



## Estimated Tax Payment Required for Personal Property Tax and Amnesty from the State Department

By Carlos R. González-Martínez

On November 26, 2013, the Governor signed Act No. 136-2013 ("Act 136"). Act 136 brings two main changes to the Municipal Property Tax Act of 1991, as amended, it: 1) establishes a requirement to pay the personal property tax in estimated tax installments and 2) provides for a uniform automatic extension request to all taxpayers.

Also, the Department of State recently released two Administrative Orders ("AO"), AO 2014-02, which includes an Amnesty for the filing of missing annual reports without the imposition of penalties, and AO 2014-03, which notifies that a survey with economic data will be required with the filing of the 2013 and future reports.

In this issue, we will discuss the amendments introduced by Act 136, and also the communications from the Department of State.

Continues on Page 2

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## Estimated Tax Payment Required... Continued from Page 1

### ACT 136

#### Estimated Personal Property Tax

Act 136 establishes a new requirement to pay the personal property tax in four equal installments, which are due on August 15, November 15, February 15 and May 15. It maintained the 5% discount when the total payment of the personal property tax due is made on May 15, but only for the 2013 tax return, which is due on May 15, 2014. However, beginning with the 2014 personal property tax return, which is due on May 15, 2015, in order to obtain the 5% discount, at least 100% of the tax paid for the prior year tax return must also be paid by August 15. For example, if a taxpayer has a tax liability of \$15,000 for the personal property tax of 2013 on May 15, 2014, it must also pay another \$15,000 by August 15, 2014 in order to be allowed the 5% discount when filing the 2014 tax return on May 15, 2015.

Please note that there is no discount if the taxpayer chooses to pay in installments, rather than paying 100% of the prior year's tax on August 15. For many taxpayers with cash flow issues, this rule, in essence, has made them lose the 5% discount for 2014 and beyond.

Beginning with taxable year 2014, the number of estimated personal property tax installments to be made will depend on the period that the taxpayer possesses taxable personal property for the first time. The following table illustrates the timing and number of installments required by Act 136.

Period for Which Taxpayer has Taxable Property for the First Time	First Installment Due Date	Number of Installments
General rule	August 15	4
Between August and October	November 15	3
Between November and January	February 15	2
Between February and May 15	May 15	1

The Municipal Property Tax Act of 1991, as amended, provides that the assessment date for property tax purposes is January 1<sup>st</sup> of every year. Therefore, it is not clear why Act 136 suggests that a taxpayer might be subject to the payment of estimated personal property tax for a given year, if the property was not possessed as of January 1<sup>st</sup>. The last two lines of the table presented above suggest that if a taxpayer possesses taxable property for the first

time during the month of January or March of a particular year, Act 136 would require a payment of estimated tax on February 15 or May 15, respectively, when in fact, there would be no tax liability for that year, because the property was not possessed on January 1<sup>st</sup>.

Act 136 imposes a 5% penalty for the underpayment of a personal property estimated tax. The penalty shall be added to the amount of the installment not paid. For purposes of establishing the amount of the estimated tax and installments due, Act 136 states that the estimated personal property tax for a particular year shall be the lesser of: 1) 90% of the current year's tax or 2) 100% of the prior year's tax. Notwithstanding, Act 136 provides that no penalty for underpayment of estimated tax shall be paid with regard to the installments of August 15 and November 15, 2014.

#### Extension Request

Prior to the approval of Act 136, the automatic extension for filing the personal property tax return was allowed for 30 days to certain taxpayers and for 90 days to other taxpayers. Act 136 simplifies this process by establishing an automatic extension request period of 3 months for all taxpayers. The change from 90 days to the 3-month period allows a few more days for filing an extended return than the previous extension of 90 days.

#### **AO 2014-02 Annual Reports Amnesty**

The Secretary of State signed this order on February 13, 2014, which allows domestic and foreign corporations to file any missing

annual corporate reports without the imposition of the late filing penalties. The Department of State, based on an analysis of the corporations database, has sent numerous noncompliance notifications to many corporations so that they know that they are not in compliance and to make them aware of the intention of the State Department to cancel their corporate

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**Carlos** is a Partner at Zaragoza & Alvarado LLP where he is the Operations Manager for our divisions of government and tax resolution and outsourcing services. Before joining the firm, he worked in in the corporate and individual tax consulting area with various local and international organizations such as Puerto Rico Telephone Company, Caribe General Electric, KPMG, Price Waterhouse LLP and Arthur Andersen LLP.

At Z&A, Carlos provides corporate tax and sales and use tax services for clients in the telecommunications, manufacturing, services and retail industries. He deals with tax exemption's grants applications, negotiation and compliance, as well as with individual and corporate tax compliance, and tax audits at municipal, state and IRS level. He also has experience in private and public accounting with international and public business entities.

Carlos has participated as guest speaker in multiple seminars and workshops on tax incentives, property tax and sales and use tax. He is a member of the Puerto Rico Certified Public Accountants Society and of the American Institute of Certified Public Accountants. He earned his Bachelor in Business Administration degree, major in Accounting, from the University of Puerto Rico.

Continues on Page 3



### Estimated Tax Payment Required... Continued from Page 2

certificates and authorizations to do business in Puerto Rico. AO 2014-02 requires corporate taxpayers who want to benefit from this Amnesty, to file the complete missing annual reports electronically, together with the annual filing fee, during the period from February 14 thru April 15, 2014. The imposition of late filing penalties will commence again for any annual report filed after April 15, 2014.

Please note that LLCs are not allowed to benefit from this Amnesty. The State Department has also expressed that the law requires corporations to be in compliance for the last five years in order to be in Good Standing. Therefore, corporations that correctly file the annual reports for the last five years will maintain its corporate certificates, and it does not matter if the corporation has missing annual reports for years prior to the last five. On the other hand, during the period of the Amnesty, corporations are allowed to file missing annual reports for any prior years.

### AO 2014-03 Survey of Economic Data

Effective for the annual corporate reports of 2013 to be filed during 2014, the Department of State is requiring that certain economic data be submitted by each corporation and Limited Liability Company. Under the name of "Encuesta de Datos Económicos" the following information is requested:

- employer identification number;
- sales volume;

- number of employees;
- NAICS classification code;
- whether the entity is engaged in exporting, and if yes, main exporting destinations.

In the case of not-for-profit entities the Department of State is also compiling data that includes the number of volunteers working for the entity and the number of volunteer hours worked for the year. The AO 2014-03 establishes that the purpose of the compilation of the economic data requested is to facilitate the analysis and generation of statistical information and to be able to match data from the Department of State database with that of other governmental agencies.

### Z&A'S COMMENTS:

Ironically, the statement of motives of Act 136 states that the intention of the act is to help taxpayers to manage cash flows and to guarantee the payment of the personal property tax. However, in 2014, many

**Continues on Page 4**

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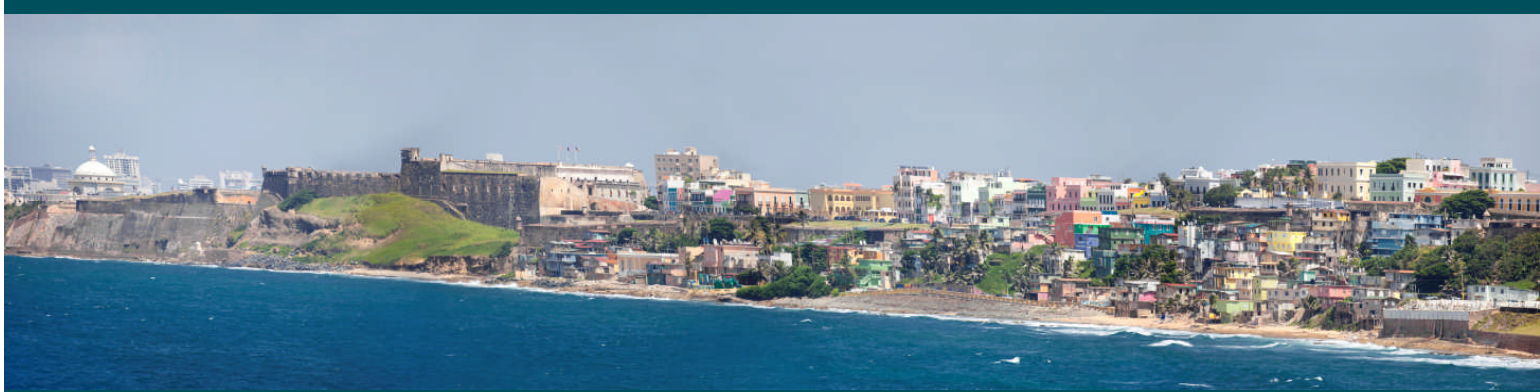
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## Estimated Tax Payment Required... Continued from Page 3

taxpayers will face the payment of any remaining balance of their increased income tax, due to the increased tax rates and the Additional Tax on Gross Income (“Patente Nacional”) and, in addition, Act 136 requires an acceleration of the payment of the personal property tax for the next year in order to be able to obtain the 5% discount, or because of the required estimated tax payments. The approval of Act 136 will definitely hit the cash flows of many taxpayers during 2014, and many will lose the 5% discount that was previously allowed when submitting the extension request or the tax return by May 15. For other taxpayers, the prepayment of the personal property tax in installments, even before the tax assessment date, represents the risk of leaving that cash in the hands of the Municipal Revenue Collection Center for a long time, in case they decide to close down the operation before January 1<sup>st</sup>. These new rules will require a revisit of the personal property tax computation at different times of the year to better estimate the liability and the amounts to be paid in installments.

On the other hand, the Amnesty approved by the Department of State offers an excellent opportunity to put the corporation in good standing, and at the same time, save some money in penalties. If your corporation has some missing reports, this is the time to be in compliance. We can help you out with this task, please contact one of our consultants.

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