

Amendments to the Puerto Rico Municipal Code

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An McV Tax Alert

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On September 17, 2024, the Governor of Puerto Rico, Hon. Pedro Pierluisi, signed into law Act No. 215 (“Act 215”) to amend the Puerto Rico Municipal Code (the “Municipal Code”) regarding certain construction excise tax exemptions, the procedure for a potential revocation of an extension to file the volume of business declarations, and the provisions for municipal license tax closing agreements.

Construction Excise Taxes: Taxation of Contractors and Exempt Owners of the Construction Works

Act 215 modifies the provisions related to the exemption granted to construction works conducted by Government Agencies or their instrumentalities, public corporations, municipalities or the Federal Government.

Specifically, the text introduced by Act 215 reads as follows: “In addition, this exemption will not apply to that construction activity carried out by a taxpayer in favor of a natural or legal person or public or private entity, even when the latter, as the owner of the works, is an exempt entity, without this constituting or could be interpreted as an impairment of the exemption granted to the owner of the works.”

This text seems to be a legislative response to recent case law that considers as exempt third-party contractors who carry out construction works on behalf of an exempt entity. See *Coop. Ahorros Rincón v. Municipio de Mayagüez*, 200 D.P.R. 546 (2018) and *Lord Construction Group, Inc. v. Municipio Autónomo de San Juan*, 223 T.A. 1918; KLAN202300577 (Aug. 11, 2023). However, this text, far from clarifying the scope of the exemptions, seems to create greater confusion. The reference to “this exemption” in the amended text is to the exemption granted to construction works carried out by the government, but the clarification deals with construction works owned by private exempt taxpayers and carried out by third-party contractor.

It must be noted that this amendment should not affect construction excise tax exemptions granted under any of Puerto Rico’s tax incentives laws or any other act that specifically provides that the exemption extends to the third-party

contractors of the exempt taxpayer.

Revocation of Extensions to File the Volume of Business Declaration

The Municipal Code provides an automatic six-month extension to file the municipal license tax Volume of Business Declaration, which the municipal Director of Finance may revoke within sixty (60) days if the requesting taxpayer is in “noncompliance with the municipality,” a previously undefined concept under the Municipal Code. Act 215 defines a taxpayer’s “non-compliance” as having outstanding municipal license tax, municipal sales and use tax, or real and personal property tax debts for prior years.

Act 215 also incorporates administrative appeal mechanisms available to the taxpayer when the municipal Director of Finance revokes the automatic extension. Going forward, the municipal Director of Finance must notify the taxpayer in writing, via certified mail or e-mail, that their automatic extension has been revoked. The notification must provide the reasons why the taxpayer is in noncompliance with the Municipality, as well as the corresponding appeals process, but the period for the submission of the appeal is not specified. Notably, if the revocation of the extension is confirmed, the taxpayer could be subject to the applicable penalties in the Municipal Code for failure to timely file the Volume of Business Declarations. This penalty generally is imposed, unless there is reasonable cause for the delay.

Municipal License Tax Closing Agreements

Closing agreements with municipalities now must be signed by the municipality’s mayor, the municipality’s finance director, and the person(s) responsible for paying the corresponding tax. Act 215 does not specify if a closing agreement can be signed by an authorized representative of the taxpayer.

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