

McV Tax Litigation Group Secures Major Victory for Puerto Rico FTZ Tax Exemption Beneficiaries

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The McV Tax Litigation Practice Team secured a major victory when, in a unanimous decision, the Puerto Rico Supreme Court recently held that municipalities cannot add requirements to qualify for or limit the tax exemptions that have been granted by statute. In this case, the Municipality of Carolina issued a \$12 million municipal license tax notice of deficiency against Lilly del Caribe, Inc. The municipality argued that Lilly's volume of business for export sales of certain products did not qualify for the Foreign Trade Zone municipal license tax exemption under Section 9(31) of the Municipal License Tax Act, because such products did not appear in Lilly's original application to PRIDCO for the establishment of a Sub-Zone and to the grant issued by the federal Foreign Trade Zone Board.

After hearing arguments from both parties, the Court of First Instance denied the municipality's dispositive motion and entered judgment in Lilly's favor, thereby vacating the municipality's notice of deficiency. The municipality appealed, and the Court of Appeals reversed the judgment issued by the Court of First Instance. Lilly appealed to the Puerto Rico Supreme Court, and PRIDCO filed an amicus brief in support of Lilly's position. In its decision, the Supreme Court reaffirmed the long-standing principle that the authority to impose a tax is constitutionally vested in the Legislative Assembly and that municipalities have no inherent power to impose taxes. The Court then held that the statute has only three requirements that a taxpayer must meet to benefit from the Foreign Trade Zone exemption: a) the entity must be authorized to do business in Puerto Rico; b) the entity must be located within a foreign trade zone; and c) the claimed income must be derived from an export activity. Thus, the municipality could not add other requirements not contemplated in the statute by limiting the benefits of the exemption to the export of certain products. Finally, the Court held that matters related to the foreign trade zone and the requirements to qualify for the exemption were preempted by federal and state law, respectively.

Juan A. Marqués-Díaz and Rubén Muñiz, co-chairs of the firm's Tax Litigation Practice Area, were on brief for Lilly. Other members of the Tax Litigation Practice Team that participated in this case include Rafael Fernández-Suárez



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and Cecilia M. Suau.

You can access the Puerto Rico Supreme Court's decision on this link.

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