

Bond Case Briefs

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MSK Realty Interests, LLC v. Department of Finance of City of New York

Supreme Court, Appellate Division, First Department, New York - March 7, 2019 - N.Y.S.3d - 2019 WL 1064041 - 2019 N.Y. Slip Op. 01662

Taxpayer, a limited liability company (LLC) that owned a condominium in New York City, brought article 78 proceeding to annul rules of the Department of Finance of City of New York which retroactively eliminated eligibility for a tax abatement for corporate and other non-individual owners of condominiums and cooperative apartments.

The Supreme Court, New York County, denied the petition, and taxpayer appealed.

The Supreme Court, Appellate Division, held that:

- Department's determination that the term "primary residence" in statute granting a partial tax abatement for cooperatives of condominiums referred to the dwelling place of individuals and did not apply to corporations, LLC partnerships or other entities was not arbitrary or capricious, and
- Department did not violate taxpayer's due process rights when it restored erroneously abated taxes for four years.

Determination by the New York City Department of Finance that the term "primary residence" in statute granting a partial tax abatement for cooperatives or condominiums referred to the dwelling place of individuals and did not apply to corporations, limited liability company (LLC) partnerships or other entities was not arbitrary or capricious; determination was consistent with dictionary definitions and common usage of the term, and was also consistent with legislative history.

New York City Department of Finance did not violate due process rights of taxpayer, a limited liability company (LLC) that owned a condominium in city, when it restored erroneously abated taxes for four years after determining that the statute granting a partial tax abatement for cooperatives or condominiums did not apply to units owned by LLCs; statute's primary residency requirement was made retroactive, and the retroactivity provided for in the statute was not excessive.