as personal bank registers, diaries, or notes made around the time of the donation could often be used as evidence of cash donations. These personal records are no longer sufficient.



Contact information

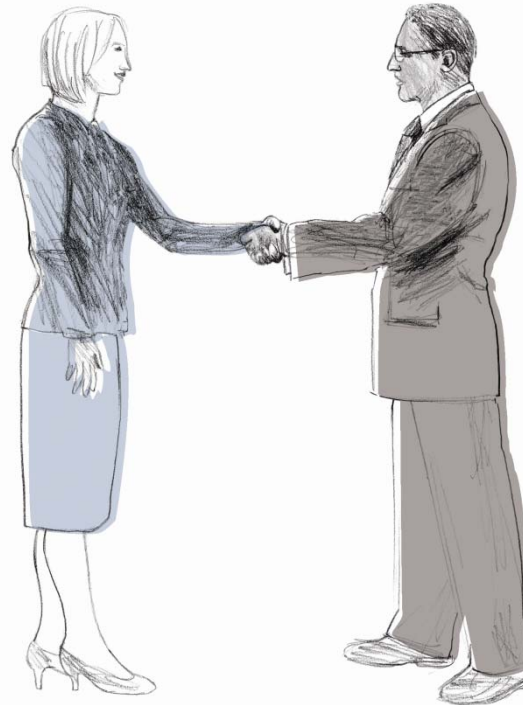
Tax Department

María de los Ángeles Rivera

Tax Partner

T +1 787 754 1915

E maria.rivera@kewane.com



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