

PR Supreme Court Opinion Clarifies Construction Excise Tax Exemption

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An McV Tax Litigation Alert

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A recent PR Supreme Court ruling might put an end to the persistent municipal practice of trying to collect construction excise taxes to contractors of exempt businesses.

On June 13, 2018, the Puerto Rico Supreme Court held in Cooperativa de Ahorro y Crédito de Rincón, et al. v. Mun. de Mayagüez, 2018 TSPR 109, that a contractor who does construction work for a cooperative savings and credit association, which is a business statutorily exempt from payment of construction excise taxes, is also exempt from such tax. The Court based its decision on its analysis of the provisions in Art. 6.08 of the Puerto Rico Cooperative Savings and Credit Associations Act of 2002 (the “Act”), regarding tax exemptions.

In this case, the Rincón Cooperative Savings and Credit Association (the “Cooperative”) notified the Municipality of Mayagüez (the “Municipality”) that it had hired a contractor for construction work required to remodel its new location at a mall. The Municipality contended that the exemptions provided under Art. 6.08 of the Act did not extend to the contractor hired by the Cooperative. The Cooperative filed a complaint before the Court of First Instance, which entered judgment in favor of the Municipality, denying the exemption to the Contractor. The Puerto Rico Court of Appeals confirmed the lower court’s decision, but the Puerto Rico Supreme Court reversed that decision.

The Puerto Rico Supreme Court examined the legislative intent of the Act, the exemptions provided under Art. 6.08 of the Act and the legal aspects of the municipal construction excise tax under the Puerto Rico Autonomous Municipalities Act. It found that the Legislature’s main objective for the Act was to provide cooperative savings and credit associations with the opportunity to be more competitive and have greater prominence in Puerto Rico. In furtherance of this objective, the Legislature granted the tax exemptions in Art. 6.08 of the Act. In response to the Municipality’s contention that these exemptions only applied to taxes levied against the cooperative itself - but not those levied against its contractors - the Court held that construction excise tax

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costs are usually included as part of the costs of the construction work, so that ultimately, the cooperative would end up paying the tax. This result would be contrary to the provisions of Art. 6.08 of the Act. For these reasons, the Court reversed the lower courts' decisions in favor of the Municipality, and held that the municipal construction excise tax exemption for the Cooperative under Art. 6.08 of the Act also applies to its contractor.

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