

Administrative:

New York Appellate Court Says Retroactive Application of Surcharge Violates Due Process

Case No. CV-23-0150, N.Y. App. Div. (5/23/24). In a case challenging New York's imposition of an excise tax surcharge imposed on pharmaceutical companies pursuant to the Opioid Stewardship Act (OSA) enacted in April 2018, the New York Supreme Court, Appellate Division (Court), held that while certain "pass-through" provisions in the OSA were determined to be invalid in a separate case, such invalid provisions were severable and the remaining OSA provisions were validly imposed in 2018; however, retroactive surcharge assessments for 2017 violated the taxpayer's due process rights. In doing so, the Court explained that the taxpayers had no forewarning for 2017 on the "15½-month period of retroactivity" and had no opportunity to "alter their behavior in anticipation of the [new law]." The Court explained that, in contrast, for 2018, the taxpayers were aware of the impending law change for most of the year. In this respect, the Court concluded that the OSA excise tax surcharge was valid for 2018 but invalid for 2017. Please contact us with any questions.

URL: <https://decisions.courts.state.ny.us/ad3/Decisions/2024/CV-23-0150.pdf>

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