

Court Rules Municipality of Caguas' Temporary Special Tax is Illegal and Ultra Vires

ATTORNEYS

- Juan A. Marqués-Díaz
- Rubén Muñiz-Bonilla
- Isis Carballo-Irigoyen
- Yamary I. González-Berríos
- Leslie Y. Flores-Rodríguez
- Cecilia M. Suau-Badía
- Dalina Sumner
- Britt E. Arrieta-Rivera
- Rafael Fernández-Suárez

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On August 23, 2017, the Court of First Instance held in Caguas Expressway Motors, et als. v. Municipio de Caguas, Civil Case No. SJ2017CV00552, that the Municipal Ordinance No. 37 of Fiscal Year 2016-17 of June 22, 2017 (“Ordinance 37”), which levied a temporary “Entrepreneurial Municipal Tax” (the “Special Tax”) is illegal and *ultra vires*. The court ordered the Municipality to refund any Special Tax collected from the plaintiffs.

As anticipated in our Tax Alert of July 5, 2017, the court ruled that by enacting Ordinance 37 the Municipality surpassed its delegated taxing authority. The court concluded that the Special Tax imposed by Ordinance 37 is in conflict with the provisions of the Municipal License Tax Act, inasmuch as the Special Tax is imposed on the same basis (i.e., the volume of business), which is an increase of the effective Municipal License Tax rate beyond the limit of 0.50% provided by the Municipal License Tax Act. Therefore, the court ruled that the Special Tax is a prohibited double taxation.

Although the trial court’s ruling is not yet final and the Municipality will likely file an appeal before the PR Court of Appeals, this decision could serve as a general deterrent to other municipalities that are actively exploring creative revenue increasing alternatives.

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