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Appendix A

COMMONWEALTH OF PUERTO RICO
GENERAL COURT OF JUSTICE
APPEALS COURT

SAN JUAN JUDICIAL REGION

* CASE NO. KLAN200701749

*

* RE: CIVIL APPEAL

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TRIPLE S
MANAGEMENT CORP

*

*

*

VS

*

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CENTRO DE RECAUDACION DE INGRESOS MUNI *
[MUNICIPAL REVENUE COLLECTION CENTER]

ATTY JOSÉ A RIVERA AYALA
LAW OFFICE OF PEDRO ORTIZ ÁLVAREZ
PO BOX 9009
PONCE PR 00732-9009

NOTIFICATION OF JUDGMENT

THE UNDERSIGNED CLERK NOTIFIES YOU THAT THIS COURT HAS ISSUED A JUDGEMENT IN THE CAPTIONED CASE DATED JUNE 30, 2008, WHICH HAS BEEN DULY REGISTERED AND FILED IN THE RECORDS OF THIS CASE, WHEREIN YOU MAY INFORM YOURSELF REGARDING THE TERMS OF THE SAME.

AND, SINCE YOU ARE OR REPRESENT THE PARTY PREJUDICED BY THE

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JUDGEMENT, OF WHICH AN APPEAL CAN BE TAKEN, I ADDRESS THIS NOTIFICATION TO YOU, HAVING FILED IN THE RECORDS OF THIS CASE A COPY OF THE SAME DATED JULY 17, 2008.

ATTY JESUS A RODRIGUEZ URBANO – THE
LAW OFFICES OF PEDRO ORTIZ
PO BOX 9009 PONCE PR 00731
ATTY EDWIN ORTIZ PIETRI – MUNICIPAL
REVENUE COLLECTION CENTER
PO BOX 195387 SAN JUAN, PR 00936-5387
GENERAL CLERK OF SAN JUAN (SUP) –
PO BOX 190887 SAN JUAN PR 00919

SAN JUAN, PUERTO RICO ON JULY 17 OF
2008 .

MARÍA ELENA PÉREZ ORTIZ

CLERK

[illegible handwriting]

BY: LISANDRA CORREA RAMOS

ASSISTANT CLERK I

CONT. CASE NUM. KLAN200701749

CERTIFIED TRANSLATION

I CERTIFY THIS TO BE A CORRECT
TRANSLATION OF ITS ORIGINAL IN THE
SPANISH LANGUAGE

/s/

Noel Zamot

CERTIFIED COURT INTERPRETER-TRANSLATOR
BY THE ADMINISTRATIVE OFFICE OF
THE UNITED STATES COURTS

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OAT 704-1 - Notification of Judgment - CA

CERTIFIED TRANSLATION

I CERTIFY THIS TO BE A CORRECT
TRANSLATION OF ITS ORIGINAL IN THE
SPANISH LANGUAGE

/s/

Noel Zamot

CERTIFIED COURT INTERPRETER-TRANSLATOR
BY THE ADMINISTRATIVE OFFICE OF
THE UNITED STATES COURTS

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COMMONWEALTH OF PUERTO RICO
COURT OF APPEALS
SAN JUAN JUDICIAL REGION
Panel IV

TRIPLE S MANAGEMENT, CORP. AND TRIPLE S, INC.		APPEAL From the Court of First Instance, Superior Court of San Juan
Appellants		
v.		Civil No. K C02006- 0029(901)
CENTRO DE RECAUDACIÓN DE INGRESOS MUNICIPALES [Municipal Revenue Collection Center]	KLAN200701749 KLAN200800249	
Appellee		

Panel composed of its president, Judge López Feliciano, and Judges Pabón Carneco and Hernández Serrano

López Feliciano, Presiding Judge

JUDGMENT

In San Juan, Puerto Rico, on June 30, 2008.

Through appeal KLAN200701749, Triple S Management Corp. and Triple S, Inc. (Triple S) appear before this Court of Appeals requesting the revocation of a judgment entered on October 29, 2007 and notified the following day, by the Superior Court of San Juan of the Court of First Instance.

The judgment issued by the Court of First Instance denied a summary judgment motion presented by Triple S and, at the same time, granted a summary judgment motion presented by the Municipal Revenue Collection Center (CRIM). Consequently, it dismissed the complaint presented by Triple S, ordering the retroactive payment of certain real property taxes that had been duly notified and demanded by the CRIM.

Subsequently, Triple S filed before this Court the appeal KLAN200800249. In this appeal, they request the revocation of another judgment issued by the Court of First Instance on December 5, 2007 and notified on January 22, 2008. Through this judgment the Court of First Instance denied a summary judgment motion presented by Triple S, and, at the same time, granted a summary judgment motion presented by the CRIM. As a result, it ordered Triple S to proceed with the payment of the taxes owed against its personal property during the years 1991-2002.

On February 21, 2008, Triple S presented a "Motion to Request Consolidation". Because the

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appeals, KLAN200701749 and KLAN0800249, involved the same facts and the same parties, we hereby consolidate them.

Having analyzed the arguments of the parties, we now resolve the controversies presented for our consideration.

I.

Seguros de Salud de Puerto Rico, Inc., better known as Triple S, was organized in 1959 as a for-profit corporation and insurer, pursuant to Act No. 3 of January 9, 1956, known as "General Corporations Law of Puerto Rico"¹ and the Insurance Code of Puerto Rico, 26 L.P.R.A. sec. 101 *et seq.*

On July 16, 1976, through an administrative determination, the Department of the Treasury granted an income tax exemption to Triple S, in conformity with Section 101(8) of the Act No. 91 of June 29, 1954, as amended, known as the "Income Tax Act of 1954", 13 L.P.R.A. sec. 3108.²

On June 12, 1987, the Department of the Treasury extended the tax exemption granted in order to cover Triple S's real property as well as personal property, based on the provisions in Article

¹ Act No. 3, *supra* was repealed by Act No. 144 of August 10, 1995, as amended, known as "General Corporations Act of 1995", 14 L.P.R.A. sec. 2601 *et seq.*

² This section currently corresponds to 13 L.P.R.A. sec. 8506(6).

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291(t) of the Political Code of Puerto Rico, 13 L.P.R.A. sec. 551(t).³

On November 6, 1988, the Department of the Treasury again ratified the tax exemption granted to Triple S under the repealed Income Tax Act of 1954, supra, and in section 1101(6) of the Act No. 120 of October 31, 1994, as amended, known as the "Internal Revenue Code of 1994" (Internal Revenue Code), 13 L.P.R.A. sec. 8501(6). Likewise, on December 15, 1998, the CRIM ratified Triple S's tax exemption against its personal as well as real property.

By letter dated July 31, 2003, the Department of the Treasury gave notice to Triple S of its intention to repeal the administrative determination it had issued on November 6, 1998, under section 1101(6) of the Internal Revenue Code. The Department of the Treasury informed Triple S of the following:

... the new public policy that the Department of the Treasury has adopted when interpreting the scope of section 1101(6) of the Code is that said section only covers entities that are organized for non-profit purposes and that, according to the described public policy, the Secretary of the Treasury cannot continue to treat Triple S as an entity described in

³ This section currently corresponds to Article 5.01 of Act No. 83 of August 31, 1991, as amended, known as "Municipal Property Tax Act of 1991" Act No. 83), 21 L.P.R.A. sec. 5151 (g).

section 1101(6) of the Code notwithstanding Triple S and Management's compliance with the conditions of the Determination for the benefit of the exemption granted therein. Therefore, the Department hereby notifies you that the Determination will no longer be in effect and Triple S will be subject to income tax under the Code for the tax years beginning on and after January 1, 2003.

As a result of the above, we also notify you that in view of the fact that Triple S is a for-profit corporation and has earnings and profits which have accumulated during the periods for which the company and its predecessor were granted tax exemption under the Code and the Income Tax Act of 1954, as amended, a levy lies against said earnings and profits since the same are available for the distribution of dividends. The tax shall be imposed imputing the earnings and profits described as a dividend to Triple S Management Corporation.

On that same date, the Department of the Treasury and Triple S signed a "Final Agreement" in which both parties stipulated that Triple S would pay the Department of the Treasury \$37,000,000, as a tax against the assigned

dividends as of the date of the agreement. By April 15, 2004, it would pay \$14,773,839, for the tax corresponding to the 2003 tax year.

Moreover, on February 1, 2006, the CRIM notified Triple S of its decision to retroactively revoke the administrative determination issued on December 15, 1998, through which it had granted a tax exemption against its personal and real property. In the communication the CRIM informed the following:

As a result of this revocation, the responsibility of Triple S, with regards to the personal property tax shall begin with the tax form of natural year 1991, with regards to the real property tax it shall be effective from the fiscal year 1992-1993 onward.

Our decision is founded on the fact that the compliance by Triple S and/or its successors with the conditions imposed by the Department of the Treasury through the different administrative determinations did not have the effect of converting them into not-for-profit entities. Consequently, the 1987 administrative determination of the Department of the Treasury and the 1998 determination of the CRIM to concede the exemption to Triple S pursuant to the provisions of Art. 291(t) of the Political Code of 1902 and of Art. 5.01(g) of Act 83 were

erroneous and did not create any right in their favor.

Subsequently, on March 1 and March 3 of 2006, respectively, the CRIM sent Triple S notice and demands for payment of the tax, against personal property as well as real property. With regards to real property, the CRIM demanded from Triple S the payment of \$1,326,024.52; with regards to personal property, it demanded the payment of \$3,998,341.27.

On March 24, 2006 Triple S presented a "Petition for Administrative Review" before the CRIM. The CRIM did not act on said petition, thus the petition was assumed to be denied.

Procedural History Pertinent to
KLAN200701749

On May 24, 2006, Triple S filed in the Court of First Instance a complaint to challenge the levy of real property tax, civil number KCO2006-0029 (901). In its complaint, it alleged that the retroactive revocation of its tax exemption was null, illegal and unconstitutional. On July 7, 2006, the CRIM answered the complaint.

After certain procedural events that need not be recounted in detail, on June 13, 2007 Triple S presented a "Summary Judgment Petition". In its motion, Triple S alleged that the exemption granted to it, by the Department of the Treasury as well as by the CRIM, was entitled to a presumption of correctness which could only be rebutted by reasonable and credible proof that the exemption was not in accordance with the law. It also alleged that the CRIM was bound by the policy

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of prospective revocation established in Circular Letter 86-03 of the Department of the Treasury of April 21, 1986, since that was the policy in effect when CRIM's operations began in 1991.

Triple S also argued that the retroactivity of the revocation of the granted tax exemption created a situation of injustice which should be declared unconstitutional. It indicated that the administrative rulings of the Department of the Treasury and of the CRIM amounted to a contractual obligation to maintain the tax exemption so long as Triple S complied with the provisions to continue to operate as a de facto not-for-profit organization.

Based on all of the above, it requested that the CRIM be ordered to desist from retroactively collecting taxes against its real property; and, as a result, urged that the CRIM be ordered to collect said taxes in a prospective manner, following the parameters of the agreement signed between the Department of the Treasury and Triple S. On July 6, 2007 the CRIM presented a "Motion in Opposition to the Motion for Summary Judgment and Petition for Summary Judgment" in its favor. In the motion, it argued in synthesis that the granting of the tax exemption to Triple S was the result of *ultra vires* and null actions; and, therefore it was responsible for the payment of taxes for its real property during the years of 1991 to 2002.

The CRIM indicated that it was not necessary to address the issue of retroactivity since the tax levy was issued as a consequence of the nullity of the granted exemption. It indicated that such "exemption had no place within the clear language

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utilized by the legislator, which renders it null and requires the collection of the unpaid taxes".

The CRIM also established that the purpose of the Department of the Treasury's public policy change was to amend the error of having granted an unwarranted tax exemption to Triple S. It indicated that the final agreement signed between the Department of the Treasury and Triple S accomplished the agency's recovery of the funds equivalent to the income taxes not paid of Triple S to said department during the effective period of the administrative rulings. It asserted that, confronted with the nullity of the administrative rulings, the revocation would also have a retroactive effect with regards to the CRIM.

After the presentation of various briefs related to the petitions for summary judgment, on October 29, 2007, and notified the following day, the Court of First Instance issued its judgment in the case. In it, the Court denied the motion for summary judgment regarding the challenge to the levy of real property taxes presented by Triple S; and granted the motion for summary judgment presented by the CRIM. It ordered Triple S to proceed with the payment of the real property taxes owed that had been notified and demanded by the CRIM.

Triple S requested reconsideration, which was denied by the appealed forum. Taking exception, it presented before this Appellate Forum the appeal KLAN0701749.

Procedural History Pertinent to
KLAN200800249

On May 28, 2007, [sic] Triple S presented a complaint to challenge the levy of personal property taxes, civil number KC02006-0014 (603). In the same it alleged that the retroactive revocation of its tax exemption was null, illegal and unconstitutional. On June 26, 2006, the CRIM answered the complaint.

On May 13, 2007, Triple S presented a "Petition for Summary Judgment".⁴ In said motion Triple S argued the same allegations that it raised in case KC02006-0029 (901), detailed above, but this time in reference to the personal property taxes.

On July 6, 2007, the CRIM presented a "Motion in Opposition to Motion for Summary Judgment and Petition for Summary Judgment". As did Triple S, the CRIM re-argued the same allegations it had presented in its opposition to request for summary judgment in case KC02006-0029 (901), mentioned above.

It was at this point that the Court of First Instance issued its judgment on December 5, 2007, and notified on January 22, 2008. In its judgment, it denied the motion for summary judgment to challenge the personal property tax levy presented by Triple S, based on the reasoning that the

⁴ This motion is identical to the "Motion for Summary Judgment" presented by the Triple S in the case KCO2006-0029 (901).

administrative determinations leading to the grant of the tax exemption to this corporation were *ultra vires* and null. As a result, it granted the motion for summary judgment presented by the CRIM, and ordered Triple S to proceed with the payment of the taxes owed against its personal property during the years 1991 to 2002.

Triple S requested reconsideration, which was summarily denied. Taking exception, it presented before this Appellate Forum the appeal KLAN200800249.

II.

In the appeal KLAN200701749, Triple S indicates that the Court of First Instance committed the following errors when issuing its holding:

The Honorable Court of First Instance erred when it issued summary judgment in favor of the CRIM even though in the complaint the appellants raised various controversies that have not been adjudicated.

The Honorable Court erred when it resolved that the administrative determination issued to the appellants by the Department of the Treasury is in conflict with Art. 5.01 of Act No. 80 of August 30, 1991 and that, therefore, the appellants were not entitled to the exemption for real property taxes.

The Honorable Court of First Instance erred by not giving deference to a

reasonable administrative interpretation, which was neither capricious nor arbitrary.

The Honorable Court of First Instance erred by not resolving that the revocation of the tax exemption over real property should have had prospective effect in conformity with the doctrine of Avon Products, Inc. v. Secretario del Trabaio, 105 D.P.R. 803 (1977).

The Honorable Court of First Instance erred by not applying the doctrine of the mistake in law to the facts of the case at bar.

The Honorable Court of First Instance erred by resolving that the notifications of real property tax do not violate the Due Process Clause.

The Honorable Court of First Instance erred by not resolving that retroactive revocation is an impairment of contractual obligations.

The Honorable Court of First Instance erred by resolving that the CRIM could repeal the policy of prospective revocation of exemptions and, as a result, collect the amounts in which the appellants benefited from the exemption retroactively.

The Honorable Court of First Instance erred by not allowing a brief period for discovery related to the issue of time

bar.

Moreover, in the appeal KLAN200800249 Triple S points to the commission of the following errors:

The Honorable Court of First Instance erred by resolving that the action to collect the personal property taxes for the years 1991-2000 is not fatally time barred.

The Honorable Court erred when it resolved that the administrative determination issued to the appellants by the Department of the Treasury and confirmed by the CRIM is in conflict with Art. 5.01 of Act No. 80 of August 30, 1991 and that, therefore, the appellants were not entitled to the exemption for personal property taxes.

The Honorable Court of First Instance erred by not giving judicial deference to a reasonable administrative interpretation, which was neither capricious nor arbitrary.

The Honorable Court of First Instance erred by confusing a change in public policy with a null decision.

The Honorable Court of First Instance erred by resolving that the CRIM could strike the policy of prospective revocation of exemptions and, as a result, collect the amount by which the appellants benefited from the tax exemption.

The Honorable Court of First Instance erred by not resolving that the revocation of the tax exemption over personal property should have had a prospective effect in conformity with the doctrine of Avon Products, Inc. v. Secretario del Trabajo, 105 D.P.R. 803 (1977), and the public policy of the Department of the Treasury, which was inherited by the CRIM.

The Honorable Court of First Instance erred by not applying by analogy the doctrine of mistake in law and the doctrine of Cartagena de Jesus v. E.L.A., 116 D.P.R. 254 (1985).

The Honorable Court of First Instance erred by resolving that the notifications of personal property tax do not violate the Due Process Clause.

The Honorable Court of First Instance erred by not resolving that the retroactive, revocation is an impairment of contractual obligations.

The Honorable Court of First Instance erred by not recognizing the protections that our legal system grants to the good faith actions of the appellants.

III.

Now we shall discuss below the norms that in our opinion are applicable to the issues raised by the parties.

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It is a recognized norm that the statutes which impose the payment of taxes have to be interpreted restrictively. BBC Realty v. Secretario, 166 D.P.R. ___ (2005), 2005 T.S.P.R. 186, 2005 T.S.P.R. 191.

There are three cardinal principles in the interpretation of the tax statutes: (1) when the language is clear and unequivocal, the text of the law is the expression par excellence of the legislative intention; (2) it is not presumed that the legislature engages in acts of futility; and, (3) the tax legislation is not interpreted in an expansive way, rather it should be interpreted in a fair manner and pursuant to its own express terms. Id.

The authority to impose taxes is an essential attribute of the sovereignty of the State and its exercise is a function properly belonging to the government. Municipio v. Professional, 171 D.P.R. ___ 2007, 2007 T.S.P.R. 95, 2007 J.T.S. 101; Burlintong Air Exp. Inc. v. Mun. Carolina, 154 D.P.R. 588, 197 (2001).

When passing judgment over the power of the State to levy and collect taxes, our Supreme Court has pronounced that "[t]he collection of taxes by the State is not unrestricted. Said power is subject to minimum proceedings of 'due process of law' for the actionability and validity of the debt, and to the descriptive terms provided in the different statutes". Diaz v. Secretario de Hacienda, 168 D.P.R. ___ (2006), 2006 T.S.P.R. 85, 2006 J.T.S. 94; Municipio v. Professional, supra. These restrictions on the power to levy and collect taxes are intended to prevent the State from exercising their authority arbitrarily and to confer to the taxpayer certain

procedural guarantees within the process of levying and collecting a tax debt.

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Act No. 80 of August 30, 1991, as amended, known as the "Municipal Revenue Collection Center Act", 21 L.P.R.A. sec 5801 *et seq.*, created the CRIM as a "municipal entity" independent and separate from any other agency or instrumentality of the state, with the ultimate purpose of granting municipalities more control over the revenue from property taxes and in this way preventing the central government from unduly controlling the fiscal process of the municipalities.

Pursuant to Act No. 80, supra, the legislature yielded to the municipalities the totality of control over personal and real property tax. The CRIM was established solely "with the purpose that — in representation of the municipalities under its control — it assumes the responsibilities related to property tax that previously were performed by the Central Government". See Statement of Purpose of Act No. 80, supra; C.R.I.M. v. Fed. Central Trabajadores, 142 D.P.R. 968, 974 (1997).

The CRIM is in charge of fiscal services, and its primary responsibility is "to collect, receive and distribute the public funds" that correspond to the municipalities. 21 L.P.R.A. sec. 5802. In fact, Act No. 80, supra, transferred to it "all of the powers, functions, and obligations conferred by law or regulation to the Department of the Treasury with regards to the appraisal, the notification of levy, the determination and collection of property tax."

C.R.I.M. v. Fed. Central Trabajadores, supra, pp. 974-975.

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On August 30, 1991, Act No. 83, supra, was also approved. The purpose of the same was to transfer to the CRIM the powers, faculties, and functions that up until then had been possessed by the Department of the Treasury with regards to personal and property tax. Article 3.22 of Act No. 83, 21 L.P.R.A. sec. 5072, provides that:

Whenever the Collection Center becomes aware that any real property subject to taxes has been omitted from the appraisal of the property of any taxpayer, during any fiscal year or years, it shall be its duty to have it appraised immediately for the years that said property has not been appraised, and to add it to the tax list for said years, proceeding to the collection of the corresponding taxes, as well as to the collection of the interest and penalties accrued for not having paid said taxes on time, which it shall do in the same way in which it collects the other taxes prescribed in this part.

With regards to the case at bar, Act No. 83, supra, in Article 5.01, subsections (e) and (g), 21 L.P.R.A. sec. 5151, provides as follows:

The following assets shall be exempt from the payment of all personal and real property taxes:

...

(e) The real and personal property belonging to and registered in the name of any nonprofit corporation, institution, partnership or entity organized under the laws of Puerto Rico dedicated to religious, charitable, scientific, literary, educational, and recreational purposes, among others, as well as commercial leagues, chambers of commerce, civic leagues or organizations, boards of proprietors, tenant associations, employee associations, and any other nonprofit organization in general, whose net properties and utilities do not benefit any shareholder or person in particular...

(g) Real and personal property belonging to every nonprofit association organized under the laws of Puerto Rico for the purpose of selling prepaid programs or plans for medical and hospital services, provided it complies with the requirements of Act No. 142 of May 9, 1942, as amended. In case part of the property should not be occupied by the partnership for its nonprofit ends and purposes, or that part of the property should be leased and making a profit, the part of the property so used shall be subject to the levy and payment of taxes in the manner, within the term, and after compliance with the requirements provided by law. (emphasis ours)

Additionally, Article 7.02 of Act No. 83, supra, states as follows:

The Governing Board of the Collection Center shall prescribe and promulgate the rules

and regulations needed for the compliance, execution and proper interpretation of this part. It shall also prescribe any other regulations that become necessary for reason of any legal change with regard to property taxes. All rules, regulations, norms and directives previously issued by the Secretary of the Treasury to that effect, that are not in conflict with the provisions of this part shall continue in effect until the Governing Board of the Collection Center promulgates said regulations. See 21 L.P.R.A. sec. 5159 [sic: §5252]. (emphasis ours)

For its part, Article 7.03 of the legislation establishes that "[t]he acquired rights of the taxpayers under the prior legislation or any other special laws, will continue in effect so long as they are not in conflict with the provisions of this law".

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Summary judgment is the procedural mechanism through which discretion is conferred on the court to issue a judgment about the totality of a claim or about any controversy included in the same, without the need to have a trial or evidentiary hearing. Rule 36 of the Rules of Civil Procedure, 32 L.P.R.A. Ap. III, R. 36; Nissen v. Genthaller, 172 D.P.R. ___ (2007), 2007 T.S.P.R. 197, 2007 J.T.S. 202. It is a reigning and indispensable criterion for summary judgment that there does not arise from the documents that accompany the petition or that are found in the court's file a legitimate controversy about material and essential facts of the case, therefore all that remains is to apply the law. Nissen v. Genthaller,

supra; Perez Rosado v. El Vocero, 149 D.P.R. 427 (1999).

In Vera v. Bravo, 161 D.P.R. 308(2004), the Supreme Court was emphatic when indicating that summary judgment should not be issued when: (1) there exist contested essential and material facts; (2) it arises from the documents themselves that accompany the motion a real controversy about any essential and material fact; or, (3) it does not proceed as a matter of law. See also Nissen v. Genthaller, supra.

In sum, it is a reiterated norm that this procedural mechanism is a discretionary remedy and that it should be used with restraint. When the court is completely convinced about the absence of controversy with respect to essential and material facts in the case and that the evidentiary hearing is unnecessary, only then should the court issue a summary judgment. Even if no proof is presented that controverts that of the moving party, it does not necessarily mean that summary judgment should be declared. Nissen v. Genthaller, supra; Vera v. Bravo, supra.

Finally, about this topic, the Highest Forum has also held that in the cases in which there does not exist a clear certainty about the essential and material facts of the controversy, summary judgment does not lie. Sucn. Maldonado v. Sucn Maldonado, 166 D.P.R. ____ (2005), 2005 T.S.P.R. 166, 2005 J.T.S. 172. Were this not the case; the unrestricted use of the summary judgment mechanism would violate due process. Because summary judgment is an extraordinary remedy and its concession is left to the discretion of the

court, "wise discernment is the reigning principle for its use because, wrongly used, it could lend itself to strip a litigant of its day in court, an elementary principle of due process of law". Nissen v. Genthaller, supra; E.L.A. v. Cole, 164 D.P.R. ____ (2005), 2005 T.S.P.R. 46, 2005 J.T.S. 55.

We shall now analyze the errors raised by the appellants in the appeals before us and to confront them with the applicable law, as discussed above.

In the brief of KLAN0701749, Triple S indicated that the Court of First Instance committed multiple errors when issuing its judgment. In sum, the allegations of Triple S are the following:

1. The Court of First Instance should have issued summary judgment in its favor, since the CRIM's claim was time barred; and, to those effects, it should have allowed it to conduct discovery.
2. The Court of First Instance committed an error of law by resolving the case at bar pursuant to an erroneous interpretation of the applicable norms.

With regards to this aspect, Triple S argued that the statute that the Department of the Treasury utilized in order to grant it the tax exemption against personal property was Article 291(t) of the Political Code, supra, today substituted by Article 5.01 of Act No. 83, supra. It indicated that these two provisions cover specifically "associations with no pecuniary purposes which sell pre-paid medical services plans" -distinguishing them from what is a for-

profit corporation.⁵ It indicates, also, that the legislative history of Article 291(t), supra, "clearly reflects that this exemption for property tax was created to cover Triple S and other similar entities." It maintains that the appealed forum gave greater weight than it deserved to the opinion of the Secretary of Justice⁶, as well as to the findings of the legislative investigations that were conducted.⁷

⁵ As part of its argument Triple S indicated that the CRIM never contested the fact that it functioned in practice as an association with no pecuniary purposes with documents admissible in evidence. See Appellate Brief, KLRA200701749, p. 15.

⁶ Through Opinion 03-09B of July 30, 2003, then-Secretary of Justice, Hon. Anabelle Rodríguez, addressed an opinion requested by then-Secretary of the Department of the Treasury, Juan A. Flores Galarza, about a controversy which arose regarding the final agreement signed by said department and Triple S. In synthesis, the Secretary of Justice concluded that the assets of Triple S were of a private nature for which the Department of the Treasury could impute on it the dividend as payment for income taxes. It indicated that the incorporation of Triple S was done as a for-profit corporate entity and that its retained earnings were always available for the distribution of dividends. It indicated, also, that the administrative determinations of the Secretary of the Treasury do not amend the articles of incorporation subscribed by juridical entities; these are amendable only by the formal procedures established in the corporate act.

⁷ The Commission on Governmental Integrity and the Commission on Health and Environmental Affairs of the Senate of Puerto Rico, as well as the Commission on Banking, Insurance and Financial Affairs of the House of Representatives conducted investigations about the tax exemption granted to Triple S by the Department of the

(Continued...)

Treasury. See Appendix of the Appeal KLAN200701749, pp. 103-111 and 124-156.

As part of the Conclusions and Recommendations of the Final Report of the Senate investigation, R. of the S. 2096, it was concluded that:

...

2. **There does not exist a legal system which allows for a for-profit entity to be treated as one that is not-for-profit. Only the decisions of the Department of the Treasury in 1976, 1979 and 1998 allowed this privilege to the insurer that always was and has been a company with lucrative purposes. No for-profit health insurer in the country enjoys tax exemption under Section 1001(6) of the Internal Revenue Code. . .**

3. **... "Triple S has accumulated earnings of approximately \$132,000,000.00 from 1976 to 2002, that is to say since it has enjoyed the tax exemption, and for this year 2003, the company estimates that its earnings will be \$40,000,999.00 for a total of accumulated earnings of \$172,000,000.00, up until the end of this tax year. If the Department of the Treasury accepts the recommendation to end the tax exemption the recovery of those earnings could proceed. In such case, Triple S would pay all taxes that it did not pay while enjoying the same, as if it had not benefited from the tax exemption and subject to the application of the highest tax bracket allowed by law which is 39%.**

...

5. **The Office of the Insurance Commissioner believes that compliance with this tax obligation does not put the company at economic risk. . .**

...

(Continued...)

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7. **The Commission on Governmental Integrity recommends, that Triple S stop receiving the benefit of tax exemption and that it pay all of the taxes that should have been paid. There exists consensus between the Department of the Treasury, Department of Justice and the Office of the Insurance Commissioner that this is a fair and correct course of action.**

For its part in the Final Report of the House of Representatives, R. of the C. 4490, of August 1, 2003, as part of the Conclusions and Recommendations, it was established that:

1. **It is not justified that Triple S receive this benefit of being exempt from taxes as a not-for-profit company while being organized for profit and without the existence of any legal system that allows it.**
2. **No for-profit health insurer in the country enjoys tax exemption under Section 1101(6) of the Internal Revenue Code.**
3. ...
- 4.
5. **Triple S has accumulated earnings of approximately \$132,000,000.00 from 1976 to 2002, that is to say since it has enjoyed the tax exemption, and for this tax year 2003, the company estimates that its earnings will be \$40,000,999.00 for a total of accumulated earnings of \$172,000,000.00, up until the end of this tax year.**
- ...
9. **The Secretary of Justice, Hon. Anabelle Rodriguez, has issued a legal opinion in which she concludes that the Secretary of the Treasury can require the payment of said tax, since the retained earnings accumulated by Triple S while it had tax exemption are private assets of Triple S**

(Continued...)

3. The appealed forum was obligated to give deference to the administrative determinations of the Department of the Treasury, and of the CRIM, to grant a tax exemption to a corporation that was functioning as an “association with no pecuniary purposes.” It indicates that, in conformity with what was resolved in Avon Products Inc. v. Srio. del Trabajo, supra, “even though an agency can revoke an administrative determination to a person, the revocation can only have prospective effect when the person has relied on the determination in the exercise of its business.”
4. The CRIM affected its property right in an arbitrary, unreasonable and capricious manner. Triple S indicates that the tax levy that was imposed on it by the CRIM: (1) is unconstitutional, for having been notified 15 years later; (2) it has the effect of committing a great injustice against it in the tax area; and, (3) it affects the rights that it had acquired through the affirmative and irrevocable actions of the

and are not charitable or public assets and, as a result, Triple S could validly declare a dividend to Triple S Management against said retained earnings.

10. The Commission reiterates its recommendation, that Triple S discontinue receiving the tax exemption benefit and pay all the taxes that should have been paid.

Department of the Treasury as well as of the CRIM. Triple S also indicates that it never could have foreseen that the amounts which were exonerated from tax would be collected retroactively, and that, pursuant to what is established in Circular Letter 86-3⁸ of the Department of

⁸ In what is pertinent to this appeal, the Circular Letter 86-3 issued by the Department of the Treasury on April 21, 1986 provides the following:

It is the practice of the Puerto Rico Department of the Treasury (hereinafter, the "Department") to answer inquiries of taxpayers and other interested parties, whenever appropriate in the interest of sound tax administration, as to the tax effects of their acts or transactions. This Circular Letter establishes the general procedure to be followed for the issuance of formal responses to those inquiries.

Rulings and Administrative Determination Letters

A ruling or written statement interpreting and applying the tax laws to a specific set of facts will be issued to a taxpayer or his authorized representative. If the issue covered by the ruling is understood by the Department to be of general interest, the ruling will be also issued as an administrative letter for public release.

Rulings and administrative determination letters are official interpretations by the Department as to the application of the tax laws on the acts or transactions represented by the taxpayer. They are issued only by the Secretary or by the person upon whom he may delegate.

...

A ruling issued by this Department will generally be binding on the Department as long as the
(Continued...)

representations upon which the ruling was based reflect an accurate statement of the material facts with respect thereto and the transaction was carried out as proposed.

A taxpayer may not rely on a ruling issued to another taxpayer.

A ruling or administrative determination found either to have been issued in error or not in accord with the current views or policies of the Department may be modified or revoked. Modification or revocation may be effected by a notice to the taxpayer to whom the ruling was issued or by publication of an administrative determination, circular letter or other publicized form. **Except in rare or unusual circumstances, the revocation or modification of a ruling or administrative determination will not be applied retroactively** with respect to the taxpayer to whom the ruling was originally issued or to an interested party whose tax liability was directly involved in that ruling, or to the taxpayer who can demonstrate that the transaction entered into was done upon reliance of the administrative determination, if:

1. The ruling or administrative determination was originally issued with respect to the transaction undertaken;
2. The facts of the transaction are not materially different from the facts on which the rulings or administrative determination was based;
3. There has been no change in the applicable law.
4. The taxpayer acted in good faith in reliance upon the ruling or administrative determination and the retroactive revocation or modification would be to his detriment.

In the event of a change in applicable law or regulations, if the above other three conditions are

(Continued...)

the Treasury, the revocations had to be made prospectively.

5. The retroactive revocation of the exemption by the CRIM should be considered an impairment of contractual obligations between it and the Department of the Treasury. It also indicates that the action of the Court of First Instance of validating the revocation of the CRIM constitutes a clear abuse of discretion.

For its part the CRIM replied to all the allegations of Triple S. In synthesis it indicated that:

1. During the course of the action both parties engaged in extensive discovery, which included interrogatories, requests for admissions and depositions, so that the petition of Triple S to have additional discovery about the issue of time bar was not justified.

The CRIM indicated that, in conformity with Article 3.22 of Act No. 83, supra, it has the duty to appraise and collect the corresponding taxes for a property that has been omitted from appraisal of the property of any taxpayer, like in the case of Triple S.

2. The entities" that are not organized for profit" under Section 1101(6), supra, and those "organized without profit-making purposes under the laws of Puerto Rico" from Article 5.01 of Act No. 83, supra,

met, the revocation will be applicable from the date that the change takes place.

refer to the same. It indicates that under the laws of Puerto Rico it is an indispensable requirement that an entity be organized as a not-for-profit in order to enjoy the tax benefit offered by Article 5.01 of Act No. 83, supra, previously Article 291(t) of the Political Code, supra,

3. The administrative determination of the Department of the Treasury to grant tax exemption for the property of Triple S is null because it is contrary to the clear and unequivocal language of the law. The benefit of the tax exemption was designed for the "exclusive use of entities that have been organized without lucrative purposes, or what is the same thing, with non-pecuniary purposes."
4. With regards to the application of Avon Products v. Srio. de Trabajo, supra, the CRIM maintains that there is a substantial difference between that case and the facts of the case at bar. It indicates that the cited case refers to an administrative determination based on a statute that had been the victim of an interpretative transformation by the courts during a course of years. In contrast, it indicates that the statute used by the Department of the Treasury to grant property tax exemption to Triple S is of exclusive application to not-for-profit entities.

The CRIM also argues that in Avon Products v. Srio. del Trabajo, supra, the judgment of the

Supreme Court of Puerto Rico about the prospective effect of its interpretation of the law there in controversy,⁹ was specific to the provisions of said law. It indicates that the limited expressions of the High Forum in that case cannot be considered to have general application to all other fiscal laws.

5. With regards to the alleged violation of due process of law, the CRIM indicates that Triple S had available to it an administrative forum as well as, now, the judicial forum to challenge its determination. With regards to the violation of the protection of contractual obligations, the CRIM maintains that "*an ultra vires* administrative act lacks any basis upon which to claim a constitutional protection." An error incurred by an administrative organism does not create any right, nor does it obligate it, nor impede its correction. Del Rey v. J.A.C.L., 107 D.P.R. 348 (1978).
6. Lastly, the CRIM indicates that the doctrine of undue collection does not apply to the present case, because in this case Triple S has not made any payment, an indispensable requirement for the application of the referred doctrine.

With regards to appeal KLAN200800249, in general terms, Triple S raises the same arguments

⁹ The Security in Employment Act of Puerto Rico, 29 L.P.R.A. sec. 702(K), (5) (A) (B) (C).

as those presented in appeal KLAN200701749, discussed above.

Of this second appeal KLAN200800249 -which concerns the challenge of the personal property tax levy- it only remains to underscore the aspect of the prescription issue raised by Triple S. In its brief, the insurer states that in conformity with what is established in Article 6.18 of Act No. 83, 21 L.P.R.A. sec. 5218, the taxes over personal property were fatally time barred.

Having summarized the allegations of the parties, and since the arguments they presented in the appeals of caption are similar, we resolve the same in a joint manner.

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We should begin by underscoring the legal provisions under which the Department of the Treasury as well as the CRIM granted Triple S tax exemptions over personal and real property. Let's see.

Section 101(8) of the Income Tax Act of 1954, supra, under which the Department of the Treasury granted to Triple S in 1976 the tax exemption over property, provided as follows:

The following organizations shall be exempt from taxation under this part-

...

(8) Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare, or local associations of employees whose membership is limited

to the employees of a designated person or persons in a particular municipality, and the net earnings of which are devoted exclusively to charitable, educational or recreational purposes.¹⁰ (emphasis ours)

Article 291(t) of the Political Code of Puerto Rico, supra, under which the Department of the Treasury ratified the tax exemption granted to Triple S, established the following:

Real and personal property belonging to every nonprofit association organized under the laws of Puerto Rico for the purpose of selling prepaid programs or plans for medical and hospital services, provided it complies with the requirements of secs. 41 to 55 of Title 6; In case part of the property should not be occupied by the partnership for its nonprofit ends and purposes, or that part of the property should be leased and making a profit, whether to the lessor or lessee, the part of the property so used shall be subject to the levy and payment of taxes in the manner, within the term and after compliance with the requirements provided by law. (emphasis ours)

Section 1101(6) of the Internal Revenue Code of 1994, supra, under which the Department of

¹⁰ This provision is currently codified in Section 1101(6) of the Internal Revenue Code of 1994.

the Treasury ratified the tax exemption granted to Triple S in 1998, provided the following:

Except as provided in Subchapter 0, the following organizations shall be exempt from taxation under this Part:

(6) Civic leagues or organizations not organized for profit but operated exclusively promotion of social welfare, or local associations of employees, the membership of which is limited to the employees of a designated person or persons in a particular municipality, and the net earnings of which are devoted exclusively to charitable, educational or recreational purposes.

These provisions establish as a fundamental requirement for the concession of tax exemption to organizations that **they not be organized for profit**. We do not have the slightest doubt that Triple S did not comply with said requirement. Triple S was incorporated in 1959 -then as Seguros de Salud de Puerto Rico, Inc.- as a for-profit corporation and insurer under the provisions of Act No. 3, supra.

Notwithstanding, in 1976 the Department of the Treasury, through an administrative determination, granted Triple S a tax exemption, which was reiterated in the years 1987 and 1998. In this last year, the tax exemption was also ratified by the CRIM.

However, beginning in 2003, the Department of the Treasury notified Triple S of its intention to discontinue the mentioned administrative

determination. The CRIM did the same through a notification sent to Triple S on February 1, 2006, and followed with the retroactive recovery of the debt.

First of all, we should point out that in conformity with what is established in Article 7.03 of Act No. 83, supra, the CRIM was obligated to observe the effectiveness of all the norms, regulations, and directives issued by the Secretary of the Treasury, so long as they are not in conflict with its enabling act. This suggests that should there be a provision in Act No. 83, supra, to which said rule, regulation, norm or directive issued in the past by the Department of the Treasury is contrary, the CRIM could revoke it and would not be obligated to accept it — which is what occurs in the present case.

After analyzing the previously cited legal provisions, pursuant to which the Department of the Treasury granted the tax exemption to Triple S, it must be concluded that the same are in conflict with Act No. 83, supra. Let us see.

Article 5.01, in its subsections (e) and (g), of Act No. 83, supra, provides expressly that the benefit of tax exemption is exclusively for entities incorporated as not-for-profits. This was also established in the same manner by Section 1101(8) of the Income Tax Act of 1954, supra; by Article 291(t) of the Political Code, supra; and, by Section 1101(6) of the Internal Revenue Code of 1994, supra.

There is no doubt that the provisions pursuant to which Triple S was granted the tax exemptions from 1976 to 2003 did not allow the concession of

such benefits to for-profit entities. Therefore, it must be concluded that the tax exemption granted to Triple S by the Department of the Treasury is in clear conflict with what is provided in the cited provisions, and the CRIM was not obligated, as Triple S claims, to give deference to the same.

Faced with this situation, the CRIM could revoke the emitted administrative determination for being in conflict with the provisions of Act No. 83, supra.

We also underscore the conclusions of the Opinion issued by the Secretary of Justice in 2003¹¹ as well as those of the legislative investigations. In both instances it was concluded, in synthesis, that there was no juridical provision which allowed a for-profit entity to be considered as one that is not-for-profit. Specifically, the then-Secretary of Justice indicated that the determinations issued by the Secretary of the Treasury do not have the effect of amending the articles of incorporation signed by

¹¹ Even though the opinions of the Secretary of Justice do not obligate the courts in any way and, therefore, we are at liberty to take the decision which lies as a matter of law, the truth is that if they propose a correct and reasonable interpretation of the question in controversy, there is no reason to reject tje,. In fact, the Supreme Court with some frequency makes use of the persuasive value of the Opinions of the Secretary of Justice to adjudicated cases and controversies. P.P.D. v. Gobernador I, 139 D.P.R. 643, 687 n. 23 (1995); Col. Int'I SEK P.R., Inc. v. Escriba, 135 D.P.R. 647, 663 n. 19 (1994); Alcalde de San Juan v. Asamblea Municipal, 132 D.P.R. 820, 827 (1993); Aut. de Puertos v. Mun. de San Juan, 123 D.P.R. 492,,10 n. 6 (1989).

juridical entities, since they could only be amended by the formal procedures established in the Corporate Act.¹²

Since the administrative determinations issued by the Department of the Treasury were null, the CRIM could validly revoke the same and demand the payment of the taxes not paid by Triple S. Incidentally, the Department of the Treasury agreed with Triple S on a global payment of \$37,000,000 attributable to the periods of effectiveness of the exemption, which, evidently signified the recovery of the income tax that the insurer did not pay when benefiting from the exemption granted to those effects.

Our Highest Forum established in the case of Franco v. Municipio de Cidra, 113 D.P.R. 260, 262 (1982), that it cannot ratify the theory that [administrative] inaction or illegality could be the source of recognizing rights where there are not any if they are born from a violation of the law. After all, *ultra vires* acts by public officials do not create rights, do not obligate the administrative organism, nor do they impede it from effectuating a correction. *Id.*; Del Rey v. JAACL, 107 D.P.R. 348, 355 (1978). See also Camacho v. AAFET, 168 D.P.R. ____ (2006), 2006 T.S.P.R. 88, 2006 J.T.S. 97; Gonzalez v. E.L.A., 167 D.P.R. ____ (2006), 2006 T.S.P.R. 44, 2006 J.T.S. 53.

Certainly from the conducted analysis it follows in a crystalline manner that the

¹² The Corporate Act applicable to the facts of this case was the repealed Act No. 3, supra.

Department of the Treasury acted in an illegal manner by granting Triple S, a corporation organized with lucrative purposes, a tax exemption over its personal as well as over its real property. Said action was an *ultra vires* one, for which it did not generate any right, does not obligate the CRIM, nor does it impede it from effectuating its correction.

Having said the above, we conclude that the appealed forum did not commit an error in law when issuing its judgment. Triple S is not correct in arguing that the norms of law applied to the case by the Court of First Instance were not the correct ones.

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Additionally, since the CRIM is not obligated to honor the administrative determinations of the Department of the Treasury which are contrary to the clear language of the law, it follows that the revocation of the same has a retroactive effect.

The norm established in the case of Avon Products, Inc. v. Srio. del Trabaio, supra, does not apply to the present case, since, as the CRIM argues in its briefs, the action of the Department of the Treasury is null and did not confer any right to Triple S. As we have established previously, the statutes that impose the payment of taxes have to be interpreted restrictively. See BBC Realty v. Secretario, supra.

In conformity with the above mentioned norm, and pursuant to what is established in Article 3.22 of Act No. 83, supra, when the CRIM has knowledge that any property has been omitted

from the appraisal of a taxpayer, "it shall be its duty to cause to be appraised immediately for the years during which said property has not been appraised and add it to the list of taxes for said years, proceeding to the collection of the taxes that correspond to it." Faced with the clarity and lack of ambiguity of this provision, it does not follow to apply to the present case what is established in Avon Products v. Srio. del Trabajo, supra, nor the norm against retroactivity established in Circular Letter 86-3, previously cited.

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We should also analyze the aspect of the time bar for the collection of taxes against personal property as argued by Triple S. The insurer argues that, in conformity with what is established in Article 6.18 of Act No. 83, 21 L.P.R.A. sec. 5218, the taxes over personal property are fatally time barred. They are not correct.

The above-mentioned Article 6.18, supra, establishes in pertinent part, that the CRIM "will have a term of four (4) years to conduct a review of the personal property tax form, the appraisal of the properties, the calculation of the tax made by the taxpayer and to determine the correct contribution to be paid, counted from the day the taxpayer filed their form...." This provision refers to the review process of the tax forms, totally inapplicable to the case at bar, in which the taxpayer is notified about the deficiencies of the same.

As the CRIM alleges, the controversy in the present case involves the collection of taxes that were considered exempt in violation of what is

established in the law. During the years of 1991 to 2002, the personal property tax forms of Triple S were filed as exempt from the payment of taxes by virtue of the *ultra vires* administrative determinations of the Department of the Treasury. In the present case, a revision of the computation or valuation of the filed tax forms was not conducted; rather it was demanded from Triple S the payment for the same based on the determination that the action of the Department of the Treasury was a nullity.

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Lastly, in the present cases under our consideration, it followed that a summary judgment be issued, since from the documents that accompany the petitions presented there did not raise any legitimate controversy of material and essential facts, leaving only the application of the law, which the appealed forum did correctly. See Nissen v. Genthaller, supra; Perez Rosado v. El Vocero, supra. It follows that the appealed judgments be confirmed.

For the aforementioned reasons, the appealed judgments are confirmed.

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So held and the Court orders, and the Clerk of the Appeals Court certifies.

[ink stamp:

(signature)

MRS. MILDRED IVONNE RODRIGUEZ RIVERA
Deputy Clerk of the Court of Appeals]

Mariá Elena Pérez Ortiz
Clerk of the Court Appeals

