

Press Release

Akerman Achieves Victory for VAS Holdings & Investments, LLC in Multi-Million-Dollar Capital Gains Tax Lawsuit

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Top 100 U.S. law firm Akerman LLP secured a Massachusetts Supreme Judicial Court ruling on behalf of a Florida company, VAS Holdings & Investments, LLC (VASHI), reversing a lower court finding that the company owed millions of dollars in taxes to the state. The Court agreed with Akerman and the client that Massachusetts had no statutory authority to tax out-of-state gains, as the state's legislature had never extended such a power to its Department of Revenue.

VASHI is a Florida limited liability company taxed as an S corporation that in 2011 was established in Illinois. Through a business combination in 2011, VASHI acquired a 50 percent membership interest in Massachusetts-based entity Cloud5, LLC (Cloud5). Cloud5 owned a Massachusetts-based subsidiary, Thing5, LLC (Thing5), that grew more profitable after the 2011 combination. In 2013, VASHI sold its interest in Cloud5 in a \$37 million transaction, generating a large capital gain.

The argument at the center of this case was whether Massachusetts had the authority to tax the capital gain. VASHI raised two arguments: First, that Massachusetts lacked the statutory authority to impose the tax. In addition, even if such statutory authority did exist, VASHI contended, the imposition of tax violated the U.S. Constitution.

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After a lengthy discussion of the Constitutional issue, the Massachusetts Supreme Judicial Court agreed with the Commissioner that the U.S. Constitution allows the imposition of tax. However, the Court agreed with VASHI that the Massachusetts legislature had failed to enact a law granting the Commissioner the power to impose such taxes. The Court reversed the ruling of the Massachusetts Appellate Tax Board and abated the tax assessments totaling millions of dollars.

The Akerman team representing VASHI was led by Michael Bowen of the Jacksonville office; he is chair of the firm's state and local tax practice.

About Akerman

Akerman LLP is a top 100 U.S. law firm recognized among the most forward-thinking firms in the industry by Financial Times. Its more than 700 lawyers and business professionals collaborate with the world's most successful enterprises and entrepreneurs to navigate change, seize opportunities, and help drive innovation and growth.

Akerman's Tax Practice Group advises domestic and foreign corporations, partnerships, individuals and nonprofit institutions on a wide range of international, federal and state and local tax issues, tax audits and tax litigation. The group represents clients in complex transactions and creates tax efficient structures and innovative solutions. Akerman also provides tax planning services associated with in-bound and out-bound investments in Latin America and the Caribbean, and serves as counsel to foreign companies and individual investors looking to do business in the United States.