

### *Puerto Rico Treasury Department Implements New Measures to Combat Sales Tax Evasion: IVU LOTTO*

In response to the Sales and Use Tax (SUT; Spanish acronym IVU) evasion problem, early last year the Puerto Rico Treasury Department (PRTD) started to work towards the implementation of the IVU Lotto. In brief, the IVU Lotto Program consists of a twice-weekly raffle in which consumers will participate with the IVU Lotto number printed on receipts issued by merchants at the point of sale. PRTD hopes to create interest in consumers to request the receipt, which will force the merchant to register each transaction. As will be discussed, PRTD's main intention is to gather information of sales transactions at the point of sale of most merchants.

Although PRTD has been working on the program's implementation for more than a year, it was not until recently that merchants in general learned more details about the IVU Lotto Program and the

participation required on their part. Available information was published recently in preparation for the IVU Lotto Pilot in Ponce, which started on December 1<sup>st</sup>, 2010. For the Ponce Pilot, PRTD selected approximately 200 merchants with point of sale in Ponce.

PRTD plans to implement the IVU Lotto island wide by the end of March 2011. To illustrate the IVU Lotto Program, below we provide a summary of the information published by PRTD in various presentations to Retailers Associations, the Processors Guidelines and Specification of IVU Lotto Program and Regulation # 7956.

In order to work effectively, the IVU Lotto Program requires the active participation of three major components: Merchants (data capture devices), Processors and the Aggregator. Merchants are responsible for gathering all of the sales tax amounts

included in each transaction and for printing the information on the receipt with the IVU Lotto number and information about the draw. The Processors are responsible for storing the sales transactions information and for providing daily transactional information files to the Aggregator. Finally, the Aggregator will receive the transactional files from all the Processors, including all merchants' sales transactions and the IVU Lotto numbers issued. The information will be available on a Unified Web Portal so that PRTD, the Municipalities and the three components of the IVU Lotto Program will be able to view their corresponding information. There are three options for the implementation of the IVU Lotto; the choice will depend on whether the merchant does not have a point-of-sale retail software (POS) at present, or has a

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POS with a bank or if they are a Self-Sufficient POS.

**Option #1 Bank Affiliated POS** - Bank/ISO Processor must go through the IVU Lotto Certification Process as established in the Processors Guidelines and Specification. To be certified, the POS must accept cash/check as a new tender type, include IVU Lotto information on the receipt and provide for cashier to enter sales and sales tax amounts.

**Option #2 Self-Sufficient POS** – Merchants with cash registers connected to a central operation center and all sales (cash/checks/cards) transactions currently registered on-line in a central site. These merchants must go through the IVU Lotto Certification Process. For the certification, the Processors must make some modifications to include IVU Lotto information on the sales receipt and to generate the IVU Lotto numbers.

**Option #3 Fiscal Devices** - Merchants that currently do not accept electronic payments (cash/checks only), merchant that accept electronic payments with a Bank/ISO Processor that is not Certified, Self-Sufficient POS that decided not to go through the IVU Lotto Certification Process or merchants with multiple Bank/ISO Processors. Under this option, the costs for the device and its implementation will be covered by PRTD. There are two devices available:

- **Tx Port** - This device does not require manual intervention

from the cashier, since it provides a seamless integration to an electronic cash register and prints IVU Lotto number on merchant's receipt; and

- **SUT Reporting Terminal** - Requires a simple data entry and instant issuance of the IVU Lotto Receipt.

Once the IVU Lotto is implemented, merchants and Processors must be capable of capturing and including on the IVU Lotto receipt the following information: terminal/device ID, merchant identification number, control number (only required for Tx Port and SUT Reporting Terminal), merchant name, transaction type (sale, refund, void, cash sale, etc), date of purchase, hour of purchase, trace or sequence number, authorization code, sale amount (total goods acquired by the consumer), State Tax, Municipal Tax, total transaction amount, IVU Lotto Number - 20 characters (IVU Lotto: XXXXX-XXXXX), IVU Lotto draw number, draw date and number prefix - 20 characters (XX DRAW 999 MM/DD/YY).

With the publication of the Processors Guidelines and Specification of IVU Lotto Program, PRTD issued more details about the structural and technical part of the implementation process. Later, with the publication of Regulation # 7956, PRTD established which merchants are required to implement the IVU Lotto and which transactions are required to issue IVU Lotto numbers, among other things.

Regulation #7956 primarily establishes the requirements for the inspections of merchant's points of sale

through fiscal devices. The implementation process and the obligation of a merchant begins with a letter from the Secretary to notify that the merchant was selected to implement the IVU Lotto and that the first step is to select one of the three options for the implementation.

If the merchant does not choose an option within the period provided, PRTD will understand that the merchant is refusing to install the IVU Lotto Program and could be subject to penalties. Once the merchant selects one option and the implementation process has been completed, the merchant must remain with the selected option for at least a year. After a year, the Secretary can approve a change of option, but the merchant will be responsible for the costs associated with the change.

Article 2501(a)-(2)(a)(1)-(11) establishes a list of merchants not subject to the implementation of IVU Lotto, which are:

1. Merchant location that exclusively generates credit transactions based on an account payable system or periodic payments.
2. Merchant location that exclusively engages in the sale of personal property and services in which customers are not present at the point of sale (catalog, internet, phone, etc.). Except for the merchants primarily dedicated to the sale of prepared food and delivery, which are required to install a fiscal device.
3. Vending Machines or Admission-Ticket Vending Machines.
4. Merchant location dedicated exclusively to

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- the sale of services and services provided at the customer location; therefore, a point of sale does not exist.
5. Government of Puerto Rico and the United State of America.
  6. Merchant location that exclusively provides educational services.
  7. Merchant location that exclusively provides designated professional services.
  8. Merchant location that exclusively provides health services or hospital services.
  9. Merchant that generates five transactions or less each month.
  10. Merchant location primarily dedicated to providing financial services or financial services, as established.
  11. Merchant primarily dedicated to the sale of insurance and commissions.

In addition, Article 2501 (a)-(2)(b) established that Merchants that generate transactions through a billing system or account payables system will be required to register the transaction in the IVU Lotto fiscal device if the invoice is paid at a point of sale. An example is included to the effect that if the invoice is paid in four installments at the point of sale the merchant will be obliged to

process each payment through the fiscal terminal and issue an IVU Lotto receipt.

On the other hand, it clearly establishes that sales generated through telephone, internet or mail in which the customer is not present at the point of sale (for the sale or pick up) and services provided at the customer's facility are not required to be processed by the fiscal device and issue an IVU Lotto receipt.

In summary, all merchant locations considered as a point of sale will be required to implement the IVU Lotto and/or the fiscal device. Point of Sale is defined as a point of interaction between consumer and a merchant at which goods or services exchange hands.

To ensure compliance with said requirements, Section 6108(c) of the Code imposes a penalty of \$20,000 for each infraction. For this purpose, an infraction will consist of the refusal to install and or use the IVU Lotto Program or fiscal device, as well as any action to disconnect, destroy, modify or manipulate the IVU Lotto Program or fiscal device. Even though the regulation and the penalties are in effect at present, PRTD has established that no penalties will be imposed until after April 30<sup>th</sup>, 2011. If reasonable cause exists for not complying with the

implementation at such date, the Secretary, upon the request of the merchant, can extend the grace period provided. To this effect, it is very peculiar that the regulation establishes that reasonable cause for not complying with the implementation is that a court with jurisdiction on this matter determines that a merchant is not obliged to comply. This type of statement opens the door for merchants to challenge the implementation of the IVU Lotto in court.

If you have any question about the information discussed or need specific information not included, feel free to contact us.

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