The Virgin Islands Consortium

Third Circuit Court of Appeals Rules Occupancy Tax Collected From Timeshare Owners by V.I. Gov't is Constitutional

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The V.I. Department of Justice announced Monday the Third Circuit Court of Appeals ruled that the V.I. government's collection of an occupancy tax on timeshare units is constitutional.

According to the V.I. D.O.J., after the passage of the Virgin Islands Revenue Enhancement and Economic Recovery Act of 2017, several timeshare owners, American Resort Development Association – Resort Owners' Coalition and Great Bay Condominium Owner's Association, Inc., filed lawsuits in the District Court of the Virgin

Islands challenging the $25 per day occupancy fee imposed on owners of timeshare units in the Virgin Islands under the Act. The Act allocates the revenues from the timeshare tax to the Virgin Islands Tourism Advertising Revolving Fund, the General Fund, and, for a period of time, to the VIESA Contingency Reserve Account.

The timeshare plaintiffs challenged that statute primarily on the basis that it is unconstitutional, claiming that it violates that Equal Protection Clause, the Privileges and Immunities Clause, and the Commerce Clause, and constitutes a Fifth Amendment taking, according to D.O.J.

On April 8, 2020, the District Court ruled in favor of the government and rejected the timeshare plaintiffs' argument that the timeshare tax is constitutional. The timeshare plaintiffs appealed the District Court's decision to the Third Circuit Court of Appeals. On Monday, the Third Circuit affirmed the District Court's decision and held that the timeshare tax does not discriminate against interstate commerce. It found that the "Territory taxes resident and non-resident taxpayers at equal rates" and "apportions its tax based on consumption," said the V.I. Dept. of Justice.

According to the D.O.J., the Third Circuit explained that it is not "inherently discriminatory" for the territory to shift its tax burden to non-resident consumers. The Third Circuit further held that the timeshare tax was designed to capture consumption spending by nonresidents.

With the Third Circuit's decision upholding the constitutionality of the timeshare tax, the government can continue to collect these revenues which can be used to advertise and promote tourism in the Virgin Islands and meet some of the government's financial obligations, the V.I. D.O.J. said.

To date, the government has collected approximately $14 million in timeshare tax, according to D.O.J.

"I consider this to be a great victory for the Virgin Islands," said V.I. Attorney General Denise George. "Although the collection of the timeshare taxes were challenged as being unconstitutional, this decision from the 3rd Circuit confirms once and for all that the collection of these taxes is in fact constitutional and collections can continue without challenge. It is a great financial benefit for the people of the Virgin Islands."