

San Lorenzo and Caguas Approve New Municipal Taxes

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PRACTICE AREAS

- Tax

An McV Tax Alert

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The Government's fiscal plan, as approved by the Fiscal Oversight Board, proposes to gradually eliminate the \$350 million subsidy to the 78 Municipalities. In anticipation of the approval of the Government's budget for fiscal year 2017-18, the Municipalities are actively exploring alternatives to mitigate the impact of the expected subsidy elimination.

Accordingly, on March 17, 2017, the Municipality of San Lorenzo ("San Lorenzo") issued Municipal Ordinance No. 16-OT, 2016-2017 Series ("Ordinance 16"), authorizing the imposition of a called "excise tax" to cover certain municipal expenses. Subsequently, on June 8, 2017, the Municipality of Caguas ("Caguas") issued Municipal Ordinance No. 28 of Fiscal Year 2016-2017 ("Ordinance 28"), which was later substituted by Municipal Ordinance No. 37 of Fiscal Year 2016-17 of June 22, 2017 ("Ordinance 37"), to levy a temporary "Entrepreneurial Municipal Tax" (the "Special Tax").

Due to Puerto Rico's fiscal crisis, other municipalities will likely undertake similar initiatives.

Municipality of San Lorenzo

Ordinance 16 provides that the excise tax is imposed based on the Municipal License Tax ("MLT") paid by businesses that annually report their volume of business to San Lorenzo. The excise tax payment is equal to half the MLT payment made for "natural" year 2015 or the current year, whichever is greater. The term "natural year" is not defined in Ordinance 16.

The excise tax must be paid on or before 30 days from the date the MLT payment was made. However, Ordinance 16 does not specify if the 30-day period begins from the early-discount payment date or from the date in which the payment for the first semester of the MLT is made.

San Lorenzo has informally indicated that the form or payment voucher to submit the excise tax payment is not available yet. San Lorenzo is requiring, however, that the taxpayer submit a check payable to the "Municipality of San Lorenzo". Failure to timely submit the excise tax payment will result in the accrual of 1% monthly interest.

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Municipality of Caguas

Ordinance 37 levies a temporary Special Tax of 0.35% on the volume of business generated by all natural or juridical persons subject to the MLT in Caguas with a volume of business of \$3,000,000 or more during the “natural” year ending prior to the effective date of the payment of the Special Tax. The term “natural year” is not defined in Ordinance 37.

The Special Tax will apply only during fiscal years 2017-2018 through 2020-2021. For fiscal years 2018-2019 through 2020-2021, the tax basis should be the volume of business generated during the natural year prior to the effective date of the payment or the volume of business generated during the natural year 2016, whichever is lower. Ordinance 37 provides that if the taxpayer holds a municipal or state tax exemption, such exemption should be applicable to the Special Tax.

The Special Tax is due on August 15th of every year that it is in effect, and can be paid in four equal installments, due on the 15th day of August, November, February, and May of each year. Caguas will invoice the Special Tax on or before July 1st, 2017 and in every subsequent year in which Ordinance 37 is in effect. Taxpayers must submit their payments by the due date, along with a form or voucher to be provided by Caguas. Interest on any unpaid portion of the Special Tax shall accrue at 1% computed monthly, and a penalty of up to 25% on any outstanding balance as of June 30 of every year also will apply.

The new taxes approved by the municipalities of San Lorenzo and Caguas seem to be in conflict with the provisions of the MLT Act, inasmuch as such new taxes are imposed on the same basis as the MLT (i.e., the volume of business). Moreover, these new taxes could be considered an increase of the effective MLT rate beyond the limit of 0.50% provided by the MLT Act.

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