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Sprint Communications Co., L.P. v. City of New York Dept. of Finance

Supreme Court, Appellate Division, First Department, New York - June 27, 2017 - N.Y.S.3d - 152 A.D.3d 184 - 2017 WL 2743348 - 2017 N.Y. Slip Op. 05194

Telecommunications service provider commenced action against municipality's department of finance, seeking declaratory judgment that it was subject to supervision of New York State Department of Public Service and therefore was liable for municipal utility tax and not municipal unincorporated business income tax.

The Supreme Court, New York County, granted municipality's motion for summary judgment declaring that provider was not utility within meaning of municipal utility tax code and therefore was liable for both utility tax and unincorporated business income tax. Provider appealed.

The Supreme Court, Appellate Division, held that:

- Provider, an unincorporated business, had burden of proving that it was entitled to statutory exemption, and
- Provider was not "utility" exempt from municipality's unincorporated business income tax.

Telecommunications service provider, an unincorporated business, had burden of proving that it was entitled to statutory exemption, in its action seeking declaratory judgment that it was subject to supervision of New York State Department of Public Service and therefore was liable for municipal utility tax and not municipal unincorporated business income tax.

Telecommunications service provider was not "utility" exempt from municipality's unincorporated business income tax; provider was competitive entity that did not enjoy monopoly status and light regulation by public services commission (PSC) to which it was subject did not rise to level of supervision necessary to classify it as utility.