

McV's Tax Litigation Practice Team Scores Another Important Victory for Municipal License Taxpayers

PRACTICE AREAS

- Tax Litigation

McV Tax Litigation News

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McV's Tax Litigation Practice Team recently scored another important victory for municipal license taxpayers.

In McNeil v. Municipio de las Piedras, 2023 TSPR 135, the Puerto Rico Supreme Court issued an opinion which holds that a municipality that assesses a municipal license tax deficiency after the expiration of the four-year statute of limitations must show not only that the declaration of volume of business is incorrect, but also that it was prepared with the intention to evade the payment of such municipal tax. The Court further held that the municipality has the burden of proof to demonstrate such intention to evade. On another subject, the Court also held that a municipal license tax declaration of volume of business can be sworn before a person authorized to take oaths, not only by the laws of Puerto Rico, but also by the laws of any state of the United States. In doing so, it rejected the Municipality's position, which had been adopted by the lower courts, that the declaration had to be sworn by a Puerto Rico notary.

The opinion, delivered by the Chief Justice, interprets for the first time in Puerto Rico the scope and meaning of the phrase "false or fraudulent declaration with the intent to evade the payment of the municipal license tax". It also discusses the retroactivity or prospectivity of Supreme Court decisions.

In reversing the decision of the Court of Appeals, which had affirmed the lower court's summary judgment determining that the statute of limitations was inapplicable because the municipal license tax declaration had used a tax rate which later had been invalidated, the Supreme Court adopted the taxpayer's position that determining that the declaration of volume of business was incorrect is not enough to activate the exception to the application of the statute of limitations.

In representing the taxpayer, McV argued, and the Supreme Court agreed, that the municipality must also show that the taxpayer acted with the intention to evade the payment of the tax. Accordingly, the Supreme Court remanded the case to the lower court so that an evidentiary hearing can be held, where the municipality would have the burden of proof to show that the taxpayer had the intention of evading the payment of the municipal license tax. Lastly, in

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declaring valid the tax return sworn before a New Jersey notary, the Supreme Court canceled the penalties imposed by the municipality.

The McV team, led by Juan A. Marqués-Díaz, included Ruben Muñiz-Bonilla, Rafael Fernández-Suárez, Britt Arrieta and Dalina Sumner.

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