Taxation 1

Case Digest

UNIVERSITY OF SANTO TOMAS
FACULTY OF CIVIL LAW

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PILMICO-MAURI FOODS CORP., PETITIONER, -*versus*-. COMMISSIONER OF INTERNAL REVENUE, RESPONDENT. G.R. No. 175651, THIRD DIVISION, September 14, 2016, REYES, *J.*

To support deductions for business expenses, official receipts and sales invoices must meet the requirements provided for in Section 238 of the 1977 Tax Code.

FACTS:

Petitioner was assessed deficiency income, value-added and withholding tax for the taxable year 1996. In the assessment, petitioner's claim for business deduction on purchases of raw materials was disallowed on the ground that petitioner failed to support sales invoices which are compliant with Section 238 of the 1977 Tax Code, particularly in the name of the purchaser and the date of the transaction. The CTA found that the alterations in the sales invoices gave rise to serious doubts as to their authenticity. Petitioner argues that Section 29 of the 1977 Tax Code is applicable to determine the deductibility of an expense, particularly, (1) the expense must be ordinary and necessary; (2) it must be paid or incurred within the taxable year; and (3) it must be paid or incurred in carrying on a trade or business. Petitioner argues that, prior to the promulgation of the 1997 Tax Code; the law does not require the production of official receipts to prove an expense.

ISSUE:

Whether or not Section 238 of the 1977 Tax Code, particularly the requirements on the information reflected in the receipts and invoices, is applicable to determine business deductibility of expenses? (Yes)

RULING:

The law intends for Section 29 and 238 of the 1977 Tax Code to be read together, and not for one provision to be accorded preference over the other. While official receipts are not the only pieces of evidences which can prove deductible expenses, if presented, they shall be subjected to examination. The petitioner submitted the receipts as evidence of its business deductions. Accordingly, Section 238 of the 1977 Tax Code is applicable to determine if such receipts and invoices may substantiate such claims for deduction.

COMMISSIONER OF INTERNAL REVENUE, PETITIONER, -versus-. NEXT MOBILE, INC. (FORMERLY NEXTEL COMMUNICATIONS PHILS., INC.), RESPONDENT. G.R. No. 212825, THIRD DIVISION, December 07, 2015, VELASCO JR., J.

An assessment notice issued after the three-year prescriptive period is not valid and effective. Exceptions to this rule are provided under Section 222 of the NIRC. Section 222(b) of the NIRC provides that the period to assess and collect taxes may only be extended upon a written agreement between the CIR and the taxpayer executed before the expiration of the three-year period.

The general rule is that when a waiver does not comply with the requisites for its validity specified under RMO No. 20-90 and RDAO 01-05, it is invalid and ineffective to extend the prescriptive period to assess taxes. However, due to its peculiar circumstances, We shall treat this case as an exception to this rule and find the Waivers valid for the reasons discussed below.

First, the parties in this case are in pari delicto or "in equal fault." Second, the Court has repeatedly pronounced that parties must come to court with clean hands. Third, respondent is estopped from questioning the validity of its Waivers. Finally, the Court cannot tolerate this highly suspicious situation. In this case, the taxpayer, on the one hand, after voluntarily executing waivers, insisted on their invalidity by raising the very same defects it caused. On the other hand, the BIR miserably failed to exact from respondent compliance with its rules. The BIR's negligence in the performance of its duties was so gross that it amounted to malice and bad faith. Moreover, the BIR was so lax such that it seemed that it consented to the mistakes in the Waivers. Such a situation is dangerous and open to abuse by unscrupulous taxpayers who intend to escape their responsibility to pay taxes by mere expedient of hiding behind technicalities.

FACTS:

Respondent filed with the BIR its Annual Income Tax Return (ITR) for taxable year ending December 31, 2001. Respondent also filed its Monthly Remittance Returns of Final Income Taxes Withheld, its Monthly Remittance Returns of Expanded Withholding Tax and its Monthly Remittance Return of Income Taxes Withheld on Compensation for year ending December 31, 2001. Later on, respondent received a copy of the Letter of Authority authorizing the Revenue Officer to examine respondent's books of accounts and other accounting records for income and withholding taxes for the period covering January 1, 2001 to December 31, 2001.

Sarmiento, respondent's Director of Finance, subsequently executed several waivers of the statute of limitations to extend the prescriptive period of assessment for taxes due in taxable year ending December 31, 2001 (Waivers). Respondent received a Formal Letter of Demand (FLD) and Assessment Notices/Demand No. 43-734 both dated October 17, 2005 from the BIR, demanding payment of deficiency income tax, FWT, EWT, increments for late remittance of taxes withheld, and compromise penalty for failure to file returns/late filing/late remittance of taxes withheld, in the total amount of P313, 339,610.42 for the taxable year ending December 31, 2001.

Respondent filed its protest against the FLD and requested the reinvestigation of the assessments. On July 28, 2009, respondent received a letter from the BIR denying its protest. Thus, on August 27, 2009, respondent filed a Petition for Review before the CTA docketed as CTA Case No. 7965. The former First Division of the CTA rendered a Decision granting respondent's Petition for Review and declared the FLD dated October 17, 2005 and Assessment Notices/Demand No. 43-734 dated October 17, 2005 cancelled and withdrawn for being issued beyond the three-year prescriptive period provided by law.

The tax court also rejected petitioner's claim that this case falls under the exception as to the three-year prescriptive period for assessment and that the 10-year prescriptive period should apply on the ground of filing a false or fraudulent return. The CTA First Division held that the Waivers executed by Sarmiento did not validly extend the three-year prescriptive period to assess respondent for deficiency income tax, FWT, EWT, increments for late remittance of tax withheld and compromise penalty, for, as found, the Waivers were not properly executed according to the procedure in Revenue Memorandum Order No. 20-90 (RMO 20-90) and Revenue Delegation Authority Order No. 05-01 (RDAO 05-01).

Petitioner's Motion for Reconsideration was denied on March 14, 2013. Petitioner filed a Petition for Review before the CTA *En Banc*. The CTA *En Banc* rendered a Decision denying the Petition for Review and affirmed that of the former CTA First Division.

It held that the five (5) Waivers of the statute of limitations were not valid and binding; thus, the three-year period of limitation within which to assess deficiency taxes was not extended. It also held that the records belie the allegation that respondent filed false and fraudulent tax returns; thus, the extension of the period of limitation from three (3) to ten (10) years does not apply.

ISSUE:

Whether or not the CIR's right to assess respondent's deficiency taxes had already prescribed? (NO)

RULING:

Section 203 of the 1997 NIRC mandates the BIR to assess internal revenue taxes within three years from the last day prescribed by law for the filing of the tax return or the actual date of filing of such return, whichever comes later. Hence, an assessment notice issued after the three-year prescriptive period is not valid and effective. Exceptions to this rule are provided under Section 222 of the NIRC. Section 222(b) of the NIRC provides that the period to assess and collect taxes may only be extended upon a written agreement between the CIR and the taxpayer executed before the expiration of the three-year period. RMO 20-90 issued on April 4, 1990 and RDAO 05-01 issued on August 2, 2001 provide the procedure for the proper execution of a waiver.

The Court has consistently held that a waiver of the statute of limitations must faithfully comply with the provisions of RMO No. 20-90 and RDAO 05-01 in order to be valid and binding.

In the instant case, the CTA found the Waivers because of the following flaws: (1) they were executed without a notarized board authority; (2) the dates of acceptance by the BIR were not indicated therein; and (3) the fact of receipt by respondent of its copy of the Second Waiver was not indicated on the face of the original Second Waiver.

To be sure, both parties in this case are at fault. Here, respondent, through Sarmiento, executed *five* Waivers in favor of petitioner. However, her authority to sign these Waivers was not presented upon their submission to the BIR. Similarly, the BIR violated its own rules and was careless in performing its functions with respect to these Waivers. It is very clear that under RDAO 05-01 it is the duty of the authorized revenue official **to ensure that the waiver is duly accomplished and signed by the taxpayer or his authorized representative** before affixing his signature to signify acceptance of the same. It also instructs that **in case the authority is delegated by the taxpayer to a representative, the concerned revenue official shall see to it that such delegation is in writing and duly notarized**. Furthermore, it mandates that **the waiver should not be accepted by the concerned BIR office and official unless duly notarized**.

Both parties knew the infirmities of the Waivers yet they continued dealing with each other on the strength of these documents without bothering to rectify these infirmities. In fact, in its Letter Protest to the BIR, respondent did not even question the validity of the Waivers or call attention to their alleged defects.

In this case, respondent, after deliberately executing defective waivers, raised the very same deficiencies it caused to avoid the tax liability determined by the BIR during the extended assessment period. It must be remembered that by virtue of these Waivers, respondent was given the opportunity to gather and submit documents to substantiate its claims before the CIR during investigation. It was able to postpone the payment of taxes, as well as contest and negotiate the assessment against it. Yet, after enjoying these benefits, respondent challenged the validity of the Waivers when the consequences thereof were not in its favor. In other words, respondent's act of impugning these Waivers after benefiting therefrom and allowing petitioner to rely on the same is an act of bad faith.

On the other hand, the stringent requirements in RMO 20-90 and RDAO 05-01 are in place precisely because the BIR put them there. Yet, instead of strictly enforcing its provisions, the BIR defied the mandates of its very own issuances. The BIR stood to lose millions of pesos in case the Waivers were declared void, as they eventually were by the CTA, but it appears that it was too negligent to even comply with its most basic requirements.

The general rule is that when a waiver does not comply with the requisites for its validity specified under RMO No. 20-90 and RDAO 01-05, it is invalid and ineffective to extend the prescriptive period to assess taxes. However, due to its peculiar circumstances, We shall treat this case as an exception to this rule and find the Waivers valid for the reasons discussed below.

First, the parties in this case are *in pari delicto* or "in equal fault." *In pari delicto* connotes that the two parties to a controversy are equally culpable or guilty and they shall have no action against each other.

Here, to uphold the validity of the Waivers would be consistent with the public policy embodied in the principle that taxes are the lifeblood of the government, and their prompt and certain availability is an imperious need. Taxes are the nation's lifeblood through which government agencies continue to operate and which the State discharges its functions for the welfare of its constituents. As between the parties, it would be more equitable if petitioner's lapses were allowed to pass and consequently uphold the Waivers in order to support this principle and public policy.

Second, the Court has repeatedly pronounced that parties must come to court with clean hands. Parties who do not come to court with clean hands cannot be allowed to benefit from their own wrongdoing. Following the foregoing principle, respondent should not be allowed to benefit from the flaws in its own Waivers and successfully insist on their invalidity in order to evade its responsibility to pay taxes.

Third, respondent is estopped from questioning the validity of its Waivers. While it is true that the Court has repeatedly held that the doctrine of estoppel must be sparingly applied as an exception to the statute of limitations for assessment of taxes, the Court finds that the application of the doctrine is justified in this case. Verily, the application of estoppel in this case would promote the administration of the law, prevent injustice and avert the accomplishment of a wrong and undue advantage. Respondent executed *five* Waivers and delivered them to petitioner, one after the other. It allowed petitioner to rely on them and did not raise any objection against their validity until petitioner assessed taxes and penalties against it. Moreover, the application of estoppel is necessary to prevent the undue injury that the government would suffer because of the cancellation of petitioner's assessment of respondent's tax liabilities.

Finally, the Court cannot tolerate this highly suspicious situation. In this case, the taxpayer, on the one hand, after voluntarily executing waivers, insisted on their invalidity by raising the very same defects it caused. On the other hand, the BIR miserably failed to exact from respondent compliance with its rules. The BIR's negligence in the performance of its duties was so gross that it amounted to malice and bad faith. Moreover, the BIR was so lax such that it seemed that it consented to the mistakes in the Waivers. Such a situation is dangerous and open to abuse by unscrupulous taxpayers who intend to escape their responsibility to pay taxes by mere expedient of hiding behind technicalities.

It is true that petitioner was also at fault here because it was careless in complying with the requirements of RMO No. 20-90 and RDAO 01-05. Nevertheless, petitioner's negligence may be addressed by enforcing the provisions imposing administrative liabilities upon the officers responsible for these errors. The BIR's right to assess and collect taxes should not be jeopardized merely because of the mistakes and lapses of its officers, especially in cases like this where the taxpayer is obviously in bad faith.

COMMISSIONER OF INTERNAL REVENUE, PETITIONER, *-versus-* DASH ENGINEERING PHILIPPINES, INC., RESPONDENT. G.R. No. 184145, THIRD DIVISION, December 11, 2013, MENDOZA, *J.*

The 120+30-day period in Section(d) (now subparagraph C) requires that upon the inaction of the CIR for 120 days after the submission of the documents in support of the claim, the tax payer has to file its judicial claim within 30 days from the lapse of the said period. The 120+30 day period under Sec. 112 is mandatory and jurisdictional that a judicial claim for refund must be denied if the same has been filed beyond the period prescribed as the Court of Appeals cannot validly acquire jurisdiction over the claim.

FACTS:

Dash Corporation filed its monthly and quarterly VAT returns for the period January 1, 2003 to June 30, 2003. On August 9, 2004, it filed a claim for tax credit or refund representing the unutilized input VAT attributable to its zero-rated sales. Subsequently, by reason of the CIR's inaction, Dash was compelled to file a petition for review with CTA on May 5, 2005. The CTA Division rendered its Decision partially granting Dash's claim. On the matter of the timelines of filing of the judicial claim, the Tax Court found that Dash's claims for refund for the first and second quarters of 2003 were filed within the two-year prescriptive period which is counted from the date of filing of the return and payment of tax due. CIR moved for reconsideration but the same was denied.

Aggrieved, CIR elevated the case to the CTA En Banc arguing, among others, that the petition for review filed by Dash was filed out of time. The CTA En Banc, in its decision, upheld the decision of the CTA Division, ruling that the judicial claim was filed on time because the use of the word "may" in Section 112(D) (now subparagraph C) of the NIRC indicates that judicial recourse within thirty days after the lapse of the 120-day period is only directory and permissive and not mandatory and jurisdictional, as long as the petition was filed within the two-year prescriptive period. The Tax Court further reiterated that the two-year prescriptive period applies to both administrative and judicial claims.

After the denial of its motion for reconsideration, the CIR filed a Petition for Review arguing that the judicial claim was filed out of time because Dash failed to comply with the 30-day period referred to in Section 112 (D) (now subparagraph C) of the NIRC, citing the case of CIR V. Aichi where the Court categorically held that compliance with the prescribed periods in Section 12 is mandatory and jurisdictional.

ISSUE: Whether or not the judicial claim was filed out of time? (YES)

RULING:

Petition Granted.

The 120+30 day period under Sec. 112 is mandatory and jurisdictional. Section 112(D) (now subparagraph C) of the NIRC provides that:

Sec. 112. Refunds or Tax Credits of Input Tax x x x (D) Period within which Refund or Tax Credit of Input Taxes shall be Made. – In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsections (A) and (B) hereof. In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals.

Petitioner is entirely correct in its assertion that compliance with the periods provided for in the above quoted provision is indeed mandatory and jurisdictional, as affirmed in this Court's ruling in San Roque, where the Court En Banc settled the controversy surrounding the application of the 120+30-day period provided for in Section 112 of the NIRC and reiterated the Aichi doctrine that the 120+30-day period is mandatory and jurisdictional. Nonetheless, the Court took into account the issuance by the Bureau of Internal Revenue (BIR) of BIR Ruling No. DA-489-03 which misled taxpayers by explicitly stating that taxpayers may file a petition for review with the CTA even before the expiration of the 120-day period given to the CIR to decide the administrative claim for refund. Even though observance of the periods in Section 112 is compulsory and failure to do so will deprive the CTA of jurisdiction to hear the case, such a strict application will be made from the effectivity of the Tax Reform Act of 1997 on January 1, 1998 until the present, except for the period from December 10, 2003 (the issuance of the erroneous BIR ruling) to October 6, 2010 (the promulgation of Aichi), during which taxpayers need not wait for the lapse of the 120+30- day period before filing their judicial claim for refund.

The case at bench, however, does not involve the issue of premature filing of the petition for review with the CTA. Rather, this petition seeks the denial of DEPI's claim for refund for having been filed late or after the expiration of the 30-day period from the denial by the CIR or failure of the CIR to make a decision within 120 days from the submission of the documents in support of respondent's administrative claim.

In accordance with San Roque, respondent's judicial claim for refund must be denied for having been filed late. Although respondent filed its administrative claim with the BIR on August 9, 2004 before the expiration of the two-year period in Section 112(A), it undoubtedly failed to comply with the 120+ 30-day period in Section 112(D) (now subparagraph C) which requires that upon the inaction of the CIR for 120 days after the submission of the documents in support of the claim, the taxpayer has to file its judicial claim within 30 days after the lapse of the said period. The 120 days granted to the CIR to decide the case ended on December 7, 2004. Thus, DEPI had 30 days therefrom, or until January 6, 2005, to file a petition for review with the CTA. Unfortunately, DEPI only sought judicial relief on May 5, 2005 when it belatedly filed its petition to the CTA, despite having had ample time to file the same, almost four months after the period allowed by law. As a consequence of DEPI's late filing, the CTA did not properly acquire jurisdiction over the claim.

CAMP JOHN HAY DEVELOPMENT CORPORATION, PETITIONER,
-versus- **CENTRAL BOARD OF ASSESSMENT APPEALS, REPRESENTED BY ITS CHAIRMAN HON.**

CESAR S. GUTIERREZ, ADELINA A. TABANGIN, IN HER CAPACITY AS CHAIRMAN OF THE BOARD OF TAX (ASSESSMENT) APPEALS OF BAGUIO CITY, AND HON. ESTRELLA B. TANO, IN HER CAPACITY AS THE CITY ASSESSOR OF THE CITY OF BAGUIO, RESPONDENTS. G.R. No. 169234, SECOND DIVISION, October 2, 2013, PEREZ, *J.*

A taxpayer questioning the correctness of an assessment of real property tax must comply with the requirement of "payment under protest" since it is a condition sine qua non before such protest or appeal may be entertained. Moreover, a claim for exemption from payment of real property taxes does not actually question the assessor's authority to assess and collect such taxes, but pertains to the reasonableness or correctness of the assessment by the local assessor, a question of fact which should be resolved, at the very first instance, by the LBAA.

FACTS:

Respondent City Assessor of Baguio City notified petitioner about the issuance against it of real property tax assessment. In response, petitioner questioned the assessments for lack of legal. The City Assessor replied that the subject RPT was issued on the basis of the approved building permits and pursuant to Sections 201 to 206 of RA No. 7160. Consequently, petitioner filed with the Board of Tax Assessment Appeals (BTAA) an appeal. BTAA enjoined petitioner to first comply as to the payment under protest of the subject real property taxes before the hearing of its appeal. Aggrieved, petitioner elevated the case before the CBAA.

The CBAA denied petitioner's appeal and remanded the case to the LBAA for further proceedings subject to a full and up-to-date payment of the realty taxes on subject properties. Undaunted by the pronouncements in the abovementioned Resolutions, petitioner appealed to the CTA En Banc. The CTA En Banc found that petitioner has indeed failed to comply with Section 252 of RA No. 7160. Hence, it dismissed the petition and affirmed the subject Resolutions of the CBAA. Moreover, adopting the CBAA's position, the court a quo ruled that it could not resolve the issue on whether petitioner is liable to pay real property tax or whether it is indeed a tax-exempt entity considering that the LBAA has not decided the case on the merits.

ISSUE:

Whether or not respondent CTA En Banc erred in dismissing for lack of merit the petition and accordingly affirmed the order of the CBAA to remand the case to the LBAA for further proceedings? (NO)

RULING:

The petition is denied. To begin with, Section 252 emphatically directs that the taxpayer/real property owner questioning the assessment should first pay the tax due before his protest can be entertained. As a matter of fact, the words "paid under protest" shall be annotated on the tax receipts. Consequently, only after such payment has been made by the taxpayer may he file a protest in writing (within thirty [30] days from said payment of tax) to the provincial, city, or municipal treasurer, who shall decide the protest within sixty (60) days from its receipt. In no case is the local treasurer obliged to entertain the protest unless the tax due has been paid.

Secondly, within the period prescribed by law, any owner or person having legal interest in the property not satisfied with the action of the provincial, city, or municipal assessor in the assessment of his property may file an appeal with the LBAA of the province or city concerned, as provided in Section 226 of RA No. 7160. Thereafter, within thirty (30) days from receipt, he may elevate, by filing a notice of appeal, the adverse decision of the LBAA with the CBAA, which exercises exclusive jurisdiction to hear and decide all appeals from the decisions, orders, and resolutions of the Local Boards involving contested assessments of real properties, claims for tax refund and/or tax credits, or overpayments of taxes.

In the present case, the authority of the assessor is not being questioned. Despite petitioners' protestations, the petition filed before the court a quo primarily involves the correctness of the assessments, which are questions of fact, that are not allowed in a petition for certiorari, prohibition and mandamus. The court a quo is therefore precluded from entertaining the petition, and it appropriately dismissed the petition.

Moreover, a claim for exemption from payment of real property taxes does not actually question the assessor's authority to assess and collect such taxes, but pertains to the reasonableness or correctness of the assessment by the local assessor, a question of fact which should be resolved, at the very first instance, by the LBAA.

In other words, by providing that real property not declared and proved as tax-exempt shall be included in the assessment roll, Section 206 of RA No. 7160 implies that the local assessor has the authority to assess the property for realty taxes, and any subsequent claim for exemption shall be allowed only when sufficient proof has been adduced supporting the claim.

To reiterate, the restriction upon the power of courts to impeach tax assessment without a prior payment, under protest, of the taxes assessed is consistent with the doctrine that taxes are the lifeblood of the nation and as such their collection cannot be curtailed by injunction or any like action; otherwise, the state or, in this case, the local government unit, shall be crippled in dispensing the needed services to the people, and its machinery gravely disabled.30 The right of local government units to collect taxes due must always be upheld to avoid severe erosion. This consideration is consistent with the State policy to guarantee the autonomy of local governments and the objective of RA No. 7160 or the LGC of 1991 that they enjoy genuine and meaningful local autonomy to empower them to achieve their fullest development as self-reliant communities and make them effective partners in the attainment of national goals.

FIRST LEPANTO TAISHO INSURANCE CORPORATION, PETITIONER, -*versus*-COMMISSIONER OF INTERNAL REVENUE, **RESPONDENT.** G.R. No. 197117, THIRD DIVISION, April 10, 2013, MENDOZA, J.

As to service/contractors and purchases, petitioner contends that both parties already stipulated that it correctly withheld the taxes due. Thus, petitioner is of the belief that it is no longer required to present evidence to prove the correct payment of taxes withheld. As correctly ruled by the CTA Second Division and En Banc, however, stipulations cannot defeat the right of the State to collect the correct taxes due on an individual or juridical person because taxes are the lifeblood of our nation so its collection should be actively pursued without unnecessary impediment.

FACTS:

Petitioner is a non-life insurance corporation and considered as a "Large Taxpayer". After submitting its corporate income tax return for taxable year ending December 31, 1997, petitioner received a Letter of Authority, dated October 30, 1998, from respondent Commissioner of Internal Revenue (*CIR*) to allow it to examine their books of account and other accounting records for 1997 and other unverified prior years.

On December 29, 1999, CIR issued internal revenue tax assessments for deficiency income, withholding, expanded withholding, final withholding, value-added, and documentary stamp taxes for taxable year 1997. Petitioner protested the said tax assessments.

During the pendency of the case, particularly on February 15, 2008, petitioner filed its Motion for Partial Withdrawal of Petition for Review of Assessment Notice Nos. ST-INC-97-0220-99; ST-VAT-97-0222-99 and ST-DST-97-0217-00, in view of the tax amnesty program it had availed. The CTA Second Division granted the said motion.

Consequently, on May 21, 2009, the CTA Second Division partially granted the petition. It directed petitioner to pay CIR a reduced tax liability of P1, 994,390.86.

Petitioner's Motion for Partial Reconsideration was likewise denied by the CTA Second Division in its October 29, 2009 Resolution. Unsatisfied, petitioner filed a Petition for Review before the CTA *En Banc*. The CTA *En Banc* affirmed the decision of the CTA Second Division.

Petitioner contended that it was not liable to pay Withholding Tax on Compensation on the P500, 000.00 Director's Bonus to their directors, specifically, Rodolfo Bausa, Voltaire Gonzales, Felipe Yap, and Catalino Macaraig, Jr., because they were not employees and the amount was already subjected to Expanded Withholding Tax. The CTA *En Banc*, however, ruled that Section 5 of Revenue Regulation No. 12-86 expressly identified a director to be an employee. As to transportation, subsistence and lodging, and representation expenses, the expenses would not be subject to withholding tax only if the same were reimbursement for actual expenses of the company. In the present case, the CTA *En Banc* declared that petitioner failed to prove that they were so. As to deficiency expanded withholding taxes on compensation, petitioner failed to substantiate that the commissions earned totaling P905, 428.36, came from reinsurance activities and should not be subject to withholding tax. Petitioner likewise failed to prove its direct loss expense, occupancy cost and service/contractors and purchases. As to deficiency final withholding taxes, "petitioner failed to present proof of remittance to establish that it had remitted the final tax on dividends paid as well as the payments for services rendered by the Malaysian entity." As to the imposition of delinquency interest under Section 249 (c) (3) of the 1997 National Internal Revenue Code (*NIRC*), records reveal that petitioner failed to pay the deficiency taxes within thirty (30) days from receipt of the demand letter, thus, delinquency interest accrued from such non-payment.

Petitioner moved for partial reconsideration, but the CTA En Banc denied the same in its May 27, 2011 Resolution. Hence, this petition.

ISSUE:

Whether or not the CTA En Banc erred in holding petitioner liable for deficiency taxes? (NO)

RULING:

For taxation purposes, a director is considered an employee under Section 5 of Revenue Regulation No. 12-86. The non-inclusion of the names of some of petitioner's directors in the company's Alpha List does not *ipso facto* create a presumption that they are not employees of the corporation, because the imposition of withholding tax on compensation hinges upon the nature of work performed by such individuals in the company. Moreover, contrary to petitioner's attestations, Revenue Regulation No. 2-98, specifically, Section 2.57.2. A (9) thereof, cannot be applied to this case as the latter is a later regulation while the accounting books examined were for taxable year 1997.

As to the deficiency withholding tax assessment on transportation, subsistence and lodging, and representation expense, commission expense, direct loss expense, occupancy cost, service/contractor and purchases, the Court finds no cogent reason to deviate from the findings of the CTA *En Banc*. As correctly observed by the CTA Second Division and the CTA *En Banc*, petitioner was not able to sufficiently establish that the transportation expenses reflected in their books were reimbursement from actual transportation expenses incurred by its employees in connection with their duties as the only document presented was a Schedule of Transportation Expenses without pertinent supporting documents. Without said documents, such as but not limited to, receipts, transportation-related vouchers and/or invoices, there is no way of ascertaining whether the amounts reflected in the schedule of expenses were disbursed for transportation.

With regard to commission expense, no additional documentary evidence, like the reinsurance agreements contracts, was presented to support petitioner's allegation that the expenditure originated from reinsurance activities that gave rise to reinsurance commissions, not subject to withholding tax. As to occupancy costs, records reveal that petitioner failed to compute the correct total occupancy cost that should be subjected to withholding tax, hence, petitioner is liable for the deficiency.

As to service/contractors and purchases, petitioner contends that both parties already stipulated that it correctly withheld the taxes due. Thus, petitioner is of the belief that it is no longer required to present evidence to prove the correct payment of taxes withheld. As correctly ruled by the CTA Second Division and *En Banc*, however, stipulations cannot defeat the right of the State to collect the correct taxes due on an individual or juridical person because taxes are the lifeblood of our nation so its collection should be actively pursued without unnecessary impediment.

As to the deficiency final withholding tax assessments for payments of dividends and computerization expenses incurred by petitioner to foreign entities, particularly Matsui Marine & Fire Insurance Co. Ltd. (*Matsui*),[17] the Court agrees with CIR that petitioner failed to present evidence to show the supposed remittance to Matsui.

The Court likewise holds the imposition of delinquency interest under Section 249 (c) (3) of the 1997 NIRC to be proper, because failure to pay the deficiency tax assessed within the time prescribed for its payment justifies the imposition of interest at the rate of twenty percent (20%) per annum, which interest shall be assessed and collected from the date prescribed for its payment until full payment is made.

It is worthy to note that tax revenue statutes are not generally intended to be liberally construed. Moreover, the CTA being a highly specialized court particularly created for the purpose of reviewing tax and customs cases, it is settled that its findings and conclusions are accorded great respect and are generally upheld by this Court, unless there is a clear showing of a reversible error or an improvident exercise of authority. Absent such errors, the challenged decision should be maintained.

COMMISSIONER OF INTERNAL REVENUE, PETITIONER, -versus- SAN ROQUE POWER CORPORATION, RESPONDENT. G.R. No. 187485, EN BANC, February 12, 2013, CARPIO, *J.*

Clearly, San Roque failed to comply with the 120-day waiting period, the time expressly given by law to the Commissioner to decide whether to grant or deny San Roque's application for tax refund or credit. It is indisputable that compliance with the 120-day waiting period is mandatory and jurisdictional. Failure to comply with the 120-day waiting period violates a mandatory provision of law.

There is no dispute that the 120-day period is mandatory and jurisdictional, and that the CTA does not acquire jurisdiction over a judicial claim that is filed before the expiration of the 120-day period. There are, however, two exceptions to this rule. The first exception is if the Commissioner, through a specific ruling, misleads a particular taxpayer to prematurely file a judicial claim with the CTA. Such specific ruling is applicable only to such particular taxpayer. The second exception is where the Commissioner, through a general interpretative rule issued under Section 4 of the Tax Code, misleads all taxpayers into filing prematurely judicial claims with the CTA. In these cases, the Commissioner cannot be allowed to later on question the CTA's assumption of jurisdiction over such claim since equitable estoppel has set in as expressly authorized under Section 246 of the Tax Code.

Clearly, BIR Ruling No. DA-489-03 is a general interpretative rule. Thus, all taxpayers can rely on BIR Ruling No. DA-489-03 from the time of its issuance on 10 December 2003 up to its reversal by this Court in Aichi on 6 October 2010, where this Court held that the 120+30 day periods are mandatory and jurisdictional. San Roque, however, cannot benefit from BIR Ruling No. DA-489-03 because it filed its judicial claim prematurely on 10 April 2003, before the issuance of BIR Ruling No. DA-489-03 on 10 December 2003. To repeat, San Roque cannot claim that it was misled by the BIR into filing its judicial claim prematurely because BIR Ruling No. DA-489-03 was issued only after San Roque filed its judicial claim. At the time San Roque filed its judicial claim, the law as applied and administered by the BIR was that the Commissioner had 120 days to act on administrative claims.

FACTS:

On October 11, 1997, San Roque entered into a Power Purchase Agreement ("PPA") with the National Power Corporation ("NPC") to develop hydro-potential of the Lower Agno River and generate additional power and energy for the Luzon Power Grid, by building the San Roque Multi-Purpose Project located in San Manuel, Pangasinan. The PPA provides, among others, that San Roque shall be responsible for the design, construction, installation, completion, testing and commissioning of the Power Station and shall operate and maintain the same, subject to NPC instructions. During the cooperation period of twenty-five (25) years commencing from the completion date of the Power Station, NPC will take and pay for all electricity available from the Power Station.

On the construction and development of the San Roque Multi- Purpose Project which comprises of the dam, spillway and power plant, San Roque allegedly incurred, excess input VAT in the amount of ₱559,709,337.54 for taxable year 2001 which it declared in its Quarterly VAT Returns filed for the same year. [San Roque] duly filed with the BIR separate claims for refund, in the total amount of ₱559,709,337.54, representing unutilized input taxes as declared in its VAT returns for taxable year 2001.

However, on March 28, 2003, San Roque filed amended Quarterly VAT Returns for the year 2001 since it increased its unutilized input VAT to the amount of ₱560,200,283.14. Consequently, San Roque filed with the BIR on even date, separate amended claims for refund in the aggregate amount of ₱560,200,283.14.

CIR's inaction on the subject claims led to the filing by [San Roque] of the Petition for Review with the Court of Tax Appeals] in Division on April 10, 2003.

The CTA Second Division required San Roque to show that it complied with the following requirements of Section 112(B) of Republic Act No. 8424 (RA 8424) to be entitled to a tax refund or credit of input VAT attributable to capital goods imported or locally purchased: (1) it is a VAT-registered entity; (2) its input taxes claimed were paid on capital goods duly supported by VAT invoices and/or official receipts; (3) it did not offset or apply the claimed input VAT payments on capital goods against any output VAT liability; and (4) its claim for refund was filed within the two-year prescriptive period both in the administrative and judicial levels.

The CTA Second Division found that San Roque complied with the first, third, and fourth requirements.

For the first, second, third, and fourth quarters of 2001, [San Roque] filed its VAT returns on April 25, 2001, July 25, 2001, October 23, 2001 and January 24, 2002, respectively. These returns were all subsequently amended on March 28, 2003. On the other hand, San Roque originally filed its separate claims for refund on July 10, 2001, October 10, 2001, February 21, 2002, and May 9, 2002 for the first, second, third, and fourth quarters of 2001, respectively, and subsequently filed amended claims for all quarters on March 28, 2003. Moreover, the Petition for Review was filed on April 10, 2003. Counting from the respective dates when San Roque originally filed its VAT returns for the first, second, third and fourth quarters of 2001, the administrative claims for refund (original and amended) and the Petition for Review fall within the two-year prescriptive period.

San Roque filed a Motion for New Trial and/or Reconsideration on 7 April 2006. In its 29 November 2007 Amended Decision, the CTA Second Division found legal basis to partially grant San Roque's claim. The CTA Second Division ordered the Commissioner to refund or issue a tax credit in favor of San Roque in the amount of ₱483,797,599.65, which represents San Roque's unutilized input VAT on its purchases of capital goods and services for the taxable year 2001.

The Commissioner filed a Motion for Partial Reconsideration on 20 December 2007. The CTA Second Division issued a Resolution dated 11 July 2008 which denied the CIR's motion for lack of merit.

The Commissioner filed a Petition for Review before the CTA EB praying for the denial of San Roque's claim for refund or tax credit in its entirety as well. The CTA EB dismissed the CIR's petition for review and affirmed the challenged decision and resolution.

The Commissioner raised the following grounds in the Petition for Review:

> I. The Court of Tax Appeals *En Banc* erred in holding that [San Roque's] claim for refund was not prematurely filed.
>
> II. The Court of Tax Appeals *En Banc* erred in affirming the amended decision of the Court of Tax Appeals (Second Division) granting [San Roque's] claim for refund of alleged unutilized input VAT on its purchases of capital goods and services for the taxable year 2001 in the amount of P483,797,599.65.

ISSUE:

Whether or not San Roque's claim was filed prematurely as argued by the CIR? (YES)

RULING:

On 10 April 2003, a mere 13 days after it filed its amended administrative claim with the Commissioner on 28 March 2003; San Roque filed a Petition for Review with the CTA. From this we gather two crucial facts: *first*, San Roque did not wait for the 120-day period to lapse before filing its judicial claim; *second*, San Roque filed its judicial claim more than four (4) years **before** the *Atlas* doctrine, which was promulgated by the Court on 8 June 2007.

Clearly, San Roque failed to comply with the 120-day waiting period, the time expressly given by law to the Commissioner to decide whether to grant or deny San Roque's application for tax refund or credit. It is indisputable that compliance with the 120-day waiting period is **mandatory and jurisdictional**. The waiting period, originally fixed at 60 days only, was part of the provisions of the first VAT law, Executive Order No. 273, which took effect on 1 January 1988. The waiting period was extended to 120 days effective 1 January 1998 under RA 8424 or the Tax Reform Act of 1997. **Thus, the waiting period has been in our statute books for more than fifteen (15) years *before* San Roque filed its judicial claim.**

Failure to comply with the 120-day waiting period violates a mandatory provision of law. It violates the doctrine of exhaustion of administrative remedies and renders the petition premature and thus without a cause of action, with the effect that the CTA does not acquire jurisdiction over the taxpayer's petition. Philippine jurisprudence is replete with cases upholding and reiterating these doctrinal principles.

San Roque's failure to comply with the 120-day **mandatory** period renders its petition for review with the CTA void. San Roque's void petition for review cannot be legitimized by the CTA or this Court because Article 5 of the Civil Code states that such void petition cannot be legitimized "except when the law itself authorizes its validity." There is no law authorizing the petition's validity.

This Court cannot brush aside the grave issue of the mandatory and jurisdictional nature of the 120-day period just because the Commissioner merely asserts that the case was prematurely filed with the CTA and does not question the entitlement of San Roque to the refund. The mere fact that a taxpayer has undisputed excess input VAT, or that the tax was admittedly illegally, erroneously or excessively collected from him, does not entitle him as a matter of right to a tax refund or credit. Strict compliance with the mandatory and jurisdictional conditions prescribed by law to claim such tax refund or credit is essential and necessary for such claim to prosper. **Well-settled is the rule that tax refunds or credits, just like tax exemptions, are strictly construed against the taxpayer**.[51] The burden is on the taxpayer to show that he has strictly complied with the conditions for the grant of the tax refund or credit.

San Roque cannot also claim being misled, misguided or confused by the *Atlas* doctrine because **San Roque filed its petition for review with the CTA more than four years before *Atlas* was promulgated.** The *Atlas* doctrine did not exist at the time San Roque failed to comply with the 120-day period. Thus, San Roque cannot invoke the *Atlas* doctrine as an excuse for its failure to wait for the 120-day period to lapse. In any event, the *Atlas* doctrine merely stated that the two-year prescriptive period should be counted from the date of payment of the output VAT, not from the close of the taxable quarter when the sales involving the input VAT were made. **The *Atlas* doctrine does not interpret, expressly or impliedly, the 120+30 day periods**.

In fact, Section 106(b) and (e) of the Tax Code of 1977 as amended, which was the law cited by the Court in *Atlas* as the applicable provision of the law did not yet provide for the 30-day period for the taxpayer to appeal to the CTA from the decision or inaction of the Commissioner. **Thus, the *Atlas* doctrine cannot be invoked by anyone to disregard compliance with the 30-day mandatory and jurisdictional period**.

Whether the *Atlas* doctrine or the *Mirant* doctrine is applied to San Roque is immaterial because what is at issue in the present case is San Roque's non-compliance with the 120-day mandatory and jurisdictional period, which is counted from the date it filed its administrative claim with the Commissioner. The 120-day period may extend beyond the two-year prescriptive period, as long as the administrative claim is filed within the two-year prescriptive period. However, San Roque's fatal mistake is that it did not wait for the Commissioner to decide within the 120-day period, a mandatory period whether the *Atlas* or the *Mirant* doctrine is applied.

There is nothing in RMC 49-03 that states, expressly or impliedly, that the taxpayer need not wait for the 120-day period to expire before filing a judicial claim with the CTA. RMC 49-03 merely authorizes the BIR to continue processing the administrative claim even after the taxpayer has filed its judicial claim, without saying that the taxpayer can file its judicial claim before the expiration of the 120-day period. RMC 49-03 states: "In cases where the taxpayer has filed a 'Petition for Review' with the Court of Tax Appeals involving a claim for refund/TCC that is pending at the administrative agency (either the Bureau of Internal Revenue or the One- Stop Shop Inter-Agency Tax Credit and Duty Drawback Center of the Department of Finance), the administrative agency and the court may act on the case separately." Thus, if the taxpayer files its judicial claim before the expiration of the 120-day period, the BIR will nevertheless continue to act on the administrative claim because such premature filing cannot divest the Commissioner of his statutory power and jurisdiction to decide the administrative claim within the 120-day period.

On the other hand, if the taxpayer files its judicial claim after the 120- day period, the Commissioner can still continue to evaluate the administrative claim. There is nothing new in this because even after the expiration of the 120-day period, the Commissioner should still evaluate internally the administrative claim for purposes of opposing the taxpayer's judicial claim, or even for purposes of determining if the BIR should actually concede to the taxpayer's judicial claim. The internal administrative evaluation of the taxpayer's claim must ***necessarily*** continue to enable the BIR to oppose intelligently the judicial claim or, if the facts and the law warrant otherwise, for the BIR to concede to the judicial claim, resulting in the termination of the judicial proceedings.

What is important, as far as the present cases are concerned, is that the mere filing by a taxpayer of a judicial claim with the CTA before the expiration of the 120-day period cannot operate to divest the Commissioner of his jurisdiction to decide an administrative claim within the 120-day mandatory period, *unless* the Commissioner has clearly given cause for equitable estoppel to apply as expressly recognized in Section 246 of the Tax Code.

There is no dispute that the 120-day period is mandatory and jurisdictional, and that the CTA does not acquire jurisdiction over a judicial claim that is filed before the expiration of the 120-day period. There are, however, two exceptions to this rule. The first exception is if the Commissioner, through a specific ruling, misleads a particular taxpayer to prematurely file a judicial claim with the CTA. Such specific ruling is applicable only to such particular taxpayer. The second exception is where the Commissioner, *through a general interpretative rule* issued under Section 4 of the Tax Code, misleads all taxpayers into filing prematurely judicial claims with the CTA. In these cases, the Commissioner cannot be allowed to later on question the CTA's assumption of jurisdiction over such claim since equitable estoppel has set in as expressly authorized under Section 246 of the Tax Code.

Thus, a general interpretative rule issued by the Commissioner may be relied upon by taxpayers from the time the rule is issued up to its reversal by the Commissioner or this Court. Section 246 is not limited to a reversal only by the Commissioner because this Section expressly states, "***Any*** revocation, modification or reversal" without specifying who made the revocation, modification or reversal. Hence, a reversal by this Court is covered under Section 246.

Thus, the only issue is whether BIR Ruling No. DA-489-03 is a general interpretative rule applicable to all taxpayers or a specific ruling applicable only to a particular taxpayer.

BIR Ruling No. DA-489-03 is a general interpretative rule because it was a response to a query made, not by a particular taxpayer, but by a government agency tasked with processing tax refunds and credits, that is, the **One Stop Shop Inter-Agency Tax Credit and Drawback Center of the Department of Finance**. Clearly, BIR Ruling No. DA-489-03 is a general interpretative rule. Thus, all taxpayers can rely on BIR Ruling No. DA-489-03 from the time of its issuance on 10 December 2003 up to its reversal by this Court in *Aichi* on 6 October 2010, where this Court held that the 120+30 day periods are mandatory and jurisdictional

However, BIR Ruling No. DA-489-03 cannot be given retroactive effect for four reasons: *first*, it is admittedly an erroneous interpretation of the law; *second*, prior to its issuance, the BIR held that the 120-day period was mandatory and jurisdictional, which is the correct interpretation of the law; *third*, prior to its issuance, no taxpayer can claim that it was misled by the BIR into filing a judicial claim prematurely; and *fourth*, a claim for tax refund or credit, like a claim for tax exemption, is strictly construed against the taxpayer.

San Roque, therefore, cannot benefit from BIR Ruling No. DA-489-03 because it filed its judicial claim prematurely on 10 April 2003, ***before*** the issuance of BIR Ruling No. DA-489-03 on 10 December 2003. To repeat, San Roque cannot claim that it was misled by the BIR into filing its judicial claim prematurely because BIR Ruling No. DA-489-03 was issued only after San Roque filed its judicial claim. At the time San Roque filed its judicial claim, the law as applied and administered by the BIR was that the Commissioner had 120 days to act on administrative claims. This was in fact the position of the BIR prior to the issuance of BIR Ruling No. DA-489-03. **Indeed, San Roque never claimed the benefit of BIR Ruling No. DA-489-03 or RMC 49-03, whether in this Court, the CTA, or before the Commissioner**.

COMMISSIONER OF INTERNAL REVENUE, PETITIONER,
-versus- BANK OF THE PHILIPPINE ISLANDS, RESPONDENT. G.R. No. 134062, FIRST DIVISION, April 17, 2007, CORONA, *J*.

Admittedly, the CIR did not inform BPI in writing of the law and facts on which the assessments of the deficiency taxes were made. He merely notified BPI of his findings, consisting only of the computation of the tax liabilities and a demand for payment thereof within 30 days after receipt.

In merely notifying BPI of his findings, the CIR relied on the provisions of the former Section 270 prior to its amendment by RA 8424 (also known as the Tax Reform Act of 1997). Accordingly, when the assessments were made pursuant to the former Section 270, the only requirement was for the CIR to "notify" or inform the taxpayer of his "findings." Nothing in the old law required a written statement to the taxpayer of the law and facts on which the assessments were based. The Court cannot read into the law what obviously was not intended by Congress. That would be judicial legislation, nothing less.

FACTS:

In two notices dated October 28, 1988, CIR assessed respondent BPI's deficiency percentage and documentary stamp taxes for the year 1986 in the total amount of ₱129,488,656.63.

In a letter dated December 10, 1988, BPI, through counsel, replied that *"the deficiency assessments are no assessments at all. The taxpayer is not informed, even in the vaguest terms, why it is being assessed a deficiency. The very purpose of a deficiency assessment is to inform taxpayer why he has incurred a deficiency so that he can make an intelligent decision on whether to pay or to protest the assessment. This is all the more so when the assessment involves astronomical amounts, as in this case. We therefore request that the examiner concerned be required to state, even in the briefest form, why he believes the taxpayer has a deficiency documentary and percentage taxes, and as to the percentage tax, it is important that the taxpayer be informed also as to what particular percentage tax the assessment refers to xxxx."*

BPI received a letter from CIR dated May 8, 1991 stating that: "although in all respects, your letter failed to qualify as a protest under Revenue Regulations No. 12-85 and therefore not deserving of any rejoinder by this office as no valid issue was raised against the validity of our assessment… still we obliged to explain the basis of the assessments"

BPI requested a reconsideration of the assessments stated in the CIR's May 8, 1991 letter which was denied. BPI filed a petition for review in the CTA.

CTA dismissed the case for lack of jurisdiction since the subject assessments had become final and unappealable. The CTA ruled that BPI failed to protest on and it denied reconsideration in a resolution dated May 27, 1996.

The CA reversed the tax court's decision and resolution and remanded the case to the CTA for a decision on the merits. It ruled that the October 28, 1988 notices were not valid assessments because they did not inform the taxpayer of the legal and factual bases therefor. It declared that the proper assessments were those contained in the May 8, 1991 letter which provided the reasons for the claimed deficiencies. Thus, it held that BPI filed the petition for review in the CTA on time. The CIR elevated the case to this Court.

ISSUE:

Whether or not the October 28, 1988 notices were valid assessments? (YES)

RULING:

The CIR argues that the CA erred in holding that the October 28, 1988 notices were invalid assessments. He asserts that he used BIR Form No. 17.08 (as revised in November 1964) which was designed for the precise purpose of notifying taxpayers of the assessed amounts due and demanding payment thereof. He contends that there was no law or jurisprudence then that required notices to state the reasons for assessing deficiency tax liabilities.

BPI counters that due process demanded that the facts, data and law upon which the assessments were based be provided to the taxpayer. It insists that the NIRC, as worded now (referring to Section 228), specifically provides that:

> *"the taxpayer shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void."*

According to BPI, this is declaratory of what sound tax procedure is and a confirmation of what due process requires even under the former Section 270.

BPI's contention has no merit. The present Section 228 of the NIRC provides:

> *Sec. 228. Protesting of Assessment. —* ***When the [CIR] or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings:*** *Provided, however, That a preassessment notice shall not be required in the following cases:*
>
> *xxx xxx xxx*
>
> ***The taxpayer shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.***

Admittedly, the CIR did not inform BPI in writing of the law and facts on which the assessments of the deficiency taxes were made. He merely notified BPI of his findings, consisting only of the computation of the tax liabilities and a demand for payment thereof within 30 days after receipt.

In merely notifying BPI of his findings, the CIR relied on the provisions of the former Section 270 prior to its amendment by RA 8424 (also known as the Tax Reform Act of 1997).

Accordingly, when the assessments were made pursuant to the former Section 270, the only requirement was for the CIR to "notify" or inform the taxpayer of his "findings." Nothing in the old law required a written statement to the taxpayer of the law and facts on which the assessments were based. The Court cannot read into the law what obviously was not intended by Congress. That would be judicial legislation, nothing less.

Jurisprudence, on the other hand, simply required that the assessments contain a computation of tax liabilities, the amount the taxpayer was to pay and a demand for payment within a prescribed period. Everything considered, there was no doubt the October 28, 1988 notices sufficiently met the requirements of a valid assessment under the old law and jurisprudence.

The sentence the taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void was not in the old Section 270 but was only later on inserted in the renumbered Section 228 in 1997. Evidently, the legislature saw the need to modify the former Section 270 by inserting the aforequoted sentence. The fact that the amendment was necessary showed that, prior to the introduction of the amendment, the statute had an entirely different meaning.

Contrary to the submission of BPI, the inserted sentence in the renumbered Section 228 was not an affirmation of what the law required under the former Section 270. The amendment introduced by RA 8424 was an innovation and could not be reasonably inferred from the old law. *Clearly, the legislature intended to insert a new provision regarding the form and substance of assessments issued by the CIR*.

Considering that the October 28, 1988 notices were valid assessments, BPI should have protested the same within 30 days from receipt thereof. The December 10, 1988 reply it sent to the CIR did not qualify as a protest since the letter itself stated that "[a]s soon as this is explained and clarified in a proper letter of assessment; **we shall inform you of the taxpayer's decision on whether to pay or protest the assessment**."[36] Hence, by its own declaration, BPI did not regard this letter as a protest against the assessments. As a matter of fact, BPI never deemed this a protest since it did not even consider the October 28, 1988 notices as valid or proper assessments.

The inevitable conclusion is that BPI's failure to protest the assessments within the 30-day period provided in the former Section 270 meant that they became final and unappealable. Thus, the CTA correctly dismissed BPI's appeal for lack of jurisdiction. BPI was, from then on, barred from disputing the correctness of the assessments or invoking any defense that would reopen the question of its liability on the merits.[37] Not only that. There arose a presumption of correctness when BPI failed to protest the assessments.

Taxes are the lifeblood of the government, for without taxes, the government can neither exist nor endure. A principal attribute of sovereignty, the exercise of taxing power derives its source from the very existence of the state whose social contract with its citizens obliges it to promote public interest and common good. The theory behind the exercise of the power to tax emanates from necessity; without taxes, government cannot fulfill its mandate of promoting the general welfare and well-being of the people.

COMMISSIONER OF INTERNAL REVENUE, PETITIONER, -versus- MANUEL B. PINEDA, as one of the heirs of deceased ATANASIO PINEDA, RESPONDENT. G.R. No. L-22734, EN BANC, September 15, 1967, BENGZON, J.P., *J.*

By virtue of such lien, the Government has the right to subject the property in Pineda's possession, i.e., the P2, 500.00, to satisfy the income tax assessment in the sum of P760.28. After such payment, Pineda will have a right of contribution from his co-heirs, to achieve an adjustment of the proper share of each heir in the distributable estate.

*All told, the Government has two ways of collecting the tax in question. One, by going after all the heirs and collecting from each one of them the amount of the tax proportionate to the inheritance received. This action rests on the concept that hereditary property consists only of that part which remains after the settlement of all lawful claims against the estate, for the settlement of which the entire estate is first liable. Another remedy, pursuant to the lien created by Section 315 of the Tax Code upon all property and rights to property belonging to the taxpayer for unpaid income tax, is by subjecting said property of the estate which is in the hands of an heir or transferee to the payment of the tax due, the estate. This second remedy is the very avenue the Government took in this case to collect the tax. The Bureau of Internal Revenue should be given, in instances like the case at bar, the necessary discretion to avail itself of the most expeditious way to collect the tax as may be envisioned in the particular provision of the Tax Code above quoted, because taxes are the lifeblood of government and their prompt and certain availability is an imperious need***.***

FACTS:

Atanasio Pineda died, survived by his wife, Felicisima Bagtas, and 15 children, the eldest of whom is Manuel B. Pineda, a lawyer. Estate proceedings were had in the Court of First Instance of Manila wherein the surviving widow was appointed administratrix. The estate was divided among and awarded to the heirs and the proceedings terminated on June 8, 1948. Manuel B. Pineda's share amounted to about P2, 500.00.

After the estate proceedings were closed, the Bureau of Internal Revenue investigated the income tax liability of the estate for the years 1945, 1946, 1947 and 1948 and it found that the corresponding income tax returns were not filed. Thereupon, the representative of the Collector of Internal Revenue filed said returns for the estate on the basis of information and data obtained from the aforesaid estate proceedings and issued an assessment for deficiency taxes.

Manuel B. Pineda, who received the assessment, contested the same. Subsequently, he appealed to the Court of Tax Appeals alleging that he was appealing "only that proportionate part or portion pertaining to him as one of the heirs."

The Court of Tax Appeals rendered judgment reversing the decision of the Commissioner on the ground that his right to assess and collect the tax has prescribed. The Commissioner appealed and this Court affirmed the findings of the Tax Court in respect to the assessment for income tax for the year 1947 but held that the right to assess and collect the taxes for 1945 and 1946 has not prescribed. Accordingly, the case was remanded to the Tax Court for further appropriate proceedings.

On November 29, 1963 the Court of Tax Appeals rendered judgment holding Manuel B. Pineda liable for the payment corresponding to his share of the deficiency taxes.

The Commissioner of Internal Revenue has appealed this case before the SC and has proposed to hold Manuel B. Pineda liable for the payment of all the taxes found by the Tax Court to be due from the estate in the total amount of P760.28 instead of only for the amount of taxes corresponding to his share in the estate.

Manuel B. Pineda opposes the proposition on the ground that as an heir he is liable for unpaid income tax due the estate only up to the extent of and in proportion to any share he received.

ISSUE:

Whether or not Pineda can be held liable for the payment of all the taxes found by the Tax Court to be due from the estate of his deceased father? (YES)

RULING:

We hold that the Government can require Manuel B. Pineda to pay the full amount of the taxes assessed.

Pineda is liable for the assessment as an heir and as a holder-transferee of property belonging to the estate/taxpayer. As an heir he is individually answerable for the part of the tax proportionate to the share he received from the inheritance. His liability, however, cannot exceed the amount of his share.[4]

As a holder of property belonging to the estate, Pineda is liable for the tax up to the amount of the property in his possession. The reason is that the Government has a lien on the P2, 500.00 received by him from the estate as his share in the inheritance, for unpaid income taxes for which said estate is liable, pursuant to the last paragraph of Section 315 of the Tax Code.

By virtue of such lien, the Government has the right to subject the property in Pineda's possession, i.e., the P2, 500.00, to satisfy the income tax assessment in the sum of P760.28. After such payment, Pineda will have a right of contribution from his co-heirs, to achieve an adjustment of the proper share of each heir in the distributable estate.

All told, the Government has two ways of collecting the tax in question. One, by going after all the heirs and collecting from each one of them the amount of the tax proportionate to the inheritance received. This remedy was adopted in *Government of the Philippine Islands v. Pamintuan*, *supra*. In said case, the Government filed an action against all the heirs for the collection of the tax. This action rests on the concept that hereditary property consists only of that part which remains after the settlement of all lawful claims against the estate, for the settlement of which the entire estate is first liable. The reason why in case suit is filed against all the heirs the tax due from the estate is levied proportionately against them is to achieve thereby two results: first, payment of the tax; and second, adjustment of the shares of each heir in the distributed estate as *lessened by the tax*.

Another remedy, pursuant to the lien created by Section 315 of the Tax Code upon all property and rights to property belonging to the taxpayer for unpaid income tax, is by subjecting said property of the estate which is in the hands of an heir or transferee to the payment of the tax due, the estate. This second remedy is the very avenue the Government took in this case to collect the tax. The Bureau of Internal Revenue should be given, in instances like the case at bar, the necessary discretion to avail itself of the most expeditious way to collect the tax as may be envisioned in the particular provision of the Tax Code above quoted, because taxes are the lifeblood of government and their prompt and certain availability is an imperious need. And as afore-stated in this case the suit seeks to achieve only one objective: payment of the tax. The adjustment of the respective shares due to the heirs from the inheritance, as lessened by the tax, is left to await the suit for contribution by the heir from whom the Government recovered said tax.

MISAEL P. VERA, as Commissioner of Internal Revenue, and JAIME ARANETA, as Regional Director, Revenue Region No. 14, Bureau of Internal Revenue, PETITIONERS, -versus- HON. JOSE F. FERNANDEZ, Judge of the Court of First Instance of Negros Occidental, Branch V, and FRANCIS A. TONGOY, Administrator of the Estate of the late LUIS D. TONGOY, RESPONDENTS. G.R. No. L-31364, FIRST DIVISION, **March 30, 1979, DE CASTRO, *J.***

The reason for the more liberal treatment of claims for taxes against a decedent's estate in the form of exception from the application of the statute of non-claims is not hard to find. Taxes are the lifeblood of the Government and their prompt and certain availability are imperious need. Upon taxation depends the Government ability to serve the people for whose benefit taxes are collected. To safeguard such interest, neglect or omission of government officials entrusted with the collection of taxes should not be allowed to bring harm or detriment to the people, in the same manner as private persons may be made to suffer individually on account of his own negligence, the presumption being that they take good care of their personal affairs. This should not hold true to government officials with respect to matters not of their own personal concern. This is the philosophy behind the government's exception, as a general rule, from the operation of the principle of estoppel.

In the instant case, petitioners filed an application (Motion for Allowance of Claim and for an Order of Payment of Taxes) which, though filed after the expiration of the time previously limited but before an order of the distribution is entered, should have been granted by the respondent court, in the absence of any valid ground, as none was shown, justifying denial of the motion, especially considering that it was for allowance Of claim for taxes due from the estate, which in effect represents a claim of the people at large, the only reason given for the denial that the claim was filed out of the previously limited period, sustaining thereby private respondents' contention, erroneously as has been demonstrated.

FACTS:

Appeal from two orders of the Court of First Instance of Negros Occidental, in Special Proceedings No. 7794, entitled: "Intestate Estate of Luis D. Tongoy," the first dated July 29, 1969 dismissing the Motion for Allowance of Claim and for an Order of Payment of Taxes by the Government of the Republic of the Philippines against the Estate of the late Luis D. Tongoy, for deficiency income taxes for the years 1963 and 1964 of the decedent in the total amount of P3,254.80, inclusive 5% surcharge, 1% monthly interest and compromise penalties. The second, dated October 7, 1969, denying the Motion for reconsideration of the Order of dismissal.

The Motion for allowance of claim and for payment of taxes dated May 28, 1969 was filed on June 3, 1969 in the abovementioned special proceedings. The claim represents the indebtedness to the Government of the late Luis D. Tongoy for deficiency income taxes in the total sum of P3,254.80 as above stated, covered by Assessment Notices, to which motion was attached Proof of Claim.

The Administrator opposed the motion solely on the ground that the claim was barred under Section 5, Rule 86 of the Rules of Court. Finding the opposition well-founded, the respondent Judge, Jose F. Fernandez, dismissed the motion for allowance of claim filed by herein petitioner, Regional Director of the Bureau of Internal Revenue, in an order dated July 29, 1969. On September 18, 1969, a motion for reconsideration was filed, of the order of July 29, 1969, but was denied in an Order dated October 7, 1969.

Hence, this appeal on certiorari.

ISSUE:

Whether or not the statute of non-claims Section 5, Rule 86 of the New Rule of Court, bars claim of the government for unpaid taxes, still within the period of limitation prescribed in Section 331 and 332 of the National Internal Revenue Code?

RULING:

A perusal of the Section 5, Rule 86 shows that it makes no mention of claims for monetary obligation of the decedent created by law, such as taxes which is entirely of different character from the claims expressly enumerated therein, such as: "all claims for money against the decedent arising from contract, express or implied, whether the same be due, not due or contingent, all claim for funeral expenses and expenses for the last sickness of the decedent and judgment for money against the decedent." Under the familiar rule of statutory construction of *expressio unius est exclusio alterius,* the mention of one thing implies the exclusion of another thing not mentioned. Thus, if a statute enumerates the things upon which it is to operate, everything else must necessarily, and by implication be excluded from its operation and effect.

In the case of *Commissioner of Internal Revenue vs. Ilagan Electric & Ice Plant, et al.*, G.R. No. L-23081, December 30, 1969, it was held that the assessment, collection and recovery of taxes, as well as the matter of prescription thereof are governed by the provisions of the National Internal revenue Code, particularly Sections 331 and 332 thereof, and not by other provisions of law. Even without being specifically mentioned, the provisions of Section 2 of Rule 86 of the Rules of Court may reasonably be presumed to have been also in the mind of the Court as not affecting the aforecited Section of the National Internal Revenue Code.

In the case of *Pineda vs. CFI of Tayabas,* 52 Phil. 803, it was even more pointedly held that "taxes assessed against the estate of a deceased person ... need not be submitted to the committee on claims in the ordinary course of administration. In the exercise of its control over the administrator, the court may direct the payment of such taxes upon motion showing that the taxes have been assessed against the estate."

The reason for the more liberal treatment of claims for taxes against a decedent's estate in the form of exception from the application of the statute of non-claims is not hard to find. Taxes are the lifeblood of the Government and their prompt and certain availability are imperious need. Upon taxation depends the Government ability to serve the people for whose benefit taxes are collected. To safeguard such interest, neglect or omission of government officials entrusted with the collection of taxes should not be allowed to bring harm or detriment to the people, in the same manner as private persons may be made to suffer individually on account of his own negligence, the presumption being that they take good care of their personal affairs. This should not hold true to government officials with respect to matters not of their own personal concern. This is the philosophy behind the government's exception, as a general rule, from the operation of the principle of estoppel.

Furthermore, as held in Commissioner of Internal Revenue vs. Pineda, supra, citing the last paragraph of Section 315 of the Tax Code payment of income tax shall be a lien in favor of the Government of the Philippines from the time the assessment was made by the Commissioner of Internal Revenue until paid with interests, penalties, etc. By virtue of such lien, this court held that the property of the estate already in the hands of an heir or transferee may be subject to the payment of the tax due the estate. *A fortiori* before the inheritance has passed to the heirs, the unpaid taxes due the decedent may be collected, even without its having been presented under Section 2 of Rule 86 of the Rules of Court.

In the instant case, petitioners filed an application (Motion for Allowance of Claim and for an Order of Payment of Taxes) which, though filed after the expiration of the time previously limited but before an order of the distribution is entered, should have been granted by the respondent court, in the absence of any valid ground, as none was shown, justifying denial of the motion, especially considering that it was for allowance Of claim for taxes due from the estate, which in effect represents a claim of the people at large, the only reason given for the denial that the claim was filed out of the previously limited period, sustaining thereby private respondents' contention, erroneously as has been demonstrated.

COMMISSIONER OF INTERNAL REVENUE, PETITIONER, -versus- COURT OF APPEALS, CITYTRUST BANKING CORPORATION and COURT OF TAX APPEALS, RESPONDENTS. G.R. No. 106611, SECOND DIVISION, July 21, 1994, REGALADO, *J.*

It is a long and firmly settled rule of law that the Government is not bound by the errors committed by its agents. In the performance of its governmental functions, the State cannot be estopped by the neglect of its agent and officers. Although the Government may generally be estopped through the affirmative acts of public officers acting within their authority, their neglect or omission of public duties as exemplified in this case will not and should not produce that effect.

Nowhere is the aforestated rule more true than in the field of taxation. It is axiomatic that the Government cannot and must not be estopped particularly in matters involving taxes. Taxes are the lifeblood of the nation through which the government agencies continue to operate and with which the State effects its functions for the welfare of its constituents. The errors of certain administrative officers should never be allowed to jeopardize the Government's financial position, especially in the case at bar where the amount involves millions of pesos the collection whereof, if justified, stands to be prejudiced just because of bureaucratic lethargy.

FACTS:

It appears that in a letter dated August 26, 1986, herein private respondent corporation filed a claim for refund with the BIR in the amount of P19,971,745.00 representing the alleged aggregate of the excess of its carried-over total quarterly payments over the actual income tax due, plus carried-over withholding tax payments on government securities and rental income, as computed in its final income tax return for the calendar year ending December 31, 1985.

Two days later, or on August 28, 1986, in order to interrupt the running of the prescriptive period, Citytrust filed a petition with the Court of Tax Appeals claiming the refund of its income tax overpayments for the years 1983, 1984 and 1985 in the total amount of P19,971,745.00.

In the answer filed, it was asserted that the mere averment that Citytrust incurred a net loss in 1985 does not *ipso facto* merit a refund; that the amounts of P6,611,223.00, P1,959,514.00 and P28,238.00 claimed by Citytrust as 1983 income tax overpayment, taxes withheld on proceeds of government securities investments, as well as on rental income, respectively, are not properly documented; that assuming *arguendo* that petitioner is entitled to refund, the right to claim the same has prescribed with respect to income tax payments prior to August 28, 1984, pursuant to Sections 292 and 295 of the National Internal Revenue Code of 1977, as amended, since the petition was filed only on August 28, 1986.

Thereafter, said court rendered its decision in the case, the decretal portion of which declares that in view of the foregoing, petitioner is entitled to a refund but only for the overpaid taxes incurred in

1984 and 1985. The refundable amount as shown in its 1983 income tax return is hereby denied on the ground of prescription. Respondent is hereby ordered to grant a refund to petitioner Citytrust Banking Corp. in the amount of P13, 314,506.14 representing the overpaid income taxes for 1984 and 1985.

A motion for the reconsideration of said decision was initially filed by the Solicitor General on the sole ground that the statements and certificates of taxes allegedly withheld are not conclusive evidence of actual payment and remittance of the taxes withheld to the BIR. A supplemental motion for reconsideration was thereafter filed, wherein it was contended for the first time that herein private respondent had outstanding unpaid deficiency income taxes. Oppositions to both the basic and supplemental motions for reconsideration were filed by private respondent Citytrust.

Thereafter, the Court of Tax Appeals issued a resolution denying both motions for the reason that Section 52 (b) of the Tax Code, as implemented by Revenue Regulation 6-85, only requires that the claim for tax credit or refund must show that the income received was declared as part of the gross income, and that the fact of withholding was duly established. Moreover, with regard to the argument raised in the supplemental motion for reconsideration anent the deficiency tax assessment against herein petitioner, the tax court ruled that since that matter was not raised in the pleadings, the same cannot be considered, invoking therefor the salutary purpose of the omnibus motion rule which is to obviate multiplicity of motions and to discourage dilatory pleadings.

A petition for review was filed by herein petitioner with respondent Court of Appeals which in due course promulgated its decision affirming the judgment of the Court of Tax Appeals. Petitioner eventually elevated the case to this Court, maintaining that said respondent court erred in affirming the grant of the claim for refund of Citytrust, considering that, firstly, said private respondent failed to prove and substantiate its claim for such refund; and, secondly, the bureau's findings of deficiency income and business tax liabilities against private respondent for the year 1984 bars such payment.

ISSUE:

Whether or not the grant of refund was proper?

RULING:

After a careful review of the records, we find that under the peculiar circumstances of this case, the ends of substantial justice and public interest would be better subserved by the remand of this case to the Court of Tax Appeals for further proceedings.

It is the sense of this Court that the BIR, represented herein by petitioner Commissioner of Internal Revenue, was denied its day in court by reason of the mistakes and/or negligence of its officials and employees. It can readily be gleaned from the records that when it was herein petitioner's turn to present evidence, several postponements were sought by its counsel, the Solicitor General, due to the unavailability of the necessary records which were not transmitted by the Refund Audit Division of the BIR to said counsel, as well as the investigation report made by the Banks/Financing and Insurance Division of the said bureau/ despite repeated requests. It was under such a predicament and in deference to the tax court that ultimately, said records being still unavailable; herein petitioner's counsel was constrained to submit the case for decision on February 20, 1991 without presenting any evidence.

For that matter, the BIR officials and/or employees concerned also failed to heed the order of the Court of Tax Appeals to remand the records to it pursuant to Section 2, Rule 7 of the Rules of the Court of Tax Appeals which provides that the Commissioner of Internal Revenue and the Commissioner of Customs shall certify and forward to the Court of Tax Appeals, within ten days after filing his answer, all the records of the case in his possession, with the pages duly numbered, and if the records are in separate folders, then the folders shall also be numbered.

The aforestated impassé came about due to the fact that, despite the filing of the aforementioned initiatory petition in CTA Case No. 4099 with the Court of Tax Appeals, the Tax Refund Division of the BIR still continued to act administratively on the claim for refund previously filed therein, instead of forwarding the records of the case to the Court of Tax Appeals as ordered.

It is a long and firmly settled rule of law that the Government is not bound by the errors committed by its agents. In the performance of its governmental functions, the State cannot be estopped by the neglect of its agent and officers. Although the Government may generally be estopped through the affirmative acts of public officers acting within their authority, their neglect or omission of public duties as exemplified in this case will not and should not produce that effect.

Nowhere is the aforestated rule more true than in the field of taxation. It is axiomatic that the Government cannot and must not be estopped particularly in matters involving taxes. Taxes are the lifeblood of the nation through which the government agencies continue to operate and with which the State effects its functions for the welfare of its constituents. The errors of certain administrative officers should never be allowed to jeopardize the Government's financial position,[22] especially in the case at bar where the amount involves millions of pesos the collection whereof, if justified, stands to be prejudiced just because of bureaucratic lethargy.

Further, it is also worth noting that the Court of Tax Appeals erred in denying petitioner's supplemental motion for reconsideration alleging bringing to said court's attention the existence of the deficiency income and business tax assessment against Citytrust. The fact of such deficiency assessment is intimately related to and inextricably intertwined with the right of respondent bank to claim for a tax refund for the same year. To award such refund despite the existence of that deficiency assessment is an absurdity and a polarity in conceptual effects. Herein private respondent cannot be entitled to refund and at the same time be liable for a tax deficiency assessment for the same year.

The grant of a refund is founded on the assumption that the tax return is valid, that is, the facts stated therein are true and correct. The deficiency assessment, although not yet final, created a doubt as to and constitutes a challenge against the truth and accuracy of the facts stated in said return which, by itself and without unquestionable evidence, cannot be the basis for the grant of the refund.

Moreover, to grant the refund without determination of the proper assessment and the tax due would inevitably result in multiplicity of proceedings or suits. If the deficiency assessment should subsequently be upheld, the Government will be forced to institute anew a proceeding for the recovery of erroneously refunded taxes which recourse must be filed within the prescriptive period of ten years after discovery of the falsity, fraud or omission in the false or fraudulent return involved.[23] This would necessarily require and entail additional efforts and expenses on the part of the Government impose a burden on and a drain of government funds, and impedes or delays the collection of much-needed revenue for governmental operations.

Thus, to avoid multiplicity of suits and unnecessary difficulties or expenses, it is both logically necessary and legally appropriate that the issue of the deficiency tax assessment against Citytrust be resolved jointly with its claim for tax refund, to determine once and for all in a single proceeding the true and correct amount of tax due or refundable.

In fact, as the Court of Tax Appeals itself has heretofore conceded, it would be only just and fair that the taxpayer and the Government alike be given equal opportunities to avail of remedies under the law to defeat each other's claim and to determine all matters of dispute between them in one single case. It is important to note that in determining whether or not petitioner is entitled to the refund of the amount paid, it would necessary to determine how much the Government is entitled to collect as taxes. This would necessarily include the determination of the correct liability of the taxpayer and, certainly, a determination of this case would constitute res judicata on both parties as to all the matters subject thereof or necessarily involved therein.

COMMISSIONER OF INTERNAL REVENUE, PETITIONER, -versus-
ALGUE, INC., and THE COURT OF TAX APPEALS, RESPONDENTS. G.R. No. L-28896, FIRST DIVISION, **February 17, 1988, CRUZ, *J.***

The Solicitor General is correct when he says that the burden is on the taxpayer to prove the validity of the claimed deduction. In the present case, however, we find that the onus has been discharged satisfactorily. The private respondent has proved that the payment of the fees was necessary and reasonable in the light of the efforts exerted by the payees in inducing investors and prominent businessmen to venture in an experimental enterprise and involve themselves in a new business requiring millions of pesos. This was no mean feat and should be, as it was, sufficiently recompensed.

It is said that taxes are what we pay for civilization society. Without taxes, the government would be paralyzed for lack of the motive power to activate and operate it. Hence, despite the natural reluctance to surrender part of one's hard earned income to the taxing authorities, every person who is able to must contribute his share in the running of the government. The government for its part is expected to respond in the form of tangible and intangible benefits intended to improve the lives of the people and enhance their moral and material values. This symbiotic relationship is the rationale of taxation and should dispel the erroneous notion that it is an arbitrary method of exaction by those in the seat of power.

But even as we concede the inevitability and indispensability of taxation, it is a requirement in all democratic regimes that it be exercised reasonably and in accordance with the prescribed procedure. If it is not, then the taxpayer has a right to complain and the courts will then come to his succor. For all the awesome power of the tax collector, he may still be stopped in his tracks if the taxpayer can demonstrate, as it has here, that the law has not been observed.

FACTS:

The record shows that the private respondent, a domestic corporation engaged in engineering, construction and other allied activities, received a letter from the petitioner assessing it in the total amount of P83, 183.85 as delinquency income taxes for the years 1958 and 1959. Algue flied a letter of protest or request for reconsideration, which letter was stamp received on the same day in the office of the petitioner. On March 12, 1965, a warrant of distraint and levy was presented to the private respondent, through its counsel, Atty. Alberto Guevara, Jr., who refused to receive it on the ground of the pending protest.

A search of the protest in the dockets of the case proved fruitless. Atty. Guevara produced his file copy and gave a photostat to BIR agent Ramon Reyes, who deferred service of the warrant. On April 7, 1965, Atty. Guevara was finally informed that the BIR was not taking any action on the protest and it was only then that he accepted the warrant of distraint and levy earlier sought to be served. Sixteen days later, on April 23, 1965, Algue filed a petition for review of the decision of the Commissioner of Internal Revenue with the Court of Tax Appeals.

ISSUE:

Whether or not the Collector of Internal Revenue correctly disallowed the P75,000.00 deduction claimed by private respondent Algue as legitimate business expenses in its income tax returns? (NO)

RULING:

The petitioner contends that the claimed deduction of P75, 000.00 was properly disallowed because it was not an ordinary reasonable or necessary business expense. The Court of Tax Appeals had seen it differently. Agreeing with Algue, it held that the said amount had been legitimately paid by the private respondent for actual services rendered. The payment was in the form of promotional fees. These were collected by the Payees for their work in the creation of the Vegetable Oil Investment Corporation of the Philippines and its subsequent purchase of the properties of the Philippine Sugar Estate Development Company.

Parenthetically, it may be observed that the petitioner had originally claimed these promotional fees to be personal holding company income but later conformed to the decision of the respondent court rejecting this assertion. In fact, as the said court found, the amount was earned through the joint efforts of the persons among whom it was distributed It has been established that the Philippine

Sugar Estate Development Company had earlier appointed Algue as its agent, authorizing it to sell its land, factories and oil manufacturing process. Pursuant to such authority, Alberto Guevara, Jr., Eduardo Guevara, Isabel Guevara, Edith, O'Farell, and Pablo Sanchez, worked for the formation of the Vegetable Oil Investment Corporation, inducing other persons to invest in it. Ultimately, after its incorporation largely through the promotion of the said persons, this new corporation purchased the PSEDC properties. For this sale, Algue received as agent a commission of P126, 000.00, and it was from this commission that the P75,000.00 promotional fees were paid to the aforenamed individuals.

There is no dispute that the payees duly reported their respective shares of the fees in their income tax returns and paid the corresponding taxes thereon.[17] The Court of Tax Appeals also found, after examining the evidence, that no distribution of dividends was involved.[18]

The petitioner claims that these payments are fictitious because most of the payees are members of the same family in control of Algue. It is argued that no indication was made as to how such payments were made, whether by check or in cash, and there is not enough substantiation of such payments. In short, the petitioner suggests a tax dodge, an attempt to evade a legitimate assessment by involving an imaginary deduction.

We find that these suspicions were adequately met by the private respondent when its President, Alberto Guevara, and the accountant, Cecilia V. de Jesus, testified that the payments were not made in one lump sum but periodically and in different amounts as each payee's need arose. [19] It should be remembered that this was a family corporation where strict business procedures were not applied and immediate issuance of receipts was not required. Even so, at the end of the year, when the books were to be closed, each payee made an accounting of all of the fees received by him or her, to make up the total of P75,000.00. [20] Admittedly, everything seemed to be informal. This arrangement was understandable, however, in view of the close relationship among the persons in the family corporation.

It is worth noting at this point that most of the payees were not in the regular employ of Algue nor were they its controlling stockholders.

The Solicitor General is correct when he says that the burden is on the taxpayer to prove the validity of the claimed deduction. In the present case, however, we find that the onus has been discharged satisfactorily. The private respondent has proved that the payment of the fees was necessary and reasonable in the light of the efforts exerted by the payees in inducing investors and prominent businessmen to venture in an experimental enterprise and involve themselves in a new business requiring millions of pesos. This was no mean feat and should be, as it was, sufficiently recompensed.

It is said that taxes are what we pay for civilization society. Without taxes, the government would be paralyzed for lack of the motive power to activate and operate it. Hence, despite the natural reluctance to surrender part of one's hard earned income to the taxing authorities, every person who is able to must contribute his share in the running of the government. The government for its part is expected to respond in the form of tangible and intangible benefits intended to improve the lives of the people and enhance their moral and material values. This symbiotic relationship is the rationale of taxation and should dispel the erroneous notion that it is an arbitrary method of exaction by those in the seat of power.

But even as we concede the inevitability and indispensability of taxation, it is a requirement in all democratic regimes that it be exercised reasonably and in accordance with the prescribed procedure. If it is not, then the taxpayer has a right to complain and the courts will then come to his succor. For all the awesome power of the tax collector, he may still be stopped in his tracks if the taxpayer can demonstrate, as it has here, that the law has not been observed.

We hold that the appeal of the private respondent from the decision of the petitioner was filed on time with the respondent court in accordance with Rep. Act No. 1125. And we also find that the claimed deduction by the private respondent was permitted under the Internal Revenue Code and should therefore not have been disallowed by the petitioner.

COMMISSIONER OF INTERNAL REVENUE, PETITIONER, -versus- COURT OF APPEALS, COURT OF TAX APPEALS and YOUNG MEN'S CHRISTIAN ASSOCIATION OF THE PHILIPPINES, INC., RESPONDENTS. G.R. No. 124043, FIRST DIVISION, October 14, 1998, PANGANIBAN, *J.*

Because taxes are the lifeblood of the nation, the Court has always applied the doctrine of strict in interpretation in construing tax exemptions. Furthermore, a claim of statutory exemption from taxation should be manifest and unmistakable from the language of the law on which it is based. Thus, the claimed exemption "must expressly be granted in a statute stated in a language too clear to be mistaken."

In the instant case, the exemption claimed by the YMCA is expressly disallowed by the very wording of the last paragraph of then Section 27 of the NIRC which mandates that the income of exempt organizations (such as the YMCA) from any of their properties, real or personal, be subject to the tax imposed by the same Code. Because the last paragraph of said section unequivocally subjects to tax the rent income of the YMCA from its real property, the Court is duty-bound to abide strictly by its literal meaning and to refrain from resorting to any convoluted attempt at construction.

FACTS:

Private Respondent YMCA is a non-stock, non-profit institution, which conducts various programs and activities that are beneficial to the public, especially the young people, pursuant to its religious, educational and charitable objectives. Private Respondent earned, among others, an income of P676, 829.80 from leasing out a portion of its premises to small shop owners, like restaurants and canteen operators, and P44, 259.00 from parking fees collected from non-members. On July 2, 1984, the CIR issued an assessment to private respondent, in the total amount of P415,615.01 including surcharge and interest, for deficiency income tax, deficiency expanded withholding taxes on rentals and professional fees and deficiency withholding tax on wages. Private respondent formally protested the assessment and, as a supplement to its basic protest, filed a letter dated October 8, 1985. In reply, the CIR denied the claims of YMCA.

Contesting the denial of its protest, the YMCA filed a petition for review at the Court of Tax Appeals (CTA) on March 14, 1989. In due course, the CTA issued this ruling in favor of the YMCA stating that the leasing of private respondent's facilities to small shop owners, to restaurant and canteen operators and the operation of the parking lot are reasonably incidental to and reasonably necessary for the accomplishment of the objectives of the private respondents.

Dissatisfied with the CTA ruling, the CIR elevated the case to the Court of Appeals (CA). In its Decision of February 16, 1994, the CA initially decided in favor of the CIR.

Aggrieved, the YMCA asked for reconsideration. Finding merit in the Motion for Reconsideration filed by the YMCA, the CA reversed itself.

The internal revenue commissioner's own Motion for Reconsideration was denied by Respondent Court in its second assailed Resolution of February 29, 1996. Hence, this petition for review under Rule 45 of the Rules of Court.

ISSUE:

Whether or not the income derived from rentals of real property owned by the Young Men's Christian Association of the Philippines, Inc. (YMCA) subject to income tax under the National Internal Revenue Code (NIRC) and the Constitution? (YES)

RULING:

We now come to the crucial issue: Is the rental income of the YMCA from its real estate subject to tax? At the outset, we set forth the relevant provision of the NIRC:

> *Sec. 27. Exemptions from tax on corporations. — The following organizations shall not be taxed under this Title in respect to income received by them as such —*

> *x x x x x x x x x*
>
> *(g) Civic league or organization not organized for profit but operated exclusively for the promotion of social welfare;*
>
> *(h) Club organized and operated exclusively for pleasure, recreation, and other non-profitable purposes, no part of the net income of which inures to the benefit of any private stockholder or member;*
>
> *x x x x x x x x x*
>
> *Notwithstanding the provisions in the preceding paragraphs, the income of whatever kind and character of the foregoing organizations from any of their properties, real or personal, or from any of their activities conducted for profit, regardless of the disposition made of such income, shall be subject to the tax imposed under this Code.*

Petitioner argues that while the income received by the organizations enumerated in Section 27 (now Section 26) of the NIRC is, as a rule, exempted from the payment of tax "in respect to income received by them as such," the exemption does not apply to income derived ". . . from any of their properties, real or personal, or from any of their activities conducted for profit, regardless of the disposition made of such income . . . ."

Petitioner adds that "rental income derived by a tax-exempt organization from the lease of its properties, real or personal, is not, therefore, exempt from income taxation, even if such income is exclusively used for the accomplishment of its objectives." We agree with the commissioner.

Because taxes are the lifeblood of the nation, the Court has always applied the doctrine of strict in interpretation in construing tax exemptions. Furthermore, a claim of statutory exemption from taxation should be manifest and unmistakable from the language of the law on which it is based. Thus, the claimed exemption "must expressly be granted in a statute stated in a language too clear to be mistaken."

In the instant case, the exemption claimed by the YMCA is expressly disallowed by the very wording of the last paragraph of then Section 27 of the NIRC which mandates that the income of exempt organizations (such as the YMCA) from any of their properties, real or personal, be subject to the tax imposed by the same Code. Because the last paragraph of said section unequivocally subjects to tax the rent income of the YMCA from its real property, the Court is duty-bound to abide strictly by its literal meaning and to refrain from resorting to any convoluted attempt at construction.

It is axiomatic that where the language of the law is clear and unambiguous, its express terms must be applied. Parenthetically, a consideration of the question of construction must not even begin, particularly when such question is on whether to apply a strict construction or a liberal one on statutes that grant tax exemptions to "religious, charitable and educational properties or institutions."

The last paragraph of Section 27, the YMCA argues, should be "subject to the qualification that the income from the properties must arise from activities 'conducted for profit' before it may be considered taxable." This argument is erroneous. As previously stated, a reading of said paragraph ineludibly shows that the income from any property of exempt organizations, as well as that arising from any activity it conducts for profit, is taxable. The phrase "any of their activities conducted for profit" does not qualify the word "properties." This makes from the property of the organization taxable, regardless of how that income is used — whether for profit or for lofty non-profit purposes.

Private respondent also invokes Article XIV, Section 4, par. 3 of the Character, claiming that the YMCA "is a non-stock, non-profit educational institution whose revenues and assets are used actually, directly and exclusively for educational purposes so it is exempt from taxes on its properties and income." We reiterate that private respondent is exempt from the payment of property tax, but not income tax on the rentals from its property. The bare allegation alone that it is a non-stock, non-profit educational institution is insufficient to justify its exemption from the payment of income tax.

As previously discussed, laws allowing tax exemption are construed *strictissimi juris*. Hence, for the YMCA to be granted the exemption it claims under the aforecited provision, it must prove with substantial evidence that (1) it falls under the classification *non-stock, non-profit educational institution*; and (2) the income it seeks to be exempted from taxation is used *actually, directly, and exclusively for educational purposes*. However, the Court notes that not a scintilla of evidence was submitted by private respondent to prove that it met the said requisites.

Is the YMCA an *educational* institution within the purview of Article XIV, Section 4, par. 3 of the Constitution? We rule that it is not. The term "educational institution" or "institution of learning" has acquired a well-known technical meaning, of which the members of the Constitutional Commission are deemed cognizant. [38] Under the Education Act of 1982, such term refers to schools. The school system is synonymous with formal education, [40] which "refers to the hierarchically structured and chronologically graded learnings organized and provided by the formal school system and for which certification is required in order for the learner to progress through the grades or move to the higher levels." [41] The Court has examined the "Amended Articles of Incorporation" and "By-Laws"[43] of the YMCA, but found nothing in them that even hints that it is a school or an educational institution. [44]

Furthermore, under the Education Act of 1982, even non-formal education is understood to be school-based and "private auspices such as foundations and civic-spirited organizations" are ruled out. [45] It is settled that the term "educational institution," when used in laws granting tax exemptions, refers to a ". . . school seminary, college or educational establishment . . . ." [46] Therefore, the private respondent cannot be deemed one of the educational institutions covered by the constitutional provision under consideration.

Moreover, without conceding that Private Respondent YMCA is an educational institution, the Court also notes that the former did not submit proof of the proportionate amount of the subject income that was actually, directly and exclusively used for educational purposes. Article XIII, Section 5 of the YMCA by-laws, which formed part of the evidence submitted, is patently insufficient, since the same merely signified that "[t]he net income derived from the rentals of the commercial buildings shall be apportioned to the Federation and Member Associations as the National Board may decide." In sum, we find no basis for granting the YMCA exemption from income tax under the constitutional provision invoked.

DAVAO GULF LUMBER CORPORATION, PETITIONER, -versus-COMMISSIONER OF INTERNAL REVENUE and COURT OF APPEALS, RESPONDENTS. G.R. No. 117359, EN BANC, **July 23, 1998, PANGANIBAN, *J.***

Petitioner submits that it is entitled to the refund of 25 percent of the specific taxes it had actually paid for the petroleum products used in its operations. In other words, it claims a refund based on the increased rates under Sections 153 and 156 of the NIRC. The relevant statutory provisions do not clearly support petitioner's claim for refund.

A tax cannot be imposed unless it is supported by the clear and express language of a statute; on the other hand, once the tax is unquestionably imposed, "a claim of exemption from tax payments must be clearly shown and based on language in the law too plain to be mistaken." Since the partial refund authorized under Section 5, RA 1435, is in the nature of a tax exemption, it must be construed strictissimi Juris against the grantee. Hence, petitioner's claim of refund on the basis of the specific taxes it actually paid

FACTS:

Petitioner is a licensed forest concessionaire possessing a Timber License Agreement granted by the Ministry of Natural Resources. From July 1, 1980 to January 31, 1982 petitioner purchased, from various oil companies, refined and manufactured mineral oils as well as motor and diesel fuels, which it used exclusively for the exploitation and operation of its forest concession. Said oil companies paid the specific taxes imposed, under Sections 153 and 156 of the 1977 National

Internal Revenue Code (NIRC), on the sale of said products. Being included in the purchase price of the oil products, the specific taxes paid by the oil companies were eventually passed on to the user, the petitioner in this case.

On December 13, 1982, petitioner filed before Respondent Commissioner of Internal Revenue (CIR) a claim for refund in the amount of P120, 825.11, representing 25% of the specific taxes actually paid on the above-mentioned fuels and oils that were used by petitioner in its operations as forest concessionaire. The claim was based on *Insular Lumber Co. vs. Court of Tax Appeals* and Section 5 of RA 1435.

It is an unquestioned fact that petitioner complied with the procedure for refund, including the submission of proof of the actual use of the aforementioned oils in its forest concession as required by the above-quoted law. On January 20, 1983, petitioner filed at the CTA a petition for review docketed as CTA Case No. 3574.

The CTA rendered its decision finding petitioner entitled to a partial refund of specific taxes the latter had paid in the reduced amount of P2, 923.15. The CTA ruled that the claim on purchases of lubricating oil (from July 1, 1980 to January 19, 1981) and on manufactured oils other than lubricating oils (from July 1, 1980 to January 4, 1981) had prescribed. Disallowed on the ground that they were not included in the original claim filed before the CIR were the claims for refund on purchases of manufactured oils from January 1, 1980 to June 30, 1980 and from February 1, 1982 to June 30, 1982. In regard to the other purchases, the CTA granted the claim, but it computed the refund based on rates deemed paid under RA 1435, and not on the higher rates actually paid by petitioner under the NIRC.

Insisting that the basis for computing the refund should be the increased rates prescribed by Sections 153 and 156 of the NIRC, petitioner elevated the matter to the Court of Appeals. As noted earlier, the Court of Appeals affirmed the CTA Decision. Hence, this petition for review.

ISSUE:

Whether or not petitioner is entitled under Republic Act No. 1435 to the refund of 25% of the amount of specific taxes it actually paid on various refined and manufactured mineral oils and other oil products taxed under Sec. 153 and Sec. 156 of the 1977 (Sec. 142 and Sec. 145 of the 1939) National Internal Revenue Code? (NO)

RULING:

At the outset, it must be stressed that petitioner is entitled to a partial refund under Section 5 of RA 1435, which was enacted to provide means for increasing the Highway Special Fund. The rationale for this grant of partial refund of specific taxes paid on purchases of manufactured diesel and fuel oils rests on the character of the Highway Special Fund. The specific taxes collected on gasoline and fuel accrues to the Fund, which is to be used for the construction and maintenance of the highway system. But because the gasoline and fuel purchased by mining and lumber concessionaires are used within their own compounds and roads, and their vehicles seldom use the national highways, they do not directly benefit from the Fund and its use. Hence, the tax refund gives the mining and the logging companies a measure of relief in light of their peculiar situation. When the Highway Special Fund was abolished in 1985, the reason for the refund likewise ceased to exist. Since petitioner purchased the subject manufactured diesel and fuel oils from July 1, 1980 to January 31, 1982 and submitted the required proof that these were actually used in operating its forest concession, it is entitled to claim the refund under Section 5 of RA 1435.

Petitioner submits that it is entitled to the refund of 25 percent of the specific taxes it had actually paid for the petroleum products used in its operations. In other words, it claims a refund based on the increased rates under Sections 153 and 156 of the NIRC. The relevant statutory provisions do not clearly support petitioner's claim for refund.

A tax cannot be imposed unless it is supported by the clear and express language of a statute; on the other hand, once the tax is unquestionably imposed, "a claim of exemption from tax payments must be clearly shown and based on language in the law too plain to be mistaken." Since the partial refund authorized under Section 5, RA 1435, is in the nature of a tax exemption, it must be construed *strictissimi Juris* against the grantee. Hence, petitioner's claim of refund on the basis of the specific taxes it actually paid must expressly be granted in a statute stated in a language too clear to be mistaken.

We have carefully scrutinized RA 1435 and the subsequent pertinent statutes and found no expression of a legislative will authorizing a refund based on the higher rates claimed by petitioner. The mere fact that the privilege of refund was included in Section 5, and not in Section 1, is insufficient to support petitioner's claim. When the law itself does not explicitly provide that a refund under RA 1435 may be based on higher rates which were nonexistent at the time of its enactment, this Coure cannot presume otherwise. A legislative lacuna cannot be filled by judicial fiat.

FERDINAND R. MARCOS II, PETITIONER,
-versus- COURT OF APPEALS, THE COMMISSIONER OF THE BUREAU OF INTERNAL REVENUE and HERMINIA D. DE GUZMAN, RESPONDENTS. G.R. No. 120880, SECOND DIVISION, **June 5, 1997, TORRES, JR.,** ***J.***

Thus, the Government has two ways of collecting the taxes in question. One, by going after all the heirs and collecting from each one of them the amount of the tax proportionate to the inheritance received. Another remedy, pursuant to the lien created by Section 315 of the Tax Code upon all property and rights to property belong to the taxpayer for unpaid income tax, is by subjecting said property of the estate which is in the hands of an heir or transferee to the payment of the tax due the estate.

From the foregoing, it is discernible that the approval of the court, sitting in probate, or as a settlement tribunal over the deceased is not a mandatory requirement in the collection of estate taxes. It cannot therefore be argued that the Tax Bureau erred in proceeding with the levying and sale of the properties allegedly owned by the late President, on the ground that it was required to seek first the probate court's sanction. There is nothing in the Tax Code, and in the pertinent remedial laws that implies the necessity of the probate or estate settlement court's approval of the state's claim for estate taxes, before the same can be enforced and collected.

FACTS:

On September 29, 1989, former President Ferdinand Marcos died in Honolulu, Hawaii, USA. On June 27, 1990, a Special Tax Audit Team was created to conduct investigations and examinations of the tax liabilities and obligations of the late president, as well as that of his family, associates and "cronies". Said audit team concluded its investigation with a Memorandum dated July 26, 1991. The investigation disclosed that the Marcoses failed to file a written notice of the death of the decedent, an estate tax returns, as well as several income tax returns covering the years 1982 to 1986, — all in violation of the National Internal Revenue Code (NIRC). The Commissioner of Internal Revenue thereby caused the preparation and filing of the Estate Tax Return for the estate of the late president, the Income Tax Returns of the Spouses Marcos for the years 1985 to 1986, and the Income Tax Returns of petitioner Ferdinand "Bongbong" Marcos II for the years 1982 to 1985.

On July 26, 1991, the BIR issued the following: (1) Deficiency estate tax assessment no. FAC-2-89-91-002464 (against the estate of the late president Ferdinand Marcos in the amount of P23, 293,607,638.00 Pesos); (2) Deficiency income tax assessment no. FAC-1-85-91-002452 and Deficiency income tax assessment no. FAC-1-86-91-002451 (against the Spouses Ferdinand and Imelda Marcos in the amounts of P149,551.70 and P184,009,737.40 representing deficiency income tax for the years 1985 and 1986); (3) Deficiency income tax assessment nos. FAC-1-82-91-002460 to FAC-1-85-91-002463 (against petitioner Ferdinand "Bongbong" Marcos II in the amounts of P258.70 pesos; P9,386.40 Pesos; P4,388.30 Pesos; and P6,376.60 Pesos representing his deficiency income taxes for the years 1982 to 1985).

The deficiency tax assessments were not protested administratively, by Mrs. Marcos and the other heirs of the late president, within 30 days from service of said assessments. On February 22, 1993, the BIR Commissioner issued twenty-two notices of levy on real property against certain parcels of land owned by the Marcoses — to satisfy the alleged estate tax and deficiency income taxes of

Spouses Marcos. On May 20, 1993, four more Notices of Levy on real property were issued for the purpose of satisfying the deficiency income taxes. On May 26, 1993, additional four (4) notices of Levy on real property were again issued. The foregoing tax remedies were resorted to pursuant to Sections 205 and 213 of the National Internal Revenue Code (NIRC).

On June 25, 1993, petitioner Ferdinand "Bongbong" Marcos II filed the instant petition for *certiorari* and prohibition under Rule 65 of the Rules of Court, with prayer for temporary restraining order and/or writ of preliminary injunction.

It has been repeatedly observed, and not without merit, that the enforcement of tax laws and the collection of taxes, is of paramount importance for the sustenance of government.

ISSUE:

Whether or not the proper avenues of assessment and collection of the said tax obligations were taken by the respondent Bureau? (NO)

RULING:

Taxes are the lifeblood of the government and should be collected without unnecessary hindrance. However, such collection should be made in accordance with law as any arbitrariness will negate the very reason for government itself. It is therefore necessary to reconcile the apparently conflicting interests of the authorities and the taxpayers so that the real purpose of taxation, which is the promotion of the common good, may be achieved.

The pivotal question the court is tasked to resolve refers to the authority of the Bureau of Internal Revenue to collect by the summary remedy of levying upon, and sale of real properties of the decedent, estate tax deficiencies, without the cognition and authority of the court sitting in probate over the supposed will of the deceased.

The nature of the process of estate tax collection has been described as follows:

> *Strictly speaking, the assessment of an inheritance tax does not directly involve the administration of a decedent's estate, although it may be viewed as an incident to the complete settlement of an estate, and, under some statutes, it is made the duty of the probate court to make the amount of the inheritance tax a part of the final decree of distribution of the estate. It is not against the property of decedent, nor is it a claim against the estate as such, but it is against the interest or property right which the heir, legatee, devisee, etc., has in the property formerly held by decedent. Further, under some statutes, it has been held that it is not a suit or controversy between the parties, nor is it an adversary proceeding between the state and the person who owes the tax on the inheritance. However, under other statutes it has been held that the hearing and determination of the cash value of the assets and the determination of the tax are adversary proceedings. The proceeding has been held to be necessarily a proceeding in rem.*

In the Philippine experience, the enforcement and collection of estate tax, is executive in character, as the legislature has seen it fit to ascribe this task to the Bureau of Internal Revenue.

Thus, it was in *Vera vs. Fernandez* that the court recognized the liberal treatment of claims for taxes charged against the estate of the decedent. Such taxes, we said, were exempted from the application of the statute of non-claims, and this is justified by the necessity of government funding, immortalized in the maxim that taxes are the lifeblood of the government. *Vectigalia nervi sunt rei publicae* — taxes are the sinews of the state.

Such liberal treatment of internal revenue taxes in the probate proceedings extends so far, even to allowing the enforcement of tax obligations against the heirs of the decedent, even after distribution of the estate's properties.

Thus, the Government has two ways of collecting the taxes in question. One, by going after all the heirs and collecting from each one of them the amount of the tax proportionate to the inheritance received. Another remedy, pursuant to the lien created by Section 315 of the Tax Code upon all property and rights to property belong to the taxpayer for unpaid income tax, is by subjecting said property of the estate which is in the hands of an heir or transferee to the payment of the tax due the estate.

From the foregoing, it is discernible that the approval of the court, sitting in probate, or as a settlement tribunal over the deceased is not a mandatory requirement in the collection of estate taxes. It cannot therefore be argued that the Tax Bureau erred in proceeding with the levying and sale of the properties allegedly owned by the late President, on the ground that it was required to seek first the probate court's sanction. There is nothing in the Tax Code, and in the pertinent remedial laws that implies the necessity of the probate or estate settlement court's approval of the state's claim for estate taxes, before the same can be enforced and collected.

On the contrary, under Section 87 of the NIRC, it is the probate or settlement court which is bidden not to authorize the executor or judicial administrator of the decedent's estate to deliver any distributive share to any party interested in the estate, unless it is shown a Certification by the Commissioner of Internal Revenue that the estate taxes have been paid. This provision disproves the petitioner's contention that it is the probate court which approves the assessment and collection of the estate tax.

If there is any issue as to the validity of the BIR's decision to assess the estate taxes, this should have been pursued through the proper administrative and judicial avenues provided for by law.

Apart from failing to file the required estate tax return within the time required for the filing of the same, petitioner, and the other heirs never questioned the assessments served upon them, allowing the same to lapse into finality, and prompting the BIR to collect the said taxes by levying upon the properties left by President Marcos.

The Notices of Levy upon real property were issued within the prescriptive period and in accordance with the provisions of the present Tax Code. The deficiency tax assessment, having already become final, executory, and demandable, the same can now be collected through the summary remedy of distraint or levy pursuant to Section 205 of the NIRC.

The omission to file an estate tax return, and the subsequent failure to contest or appeal the assessment made by the BIR is fatal to the petitioner's cause, as under the above-cited provision, in case of failure to file a return, the tax may be assessed at any time within ten years after the omission, and any tax so assessed may be collected by levy upon real property within three years following the assessment of the tax. Since the estate tax assessment had become final and unappealable by the petitioner's default as regards protesting the validity of the said assessment, there is now no reason why the BIR cannot continue with the collection of the said tax. Any objection against the assessment should have been pursued following the avenue paved in Section 229 of the NIRC on protests on assessments of internal revenue taxes.

Petitioner argues that all the questioned Notices of Levy, however, must be nullified for having been issued without validly serving copies thereof to the petitioner. As a mandatory heir of the decedent, petitioner avers that he has an interest in the subject estate, and notices of levy upon its properties should have been served upon him. We do not agree. In the case of notices of levy issued to satisfy the delinquent estate tax, the delinquent taxpayer is the Estate of the decedent, and not necessarily, and exclusively, the petitioner as heir of the deceased. In the same vein, in the matter of income tax delinquency of the late president and his spouse, petitioner is not the taxpayer liable. Thus, it follows that service of notices of levy in satisfaction of these tax delinquencies upon the petitioner is not required by law.

The foregoing notwithstanding, the record shows that notices of warrants of distraint and levy of sale were furnished the counsel of petitioner on April 7, 1993, and June 10, 1993, and the petitioner himself on April 12, 1993 at his office at the Batasang Pambansa. We cannot therefore, countenance petitioner's insistence that he was denied due process. Where there was an opportunity to raise objections to government action, and such opportunity was disregarded, for no justifiable reason, the party claiming oppression then becomes the oppressor of the orderly functions of government. He who comes to court must come with clean hands. Otherwise, he not only taints his name, but ridicules the very structure of established authority.

FERDINAND R. MARCOS II, PETITIONER,
-versus- COURT OF APPEALS, THE COMMISSIONER OF THE BUREAU OF INTERNAL REVENUE and HERMINIA D. DE GUZMAN, RESPONDENTS. G.R. No. 120880, SECOND DIVISION, **June 5, 1997, TORRES, JR., *J.***

Thus, the Government has two ways of collecting the taxes in question. One, by going after all the heirs and collecting from each one of them the amount of the tax proportionate to the inheritance received. Another remedy, pursuant to the lien created by Section 315 of the Tax Code upon all property and rights to property belong to the taxpayer for unpaid income tax, is by subjecting said property of the estate which is in the hands of an heir or transferee to the payment of the tax due the estate.

From the foregoing, it is discernible that the approval of the court, sitting in probate, or as a settlement tribunal over the deceased is not a mandatory requirement in the collection of estate taxes. It cannot therefore be argued that the Tax Bureau erred in proceeding with the levying and sale of the properties allegedly owned by the late President, on the ground that it was required to seek first the probate court's sanction. There is nothing in the Tax Code, and in the pertinent remedial laws that implies the necessity of the probate or estate settlement court's approval of the state's claim for estate taxes, before the same can be enforced and collected.

FACTS:

On September 29, 1989, former President Ferdinand Marcos died in Honolulu, Hawaii, USA. On June 27, 1990, a Special Tax Audit Team was created to conduct investigations and examinations of the tax liabilities and obligations of the late president, as well as that of his family, associates and "cronies". Said audit team concluded its investigation with a Memorandum dated July 26, 1991. The investigation disclosed that the Marcoses failed to file a written notice of the death of the decedent, an estate tax returns, as well as several income tax returns covering the years 1982 to 1986, — all in violation of the National Internal Revenue Code (NIRC). The Commissioner of Internal Revenue thereby caused the preparation and filing of the Estate Tax Return for the estate of the late president, the Income Tax Returns of the Spouses Marcos for the years 1985 to 1986, and the Income Tax Returns of petitioner Ferdinand "Bongbong" Marcos II for the years 1982 to 1985.

On July 26, 1991, the BIR issued the following: (1) Deficiency estate tax assessment no. FAC-2-89-91-002464 (against the estate of the late president Ferdinand Marcos in the amount of P23, 293,607,638.00 Pesos); (2) Deficiency income tax assessment no. FAC-1-85-91-002452 and Deficiency income tax assessment no. FAC-1-86-91-002451 (against the Spouses Ferdinand and Imelda Marcos in the amounts of P149,551.70 and P184,009,737.40 representing deficiency income tax for the years 1985 and 1986); (3) Deficiency income tax assessment nos. FAC-1-82-91-002460 to FAC-1-85-91-002463 (against petitioner Ferdinand "Bongbong" Marcos II in the amounts of P258.70 pesos; P9,386.40 Pesos; P4,388.30 Pesos; and P6,376.60 Pesos representing his deficiency income taxes for the years 1982 to 1985).

The deficiency tax assessments were not protested administratively, by Mrs. Marcos and the other heirs of the late president, within 30 days from service of said assessments. On February 22, 1993, the BIR Commissioner issued twenty-two notices of levy on real property against certain parcels of land owned by the Marcoses — to satisfy the alleged estate tax and deficiency income taxes of Spouses Marcos. On May 20, 1993, four more Notices of Levy on real property were issued for the purpose of satisfying the deficiency income taxes. On May 26, 1993, additional four (4) notices of Levy on real property were again issued. The foregoing tax remedies were resorted to pursuant to Sections 205 and 213 of the National Internal Revenue Code (NIRC).

On June 25, 1993, petitioner Ferdinand "Bongbong" Marcos II filed the instant petition for *certiorari* and prohibition under Rule 65 of the Rules of Court, with prayer for temporary restraining order and/or writ of preliminary injunction.

It has been repeatedly observed, and not without merit, that the enforcement of tax laws and the collection of taxes, is of paramount importance for the sustenance of government.

ISSUE:

Whether or not the proper avenues of assessment and collection of the said tax obligations were taken by the respondent Bureau? (NO)

RULING:

Taxes are the lifeblood of the government and should be collected without unnecessary hindrance. However, such collection should be made in accordance with law as any arbitrariness will negate the very reason for government itself. It is therefore necessary to reconcile the apparently conflicting interests of the authorities and the taxpayers so that the real purpose of taxation, which is the promotion of the common good, may be achieved.

The pivotal question the court is tasked to resolve refers to the authority of the Bureau of Internal Revenue to collect by the summary remedy of levying upon, and sale of real properties of the decedent, estate tax deficiencies, without the cognition and authority of the court sitting in probate over the supposed will of the deceased.

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PHILIPPINE BANK OF COMMUNICATIONS, PETITIONER, -VERSUS- COMMISSIONER OF INTERNAL REVENUE, COURT OF TAX APPEALS and COURT OF APPEALS, RESPONDENT. G.R. No. 112024, SECOND DIVISION, **January 28, 1999, QUISUMBING, *J.***

The rule states that the taxpayer may file a claim for refund or credit with the Commissioner of Internal Revenue, within two (2) years after payment of tax, before any suit in CTA is commenced. The two-year prescriptive period provided, should be computed from the time of filing the Adjustment Return and final payment of the tax for the year.

When the Acting Commissioner of Internal Revenue issued RMC 7-85, changing the prescriptive period of two years to ten years on claims of excess quarterly income tax payments, such circular created a clear inconsistency with the provision of Sec. 230 of 1977 NIRC. In so doing, the BIR did not simply interpret the law; rather it legislated guidelines contrary to the statute passed by Congress.

It bears repeating that Revenue memorandum-circulars are considered administrative rulings (in the sense of more specific and less general interpretations of tax laws) which are issued from time to time by the Commissioner of Internal Revenue. Nevertheless, such interpretation is not conclusive and will be ignored if judicially found to be erroneous. Thus, courts will not countenance administrative issuances that override, instead of remaining consistent and in harmony with the law they seek to apply and implement. Further, fundamental is the rule that the State cannot be put in estoppel by the mistakes or errors of its officials or agents. As pointed out by the respondent courts, the nullification of RMC No. 7-85 issued by the Acting Commissioner of Internal Revenue is an administrative interpretation which is not in harmony with Sec. 230 of 1977 NIRC for being contrary to the express provision of a statute. Hence, his interpretation could not be given weight for to do so would, in effect, amend the statute.

FACTS:

Petitioner, PBCom, filed its quarterly income tax returns for the first and second quarters of 1985, reported profits, and paid the total income tax of P5, 016,954.00. The taxes due were settled by applying PBCom's tax credit memos and accordingly, the Bureau of Internal Revenue (BIR) issued Tax Debit Memo Nos. 0746-85 and 0747-85 for P3,401,701.00 and P1,615,253.00, respectively.

Subsequently, however, PBCom suffered losses so that when it filed its Annual Income Tax Returns for the year-ended December 31, 1986, the petitioner likewise reported a net loss of P14, 129,602.00, and thus declared no tax payable for the year. But during these two years, PBCom earned rental income from leased properties. The lessees withheld and remitted to the BIR withholding creditable taxes of P282, 795.50 in 1985 and P234, 077.69 in 1986.

Petitioner requested the CIR, among others, for a tax credit of P5, 016,954.00 representing the overpayment of taxes in the first and second quarters of 1985. Petitioner filed a claim for refund of creditable taxes withheld by their lessees from property rentals in 1985 for P282,795.50 and in 1986 for P234,077.69.

Pending the investigation of the respondent CIR, Petitioner instituted a Petition for Review on November 18, 1988 before the Court of Tax Appeals.

CTA rendered a decision which, as stated on the outset, denied the request of petitioner for a tax refund or credit in the sum amount of P5,299,749.95, on the ground that it was filed beyond the two-year reglementary period provided for by law. The petitioner's claim for refund in 1986 amounting to P234, 077.69 was likewise denied on the assumption that it was automatically credited by PBCom against its tax payment in the succeeding year.

Petitioner filed a Motion for Reconsideration of the CTA's decision but the same was denied due course for lack of merit. Thereafter, PBCom filed a petition for review of said decision and resolution of the CTA with the Court of Appeals. However, the Court of Appeals affirmed *in toto* the CTA's resolution. Hence this petition now before us.

ISSUE:

Whether or not the Court of Appeals erred in denying the plea for tax refund or tax credits on the ground of prescription, despite petitioner's reliance on RMC No. 7-85, changing the prescriptive period of two years to ten years?

RULING:

Petitioner argues that its claims for refund and tax credits are not yet barred by prescription relying on the applicability of Revenue Memorandum Circular No. 7-85 issued on April 1, 1985. The circular states that overpaid income taxes are not covered by the two-year prescriptive period under the tax Code and that taxpayers may claim refund or tax credits for the excess quarterly income tax with the BIR within ten (10) years under Article 1144 of the Civil Code.

Petitioner argues that the government is barred from asserting a position contrary to its declared circular if it would result to injustice to taxpayers. Citing *ABS CBN Broadcasting Corporation vs. Court of Tax Appeals* petitioner claims that rulings or circulars promulgated by the Commissioner of Internal Revenue have no retroactive effect if it would be prejudicial to taxpayers. In ABS-CBN case, the Court held that the government is precluded from adopting a position inconsistent with one previously taken where injustice would result therefrom or where there has been a misrepresentation to the taxpayer.

Respondent Commissioner of Internal Revenue, through Solicitor General, argues that the two-year prescriptive period for filing tax cases in court concerning income tax payments of Corporations is reckoned from the date of filing the Final Adjusted Income Tax Return, which is generally done on April 15 following the close of the calendar year.

After a careful study of the records and applicable jurisprudence on the matter, we find that, contrary to the petitioner's contention, the relaxation of revenue regulations by RMC 7-85 is not warranted as it disregards the two-year prescriptive period set by law.

Basic is the principle that "taxes are the lifeblood of the nation." The primary purpose is to generate funds for the State to finance the needs of the citizenry and to advance the common weal. Due process of law under the Constitution does not require judicial proceedings in tax cases. This must necessarily be so because it is upon taxation that the government chiefly relies to obtain the means to carry on its operations and it is of utmost importance that the modes adopted to enforce the collection of taxes levied should be summary and interfered with as little as possible.

From the same perspective, claims for refund or tax credit should be exercised within the time fixed by law because the BIR being an administrative body enforced to collect taxes; its functions should not be unduly delayed or hampered by incidental matters.

The rule states that the taxpayer may file a claim for refund or credit with the Commissioner of Internal Revenue, within two (2) years after payment of tax, before any suit in CTA is commenced. The two-year prescriptive period provided, should be computed from the time of filing the Adjustment Return and final payment of the tax for the year.

When the Acting Commissioner of Internal Revenue issued RMC 7-85, changing the prescriptive period of two years to ten years on claims of excess quarterly income tax payments, such circular created a clear inconsistency with the provision of Sec. 230 of 1977 NIRC. In so doing, the BIR did not simply interpret the law; rather it legislated guidelines contrary to the statute passed by Congress.

It bears repeating that Revenue memorandum-circulars are considered administrative rulings (in the sense of more specific and less general interpretations of tax laws) which are issued from time to time by the Commissioner of Internal Revenue. It is widely accepted that the interpretation placed upon a statute by the executive officers, whose duty is to enforce it, is entitled to great respect by the courts. Nevertheless, such interpretation is not conclusive and will be ignored if judicially found to be erroneous. Thus, courts will not countenance administrative issuances that override, instead of remaining consistent and in harmony with the law they seek to apply and implement.

Further, fundamental is the rule that the State cannot be put in estoppel by the mistakes or errors of its officials or agents. As pointed out by the respondent courts, the nullification of RMC No. 7-85 issued by the Acting Commissioner of Internal Revenue is an administrative interpretation which is not in harmony with Sec. 230 of 1977 NIRC for being contrary to the express provision of a statute. Hence, his interpretation could not be given weight for to do so would, in effect, amend the statute.

Art. 8 of the Civil Code recognize judicial decisions, applying or interpreting statutes as part of the legal system of the country. But administrative decisions do not enjoy that level of recognition. Moreover, the non-retroactivity of rulings by the Commissioner of Internal Revenue is not applicable in this case because the nullity of RMC No. 7-85 was declared by respondent courts and not by the Commissioner of Internal Revenue. Lastly, it must be noted that, as repeatedly held by this Court, a claim for refund is in the nature of a claim for exemption and should be construed in *strictissimi juris* against the taxpayer.

THE PHILIPPINE GUARANTY CO., INC., PETITIONER, **-versus- THE COMMISSIONER OF INTERNAL REVENUE and THE COURT OF TAX APPEALS, RESPONDENTS**. G.R. No. L-22074, EN BANC, April 30, 1965, BENGZON, J.P., *J.*

The reinsurance contracts show that the transactions or activities that constituted the undertaking to reinsure Philippine Guaranty Co., Inc. against lose arising from the original insurances in the Philippines was performed in the Philippines. The word "sources" has been interpreted as the activity, property or service giving rise to the income. The reinsurance premiums were income created from the undertaking of the foreign reinsurance companies to reinsure Philippine Guaranty Co., Inc., against liability for loss under original insurances. Such undertaking, as explained above, took place in the Philippines. These insurance premiums, therefore, came from sources within the Philippines and, hence, are subject to corporate income tax.

The foreign insurers' place of business should not be confused with their place of activity. Business should not be continuity and progression of transactions while activity may consist of only a single transaction. An activity may occur outside the place of business. Section 24 of the Tax Code does not require a foreign corporation to engage in business in the Philippines in subjecting its income to tax. It suffices that the activity creating the income is performed or done in the Philippines. What is controlling, therefore, is not the place of business but the place of activity that created an income.

FACTS:

The Philippine Guaranty Co., Inc., entered into reinsurance contracts, on various dates, with foreign insurance companies not doing business in the Philippines, thereby agreed to cede to the foreign reinsurers a portion of the premiums on insurance it has originally underwritten in the Philippines, in consideration for the assumption by the latter of liability on an equivalent portion of the risks insured. Said reinsurance contracts were signed by Philippine Guaranty Co., Inc. in Manila and by the foreign reinsurers outside the Philippines, except the contract with Swiss Reinsurance Company, which was signed by both parties in Switzerland.

The reinsurance contracts made the commencement of the reinsurers' liability simultaneous with that of Philippine Guaranty Co., Inc. under the original insurance. Philippine Guaranty Co., Inc. was required to keep a register in Manila where the risks ceded to the foreign reinsurers where entered, and entry therein was binding upon the reinsurers. A proportionate amount of taxes on insurance premiums not recovered from the original assured were to be paid for by the foreign reinsurers. The foreign reinsurers further agreed, in consideration for managing or administering their affairs in the Philippines, to compensate the Philippine Guaranty Co., Inc., in an amount equal to 5% of the reinsurance premiums. Pursuant to the aforesaid reinsurance contracts, Philippine Guaranty Co., Inc. ceded to the foreign reinsurers premiums. Said premiums were excluded by Philippine Guaranty Co., Inc. from its gross income when it filed its income tax returns for 1953 and 1954. Furthermore, it did not withhold or pay tax on them. Consequently, per letter dated April 13, 1959, the Commissioner of Internal Revenue assessed against Philippine Guaranty Co., Inc. withholding tax on the ceded reinsurance premiums. Philippine Guaranty Co., Inc. protested the assessment on the ground that reinsurance premiums ceded to foreign reinsurers not doing business in the Philippines are not subject to withholding tax. Its protest was denied and it appealed to the Court of Tax Appeals.

The Court of Tax Appeals rendered judgment ordering petitioner Philippine Guaranty Co., Inc. to pay to the CIR the withholding income taxes for the years 1953 and 1954, plus the statutory delinquency penalties thereon.

Philippine Guaranty Co, Inc. has appealed, questioning the legality of the Commissioner of Internal Revenue's assessment for withholding tax on the reinsurance premiums ceded in 1953 and 1954 to the foreign reinsurers. Petitioner maintains that the reinsurance premiums in question did not constitute income from sources within the Philippines because the foreign reinsurers did not engage in business in the Philippines, nor did they have office here.

ISSUE:

Whether or not the reinsurance premiums in question constitute income from sources within the Philippines? (YES)

RULING:

The reinsurance contracts show that the transactions or activities that constituted the undertaking to reinsure Philippine Guaranty Co., Inc. against lose arising from the original insurances in the Philippines was performed in the Philippines.

Section 24 of the Tax Code subjects foreign corporations to tax on their income from sources within the Philippines. The word "sources" has been interpreted as the activity, property or service giving rise to the income. The reinsurance premiums were income created from the undertaking of the foreign reinsurance companies to reinsure Philippine Guaranty Co., Inc., against liability for loss under original insurances. Such undertaking, as explained above, took place in the Philippines. These insurance premiums, therefore, came from sources within the Philippines and, hence, are subject to corporate income tax.

The foreign insurers' place of *business* should not be confused with their place of activity. *Business* should not be continuity and progression of transactions while activity may consist of only a single transaction. An activity may occur outside the place of business. Section 24 of the Tax Code does not require a foreign corporation to engage in business in the Philippines in subjecting its income to tax. It suffices that the activity creating the income is performed or done in the Philippines. What is controlling, therefore, is not the place of *business* but the place of *activity* that created an income.

Petitioner further contends that the reinsurance premiums are not income from sources within the Philippines because they are not specifically mentioned in Section 37 of the Tax Code. Section 37 is not an all-inclusive enumeration, for it merely directs that the kinds of income mentioned therein should be treated as income from sources within the Philippines but it does not require that other kinds of income should not be considered likewise.

The power to tax is an attribute of sovereignty. It is a power emanating from necessity. It is a necessary burden to preserve the State's sovereignty and a means to give the citizenry an army to resist an aggression, a navy to defend its shores from invasion, a corps of civil servants to serve, public improvement designed for the enjoyment of the citizenry and those which come within the State's territory, and facilities and protection which a government is supposed to provide. Considering that the reinsurance premiums in question were afforded protection by the government and the recipient foreign reinsurer's exercised rights and privileges guaranteed by our laws, such reinsurance premiums and reinsurers should share the burden of maintaining the state.

In respect to the question of whether or not reinsurance premiums ceded to foreign reinsurers not doing business in the Philippines are subject to withholding tax under Section 53 and 54 of the Tax Code, suffice it to state that this question has already been answered in the affirmative in *Alexander Howden & Co., Ltd. vs. Collector of Internal Revenue*, L-19393, April 14, 1965.

Finally, petitioner contends that the withholding tax should be computed from the amount actually remitted to the foreign reinsurers instead of from the total amount ceded. And since it did not remit any amount to its foreign insurers in 1953 and 1954, no withholding tax was due.

Section 54 of the Tax Code allows no deduction from the income therein enumerated in determining the amount to be withheld. According, in computing the withholding tax due on the reinsurance premium in question, no deduction shall be recognized.

PHILEX MINING CORPORATION, PETITIONER, -VERSUS- COMMISSIONER OF INTERNAL REVENUE, COURT OF APPEALS, and THE COURT OF TAX APPEALS, RESPONDENTS. G.R. No. 125704, THIRD DIVISION, August 28, 1998, ROMERO, *J.*

In several instances prior to the instant case, we have already made the pronouncement that taxes cannot be subject to compensation for the simple reason that the government and the taxpayer are not creditors and debtors of each other. There is a material distinction between a tax and debt. Debts are due to the Government in its corporate capacity, while taxes are due to the Government in its sovereign capacity. We find no cogent reason to deviate from the aforementioned distinction.

Further, Philex's reliance on our holding in Commissioner of Internal Revenue v. Itogon-Suyoc Mines Inc., wherein we ruled that a pending refund may be set off against an existing tax liability even though the refund has not yet been approved by the Commissioner, [21] *is no longer without any support in statutory law.*

It is important to note, that the premise of our ruling in the aforementioned case was anchored on Section 51 (d) of the National Revenue Code of 1939. However, when the National Internal Revenue Code of 1977 was enacted, the same provision upon which the Itogon-Suyoc pronouncement was based was omitted. Accordingly, the doctrine enunciated in Itogon-Suyoc cannot be invoked by Philex.

FACTS:

On August 5, 1992, the BIR sent a letter to Philex asking it to settle its tax liabilities for the 2nd, 3rd and 4th quarter of 1991 as well as the 1st and 2nd quarter of 1992 in the total amount of P123, 821.982.52. In a letter dated August 20, 1992, Philex protested the demand for payment of the tax liabilities stating that it has pending claims for VAT input credit/refund for the taxes it paid for the years 1989 to 1991 in the amount of P119,977,037.02 plus interest. Therefore these claims for tax credit/refund should be applied against the tax liabilities, citing our ruling in *Commissioner of Internal Revenue v. Itogon-Suyoc Mines, Inc*.

In reply, the BIR, in a letter dated September 7, 1992, found no merit in Philex's position. Since these pending claims have not yet been established or determined with certainty, it follows that no legal compensation can take place. Hence, the BIR reiterated its demand that Philex settle the amount plus interest within 30 days from the receipt of the letter.

In view of the BIR's denial of the offsetting of Philex's claim for VAT input credit/refund against its excise tax obligation, Philex raised the issue to the Court of Tax Appeals on November 6, 1992. In the course of the proceedings, the BIR issued Tax Credit Certificate SN 001795 in the amount of P13,144,313.88 which, applied to the total tax liabilities of Philex of P123,821,982.52; effectively lowered the latter's tax obligation to P110,677,688.52.

Despite the reduction of its tax liabilities, the CTA still ordered Philex to pay the remaining balance of P110, 677,688.52 plus interest. Moreover, the Court of Tax Appeals ruled that "taxes cannot be subject to set-off on compensation since claim for taxes is not a debt or contract."

Aggrieved with the decision, Philex appealed the case before the Court of Appeals. Nonetheless, on April 8, 1996, the Court of Appeals Affirmed the Court of Tax Appeals observation.

Philex filed a motion for reconsideration which was, nevertheless, denied in a Resolution dated July 11, 1996. However, a few days after the denial of its motion for reconsideration, Philex was able to obtain its VAT input credit/refund not only for the taxable year 1989 to 1991 but also for 1992 and 1994.

In view of the grant of its VAT input credit/refund, Philex now contends that the same should, *ipso jure*, off-set its excise tax liabilities since both had already become "due and demandable, as well as fully liquidated;" hence, legal compensation can properly take place.

ISSUE:

Whether or not the grant of its VAT input credit/refund should, ipso jure, off-set its excise tax liabilities? (NO)

RULING:

We see no merit in this contention.

In several instances prior to the instant case, we have already made the pronouncement that taxes cannot be subject to compensation for the simple reason that the government and the taxpayer are not creditors and debtors of each other. There is a material distinction between a tax and debt. Debts are due to the Government in its corporate capacity, while taxes are due to the Government in its sovereign capacity. We find no cogent reason to deviate from the aforementioned distinction.

Further, Philex's reliance on our holding in *Commissioner of Internal Revenue v. Itogon-Suyoc Mines Inc*., wherein we ruled that a pending refund may be set off against an existing tax liability even though the refund has not yet been approved by the Commissioner,[21] is no longer without any support in statutory law.

It is important to note, that the premise of our ruling in the aforementioned case was anchored on Section 51 (d) of the National Revenue Code of 1939. However, when the National Internal Revenue Code of 1977 was enacted, the same provision upon which the *Itogon-Suyoc* pronouncement was based was omitted. Accordingly, the doctrine enunciated in *Itogon-Suyoc* cannot be invoked by Philex.

Despite the foregoing rulings clearly adverse to Philex's position, it asserts that the imposition of surcharge and interest for the non-payment of the excise taxes within the time prescribed was unjustified. Philex posits the theory that it had no obligation to pay the excise tax liabilities within the prescribed period since, after all, it still has pending claims for VAT input credit/refund with BIR.

We fail to see the logic of Philex's claim for this is an outright disregard of the basic principle in tax law that taxes are the lifeblood of the government and so should be collected without unnecessary hindrance. Evidently, to countenance Philex's whimsical reason would render ineffective our tax collection system. Too simplistic, it finds no support in law or in jurisprudence.

To be sure, we cannot allow Philex to refuse the payment of its tax liabilities on the ground that it has a pending tax claim for refund or credit against the government which has not yet been granted. It must be noted that a distinguishing feature of a tax is that it is compulsory rather than a matter of bargain.[25] Hence, a tax does not depend upon the consent of the taxpayer.[26] If any taxpayer can defer the payment of taxes by raising the defense that it still has a pending claim for refund or credit, this would adversely affect the government revenue system. A taxpayer cannot refuse to pay his taxes when they fall due simply because he has a claim against the government or that the collection of the tax is contingent on the result of the lawsuit it filed against the government. Moreover, Philex's theory that would automatically apply its VAT input credit/refund against its tax liabilities can easily give rise to confusion and abuse, depriving the government of authority over the manner by which taxpayers credit and offset their tax liabilities.

Corollarily, the fact that Philex has pending claims for VAT input claim/refund with the government is immaterial for the imposition of charges and penalties prescribed under Section 248 and 249 of the Tax Code of 1977. The payment of the surcharge is mandatory and the BIR is not vested with any authority to waive the collection thereof. The same cannot be condoned for flimsy reasons, similar to the one advanced by Philex in justifying its non-payment of its tax liabilities.

Finally, Philex asserts that the BIR violated Section 106 (e) of the National Internal Revenue Code of 1977, which requires the refund of input taxes within 60 days, when it took five years for the latter to grant its tax claim for VAT input credit/refund.

In this regard, we agree with Philex. While there is no dispute that a claimant has the burden of proof to establish the factual basis of his or her claim for tax credit or refund, however, once the claimant has submitted all the required documents it is the function of the BIR to assess these documents with purposeful dispatch. After all, since taxpayers owe honestly to government it is but just that government render fair service to the taxpayers.

Despite our concern with the lethargic manner by which the BIR handled Philex's tax claim, it is a settled rule that in the performance of governmental function, the State is not bound by the neglect of its agents and officers. Nowhere is this more true than in the field of taxation. Again, while we understand Philex's predicament, it must be stressed that the same is not a valid reason for the non-payment of its tax liabilities.

To be sure, this is not to state that the taxpayer is devoid of remedy against public servants or employees, especially BIR examiners who, in investigating tax claims are seen to drag their feet needlessly. First, if the BIR takes time in acting upon the taxpayer's claim for refund, the latter can seek judicial remedy before the Court of Tax Appeals in the manner prescribed by law. [38] Second, if the inaction can be characterized as willful neglect of duty, then recourse under the Civil Code and the Tax Code can also be availed of.

In sum, while we can never condone the BIR's apparent callousness in performing its duties, still, the same cannot justify Philex's non-payment of its tax liabilities. The adage "no one should take the law into his own hands" should have guided Philex's action.

NORTH CAMARINES LUMBER Co., INC., PETITIONER, -versus COLLECTOR OF INTERNAL REVENUE, RESPONDENT. G.R. No. L-12353, EN BANC, September 30, 1960, **PARAS, *J.***

As the petitioner had consumed thirty-three days, its appeal was clearly filed out of time. It is argued, however, that in computing the 30-day period fixed in Section 11 of Republic Act No. 1125, the letter of the respondent Collector dated January 30, 1956, denying the second request for reconsideration, should be considered as the final decision contemplated in Section 7, and not the letter of demand dated August 30, 1955.
This contention is untenable. We cannot countenance the theory that would make the commencement of the statutory 30-day period solely dependent on the will of the taxpayer and place the latter in a position to put off indefinitely and at his convenience the finality of a tax assessment. Such an absurd procedure would be detrimental to the interest of the Government, for "taxes are the lifeblood of the government, and their prompt and certain availability an imperious need."

FACTS:

The petitioner, North Camarines Lumber Co., Inc., is a domestic corporation engaged in the lumber business. On June 19, 1951 and July 31, 1951, it sold a total of 2,164,863 board feet of logs to the General Lumber Co., Inc., with the agreement that the latter would assume responsibility for the payment of the sales tax thereon in the amount of P7, 768.51. After being consulted on the matter, the respondent CIR, in his letters advised the petitioner that he was interposing no objection to the arrangement, provided the General Lumber Co., Inc. would file the corresponding bonds to cover the sales tax liabilities.

The General Lumber Co., Inc. complied with the condition. In view, however, of its failure and that of the surety to pay the tax liabilities, the respondent Collector, in his letter dated August 30, 1955, required the petitioner to pay the total amount of P9, 598.72 as sales tax and incidental penalties in the sale of logs to the General Lumber Co., Inc. Although the date of receipt by petitioner of this letter does not appear in the records, it may be presumed to be September 9, 1955, when the petitioner addressed a letter to the respondent Collector, which was received on September 12, 1955, wherein the petitioner acknowledged receipt of the letter of demand and at the same time requested for the reconsideration of the assessment. This was denied by the respondent Collector.

The respondent Collector having denied the second request for, which the petitioner received, the latter, filed a petition for review with the Court of Tax Appeals. The Court, after a preliminary hearing on respondent Collector's motion to dismiss, ruled that, as the petition was filed beyond the 30-day period prescribed by Section 11 of Republic Act No. 1125, it has no jurisdiction to try the same. Accordingly, the case was dismissed.

ISSUE:

Whether or not the CTA erred in dismissing the case on the ground of lack of jurisdiction for being filed out of time? (NO)

RULING:

In contending that the Court of Tax Appeals erred, the petitioner points out that Section 7, and not Section 11, of Republic Act No. 1125 confers and determines the jurisdiction of the respondent court, and that Section 11 refers merely to the prescriptive period for filing appeals.

While the petitioner is correct as to the attribute of Section 7, it should be remembered that, for the respondent court to have jurisdiction over any case, the party seeking redress must first invoke its exercise in the manner and within the time prescribed by the law. Thus Section 7, which enumerates the specific cases falling within the jurisdiction of the Court of Tax Appeals, must be read together with Section 11, which fixes the time for invoking said jurisdiction.

There is no question that petitioner's case is covered by Section 7 and, therefore, comes within the jurisdiction of the respondent court. But was said jurisdiction invoked by toe petitioner within the period prescribed by Section 11?

As the petitioner had consumed thirty-three days, its appeal was clearly filed out of time. It is argued, however, that in computing the 30-day period fixed in Section 11 of Republic Act No. 1125, the letter of the respondent Collector dated January 30, 1956, denying the second request for reconsideration, should be considered as the final decision contemplated in Section 7, and not the letter of demand dated August 30, 1955.

This contention is untenable. We cannot countenance the theory that would make the commencement of the statutory 30-day period solely dependent on the will of the taxpayer and place the latter in a position to put off indefinitely and at his convenience the finality of a tax assessment. Such an absurd procedure would be detrimental to the interest of the Government, for "taxes are the lifeblood of the government, and their prompt and certain availability an imperious need."

THE PHILIPPINE GUARANTY CO., INC., PETITIONER, **-versus- THE COMMISSIONER OF INTERNAL REVENUE and THE COURT OF TAX APPEALS, RESPONDENTS**. G.R. No. L-22074, EN BANC, April 30, 1965, BENGZON, J.P., *J.*

The reinsurance contracts show that the transactions or activities that constituted the undertaking to reinsure Philippine Guaranty Co., Inc. against lose arising from the original insurances in the Philippines was performed in the Philippines. The word "sources" has been interpreted as the activity, property or service giving rise to the income. The reinsurance premiums were income created from the undertaking of the foreign reinsurance companies to reinsure Philippine Guaranty Co., Inc., against liability for loss under original insurances. Such undertaking, as explained above, took place in the Philippines. These insurance premiums, therefore, came from sources within the Philippines and, hence, are subject to corporate income tax.

The foreign insurers' place of business should not be confused with their place of activity. Business should not be continuity and progression of transactions while activity may consist of only a single transaction. An activity may occur outside the place of business. Section 24 of the Tax Code does not require a foreign corporation to engage in business in the Philippines in subjecting its income to tax. It suffices that the activity creating the income is performed or done in the Philippines. What is controlling, therefore, is not the place of business but the place of activity that created an income.

FACTS:

The Philippine Guaranty Co., Inc., entered into reinsurance contracts, on various dates, with foreign insurance companies not doing business in the Philippines, thereby agreed to cede to the foreign reinsurers a portion of the premiums on insurance it has originally underwritten in the Philippines, in consideration for the assumption by the latter of liability on an equivalent portion of the risks insured. Said reinsurrance contracts were signed by Philippine Guaranty Co., Inc. in Manila and by the foreign reinsurers outside the Philippines, except the contract with Swiss Reinsurance Company, which was signed by both parties in Switzerland.

The reinsurance contracts made the commencement of the reinsurers' liability simultaneous with that of Philippine Guaranty Co., Inc. under the original insurance. Philippine Guaranty Co., Inc. was required to keep a register in Manila where the risks ceded to the foreign reinsurers where entered, and entry therein was binding upon the reinsurers. A proportionate amount of taxes on insurance premiums not recovered from the original assured were to be paid for by the foreign reinsurers. The foreign reinsurers further agreed, in consideration for managing or administering their affairs in the Philippines, to compensate the Philippine Guaranty Co., Inc., in an amount equal to 5% of the reinsurance premiums. Pursuant to the aforesaid reinsurance contracts, Philippine Guaranty Co., Inc. ceded to the foreign reinsurers premiums. Said premiums were excluded by Philippine Guaranty Co., Inc. from its gross income when it filed its income tax returns for 1953 and 1954. Furthermore, it did not withhold or pay tax on them. Consequently, per letter dated April 13, 1959, the Commissioner of Internal Revenue assessed against Philippine Guaranty Co., Inc. withholding tax on the ceded reinsurance premiums. Philippine Guaranty Co., Inc. protested the assessment on the ground that reinsurance premiums ceded to foreign reinsurers not doing business in the Philippines are not subject to withholding tax. Its protest was denied and it appealed to the Court of Tax Appeals.

The Court of Tax Appeals rendered judgment ordering petitioner Philippine Guaranty Co., Inc. to pay to the CIR the withholding income taxes for the years 1953 and 1954, plus the statutory delinquency penalties thereon.

Philippine Guaranty Co, Inc. has appealed, questioning the legality of the Commissioner of Internal Revenue's assessment for withholding tax on the reinsurance premiums ceded in 1953 and 1954 to the foreign reinsurers. Petitioner maintains that the reinsurance premiums in question did not constitute income from sources within the Philippines because the foreign reinsurers did not engage in business in the Philippines, nor did they have office here.

ISSUE:

Whether or not the reinsurance premiums in question constitute income from sources within the Philippines? (YES)

RULING:

The reinsurance contracts show that the transactions or activities that constituted the undertaking to reinsure Philippine Guaranty Co., Inc. against lose arising from the original insurances in the Philippines was performed in the Philippines.

Section 24 of the Tax Code subjects foreign corporations to tax on their income from sources within the Philippines. The word "sources" has been interpreted as the activity, property or service giving rise to the income. The reinsurance premiums were income created from the undertaking of the foreign reinsurance companies to reinsure Philippine Guaranty Co., Inc., against liability for loss under original insurances. Such undertaking, as explained above, took place in the Philippines. These insurance premiums, therefore, came from sources within the Philippines and, hence, are subject to corporate income tax.

The foreign insurers' place of *business* should not be confused with their place of activity. *Business* should not be continuity and progression of transactions while activity may consist of only a single transaction. An activity may occur outside the place of business. Section 24 of the Tax Code does not require a foreign corporation to engage in business in the Philippines in subjecting its income to tax. It suffices that the activity creating the income is performed or done in the Philippines. What is controlling, therefore, is not the place of *business* but the place of *activity* that created an income.

Petitioner further contends that the reinsurance premiums are not income from sources within the Philippines because they are not specifically mentioned in Section 37 of the Tax Code. Section 37 is not an all-inclusive enumeration, for it merely directs that the kinds of income mentioned therein should be treated as income from sources within the Philippines but it does not require that other kinds of income should not be considered likewise.

The power to tax is an attribute of sovereignty. It is a power emanating from necessity. It is a necessary burden to preserve the State's sovereignty and a means to give the citizenry an army to resist an aggression, a navy to defend its shores from invasion, a corps of civil servants to serve, public improvement designed for the enjoyment of the citizenry and those which come within the State's territory, and facilities and protection which a government is supposed to provide. Considering that the reinsurance premiums in question were afforded protection by the government and the recipient foreign reinsurer's exercised rights and privileges guaranteed by our laws, such reinsurance premiums and reinsurers should share the burden of maintaining the state.

In respect to the question of whether or not reinsurance premiums ceded to foreign reinsurers not doing business in the Philippines are subject to withholding tax under Section 53 and 54 of the Tax Code, suffice it to state that this question has already been answered in the affirmative in *Alexander Howden & Co., Ltd. vs. Collector of Internal Revenue*, L-19393, April 14, 1965.

Finally, petitioner contends that the withholding tax should be computed from the amount actually remitted to the foreign reinsurers instead of from the total amount ceded. And since it did not remit any amount to its foreign insurers in 1953 and 1954, no withholding tax was due.

Section 54 of the Tax Code allows no deduction from the income therein enumerated in determining the amount to be withheld. According, in computing the withholding tax due on the reinsurance premium in question, no deduction shall be recognized.

ROMEO P. GEROCHI, KATULONG NG BAYAN (KB) AND ENVIRONMENTALIST CONSUMERS NETWORK, INC. (ECN), PETITIONERS,
-VERSUS- DEPARTMENT OF ENERGY (DOE), ENERGY REGULATORY COMMISSION (ERC), NATIONAL POWER CORPORATION (NPC), POWER SECTOR ASSETS AND LIABILITIES MANAGEMENT GROUP (PSALM CORP.), STRATEGIC POWER UTILITIES GROUP (SPUG), AND PANAY ELECTRIC COMPANY INC. (PECO),RESPONDENTS. G.R. NO. 159796, EN BANC, JULY 17, 2007, NACHURA, *J.*

Petitioners come before this Court in this original action praying that Section 34 of Republic Act (RA) 9136, otherwise known as the "Electric Power Industry Reform Act of 2001" (EPIRA), imposing the Universal Charge,1and Rule 18 of the Rules and Regulations (IRR)2 which seeks to implement the said imposition, be declared unconstitutional.

In exacting the assailed Universal Charge through Sec. 34 of the EPIRA, the State's police power, particularly its regulatory dimension, is invoked. Such can be deduced from Sec. 34 which enumerates the purposes for which the Universal Charge is imposed and which can be amply discerned as regulatory in character.

From the aforementioned purposes, it can be gleaned that the assailed Universal Charge is not a tax, but an exaction in the exercise of the State's police power. Public welfare is surely promoted. Moreover, it is a well-established doctrine that the taxing power may be used as an implement of police power.

FACTS:

Congress enacted the EPIRA on June 8, 2001; on June 26, 2001, it took effect. On April 5, 2002, respondent National Power Corporation-Strategic Power Utilities Group (NPC-SPUG) filed with respondent ERC a petition for the availment from the Universal Charge of its share for Missionary Electrification.

NPC filed another petition with ERC, praying that the proposed share from the Universal Charge for the Environmental charge of ₱0.0025 per kilowatt-hour, or a total of ₱119,488,847.59, be approved for withdrawal from the Special Trust Fund (STF) managed by respondent Power Sector Assets and Liabilities Management Group (PSALM) for the rehabilitation and management of watershed areas.

ERC issued an Order provisionally approving the computed amount of ₱0.0168/kWh as the share of the NPC-SPUG from the Universal Charge for Missionary Electrification and authorizing the National Transmission Corporation (TRANSCO) and Distribution Utilities to collect the same from its end-users on a monthly basis. ERC rendered another Decision modifying its Order of December 20, 2002..

Relative thereto, TRANSCO and Dus are directed to collect the UC-ME in the amount of ₱0.0373 per kilowatt-hour and remit the same to PSALM on or before the 15th day of the succeeding month.

In the meantime, NPC-SPUG is directed to submit, a detailed report to include Audited Financial Statements and physical status of the projects using the prescribed format.

NPC-SPUG filed a Motion for Reconsideration asking the ERC, among others, to set aside the above-mentioned Decision, which the ERC granted.

Meanwhile, ERC decided ERC Case No. 2002-194, authorizing the NPC to draw up to ₱70,000,000.00 from PSALM for its 2003 Watershed Rehabilitation Budget subject to the availability of funds for the Environmental Fund component of the Universal Charge.

On the basis of the said ERC decisions, respondent Panay Electric Company, Inc. (PECO) charged petitioner Romeo P. Gerochi and all other end-users with the Universal Charge as reflected in their respective electric bills starting from the month of July 2003.

Hence, this original action.

Petitioners submit that the assailed provision of law and its IRR which sought to implement the same are unconstitutional on the ground that the universal charge provided for under EPIRA and sought to be implemented under Sec. 2, Rule 18 of the IRR of the said law is a tax which is to be collected from all electric end-users and self-generating entities. The power to tax is strictly a legislative function and as such, the delegation of said power to any executive or administrative agency like the ERC is unconstitutional, giving the same unlimited authority. The assailed provision clearly provides that the Universal Charge is to be determined, fixed and approved by the ERC, hence leaving to the latter complete discretionary legislative authority.

Petitioners contend that the Universal Charge has the characteristics of a tax and is collected to fund the operations of the NPC.

On the other hand, respondent PSALM through the Office of the Government Corporate Counsel (OGCC) contends that unlike a tax which is imposed to provide income for public purposes, such as support of the government, administration of the law, or payment of public expenses, the assailed Universal Charge is levied for a specific regulatory purpose, which is to ensure the viability of the country's electric power industry. Thus, it is exacted by the State in the exercise of its inherent police power. On this premise, PSALM submits that there is no undue delegation of legislative power to the ERC since the latter merely exercises a limited authority or discretion as to the execution and implementation of the provisions of the EPIRA.

Respondents Department of Energy (DOE), ERC, and NPC, through the Office of the Solicitor General (OSG), share the same view that the Universal Charge is not a tax because it is levied for a specific regulatory purpose, which is to ensure the viability of the country's electric power industry, and is, therefore, an exaction in the exercise of the State's police power. Respondents further contend that said Universal Charge does not possess the essential characteristics of a tax, that its imposition would redound to the benefit of the electric power industry and not to the public, and that its rate is uniformly levied on electricity end-users, unlike a tax which is imposed based on the individual taxpayer's ability to pay. Moreover, respondents deny that there is undue delegation of legislative power to the ERC since the EPIRA sets forth sufficient determinable standards which would guide the ERC in the exercise of the powers granted to it. Lastly, respondents argue that the imposition of the Universal Charge is not oppressive and confiscatory since it is an exercise of the police power of the State and it complies with the requirements of due process.

ISSUE:

Whether or not, the Universal Charge imposed under Sec. 34 of the EPIRA is a tax?

RULING:

The power to tax is an incident of sovereignty and is unlimited in its range, acknowledging in its very nature no limits, so that security against its abuse is to be found only in the responsibility of the legislature which imposes the tax on the constituency that is to pay it. It is based on the principle that taxes are the lifeblood of the government, and their prompt and certain availability is an imperious need. Thus, the theory behind the exercise of the power to tax emanates from necessity; without taxes, government cannot fulfill its mandate of promoting the general welfare and well-being of the people.

On the other hand, police power is the power of the state to promote public welfare by restraining and regulating the use of liberty and property. It is the most pervasive, the least limitable, and the most demanding of the three fundamental powers of the State. The justification is found in the Latin maxims *salus populi est suprema lex* (the welfare of the people is the supreme law) and *sic utere tuo ut alienum non laedas* (so use your property as not to injure the property of others). As an inherent attribute of sovereignty which virtually extends to all public needs, police power grants a wide panoply of instruments through which the State, as *parens patriae*, gives effect to a host of its regulatory powers. We have held that the power to "regulate" means the power to protect, foster, promote, preserve, and control, with due regard for the interests, first and foremost, of the public, then of the utility and of its patrons.

The conservative and pivotal distinction between these two powers rests in the purpose for which the charge is made. If generation of revenue is the primary purpose and regulation is merely incidental, the imposition is a tax; but if regulation is the primary purpose, the fact that revenue is incidentally raised does not make the imposition a tax.[36]

In exacting the assailed Universal Charge through Sec. 34 of the EPIRA, the State's police power, particularly its regulatory dimension, is invoked. Such can be deduced from Sec. 34 which enumerates the purposes for which the Universal Charge is imposed and which can be amply discerned as regulatory in character.

From the aforementioned purposes, it can be gleaned that the assailed Universal Charge is not a tax, but an exaction in the exercise of the State's police power. Public welfare is surely promoted. Moreover, it is a well-established doctrine that the taxing power may be used as an implement of police power.

The OSG is in point when it asseverates:

> *Evidently, the establishment and maintenance of the Special Trust Fund, under the last paragraph of Section 34, R.A. No. 9136, is well within the pervasive and non-waivable power and responsibility of the government to secure the physical and economic survival and well-being of the community, that comprehensive sovereign authority we designate as the police power of the State.*[46]
>
> *This feature of the Universal Charge further boosts the position that the same is an exaction imposed primarily in pursuit of the State's police objectives. The STF reasonably serves and assures the attainment and perpetuity of the purposes for which the Universal Charge is imposed, i.e., to ensure the viability of the country's electric power industry.*

COMMISSIONER OF INTERNAL REVENUE, PETITIONER, -versus-

ALGUE, INC., and THE COURT OF TAX APPEALS, RESPONDENTS. G.R. No. L-28896, FIRST DIVISION, **February 17, 1988, CRUZ, *J.***

The Solicitor General is correct when he says that the burden is on the taxpayer to prove the validity of the claimed deduction. In the present case, however, we find that the onus has been discharged satisfactorily. The private respondent has proved that the payment of the fees was necessary and reasonable in the light of the efforts exerted by the payees in inducing investors and prominent businessmen to venture in an experimental enterprise and involve themselves in a new business requiring millions of pesos. This was no mean feat and should be, as it was, sufficiently recompensed.

It is said that taxes are what we pay for civilization society. Without taxes, the government would be paralyzed for lack of the motive power to activate and operate it. Hence, despite the natural reluctance to surrender part of one's hard earned income to the taxing authorities, every person who is able to must contribute his share in the running of the government. The government for its part is expected to respond in the form of tangible and intangible benefits intended to improve the lives of the people and enhance their moral and material values. This symbiotic relationship is the rationale of taxation and should dispel the erroneous notion that it is an arbitrary method of exaction by those in the seat of power.

But even as we concede the inevitability and indispensability of taxation, it is a requirement in all democratic regimes that it be exercised reasonably and in accordance with the prescribed procedure. If it is not, then the taxpayer has a right to complain and the courts will then come to his succor. For all the awesome power of the tax collector, he may still be stopped in his tracks if the taxpayer can demonstrate, as it has here, that the law has not been observed.

FACTS:

The record shows that the private respondent, a domestic corporation engaged in engineering, construction and other allied activities, received a letter from the petitioner assessing it in the total amount of P83, 183.85 as delinquency income taxes for the years 1958 and 1959. Algue flied a letter of protest or request for reconsideration, which letter was stamp received on the same day in the office of the petitioner. On March 12, 1965, a warrant of distraint and levy was presented to the private respondent, through its counsel, Atty. Alberto Guevara, Jr., who refused to receive it on the ground of the pending protest.

A search of the protest in the dockets of the case proved fruitless. Atty. Guevara produced his file copy and gave a photostat to BIR agent Ramon Reyes, who deferred service of the warrant. On April 7, 1965, Atty. Guevara was finally informed that the BIR was not taking any action on the protest and it was only then that he accepted the warrant of distraint and levy earlier sought to be served. Sixteen days later, on April 23, 1965, Algue filed a petition for review of the decision of the Commissioner of Internal Revenue with the Court of Tax Appeals.

ISSUE:

Whether or not the Collector of Internal Revenue correctly disallowed the P75,000.00 deduction claimed by private respondent Algue as legitimate business expenses in its income tax returns? (NO)

RULING:

The petitioner contends that the claimed deduction of P75, 000.00 was properly disallowed because it was not an ordinary reasonable or necessary business expense. The Court of Tax Appeals had seen it differently. Agreeing with Algue, it held that the said amount had been legitimately paid by the private respondent for actual services rendered. The payment was in the form of promotional fees. These were collected by the Payees for their work in the creation of the Vegetable Oil Investment Corporation of the Philippines and its subsequent purchase of the properties of the Philippine Sugar Estate Development Company.

Parenthetically, it may be observed that the petitioner had originally claimed these promotional fees to be personal holding company income but later conformed to the decision of the respondent court rejecting this assertion. In fact, as the said court found, the amount was earned through the joint efforts of the persons among whom it was distributed It has been established that the Philippine Sugar Estate Development Company had earlier appointed Algue as its agent, authorizing it to sell its land, factories and oil manufacturing process. Pursuant to such authority, Alberto Guevara, Jr., Eduardo Guevara, Isabel Guevara, Edith, O'Farell, and Pablo Sanchez, worked for the formation of the Vegetable Oil Investment Corporation, inducing other persons to invest in it. Ultimately, after its incorporation largely through the promotion of the said persons, this new corporation purchased the PSEDC properties. For this sale, Algue received as agent a commission of P126, 000.00, and it was from this commission that the P75,000.00 promotional fees were paid to the aforenamed individuals.

There is no dispute that the payees duly reported their respective shares of the fees in their income tax returns and paid the corresponding taxes thereon.[17] The Court of Tax Appeals also found, after examining the evidence, that no distribution of dividends was involved.[18]

The petitioner claims that these payments are fictitious because most of the payees are members of the same family in control of Algue. It is argued that no indication was made as to how such payments were made, whether by check or in cash, and there is not enough substantiation of such payments. In short, the petitioner suggests a tax dodge, an attempt to evade a legitimate assessment by involving an imaginary deduction.

We find that these suspicions were adequately met by the private respondent when its President, Alberto Guevara, and the accountant, Cecilia V. de Jesus, testified that the payments were not made in one lump sum but periodically and in different amounts as each payee's need arose. [19] It should be remembered that this was a family corporation where strict business procedures were not applied and immediate issuance of receipts was not required. Even so, at the end of the year, when the books were to be closed, each payee made an accounting of all of the fees received by him or her, to make up the total of P75,000.00. [20] Admittedly, everything seemed to be informal. This arrangement was understandable, however, in view of the close relationship among the persons in the family corporation.

It is worth noting at this point that most of the payees were not in the regular employ of Algue nor were they its controlling stockholders.

The Solicitor General is correct when he says that the burden is on the taxpayer to prove the validity of the claimed deduction. In the present case, however, we find that the onus has been discharged satisfactorily. The private respondent has proved that the payment of the fees was necessary and reasonable in the light of the efforts exerted by the payees in inducing investors and prominent businessmen to venture in an experimental enterprise and involve themselves in a new business requiring millions of pesos. This was no mean feat and should be, as it was, sufficiently recompensed.

It is said that taxes are what we pay for civilization society. Without taxes, the government would be paralyzed for lack of the motive power to activate and operate it. Hence, despite the natural reluctance to surrender part of one's hard earned income to the taxing authorities, every person who is able to must contribute his share in the running of the government. The government for its part is expected to respond in the form of tangible and intangible benefits intended to improve the lives of the people and enhance their moral and material values. This symbiotic relationship is the rationale of taxation and should dispel the erroneous notion that it is an arbitrary method of exaction by those in the seat of power.

But even as we concede the inevitability and indispensability of taxation, it is a requirement in all democratic regimes that it be exercised reasonably and in accordance with the prescribed procedure. If it is not, then the taxpayer has a right to complain and the courts will then come to his succor. For all the awesome power of the tax collector, he may still be stopped in his tracks if the taxpayer can demonstrate, as it has here, that the law has not been observed.

We hold that the appeal of the private respondent from the decision of the petitioner was filed on time with the respondent court in accordance with Rep. Act No. 1125. And we also find that the claimed deduction by the private respondent was permitted under the Internal Revenue Code and should therefore not have been disallowed by the petitioner.

ABAKADA GURO PARTY LIST (FORMERLY AASJAS) OFFICERS SAMSON S. ALCANTARA AND ED VINCENT S. ALBANO, PETITIONERS,
-VERSUS THE HONORABLE EXECUTIVE SECRETARY EDUARDO ERMITA; HONORABLE SECRETARY OF THE DEPARTMENT OF FINANCE CESAR PURISIMA; AND HONORABLE COMMISSIONER OF INTERNAL REVENUE GUILLERMO PARAYNO, JR., RESPONDENT. G.R. No. 168056, EN BANC, September 1, 2005, AUSTRIA-MARTINEZ, *J*.

It has been said that taxes are the lifeblood of the government. In this case, it is just an enema, a first-aid measure to resuscitate an economy in distress. The Court is neither blind nor is it turning a deaf ear on the plight of the masses. But it does not have the panacea for the malady that the law seeks to remedy. As in other cases, the Court cannot strike down a law as unconstitutional simply because of its yokes.

FACTS:

R.A. No. 9337 is a consolidation of three legislative bills namely, House Bill Nos. 3555 and 3705, and Senate Bill No. 1950. On May 23, 2005, the enrolled copy of the consolidated House and Senate version was transmitted to the President, who signed the same into law on May 24, 2005. Thus, came R.A. No. 9337.

July 1, 2005 is the effectivity date of R.A. No. 9337. When said date came, the Court issued a temporary restraining order, effective immediately and continuing until further orders, enjoining respondents from enforcing and implementing the law.

Before R.A. No. 9337 took effect, petitioners *ABAKADA GURO* Party List*, et al.*, filed a petition for prohibition on May 27, 2005. They question the constitutionality of Sections 4, 5 and 6 of R.A. No. 9337, amending Sections 106, 107 and 108, respectively, of the National Internal Revenue Code (NIRC).

Petitioners argue that the law is unconstitutional, as it constitutes abandonment by Congress of its exclusive authority to fix the rate of taxes under Article VI, Section 28(2) of the 1987 Philippine Constitution.

Sen. Aquilino Q. Pimentel, Jr., *et al.*, also filed a petition for *certiorari* likewise assailing the constitutionality of Sections 4, 5 and 6 of R.A. No. 9337. Aside from questioning the so-called *stand-by authority* of the President to increase the VAT rate to 12%, on the ground that it amounts to an undue delegation of legislative power, petitioners also contend that the increase in the VAT rate to 12% contingent on any of the two conditions being satisfied violates the due process clause embodied in Article III, Section 1 of the Constitution, as it imposes an unfair and additional tax burden on the people, in that: (1) the 12% increase is ambiguous because it does not state if the rate would be returned to the original 10% if the conditions are no longer satisfied; (2) the rate is unfair and unreasonable, as the people are unsure of the applicable VAT rate from year to year; and (3) the increase in the VAT rate, which is supposed to be an incentive to the President to raise the VAT collection to at least 2 $^{4}/_{5}$ of the GDP of the previous year, should only be based on fiscal adequacy.

Thereafter, a petition for prohibition was filed on June 29, 2005, by the Association of *Pilipinas* Shell Dealers, Inc., *et al.*

Several members of the House of Representatives led by Rep. Francis Joseph G. Escudero filed this petition for *certiorari* on June 30, 2005.

On the eleventh hour, Governor Enrique T. Garcia filed a petition for *certiorari* and prohibition on July 20, 2005, alleging unconstitutionality of the law on the ground that the limitation on the creditable input tax in effect allows VAT-registered establishments to retain a portion of the taxes they collect, thus violating the principle that tax collection and revenue should be solely allocated for public purposes and expenditures. Petitioner Garcia further claims that allowing these establishments to pass on the tax to the consumers is inequitable, in violation of Article VI, Section 28(1) of the Constitution.

ISSUE:

Whether or not the law subject of this case violates the Constitution?

RULING:

Petitioners Escudero, *et al.*, and Pimentel, *et al.*, allege that the Bicameral Conference Committee exceeded its authority by 1.) inserting the *stand-by authority* in favor of the President in Sections 4, 5, and 6 of R.A. No. 9337; 2) Deleting entirely the *no pass-on* provisions found in both the House and Senate bills; 3) Inserting the provision imposing a 70% limit on the amount of input tax to be credited against the output tax; and 4) Including the amendments introduced only by Senate Bill No. 1950 regarding other kinds of taxes in addition to the value-added tax.

It should be borne in mind that the power of internal regulation and discipline are intrinsic in any legislative body for, as unerringly elucidated by Justice Story, **"[i]f the power did not exist, it would be utterly impracticable to transact the business of the nation, either at all, or at least with decency, deliberation, and order.** Thus, Article VI, Section 16 (3) of the Constitution provides that "each House may determine the rules of its proceedings." Pursuant to this inherent constitutional power to promulgate and implement its own rules of procedure, the respective rules of each house of Congress provided for the creation of a Bicameral Conference Committee.

In resolving the differences with the Senate, the House panel shall, as much as possible, adhere to and support the House Bill. If the differences with the Senate are so substantial that they materially impair the House Bill, the panel shall report such fact to the House for the latter's appropriate action.

The creation of such conference committee was apparently in response to a problem, not addressed by any constitutional provision, where the two houses of Congress find themselves in disagreement over changes or amendments introduced by the other house in a legislative bill. Given that one of the most basic powers of the legislative branch is to formulate and implement its own rules of proceedings and to discipline its members, may the Court then delve into the details of how Congress complies with its internal rules or how it conducts its business of passing legislation? Note that in the present petitions, the issue is not whether provisions of the rules of both houses creating the bicameral conference committee are unconstitutional, **but whether the bicameral conference committee has strictly complied with the rules of both houses, thereby remaining within the jurisdiction conferred upon it by Congress**.

The disagreements between the provisions in the House bills and the Senate bill were with regard to (1) what rate of VAT is to be imposed; (2) whether only the VAT imposed on electricity generation, transmission and distribution companies should not be passed on to consumers, as proposed in the Senate bill, or both the VAT imposed on electricity generation, transmission and distribution companies and the VAT imposed on sale of petroleum products should not be passed on to consumers, as proposed in the House bill; (3) in what manner input tax credits should be limited; (4) and whether the NIRC provisions on corporate income taxes, percentage, franchise and excise taxes should be amended.

There being differences and/or disagreements on the foregoing provisions of the House and Senate bills, the Bicameral Conference Committee was mandated by the rules of both houses of Congress to act on the same by settling said differences and/or disagreements.

Under the provisions of both the Rules of the House of Representatives and Senate Rules, the Bicameral Conference Committee is mandated to settle the differences between the disagreeing provisions in the House bill and the Senate bill. The term "settle" is synonymous to "reconcile" and "harmonize." To reconcile or harmonize disagreeing provisions, the Bicameral Conference Committee may then (a) adopt the specific provisions of either the House bill or Senate bill, (b) decide that neither provisions in the House bill or the provisions in the Senate bill would be carried into the final form of the bill, and/or (c) try to arrive at a compromise between the disagreeing provisions.

In the present case, the changes introduced by the Bicameral Conference Committee on disagreeing provisions were meant only to reconcile and harmonize the disagreeing provisions for it did not inject any idea or intent that is wholly foreign to the subject embraced by the original provisions.

The so-called *stand-by authority* in favor of the President, whereby the rate of 10% VAT wanted by the Senate is retained until such time that certain conditions arise when the 12% VAT wanted by the House shall be imposed, appears to be a compromise to try to bridge the difference in the rate of VAT proposed by the two houses of Congress. Nevertheless, such compromise is still totally within the subject of what rate of VAT should be imposed on taxpayers.

As to the amendments to NIRC provisions on taxes other than the value-added tax proposed in Senate Bill No. 1950, since said provisions were among those referred to it, the conference committee had to act on the same and it basically adopted the version of the Senate.

Thus, all the changes or modifications made by the Bicameral Conference Committee were germane to subjects of the provisions referred to it for reconciliation. Such being the case, the Court does not see any grave abuse of discretion amounting to lack or excess of jurisdiction committed by the Bicameral Conference Committee.

R.A. No. 9337 Does Not Violate Article VI, Section 26(2) of the Constitution on the "No-Amendment Rule"

Petitioners' argument that the practice where a bicameral conference committee is allowed to add or delete provisions in the House bill and the Senate bill after these had passed three readings is in effect a circumvention of the "no amendment rule" (Sec. 26 (2), Art. VI of the 1987 Constitution), fails to convince the Court to deviate from its ruling in the *Tolentino* case that:

> *Nor is there any reason for requiring that the Committee's Report in these cases must have undergone three readings in each of the two houses. If that be the case, there would be no end to negotiation since each house may seek modification of the compromise bill. . . .*
>
> ***Art. VI. § 26 (2) must, therefore, be construed as referring only to bills introduced for the first time in either house of Congress, not to the conference committee report.***[32] *(Emphasis supplied)*

The Court reiterates here that **the "no-amendment rule" refers only to the procedure to be followed by each house of Congress with regard to bills initiated in each of said respective houses, before said bill is transmitted to the other house for its concurrence or amendment**. Verily, to construe said provision in a way as to proscribe any further changes to a bill after one house has voted on it would lead to absurdity as this would mean that the other house of Congress would be deprived of its constitutional power to amend or introduce changes to said bill.

R.A. No. 9337 Does Not Violate Article VI, Section 24 of the Constitution on Exclusive Origination of Revenue Bills

Petitioners claim that the amendments to these provisions of the NIRC did not at all originate from the House. They aver that House Bill No. 3555 proposed amendments only regarding Sections 106, 107, 108, 110 and 114 of the NIRC, while House Bill No. 3705 proposed amendments only to Sections 106, 107,108, 109, 110 and 111 of the NIRC; thus, the other sections of the NIRC which the Senate amended but which amendments were not found in the House bills are not intended to be amended by the House of Representatives. Hence, they argue that since the proposed amendments did not originate from the House, such amendments are a violation of Article VI, Section 24 of the Constitution.

The argument does not hold water. In the present cases, petitioners admit that it was indeed House

Bill Nos. 3555 and 3705 that initiated the move for amending provisions of the NIRC dealing mainly with the value-added tax. Upon transmittal of said House bills to the Senate, the Senate came out with Senate Bill No. 1950 proposing amendments not only to NIRC provisions on the value-added tax but also amendments to NIRC provisions on other kinds of taxes. Is the introduction by the Senate of provisions not dealing directly with the value- added tax, which is the only kind of tax being amended in the House bills, still within the purview of the constitutional provision authorizing the Senate to propose or concur with amendments to a revenue bill that originated from the House?

The foregoing question had been squarely answered in the *Tolentino* case. Indeed, what the Constitution simply means is that the initiative for filing revenue, tariff or tax bills, bills authorizing an increase of the public debt, private bills and bills of local application must come from the House of Representatives. Since there is no question that the revenue bill exclusively originated in the House of Representatives, the Senate was acting within its constitutional power to introduce amendments to the House bill when it included provisions in Senate Bill No. 1950 amending corporate income taxes, percentage, excise and franchise taxes. Verily, Article VI, Section 24 of the Constitution does not contain any prohibition or limitation on the extent of the amendments that may be introduced by the Senate to the House revenue bill.

As the Court has said, the Senate can propose amendments and in fact, the amendments made on provisions in the tax on income of corporations are germane to the purpose of the house bills which is to raise revenues for the government.

SUBSTANTIVE ISSUES

No Undue Delegation of Legislative Power

Petitioners allege that the grant of the *stand-by authority* to the President to increase the VAT rate is a virtual abdication by Congress of its exclusive power to tax because such delegation is not within the purview of Section 28 (2), Article VI of the Constitution. They argue that the VAT is a tax levied on the sale, barter or exchange of goods and properties as well as on the sale or exchange of services, which cannot be included within the purview of tariffs under the exempted delegation as the latter refers to customs duties, tolls or tribute payable upon merchandise to the government and usually imposed on goods or merchandise imported or exported.

Petitioners *ABAKADA GURO* Party List, *et al.*, further contends that delegating to the President the legislative power to tax is contrary to republicanism. They insist that accountability, responsibility and transparency should dictate the actions of Congress and they should not pass to the President the decision to impose taxes. They also argue that the law also effectively nullified the President's power of control, which includes the authority to set aside and nullify the acts of her subordinates like the Secretary of Finance, by mandating the fixing of the tax rate by the President upon the recommendation of the Secretary of Finance.

Petitioners Pimentel, *et al.* aver that the President has ample powers to cause, influence or create the conditions provided by the law to bring about either or both the conditions precedent.

On the other hand, petitioners Escudero, *et al.* find bizarre and revolting the situation that the imposition of the 12% rate would be subject to the whim of the Secretary of Finance, an unelected bureaucrat, contrary to the principle of no taxation without representation. They submit that the Secretary of Finance is not mandated to give a favorable recommendation and he may not even give his recommendation. Moreover, they allege that no guiding standards are provided in the law on what basis and as to how he will make his recommendation. They claim, nonetheless, that any recommendation of the Secretary of Finance can easily be brushed aside by the President since the former is a mere alter ego of the latter, such that, ultimately, it is the President who decides whether to impose the increased tax rate or not.

The principle of separation of powers ordains that each of the three great branches of government has exclusive cognizance of and is supreme in matters falling within its own constitutionally allocated sphere. A logical corollary to the doctrine of separation of powers is the principle of non-delegation of powers, as expressed in the Latin maxim: *potestas delegata non delegari potest* which means "what has been delegated, cannot be delegated." This doctrine is based on the ethical principle that such as delegated power constitutes not only a right but a duty to be performed by the delegate through the instrumentality of his own judgment and not through the intervening mind of another.[39]

With respect to the Legislature, Section 1 of Article VI of the Constitution provides that "*the Legislative power shall be vested in the Congress of the Philippines which shall consist of a Senate and a House of Representatives*." The powers which Congress is prohibited from delegating are those which are strictly, or inherently and exclusively, legislative. Purely legislative power, which can never be delegated, has been described as the **authority to make a complete law – complete as to the time when it shall take effect and as to whom it shall be applicable – and to determine the expediency of its enactmen**t. Thus, the rule is that in order that a court may be justified in holding a statute unconstitutional as a delegation of legislative power, it must appear that the power involved is purely legislative in nature – that is, one appertaining exclusively to the legislative department. It is the nature of the power, and not the liability of its use or the manner of its exercise, which determines the validity of its delegation.

In every case of permissible delegation, there must be a showing that the delegation itself is valid. It is valid only if the law (a) is complete in itself, setting forth therein the policy to be executed, carried out, or implemented by the delegate; and (b) fixes a standard — the limits of which are sufficiently determinate and determinable — to which the delegate must conform in the performance of his functions. A sufficient standard is one which defines legislative policy, marks its limits, maps out its boundaries and specifies the public agency to apply it. It indicates the circumstances under which the legislative command is to be effected. Both tests are intended to prevent a total transference of legislative authority to the delegate, who is not allowed to step into the shoes of the legislature and exercise a power essentially legislative.

Clearly, the legislature may delegate to executive officers or bodies the power to determine certain facts or conditions, or the happening of contingencies, on which the operation of a statute is, by its terms, made to depend, but the legislature must prescribe sufficient standards, policies or limitations on their authority. While the power to tax cannot be delegated to executive agencies, details as to the enforcement and administration of an exercise of such power may be left to them, including the power to determine the existence of facts on which its operation depends.

The rationale for this is that the preliminary ascertainment of facts as basis for the enactment of legislation is not of itself a legislative function, but is simply ancillary to legislation. Thus, the duty of correlating information and making recommendations is the kind of subsidiary activity which the legislature may perform through its members, or which it may delegate to others to perform. Intelligent legislation on the complicated problems of modern society is impossible in the absence of accurate information on the part of the legislators, and any reasonable method of securing such information is proper.

In the present case, the challenged section of R.A. No. 9337 is the common *proviso* in Sections 4, 5 and 6. The case before the Court is not a delegation of legislative power. It is simply a delegation of ascertainment of facts upon which enforcement and administration of the increase rate under the law is contingent. The legislature has made the operation of the 12% rate effective January 1, 2006, contingent upon a specified fact or condition. It leaves the entire operation or non-operation of the 12% rate upon factual matters outside of the control of the executive.

No discretion would be exercised by the President. Highlighting the absence of discretion is the fact that the word *shall* is used in the common *proviso*. The use of the word *shall* connotes a mandatory order. Its use in a statute denotes an imperative obligation and is inconsistent with the idea of discretion.[53] Where the law is clear and unambiguous, it must be taken to mean exactly what it says, and courts have no choice but to see to it that the mandate is obeyed.

Thus, it is the ministerial duty of the President to immediately impose the 12% rate upon the existence of any of the conditions specified by Congress. This is a duty which cannot be evaded by the President. Inasmuch as the law specifically uses the word *shall*, the exercise of discretion by the President does not come into play. It is a clear directive to impose the 12% VAT rate when the specified conditions are present. The time of taking into effect of the 12% VAT rate is based on the happening of a certain specified contingency, or upon the ascertainment of certain facts or conditions by a person or body other than the legislature itself.

In the present case, in making his recommendation to the President on the existence of either of the two conditions, the Secretary of Finance is not acting as the alter ego of the President or even her subordinate. In such instance, he is not subject to the power of control and direction of the President. He is acting as the agent of the legislative department, to determine and declare the event upon which its expressed will is to take effect. The Secretary of Finance becomes the means or tool by which legislative policy is determined and implemented, considering that he possesses all the facilities to gather data and information and has a much broader perspective to properly evaluate them. His function is to gather and collate statistical data and other pertinent information and verify if any of the two conditions laid out by Congress is present. His personality in such instance is in reality but a projection of that of Congress. Thus, being the agent of Congress and not of the President, the President cannot alter or modify or nullify, or set aside the findings of the Secretary of Finance and to substitute the judgment of the former for that of the latter.

Congress simply granted the Secretary of Finance the authority to ascertain the existence of a fact, namely, whether by December 31, 2005, the value-added tax collection as a percentage of Gross Domestic Product (GDP) of the previous year exceeds two and four-fifth percent ($2^4/_5$%) or the national government deficit as a percentage of GDP of the previous year exceeds one and one-half percent (1½%). If either of these two instances has occurred, the Secretary of Finance, by legislative mandate, must submit such information to the President. Then the 12% VAT rate must be imposed by the President effective January 1, 2006. **There is no undue delegation of legislative power but only of the discretion as to the execution of a law. This is constitutionally permissible**. Congress does not abdicate its functions or unduly delegate power when it describes what job must be done, who must do it, and what is the scope of his authority; in our complex economy that is frequently the only way in which the legislative process can go forward.

The 12% Increase VAT Rate Does Not Impose an Unfair and Unnecessary Additional Tax Burden

Under the common *provisos* of Sections 4, 5 and 6 of R.A. No. 9337, if any of the two conditions set forth therein are satisfied, the President shall increase the VAT rate to 12%. The provisions of the law are clear. It does not provide for a return to the 10% rate nor does it empower the President to so revert if, after the rate is increased to 12%, the VAT collection goes below the $2^4/_5$ of the GDP of the previous year or that the national government deficit as a percentage of GDP of the previous year does not exceed 1½%.

Therefore, no statutory construction or interpretation is needed. Neither can conditions or limitations be introduced where none is provided for. Rewriting the law is a forbidden ground that only Congress may tread upon. Thus, in the absence of any provision providing for a return to the 10% rate, which in this case the Court finds none, petitioners' argument is, at best, purely speculative. There is no basis for petitioners' fear of a fluctuating VAT rate because the law itself does not provide that the rate should go back to 10% if the conditions provided in Sections 4, 5 and 6 are no longer present. The rule is that where the provision of the law is clear and unambiguous, so that there is no occasion for the court's seeking the legislative intent, the law must be taken as it is, devoid of judicial addition or subtraction.

Petitioners also contend that the increase in the VAT rate, which was allegedly an incentive to the President to raise the VAT collection to at least 2 $^4/_5$ of the GDP of the previous year, should be based on fiscal adequacy.

Petitioners obviously overlooked that increase in VAT collection is not the *only* condition. There is another condition, *i.e.*, the national government deficit as a percentage of GDP of the previous year exceeds one and one-half percent (1 ½%).

The dire need for revenue cannot be ignored. Our country is in a quagmire of financial woe. The image portrayed is chilling. Congress passed the law hoping for rescue from an inevitable catastrophe. Whether the law is indeed sufficient to answer the state's economic dilemma is not for the Court to judge.

Due Process and Equal Protection Clauses

Petitioners Association of *Pilipinas* Shell Dealers, Inc., *et al.* argue that Section 8 of R.A. No. 9337, amending Sections 110 (A)(2), 110 (B), and Section 12 of R.A. No. 9337, amending Section 114 (C) of the NIRC are arbitrary, oppressive, excessive and confiscatory. Their argument is premised on the constitutional right against deprivation of life, liberty of property without due process of law, as embodied in Article III, Section 1 of the Constitution.

Petitioners also contend that these provisions violate the constitutional guarantee of equal protection of the law.

The doctrine is that where the due process and equal protection clauses are invoked, considering that they are not fixed rules but rather broad standards, there is a need for proof of such persuasive character as would lead to such a conclusion. Absent such a showing, the presumption of validity must prevail.

Petitioners claim that the contested sections impose limitations on the amount of input tax that may be claimed. In effect, a portion of the input tax that has already been paid cannot now be credited against the output tax.

Petitioners' argument is not absolute. It assumes that the input tax exceeds 70% of the output tax, and therefore, the input tax in excess of 70% remains uncredited. However, to the extent that the input tax is less than 70% of the output tax, then 100% of such input tax is still creditable. More importantly, the excess input tax, if any, is retained in a business's books of accounts and remains creditable in the succeeding quarter/s. This is explicitly allowed by Section 110(B), which provides that "if the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters." In addition, Section 112(B) allows a VAT-registered person to apply for the issuance of a tax credit certificate or refund for any unused input taxes, to the extent that such input taxes have not been applied against the output taxes. Such unused input tax may be used in payment of his other internal revenue taxes.

The non-application of the unutilized input tax in a given quarter is not *ad infinitum*, as petitioners exaggeratedly contend. Their analysis of the effect of the 70% limitation is incomplete and one-sided. It ends at the net effect that there will be unapplied/unutilized inputs VAT for a given quarter. It does not proceed further to the fact that such unapplied/unutilized input tax may be credited in the subsequent periods as allowed by the carry-over provision of Section 110(B) or that it may later on be refunded through a tax credit certificate under Section 112(B).

Therefore, petitioners' argument must be rejected.

Petitioners Association of *Pilipinas* Shell Dealers, Inc., *et al.* also argue that the input tax partakes the nature of a property that may not be confiscated, appropriated, or limited without due process of law. The input tax is not a property or a property right within the constitutional purview of the due process clause. A VAT-registered person's entitlement to the creditable input tax is a mere statutory privilege.

The distinction between statutory privileges and vested rights must be borne in mind for persons have no vested rights in statutory privileges. The state may change or take away rights, which were created by the law of the state, although it may not take away property, which was vested by virtue of such rights.

Petitioners also contest as arbitrary, oppressive, excessive and confiscatory, Section 8 of R.A. No. 9337, amending Section 110(A) of the NIRC. The foregoing section imposes a 60-month period within which to amortize the creditable input tax on purchase or importation of capital goods with acquisition cost of ₱1 Million pesos, exclusive of the VAT component. Such spread out only poses a delay in the crediting of the input tax. Petitioners' argument is without basis because the taxpayer is not permanently deprived of his privilege to credit the input tax.

It is worth mentioning that Congress admitted that the spread-out of the creditable input tax in this case amounts to a 4-year interest-free loan to the government. In the same breath, Congress also justified its move by saying that the provision was designed to raise an annual revenue of 22.6 billion.[77] The legislature also dispelled the fear that the provision will fend off foreign investments, saying that foreign investors have other tax incentives provided by law, and citing the case of China, where despite a 17.5% non-creditable VAT, foreign investments were not deterred. Again, for whatever is the purpose of the 60-month amortization, this involves executive economic policy and legislative wisdom in which the Court cannot intervene.

With regard to the 5% creditable withholding tax imposed on payments made by the government for taxable transactions, Section 12 of R.A. No. 9337. Section 114(C) merely provides a method of collection, or as stated by respondents, a more simplified VAT withholding system. The government in this case is constituted as a withholding agent with respect to their payments for goods and services. Prior to its amendment, Section 114(C) provided for different rates of value-added taxes to be withheld -- 3% on gross payments for purchases of goods; 6% on gross payments for services supplied by contractors other than by public works contractors; 8.5% on gross payments for services supplied by public work contractors; or 10% on payment for the lease or use of properties or property rights to nonresident owners. Under the present Section 114(C), these different rates, except for the 10% on lease or property rights payment to nonresidents, were deleted, and a uniform rate of 5% is applied. The Court observes, however, that the law the used the word *final*. In tax usage, *final*, as opposed to creditable, means full. Thus, it is provided in Section 114(C): "final value-added tax at the rate of five percent (5%)."

The Court need not explore the rationale behind the provision. It is clear that Congress intended to treat differently taxable transactions with the government.[80] This is supported by the fact that under the old provision, the 5% tax withheld by the government remains creditable against the tax liability of the seller or contractor, to wit:

As amended, the use of the word *final* and the deletion of the word *creditable* exhibits Congress's intention to treat transactions with the government differently. Since it has not been shown that the class subject to the 5% final withholding tax has been unreasonably narrowed, there is no reason to invalidate the provision. Petitioners, as petroleum dealers, are not the only ones subjected to the 5% final withholding tax. It applies to all those who deal with the government.

Moreover, the actual input tax is not totally lost or uncreditable, as petitioners believe. Revenue Regulations No. 14-2005 or the Consolidated Value-Added Tax Regulations 2005 issued by the BIR, provides that should the actual input tax exceed 5% of gross payments, the excess may form part of the cost. Equally, should the actual input tax be less than 5%, the difference is treated as income.

The equal protection clause under the Constitution means that "no person or class of persons shall be deprived of the same protection of laws which is enjoyed by other persons or other classes in the same place and in like circumstances."

The equal protection clause does not require the universal application of the laws on all persons or things without distinction. This might in fact sometimes result in unequal protection. What the clause requires is equality among equals as determined according to a valid classification. By classification is meant the grouping of persons or things similar to each other in certain particulars and different from all others in these same particulars.[85]

Uniformity and Equitability of Taxation

Uniformity in taxation means that all taxable articles or kinds of property of the same class shall be taxed at the same rate. Different articles may be taxed at different amounts provided that the rate is uniform on the same class everywhere with all people at all times.

In this case, the tax law is uniform as it provides a standard rate of 0% or 10% (or 12%) on all goods and services. Sections 4, 5 and 6 of R.A. No. 9337, amending Sections 106, 107 and 108, respectively, of the NIRC, provide for a rate of 10% (or 12%) on sale of goods and properties, importation of goods, and sale of services and use or lease of properties. These same sections also provide for a 0% rate on certain sales and transaction.

Neither does the law make any distinction as to the type of industry or trade that will bear the 70% limitation on the creditable input tax, 5-year amortization of input tax paid on purchase of capital goods or the 5% final withholding tax by the government. It must be stressed that the rule of uniform taxation does not deprive Congress of the power to classify subjects of taxation, and only demands uniformity within the particular class.[87]

R.A. No. 9337 is also equitable. The law is equipped with a threshold margin. The VAT rate of 0% or 10% (or 12%) does not apply to sales of goods or services with gross annual sales or receipts not exceeding ₱1,500,000.00. Also, basic marine and agricultural food products in their original state are still not subject to the tax, thus ensuring that prices at the grassroots level will remain accessible.

Progressivity of Taxation

Lastly, petitioners contend that the limitation on the creditable input tax is anything but regressive. It is the smaller business with higher input tax-output tax ratio that will suffer the consequences. Progressive taxation is built on the principle of the taxpayer's ability to pay. Taxation is progressive when its rate goes up depending on the resources of the person affected. The VAT is an antithesis of progressive taxation. By its very nature, it is regressive. The principle of progressive taxation has no relation with the VAT system inasmuch as the VAT paid by the consumer or business for every goods bought or services enjoyed is the same regardless of income. In other words, the VAT paid eats the same portion of an income, whether big or small. Nevertheless, the Constitution does not really prohibit the imposition of indirect taxes, like the VAT. What it simply provides is that Congress shall "evolve a progressive system of taxation."

Resort to indirect taxes should be minimized but not avoided entirely because it is difficult, if not impossible, to avoid them by imposing such taxes according to the taxpayers' ability to pay. In the case of the VAT, the law minimizes the regressive effects of this imposition by providing for zero rating of certain transactions (R.A. No. 7716, §3, amending §102 (b) of the NIRC), while granting exemptions to other transactions. (R.A. No. 7716, §4 amending §103 of the NIRC)

It has been said that taxes are the lifeblood of the government. In this case, it is just an enema, a first-aid measure to resuscitate an economy in distress. The Court is neither blind nor is it turning a deaf ear on the plight of the masses. But it does not have the panacea for the malady that the law seeks to remedy. As in other cases, the Court cannot strike down a law as unconstitutional simply because of its yokes.

COMMISSIONER OF INTERNAL REVENUE, PETITIONER,
-versus- PHILIPPINE HEALTH CARE PROVIDERS, INC., RESPONDENT. G.R. No. 168129, FIRST DIVISION, April 24, 2007, SANDOVAL-GUTIERREZ, *J.*

We agree with both the Tax Court and the Court of Appeals that respondent acted in good faith. According to the Court of Appeals, respondent's failure to describe itself as a "health maintenance organization," which is subject to VAT, is not tantamount to bad faith. We note that the term "health maintenance organization" was first recorded in the Philippine statute books only upon the passage of "The National Health Insurance Act of 1995" (Republic Act No. 7875). Section 4 (o) (3) thereof defines a health maintenance organization as "an entity that provides, offers, or arranges for coverage of designated health services needed by plan members for a fixed prepaid premium." Under this law, a health maintenance organization is one of the classes of a "health care provider."

FACTS:

The Philippine Health Care Providers, Inc., herein respondent, is a corporation organized and existing under the laws of the Republic of the Philippines.

On July 25, 1987, President Corazon C. Aquino issued Executive Order (E.O.) No. 273, amending the National Internal Revenue Code of 1977 (Presidential Decree No. 1158) by imposing Value-Added Tax (VAT) on the sale of goods and services.

Before the effectivity of E.O. No. 273, or on December 10, 1987, respondent wrote the Commissioner of Internal Revenue (CIR), petitioner, inquiring whether the services it provides to the participants in its health care program are exempt from the payment of the VAT.

CIR, through the VAT Review Committee of the Bureau of Internal Revenue (BIR), issued its ruling stating that respondent, as a provider of medical services, is exempt from the VAT coverage. This Ruling was subsequently confirmed by the Regional Director.

Meanwhile, Republic Act (R.A.) No. 7716 (Expanded VAT or E-VAT Law) took effect, amending further the National Internal Revenue Code of 1977. Then on January 1, 1998, R.A. No. 8424 (National Internal Revenue Code of 1997) became effective. This new Tax Code substantially adopted and reproduced the provisions of E.O. No. 273 on VAT and R.A. No. 7716 on E-VAT. In the interim, on October 1, 1999, the BIR sent respondent a Preliminary Assessment Notice for deficiency in its payment of the VAT and documentary stamp taxes (DST) for taxable years 1996 and 1997.

Respondent filed a protest with the BIR. CIR sent respondent a letter demanding payment of "deficiency VAT" and DST for taxable years 1996 and 1997. Attached to the demand letter were four (4) assessment notices.

On February 23, 2000, respondent filed another protest questioning the assessment notices. CIR did not take any action on respondent's protests. Hence, respondent filed with the Court of Tax Appeals (CTA) a petition for review. On April 5, 2002, the CTA rendered its Decision, partially granting the petition and cancelling and setting aside the assessment for deficiency DST. Respondent filed a motion for partial reconsideration of the above judgment concerning its liability to pay the deficiency VAT. CTA granted respondent's motion and held that the petitioner is a **service contractor** subject to VAT since it does not actually render medical service but merely acts as a conduit between the members and petitioner's accredited and recognized hospitals and clinics. However, after a careful review of the facts of the case as well as the Law and jurisprudence applicable, this court resolves to grant petitioner's "Motion for Partial Reconsideration." We are in accord with the view of petitioner that it is entitled to the benefit of non-retroactivity of rulings guaranteed under Section 246 of the Tax Code, in the absence of showing of bad faith on its part. Clearly, undue prejudice will be caused to petitioner if the revocation of VAT Ruling No. 231-88 will be retroactively applied to its case. VAT Ruling No. 231-88 issued by no less than the respondent itself has confirmed petitioner's entitlement to VAT exemption under Section 103 of the Tax Code. In saying so, respondent has actually broadened the scope of "medical services" to include the case of the petitioner.

Petitioner seasonably filed with the Court of Appeals a petition for review. In its Decision dated February 18, 2005, the Court of Appeals affirmed the CTA Resolution.

Petitioner CIR filed a motion for reconsideration, but it was denied by the appellate court in its Resolution.

Hence, the instant petition for review on certiorari.

ISSUE:

1. Whether VAT Ruling No. 231-88 exempting respondent from payment of VAT has retroactive application?

RULING:

Section 246 of the 1997 Tax Code, as amended, provides that rulings, circulars, rules and regulations promulgated by the Commissioner of Internal Revenue have no retroactive application if to apply them would prejudice the taxpayer. The exceptions to this rule are: (1) where the taxpayer deliberately misstates or omits material facts from his return or in any document required of him by the Bureau of Internal Revenue; (2) where the facts subsequently gathered by the Bureau of Internal Revenue are materially different from the facts on which the ruling is based, or (3) where the taxpayer acted in bad faith.

In its Resolution dated March 23, 2003, the CTA found that there is no showing that respondent "deliberately committed mistakes or omitted material facts" when it obtained VAT Ruling No. 231-88 from the BIR. The CTA held that respondent's letter which served as the basis for the VAT ruling "sufficiently described" its business and "there is no way the BIR could be misled by the said representation as to the real nature" of said business.

In sustaining the CTA, the Court of Appeals found that "the failure of respondent to refer to itself as a health maintenance organization is not an indication of bad faith or a deliberate attempt to make false representations." As "the term health maintenance organization did not as yet have any particular significance for tax purposes," respondent's failure "to include a term that has yet to acquire its present definition and significance cannot be equated with bad faith."

We agree with both the Tax Court and the Court of Appeals that respondent acted in good faith. According to the Court of Appeals, respondent's failure to describe itself as a "health maintenance organization," which is subject to VAT, is not tantamount to bad faith. We note that the term "health maintenance organization" was first recorded in the Philippine statute books only upon the passage of "The National Health Insurance Act of 1995" (Republic Act No. 7875). Section 4 (o) (3) thereof defines a health maintenance organization as "an entity that provides, offers, or arranges for coverage of designated health services needed by plan members for a fixed prepaid premium." Under this law, a health maintenance organization is one of the classes of a "health care provider."

It is thus apparent that when VAT Ruling No. 231-88 was issued in respondent's favor, the term "health maintenance organization" was yet unknown or had no significance for taxation purposes. Respondent, therefore, believed in good faith that it was VAT exempt for the taxable years 1996 and 1997 on the basis of VAT Ruling No. 231-88.

In *ABS-CBN Broadcasting Corp. v. Court of Tax Appeals,*[11] this Court held that under Section 246 of the 1997 Tax Code, **the Commissioner of Internal Revenue is precluded from adopting a position contrary to one previously taken where injustice would result to the taxpayer.** Hence, where an assessment for deficiency withholding income taxes was made, three years after a new BIR Circular reversed a previous one upon which the taxpayer had relied upon; such an assessment was prejudicial to the taxpayer. To rule otherwise, opined the Court, would be contrary to the tenets of good faith, equity, and fair play.

KAPATIRAN NG MGA NAGLILINGKOD SA PAMAHALAAN NG PILIPINAS, INC., HERMINIGILDO C. DUMLAO, GERONIMO Q. QUADRA, AND MARIO C. VILLANUEVA, PETITIONERS, -versus- HON. BIENVENIDO TAN, AS COMMISSIONER OF INTERNAL REVENUE, RESPONDENT. G.R. No. 81311, EN BANC, June 30, 1988, PADILLA, *J.*

The petitioners' assertions in this regard are not supported by facts and circumstances to warrant their conclusions. They have failed to adequately show that the VAT is oppressive, discriminatory or unjust. Petitioners merely rely upon newspaper articles which are actually hearsay and have evidentiary value. To justify the nullification of a law there must be a clear and unequivocal breach of the Constitution, not a doubtful and argumentative implication.

As the Court sees it, EO 273 satisfies all the requirements of a valid tax.

FACTS:

These petitions, seek to nullify Executive Order No. 273 (EO 273, for short), issued by the President of the Philippines which amended certain sections of the National Internal Revenue Code and adopted the value-added tax (VAT, for short), for being unconstitutional in that its enactment is not alledgedly within the powers of the President; that the VAT is oppressive, discriminatory, regressive, and violates the due process and equal protection clauses and other provisions of the 1987 Constitution.

The Solicitor General prays for the dismissal of the petitions on the ground that the petitioners have failed to show justification for the exercise of its judicial powers, viz. (1) the existence of an appropriate case; (2) an interest, personal and substantial, of the party raising the constitutional questions; (3) the constitutional question should be raised at the earliest opportunity; and (4) the question of constitutionality is directly and necessarily involved in a justiciable controversy and its resolution is essential to the protection of the rights of the parties. According to the Solicitor General, only the third requisite — that the constitutional question should be raised at the earliest opportunity — has been complied with. He also questions the legal standing of the petitioners who, he contends, are merely asking for an advisory opinion from the Court, there being no justiciable controversy for resolution.

ISSUE:

Whether or not EO 273 is unconstitutional? (NO)

RULING:

Petitioners claim that EO 273 is oppressive, discriminatory, unjust and regressive, in violation of the provisions of Art. VI, sec. 28(1) of the 1987 Constitution, which states:

> *Sec. 28 (1) The rule of taxation shall be uniform and equitable. The Congress shall evolve a progressive system of taxation.*

The petitioners' assertions in this regard are not supported by facts and circumstances to warrant their conclusions. They have failed to adequately show that the VAT is oppressive, discriminatory or unjust. Petitioners merely rely upon newspaper articles which are actually hearsay and have evidentiary value. To justify the nullification of a law there must be a clear and unequivocal breach of the Constitution, not a doubtful and argumentative implication.

As the Court sees it, EO 273 satisfies all the requirements of a valid tax. It is uniform. The court, in *City of Baguio vs. De Leon*, said:

> *... In Philippine Trust Company v. Yatco (69 Phil. 420), Justice Laurel, speaking for the Court, stated: "A tax is considered uniform when it operates with the same force and effect in every place where the subject may be found."*
>
> *There was no occasion in that case to consider the possible effect on such a constitutional requirement where there is a classification. The opportunity came in Eastern Theatrical Co. v. Alfonso (83 Phil. 852, 862). Thus: "Equality and uniformity in taxation means that all taxable articles or kinds of property of the same class shall be taxed at the same rate. The taxing power has the authority to make reasonable and natural classifications for purposes of taxation; . . ." About two years later, Justice Tuason, speaking for this Court in Manila Race Horses Trainers Assn. v. de la Fuente (88 Phil. 60, 65) incorporated the above excerpt in his opinion and continued; "Taking everything into account, the differentiation against which the plaintiffs complain conforms to the practical dictates of justice and equity and is not discriminatory within the meaning of the Constitution."*
>
> *To satisfy this requirement then, all that is needed as held in another case decided two years later, (Uy Matias v. City of Cebu, 93 Phil. 300) is that the statute or ordinance in question "applies equally to all persons, firms and corporations placed in similar situation." This Court is on record as accepting the view in a leading American case (Carmichael v. Southern Coal and Coke Co., 301 US 495) that "inequalities which result from a singling out of one particular class for taxation or exemption infringe no constitutional limitation." (Lutz v. Araneta, 98 Phil. 148, 153).*

The sales tax adopted in EO 273 is applied similarly on all goods and services sold to the public, which are not exempt, at the constant rate of 0% or 10%.

The disputed sales tax is also equitable. It is imposed only on sales of goods or services by persons engage in business with an aggregate gross annual sales exceeding P200,000.00. Small corner *sari-sari* stores are consequently exempt from its application. Likewise exempt from the tax are sales of farm and marine products, spared as they are from the incidence of the VAT, are expected to be relatively lower and within the reach of the general public. [6]

The Court likewise finds no merit in the contention of the petitioner Integrated Customs Brokers Association of the Philippines that EO 273, more particularly the new Sec. 103 (r) of the National Internal Revenue Code, unduly discriminates against customs brokers.

The phrase "except customs brokers" is not meant to discriminate against customs brokers. It was inserted in Sec. 103(r) to complement the provisions of Sec. 102 of the Code, which makes the services of customs brokers subject to the payment of the VAT and to distinguish customs brokers from other professionals who are subject to the payment of an occupation tax under the Local Tax Code. With the insertion of the clarificatory phrase "except customs brokers" in Sec. 103(r), a potential conflict between the two sections, (Secs. 102 and 103), insofar as customs brokers are concerned, is averted.

At any rate, the distinction of the customs brokers from the other professionals who are subject to occupation tax under the Local Tax Code is based upon material differences, in that the activities of customs brokers (like those of stock, real estate and immigration brokers) partake more of a business, rather than a profession and were thus subjected to the percentage tax under Sec. 174 of the National Internal Revenue Code prior to its amendment by EO 273. EO 273 abolished the percentage tax and replaced it with the VAT. If the petitioner Association did not protest the classification of customs brokers then, the Court sees no reason why it should protest now.

The Court takes note that EO 273 has been in effect for more than five (5) months now, so that the fears expressed by the petitioners that the adoption of the VAT will trigger skyrocketing of prices of basic commodities and services, as well as mass actions and demonstrations against the VAT should by now be evident. The fact that nothing of the sort has happened shows that the fears and apprehensions of the petitioners appear to be more imagined than real. It would seem that the VAT is not as bad as we are made to believe.

In any event, if petitioners seriously believe that the adoption and continued application of the VAT are prejudicial to the general welfare or the interests of the majority of the people, they should seek recourse and relief from the political branches of the government. The Court, following the time-honored doctrine of separation of powers, cannot substitute its judgment for that of the President as to the wisdom, justice and advisability of the adoption of the VAT. The Court can only look into and determine whether or not EO 273 was enacted and made effective as law, in the manner required by, and consistent with, the Constitution, and to make sure that it was not issued in grave abuse of discretion amounting to lack or excess of jurisdiction; and, in this regard, the Court finds no reason to impede its application or continued implementation.

CHAMBER OF REAL ESTATE AND BUILDERS' ASSOCIATIONS, INC., PETITIONER, -VERSUS- THE HON. EXECUTIVE SECRETARY ALBERTO ROMULO, THE HON. ACTING SECRETARY OF FINANCE JUANITA D. AMATONG, AND THE HON. COMMISSIONER OF INTERNAL REVENUE GUILLERMO PARAYNO, JR., RESPONDENTS. G.R. No. 160756, EN BANC, March 9, 2010, CORONA, J.

Certainly, an income tax is arbitrary and confiscatory if it taxes capital because capital is not income. In other words, it is income, not capital, which is subject to income tax. However, the MCIT is not a tax on capital.

The MCIT is imposed on gross income which is arrived at by deducting the capital spent by a corporation in the sale of its goods, i.e., the cost of goods and other direct expenses from gross sales. Clearly, the capital is not being taxed.

Furthermore, the MCIT is not an additional tax imposition. It is imposed in lieu of the normal net income tax, and only if the normal income tax is suspiciously low. The MCIT merely approximates the *amount of net income tax due from a corporation, pegging the rate at a very much reduced 2% and uses as the base the corporation's gross income.*

Besides, there is no legal objection to a broader tax base or taxable income by eliminating all deductible items and at the same time reducing the applicable tax rate.49

Statutes taxing the gross "receipts," "earnings," or "income" of particular corporations are found in many jurisdictions. Tax thereon is generally held to be within the power of a state to impose; or constitutional, unless it interferes with interstate commerce or violates the requirement as to uniformity of taxation.

FACTS:

Petitioner is an association of real estate developers and builders in the Philippines. Petitioner assails the validity of the imposition of minimum corporate income tax (MCIT) on corporations and creditable withholding tax (CWT) on sales of real properties classified as ordinary assets.

Section 27(E) of RA 8424 provides for MCIT on domestic corporations and is implemented by RR 9-98. Petitioner argues that the MCIT violates the due process clause because it levies income tax even if there is no realized gain.

ISSUE:

1. Whether or not the imposition of the MCIT on domestic corporations is unconstitutional? (NO)

RULING:

The MCIT on domestic corporations is a new concept introduced by RA 8424 to the Philippine taxation system. It came about as a result of the perceived inadequacy of the self-assessment system in capturing the true income of corporations. It was devised as a relatively simple and effective revenue-raising instrument compared to the normal income tax which is more difficult to control and enforce. It is a means to ensure that everyone will make some minimum contribution to the support of the public sector.

Even before the legislature introduced the MCIT to the Philippine taxation system, several other countries already had their own system of minimum corporate income taxation. Our lawmakers noted that most developing countries, particularly Latin American and Asian countries, have the same form of safeguards as we do.

MCIT Is Not Violative of Due Process

Petitioner claims that the MCIT under Section 27(E) of RA 8424 is unconstitutional because it is highly oppressive, arbitrary and confiscatory which amounts to deprivation of property without due process of law. It explains that gross income as defined under said provision only considers the cost of goods sold and other direct expenses; other major expenditures, such as administrative and interest expenses which are equally necessary to produce gross income, were not taken into account. Thus, pegging the tax base of the MCIT to a corporation's gross income is tantamount to a confiscation of capital because gross income, unlike net income, is not "realized gain."

Taxes are the lifeblood of the government. Without taxes, the government can neither exist nor endure. The exercise of taxing power derives its source from the very existence of the State whose social contract with its citizens obliges it to promote public interest and the common good.

Taxation is an inherent attribute of sovereignty. It is a power that is purely legislative.[35] Essentially, this means that in the legislature primarily lies the discretion to determine the nature (kind), object (purpose), extent (rate), coverage (subjects) and situs (place) of taxation. It has the authority to prescribe a certain tax at a specific rate for a particular public purpose on persons or things within its jurisdiction. In other words, the legislature wields the power to define what tax shall be imposed, why it should be imposed, how much tax shall be imposed, against whom (or what) it shall be imposed and where it shall be imposed.

As a general rule, the power to tax is plenary and unlimited in its range, acknowledging in its very nature no limits, so that the principal check against its abuse is to be found only in the responsibility of the legislature (which imposes the tax) to its constituency who are to pay it. Nevertheless, it is circumscribed by constitutional limitations. At the same time, like any other statute, tax legislation carries a presumption of constitutionality.

Petitioner is correct in saying that income is distinct from capital. Income means all the wealth which flows into the taxpayer other than a mere return on capital. Capital is a fund or property existing at one distinct point in time while income denotes a flow of wealth during a definite period of time. Income is gain derived and severed from capital. For income to be taxable, the following requisites must exist: (1) there must be gain; (2) the gain must be realized or received and (3) the gain must not be excluded by law or treaty from taxation.

Certainly, an income tax is arbitrary and confiscatory if it taxes capital because capital is not income. In other words, it is income, not capital, which is subject to income tax. However, the MCIT is not a tax on capital.

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Besides, there is no legal objection to a broader tax base or taxable income by eliminating all deductible items and at the same time reducing the applicable tax rate.[49]

Statutes taxing the **gross** "receipts," "earnings," or "**income**" **of particular corporations** are found in many jurisdictions. Tax thereon is generally held to be within the power of a state to impose; or constitutional, unless it interferes with interstate commerce or violates the requirement as to uniformity of taxation.

The United States has a similar alternative minimum tax (AMT) system which is generally characterized by a lower tax rate but a broader tax base. The U.S. Court declared that the congressional intent to ensure that corporate taxpayers would contribute a minimum amount of taxes was a legitimate governmental end to which the AMT bore a reasonable relation. American courts have also emphasized that Congress has the power to condition, limit or deny deductions from gross income in order to arrive at the net that it chooses to tax. This is because deductions are a matter of legislative grace.

Absent any other valid objection, the assignment of gross income, instead of net income, as the tax base of the MCIT, taken with the reduction of the tax rate from 32% to 2%, is not constitutionally objectionable.

Moreover, petitioner does not cite any actual, specific and concrete negative experiences of its members nor does it present empirical data to show that the implementation of the MCIT resulted in the confiscation of their property.

In sum, petitioner failed to support, by any factual or legal basis, its allegation that the MCIT is arbitrary and confiscatory. The Court cannot strike down a law as unconstitutional simply because of its yokes. Taxation is necessarily burdensome because, by its nature, it adversely affects property rights. The party alleging the law's unconstitutionality has the burden to demonstrate the supposed violations in understandable terms.

CHAMBER OF REAL ESTATE AND BUILDERS' ASSOCIATIONS, INC., PETITIONER, -VERSUS- THE HON. EXECUTIVE SECRETARY ALBERTO ROMULO, THE HON. ACTING SECRETARY OF FINANCE JUANITA D. AMATONG, AND THE HON. COMMISSIONER OF INTERNAL REVENUE GUILLERMO PARAYNO, JR., RESPONDENTS. G.R. No. 160756, EN BANC, March 9, 2010, CORONA, J.

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Section 27(E) of RA 8424 provides for MCIT on domestic corporations and is implemented by RR 9-98. Petitioner argues that the MCIT violates the due process clause because it levies income tax even if there is no realized gain.

ISSUE:

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As a general rule, the power to tax is plenary and unlimited in its range, acknowledging in its very nature no limits, so that the principal check against its abuse is to be found only in the responsibility of the legislature (which imposes the tax) to its constituency who are to pay it. Nevertheless, it is circumscribed by constitutional limitations. At the same time, like any other statute, tax legislation carries a presumption of constitutionality.

Petitioner is correct in saying that income is distinct from capital. Income means all the wealth which flows into the taxpayer other than a mere return on capital. Capital is a fund or property existing at one distinct point in time while income denotes a flow of wealth during a definite period of time. Income is gain derived and severed from capital. For income to be taxable, the following requisites must exist: (1) there must be gain; (2) the gain must be realized or received and (3) the gain must not be excluded by law or treaty from taxation.

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Absent any other valid objection, the assignment of gross income, instead of net income, as the tax base of the MCIT, taken with the reduction of the tax rate from 32% to 2%, is not constitutionally objectionable.

Moreover, petitioner does not cite any actual, specific and concrete negative experiences of its members nor does it present empirical data to show that the implementation of the MCIT resulted in the confiscation of their property.

In sum, petitioner failed to support, by any factual or legal basis, its allegation that the MCIT is arbitrary and confiscatory. The Court cannot strike down a law as unconstitutional simply because of its yokes. Taxation is necessarily burdensome because, by its nature, it adversely affects property rights. The party alleging the law's unconstitutionality has the burden to demonstrate the supposed violations in understandable terms.

MACTAN CEBU INTERNATIONAL AIRPORT AUTHORITY, petitioner, vs. HON. FERDINAND J. MARCOS, in his capacity as the Presiding Judge of the Regional Trial Court, Branch 20, Cebu City, THE CITY OF CEBU, represented by its Mayor HON. TOMAS R. OSMEÑA, and EUSTAQUIO B. CESA, respondents.

G.R. No. 120082, THIRD DIVISION, September 11, 1996, DAVIDE, JR., J.

But since taxes are what we pay for civilized society, or are the lifeblood of the nation, the law frowns against exemptions from taxation and statutes granting tax exemptions are thus construed strictissimi juris against the taxpayers and liberally in favor of the taxing authority. ***A claim of exemption from tax payment must be clearly shown and based on language in the law too plain to be mistaken****. Elsewise stated, taxation is the rule, exemption therefrom is the exception. However, if the grantee of the exemption is a political subdivision or instrumentality, the rigid rule of construction does not apply because the practical effect of the exemption is merely to reduce the amount of money that has to be handled by the government in the course of its operations.*

As to ***tax exemptions or incentives granted to or presently enjoyed by natural or juridical persons, including government-owned and controlled corporations****, Section 193 of the LGC prescribes the* ***general rule****, viz.,* ***they are withdrawn upon the effectivity of the LGC, except upon the effectivity of the LGC, except those granted to local water districts, cooperatives duly registered under R.A. No. 6938, non stock and non-profit hospitals and educational institutions, and unless otherwise provided in the LGC****. The latter proviso could refer to Section 234, which enumerates the properties exempt from real property tax. But the last paragraph of Section 234 further qualifies the retention of the exemption in so far as the real property taxes are concerned by limiting the retention only to those enumerated there-in; all others not included in the enumeration lost the privilege upon the effectivity of the LGC.* ***Moreover, even as the real property is owned by the Republic of the Philippines, or any of its political subdivisions covered by item (a) of the first paragraph of Section 234, the exemption is withdrawn if the beneficial use of such property has been granted to taxable person for consideration or otherwise****.*

Since the last paragraph of Section 234 unequivocally withdrew, upon the effectivity of the LGC, exemptions from real property taxes granted to natural or juridical persons, including government-owned or controlled corporations, except as provided in the said section, ***and the petitioner is, undoubtedly, a government-owned corporation, it necessarily follows that its exemption from such tax granted it in Section 14 of its charter, R.A. No. 6958, has been withdrawn****. Any claim to the contrary can only be justified if the petitioner can seek refuge under any of the exceptions provided in Section 234, but not under Section 133, as it now asserts, since, as shown above, the said section is qualified by Section 232 and 234.*

FACTS:

Mactan Cebu International Airport Authority (MCIAA) was created by virtue of Republic Act 6958. Since the time of its creation, MCIAA enjoyed the privilege of exemption from payment of realty taxes in accordance with Section 14 of its Charter. However on 11 October 1994, the Office of the

Treasurer of Cebu, demanded for the payment of realty taxes on several parcels of land belonging to the petitioner.

Petitioner objected to such demand for payment as baseless and unjustified and asserted that it is an instrumentality of the government performing governmental functions, which puts limitations on the taxing powers of local government units.

The City refused to cancel and set aside petitioner's realty tax account, insisting that the MCIAA is a government controlled corporation whose tax exemption privilege has been withdrawn by virtue of Sections 193 and 234 of the Local Government Code (LGC), and not an instrumentality of the government but merely a government owned corporation performing proprietary functions. MCIAA paid its tax account "under protest" when City is about to issue a warrant of levy against the MCIAA's properties.

MCIAA filed a Petition of Declaratory Relief with the RTC contending that the taxing power of local government units do not extend to the levy of taxes or fees on an instrumentality of the national government. It contends that by the nature of its powers and functions, it has the footing of an agency or instrumentality of the national government; which claim the City rejects. The trial court dismissed the petition, citing that close reading of the LGC provides the express cancellation and withdrawal of tax exemptions of Government Owned and Controlled Corporations.

ISSUE:

Whether the MCIAA is exempted from realty taxes. (NO)

RULING:

As a general rule, the power to tax is an incident of sovereignty and is unlimited in its range, acknowledging in its very nature no limits, so that security against its abuse is to be found only in the responsibility of the legislature which imposes the tax on the constituency who are to pay it. Nevertheless, effective limitations thereon may be imposed by the people through their Constitutions. Our Constitution, for instance, provides that the rule of taxation shall be uniform and equitable and Congress shall evolve a progressive system of taxation. So potent indeed is the power that it was once opined that "the power to tax involves the power to destroy." Verily, taxation is a destructive power which interferes with the personal and property for the support of the government. Accordingly, tax statutes must be construed strictly against the government and liberally in favor of the taxpayer. But since taxes are what we pay for civilized society, or are the lifeblood of the nation, the law frowns against exemptions from taxation and statutes granting tax exemptions are thus construed strictissimi juris against the taxpayers and liberally in favor of the taxing authority. A claim of exemption from tax payment must be clearly shown and based on language in the law too plain to be mistaken. Elsewise stated, taxation is the rule, exemption therefrom is the exception. However, if the grantee of the exemption is a political subdivision or instrumentality, the rigid rule of construction does not apply because the practical effect of the exemption is merely to reduce the amount of money that has to be handled by the government in the course of its operations.

The power to tax is primarily vested in the Congress; however, in our jurisdiction, it may be exercised by local legislative bodies, no longer merely by virtue of a valid delegation as before, but pursuant to direct authority conferred by Section 5, Article X of the Constitution. Under the latter, the exercise of the power may be subject to such guidelines and limitations as the Congress may provide which, however, must be consistent with the basic policy of local autonomy.

There can be no question that under Section 14 of R.A. No. 6958 the petitioner is exempt from the payment of realty taxes imposed by the National Government or any of its political subdivisions, agencies, and instrumentalities. Nevertheless, since taxation is the rule and exemption therefrom the exception, the exemption may thus be withdrawn at the pleasure of the taxing authority. The only exception to this rule is where the exemption was granted to private parties based on material consideration of a mutual nature, which then becomes contractual and is thus covered by the non-impairment clause of the Constitution.

The LGC, enacted pursuant to Section 3, Article X of the constitution provides for the exercise by local government units of their power to tax, the scope thereof or its limitations, and the exemption from
taxation.

Section 133 of the LGC prescribes the common limitations on the taxing powers of local government units as follows:
Sec. 133. Common Limitations on the Taxing Power of Local Government Units. — Unless otherwise provided herein, the exercise of the taxing powers of provinces, cities, municipalities, and barangays shall not extend to the levy of the following:

(o) TAXES, FEES, OR CHARGES OF ANY KIND ON THE NATIONAL GOVERNMENT, ITS AGENCIES AND INSTRUMENTALITIES, AND LOCAL GOVERNMENT UNITS.

Needless to say the last item (item o) is pertinent in this case. The "taxes, fees or charges" referred to are "of any kind", hence they include all of these, unless otherwise provided by the LGC. The term "taxes" is well understood so as to need no further elaboration, especially in the light of the above enumeration. The term "fees" means charges fixed by law or Ordinance for the regulation or inspection of business activity, while "charges" are pecuniary liabilities such as rents or fees against person or property.

Among the "taxes" enumerated in the LGC is real property tax, which is governed by Section 232. It reads as follows:

Sec. 232. Power to Levy Real Property Tax. — A province or city or a municipality within the Metropolitan Manila Area may levy on an annual ad valorem tax on real property such as land, building, machinery and other improvements not hereafter specifically exempted.

Section 234 of LGC provides for the exemptions from payment of real property taxes and withdraws previous exemptions therefrom granted to natural and juridical persons, including government owned and controlled corporations, except as provided therein. It provides:

Sec. 234. Exemptions from Real Property Tax. — The following are exempted from payment of the real property tax:

(a) Real property owned by the Republic of the Philippines or any of its political subdivisions except when the beneficial use thereof had been granted, for reconsideration or otherwise, to a taxable person;
(b) Charitable institutions, churches, parsonages or convents appurtenants thereto, mosques nonprofits or religious cemeteries and all lands, building and improvements actually, directly, and exclusively used for religious charitable or educational purposes;
(c) All machineries and equipment that are actually, directly and exclusively used by local water districts and government-owned or controlled corporations engaged in the supply and distribution of water and/or generation and transmission of electric power;
(d) All real property owned by duly registered cooperatives as provided for under R.A. No. 6938; and;
(e) Machinery and equipment used for pollution control and environmental protection.

Except as provided herein, any exemptions from payment of real property tax previously granted to or presently enjoyed by, all persons whether natural or juridical, including all government owned or controlled corporations are hereby withdrawn upon the effectivity of his Code.

These exemptions are based on the ownership, character, and use of the property. Thus;
(a) Ownership Exemptions. Exemptions from real property taxes on the basis of ownership are real properties owned by: (i) the Republic, (ii) a province, (iii) a city, (iv) a municipality, (v) a barangay, and (vi) registered cooperatives.
(b) Character Exemptions. Exempted from real property taxes on the basis of their character are: (i) charitable institutions, (ii) houses and temples of prayer like churches, parsonages or convents appurtenant thereto, mosques, and (iii) non profit or religious cemeteries.

(c) Usage exemptions. Exempted from real property taxes on the basis of the actual, direct and exclusive use to which they are devoted are: (i) all lands buildings and improvements which are actually, directed and exclusively used for religious, charitable or educational purpose; (ii) all machineries and equipment actually, directly and exclusively used or by local water districts or by government-owned or controlled corporations engaged in the supply and distribution of water and/or generation and transmission of electric power; and (iii) all machinery and equipment used for pollution control and environmental protection.

To help provide a healthy environment in the midst of the modernization of the country, all machinery and equipment for pollution control and environmental protection may not be taxed by local governments.

2. Other Exemptions Withdrawn. **All other exemptions previously granted to natural or juridical persons including government-owned or controlled corporations are withdrawn upon the effectivity of the Code**.

Section 193 of the LGC is the general provision on withdrawal of tax exemption privileges. It provides:

Sec. 193. Withdrawal of Tax Exemption Privileges. — Unless otherwise provided in this code, tax exemptions or incentives granted to or presently enjoyed by all persons, whether natural or juridical, including government-owned, or controlled corporations, except local water districts, cooperatives duly registered under R.A. 6938, non stock and non profit hospitals and educational constitutions, are hereby withdrawn upon the effectivity of this Code.

On the other hand, the LGC authorizes local government units to grant tax exemption privileges. Thus, Section 192 thereof provides:

Sec. 192. Authority to Grant Tax Exemption Privileges. — Local government units may, through ordinances duly approved, grant tax exemptions, incentives or reliefs under such terms and conditions as they may deem necessary.

The foregoing sections of the LGC speaks of: (a) the limitations on the taxing powers of local government units and the exceptions to such limitations; and (b) the rule on tax exemptions and the exceptions thereto. The use of exceptions of provisos in these section, as shown by the following clauses:

(1) "unless otherwise provided herein" in the opening paragraph of Section 133;
(2) "Unless otherwise provided in this Code" in section 193;
(3) "not hereafter specifically exempted" in Section 232; and
(4) "Except as provided herein" in the last paragraph of Section 234

Thus, reading together Section 133, 232 and 234 of the LGC, we conclude that as a general rule, as laid down in Section 133 the taxing powers of local government units cannot extend to the levy of inter alia, "taxes, fees, and charges of any kind of the National Government, its agencies and instrumentalties, and local government units"; however, pursuant to Section 232, provinces, cities, municipalities in the Metropolitan Manila Area may impose the real property tax except on, inter alia, "real property owned by the Republic of the Philippines or any of its political subdivisions except when the beneficial used thereof has been granted, for consideration or otherwise, to a taxable person", as provided in item (a) of the first paragraph of Section 234.

As to tax exemptions or incentives granted to or presently enjoyed by natural or juridical persons, including government-owned and controlled corporations, Section 193 of the LGC prescribes the general rule, viz., they are withdrawn upon the effectivity of the LGC, except upon the effectivity of the LGC, except those granted to local water districts, cooperatives duly registered under R.A. No. 6938, non stock and non-profit hospitals and educational institutions, and unless otherwise provided in the LGC. The latter proviso could refer to Section 234, which enumerates the properties exempt from real property tax. But the last paragraph of Section 234 further qualifies the retention of the exemption in so far as the real property taxes are concerned by limiting the retention only to those enumerated there-in; all others not included in the enumeration lost the privilege upon the effectivity of the LGC. Moreover, even as the real property is owned by the Republic of the Philippines, or any of its political subdivisions covered by item (a) of the first paragraph of Section 234, the exemption is withdrawn if the beneficial use of such property has been granted to taxable person for consideration or otherwise.

Since the last paragraph of Section 234 unequivocally withdrew, upon the effectivity of the LGC, exemptions from real property taxes granted to natural or juridical persons, including government-owned or controlled corporations, except as provided in the said section, and the petitioner is, undoubtedly, a government-owned corporation, it necessarily follows that its exemption from such tax granted it in Section 14 of its charter, R.A. No. 6958, has been withdrawn. Any claim to the contrary can only be justified if the petitioner can seek refuge under any of the exceptions provided in Section 234, but not under Section 133, as it now asserts, since, as shown above, the said section is qualified by Section 232 and 234.

Accordingly, the position taken by the petitioner is untenable. Reliance on Basco vs. Philippine Amusement and Gaming Corporation is unavailing since it was decided before the effectivity of the LGC. Besides, nothing can prevent Congress from decreeing that even instrumentalities or agencies of the government performing governmental functions may be subject to tax. Where it is done precisely to fulfill a constitutional mandate and national policy, no one can doubt its wisdom.

REPUBLIC OF THE PHILIPPINES, represented by THE HONORABLE SECRETARY OF FINANCE, THE HONORABLE COMMISSIONER OF BUREAU OF INTERNAL REVENUE, THE HONORABLE COMMISSIONER OF CUSTOMS, and THE COLLECTOR OF CUSTOMS OF THE PORT OF SUBIC, petitioners, vs. HON. RAMON S. CAGUIOA, Presiding Judge, Branch 74, RTC, Third Judicial Region, Olongapo City, INDIGO DISTRIBUTION CORP., herein represented by ARIEL G. CONSOLACION, W STAR TRADING AND WAREHOUSING CORP., herein represented by HIERYN R. ECLARINAL, FREEDOM BRANDS PHILS., CORP., herein represented by ANA LISA RAMAT, BRANDED WAREHOUSE, INC., herein represented by MARY AILEEN S. GOZUN, ALTASIA INC., herein represented by ALAN HARROW, TAINAN TRADE (TAIWAN), INC., herein represented by ELENA RANULLO, SUBIC PARK N' SHOP, herein represented by NORMA MANGALINO DIZON, TRADING GATEWAYS INTERNATIONAL PHILS., herein represented by MA. CHARINA FE C. RODOLFO, DUTY FREE SUPERSTORE (DFS), herein represented by RAJESH R. SADHWANI, CHJIMES TRADING INC., herein represented by ANGELO MARK M. PICARDAL, PREMIER FREEPORT, INC., herein represented by ROMMEL P. GABALDON, FUTURE TRADE SUBIC FREEPORT, INC., herein represented by WILLIE S. VERIDIANO, GRAND COMTRADE INTERNATIONAL CORP., herein represented by JULIUS MOLINDA, and FIRST PLATINUM INTERNATIONAL, INC., herein represented by ISIDRO M. MUÑOZ,respondents.

G.R. No. 168584, EN BANC, October 15, 2007, CARPIO MORALES, J.

There is no vested right in a tax exemption, more so when the latest expression of legislative intent renders its continuance doubtful. ***Being a mere statutory privilege, a tax exemption may be modified or withdrawn at will by the granting authority****.*

To state otherwise is to limit the taxing power of the State, which is unlimited, plenary, comprehensive and supreme. ***The power to impose taxes is one so unlimited in force and so searching in extent, it is subject only to restrictions which rest on the discretion of the authority exercising it****.*

By subsequently enacting R.A. No. 9334, however, Congress expressed its intention to withdraw private respondents' tax exemption privilege on their importations of cigars, cigarettes, distilled spirits, fermented liquors and wines

Every court should remember that an injunction is a limitation upon the freedom of action of the defendant and should not be granted lightly or precipitately. ***It should be granted only when the court is fully satisfied that the law permits it and the emergency demands it****.*

It cannot be overemphasized that any injunction that restrains the collection of taxes, which is the inevitable result of the suspension of the implementation of the assailed Section 6 of R.A. No. 9334, is a limitation upon the right of the government to its lifeline and wherewithal.

FACTS:

In 1992, Congress enacted Republic Act (R.A) No. 7227 or the Bases Conversion and Development Act of 1992 which, among other things, created the Subic Special Economic and Freeport Zone (SBF) and the Subic Bay Metropolitan Authority (SBMA).

Pursuant to the law, private respondents Indigo Distribution Corporation, W Star Trading and Warehousing Corporation, Freedom Brands Philippines Corporation, Branded Warehouse, Inc., Altasia, Inc., Tainan Trade (Taiwan) Inc., Subic Park 'N Shop, Incorporated, Trading Gateways International Philipines, Inc., Duty Free Superstore (DFS) Inc., Chijmes Trading, Inc., Premier Freeport, Inc., Future Trade Subic Freeport, Inc., Grand Comtrade Int'l., Corp., and First Platinum International, Inc., which are all domestic corporations doing business at the SBF, applied for and were granted Certificates of Registration and Tax Exemption by the SBMA.

These certificates allowed them to engage in the business either of trading, retailing or wholesaling, import and export, warehousing, distribution and/or transshipment of general merchandise, including alcohol and tobacco products, and uniformly granted them tax exemptions for such importations.

Congress subsequently passed R.A. No. 9334, however, effective on January 1, 2005, Section 6 of which provides:

Sec. 6. Section 131 of the National Internal Revenue Code of 1977, as amended, is hereby amended to read as follows:

Sec. 131. Payment of Excise Taxes on Imported Articles. –

(A) Persons Liable. – Excise taxes on imported articles shall be paid by the owner or importer to the Customs Officers, conformably with the regulations of the Department of Finance and before the release of such articles from the customshouse or by the person who is found in possession of articles which are exempt from excise taxes other than those legally entitled to exemption.

In the case of tax-free articles brought or imported into the Philippines by persons, entities or agencies exempt from tax which are subsequently sold, transferred or exchanged in the Philippines to non-exempt persons or entities, the purchasers or recipients shall be considered the importers thereof, and shall be liable for the duty and internal revenue tax due on such importation.

The provision of any special or general law to the contrary notwithstanding, the importation of cigars and cigarettes, distilled spirits, fermented liquors and wines into the Philippines, even if destined for tax and duty free shops, shall be subject to all applicable taxes, duties, charges, including excise taxes due thereon. This shall apply to cigars and cigarettes, distilled spirits, fermented liquors and wines brought directly into the duly chartered or legislated freeports of the Subic Economic Freeport Zone, created under Republic Act No. 7227; x x x and such other freeports as may hereafter be established or created by law: Provided, further, That importations of cigars and cigarettes, distilled spirits, fermented liquors and wines made directly by a government-owned and operated duty-free shop, like the Duty Free Philippines (DFP), shall be exempted from all applicable duties only: x x x Provided, finally, That the removal and transfer of tax and duty-free goods, products, machinery, equipment and other similar articles other than cigars and cigarettes, distilled spirits, fermented liquors and wines, from one Freeport to another Freeport, shall not be deemed an introduction into the Philippine customs territory. x x x.

On the basis of Section 6 of R.A. No. 9334, SBMA issued on January 10, 2005 a Memorandum declaring that effective January 1, 2005, all importations of cigars, cigarettes, distilled spirits, fermented liquors and wines into the SBF, including those intended to be transshipped to other free ports in the Philippines, shall be treated as ordinary importations subject to all applicable taxes, duties and charges, including excise taxes.

On February 15, 2005, private respondents wrote the offices of respondent Collector of Customs and the SBMA Administrator requesting for a reconsideration of the directives on the imposition of duties and taxes, particularly excise taxes, on their shipments of cigars, cigarettes, wines and liquors. Despite these letters, however, they were not allowed to file any warehousing entry for their shipments.

Thus, private respondent enterprises, through their representatives, brought before the RTC of Olongapo City a special civil action for declaratory relief to have certain provisions of R.A. No. 9334 declared as unconstitutional.

In the main, private respondents submitted that (1) R.A. No. 9334 should not be interpreted as altering, modifying or amending the provisions of R.A. No. 7227 because repeals by implication are not favored; (2) a general law like R.A. No. 9334 cannot amend R.A. No. 7727, which is a special law; and (3) the assailed law violates the one bill-one subject rule embodied in Section 26(1), Article VI of the Constitution as well as the constitutional proscription against the impairment of the obligation of contracts.

Alleging that great and irreparable loss and injury would befall them as a consequence of the imposition of taxes on alcohol and tobacco products brought into the SBF, private respondents prayed for the issuance of a writ of preliminary injunction and/or Temporary Restraining Order (TRO) and preliminary mandatory injunction to enjoin the directives of herein petitioners.

Petitioners duly opposed the private respondents' prayer for the issuance of a writ of preliminary injunction and/or TRO, arguing that (1) tax exemptions are not presumed and even when granted, are strictly construed against the grantee; (2) an increase in business expense is not the injury contemplated by law, it being a case of damnum absque injuria; and (3) the drawback mechanism established in the law clearly negates the possibility of the feared injury.

Petitioners moreover pointed out that courts are enjoined from issuing a writ of injunction and/or TRO on the grounds of an alleged nullity of a law, ordinance or administrative regulation or circular or in a manner that would effectively dispose of the main case. Taxes, they stressed, are the lifeblood of the government and their prompt and certain availability is an imperious need. They maintained that greater injury would be inflicted on the public should the writ be granted.

On May 4, 2005, the court a quo granted private respondents' application for the issuance of a writ of preliminary injunction, after it found that the essential requisites for the issuance of a preliminary injunction were present.

ISSUE:

Whether the Writ of Preliminary Injunction was properly issued. (NO)

RULING:

For a writ of preliminary injunction to issue, the plaintiff must be able to establish that (1) there is a clear and unmistakable right to be protected, (2) the invasion of the right sought to be protected is material and substantial, and (3) there is an urgent and paramount necessity for the writ to prevent serious damage.

Conversely, failure to establish either the existence of a clear and positive right which should be judicially protected through the writ of injunction, or of the acts or attempts to commit any act which endangers or tends to endanger the existence of said right, or of the urgent need to prevent serious damage, is a sufficient ground for denying the preliminary injunction.

It is beyond cavil that R.A. No. 7227 granted private respondents exemption from local and national taxes, including excise taxes, on their importations of general merchandise, for which reason they enjoyed tax-exempt status until the effectivity of R.A. No. 9334.

By subsequently enacting R.A. No. 9334, however, Congress expressed its intention to withdraw private respondents' tax exemption privilege on their importations of cigars, cigarettes, distilled spirits, fermented liquors and wines.

To note, the old Section 131 of the NIRC expressly provided that all taxes, duties, charges, including excise taxes shall not apply to importations of cigars, cigarettes, fermented spirits and wines brought directly into the duly chartered or legislated freeports of the SBF.

On the other hand, Section 131, as amended by R.A. No. 9334, now provides that such taxes, duties and charges, including excise taxes, shall apply to importation of cigars and cigarette

Without necessarily passing upon the validity of the withdrawal of the tax exemption privileges of private respondents, it behooves this Court to state certain basic principles and observations that should throw light on the propriety of the issuance of the writ of preliminary injunction in this case.

First. Every presumption must be indulged in favor of the constitutionality of a statute. The burden of proving the unconstitutionality of a law rests on the party assailing the law. In passing upon the validity of an act of a co-equal and coordinate branch of the government, courts must ever be mindful of the time-honored principle that a statute is presumed to be valid.

Second. There is no vested right in a tax exemption, more so when the latest expression of legislative intent renders its continuance doubtful. Being a mere statutory privilege, a tax exemption may be modified or withdrawn at will by the granting authority.

To state otherwise is to limit the taxing power of the State, which is unlimited, plenary, comprehensive and supreme. The power to impose taxes is one so unlimited in force and so searching in extent, it is subject only to restrictions which rest on the discretion of the authority exercising it.

Third. As a general rule, tax exemptions are construed strictissimi juris against the taxpayer and liberally in favor of the taxing authority. The burden of proof rests upon the party claiming exemption to prove that it is in fact covered by the exemption so claimed. In case of doubt, non-exemption is favored.

Fourth. A tax exemption cannot be grounded upon the continued existence of a statute which precludes its change or repeal. Flowing from the basic precept of constitutional law that no law is irrepealable, Congress, in the legitimate exercise of its lawmaking powers, can enact a law withdrawing a tax exemption just as efficaciously as it may grant the same under Section 28(4) of Article VI of the Constitution. There is no gainsaying therefore that Congress can amend Section 131 of the NIRC in a manner it sees fit, as it did when it passed R.A. No. 9334.

Fifth. The rights granted under the Certificates of Registration and Tax Exemption of private respondents are not absolute and unconditional as to constitute rights in esse – those clearly founded on or granted by law or is enforceable as a matter of law.

These certificates granting private respondents a "permit to operate" their respective businesses are in the nature of licenses, which the bulk of jurisprudence considers as neither a property nor a property right. The licensee takes his license subject to such conditions as the grantor sees fit to impose, including its revocation at pleasure. A license can thus be revoked at any time since it does not confer an absolute right.

While the tax exemption contained in the Certificates of Registration of private respondents may have been part of the inducement for carrying on their businesses in the SBF, this exemption, nevertheless, is far from being contractual in nature in the sense that the non-impairment clause of the Constitution can rightly be invoked.

Sixth. Whatever right may have been acquired on the basis of the Certificates of Registration and Tax Exemption must yield to the State's valid exercise of police power. It is well to remember that taxes may be made the implement of the police power.

It is not difficult to recognize that public welfare and necessity underlie the enactment of R.A. No. 9334. As petitioners point out, the now assailed provision was passed to curb the pernicious practice of some unscrupulous business enterprises inside the SBF of using their tax exemption privileges for smuggling purposes. Smuggling in whatever form is bad enough; it is worse when the same is allegedly perpetrated, condoned or facilitated by enterprises hiding behind the cloak of their tax exemption privileges.

Seventh. As a rule, courts should avoid issuing a writ of preliminary injunction which would in effect dispose of the main case without trial. This rule is intended to preclude a prejudgment of the main case and a reversal of the rule on the burden of proof since by issuing the injunctive writ, the court would assume the proposition that petitioners are inceptively duty bound to prove.

Eighth. A court may issue a writ of preliminary injunction only when the petitioner assailing a statute has made out a case of unconstitutionality or invalidity strong enough, in the mind of the judge, to overcome the presumption of validity, in addition to a showing of a clear legal right to the remedy sought.

Thus, it is not enough that petitioners make out a case of unconstitutionality or invalidity to overcome the prima facie presumption of validity of a statute; they must also be able to show a clear legal right that ought to be protected by the court. The issuance of the writ is therefore not proper when the complainant's right is doubtful or disputed.

Ninth. The feared injurious effects of the imposition of duties, charges and taxes on imported cigars, cigarettes, distilled spirits, fermented liquors and wines on private respondents' businesses cannot possibly outweigh the dire consequences that the non-collection of taxes, not to mention the unabated smuggling inside the SBF, would wreak on the government. Whatever damage would befall private respondents must perforce take a back seat to the pressing need to curb smuggling and raise revenues for governmental functions.

All told, while the grant or denial of an injunction generally rests on the sound discretion of the lower court, this Court may and should intervene in a clear case of abuse.

One such case of grave abuse obtained in this case when public respondent issued his Order of May 4, 2005 and the Writ of Preliminary Injunction on May 11, 2005 despite the absence of a clear and unquestioned legal right of private respondents.

In holding that the presumption of constitutionality and validity of R.A. No. 9334 was overcome by private respondents for the reasons public respondent cited in his May 4, 2005 Order, he disregarded the fact that as a condition sine qua non to the issuance of a writ of preliminary injunction, private respondents needed also to show a clear legal right that ought to be protected. That requirement is not satisfied in this case.

To stress, the possibility of irreparable damage without proof of an actual existing right would not justify an injunctive relief.

Besides, private respondents are not altogether lacking an appropriate relief under the law. As petitioners point out in their Petition before this Court, private respondents may avail themselves of a tax refund or tax credit should R.A. No. 9334 be finally declared invalid.
Indeed, Sections 204 and 229 of the NIRC provide for the recovery of erroneously or illegally collected taxes which would be the nature of the excise taxes paid by private respondents should Section 6 of R.A. No. 9334 be declared unconstitutional or invalid.

It may not be amiss to add that private respondents can also opt not to import, or to import less of, those items which no longer enjoy tax exemption under R.A. No. 9334 to avoid the payment of taxes thereon.

The Court finds that public respondent had also ventured into the delicate area which courts are cautioned from taking when deciding applications for the issuance of the writ of preliminary injunction. Having ruled preliminarily against the prima facie validity of R.A. No. 9334, he assumed in effect the proposition that private respondents in their petition for declaratory relief were duty bound to prove, thereby shifting to petitioners the burden of proving that R.A. No. 9334 is not unconstitutional or invalid.

In the same vein, the Court finds public respondent to have overstepped his discretion when he arbitrarily fixed the injunction bond of the SBF enterprises at only P1million.

The alleged sparseness of the testimony of Indigo Corporation's representative on the injury to be suffered by private respondents may be excused because evidence for a preliminary injunction need not be conclusive or complete. Nonetheless, considering the number of private respondent enterprises and the volume of their businesses, the injunction bond is undoubtedly not sufficient to answer for the damages that the government was bound to suffer as a consequence of the suspension of the implementation of the assailed provisions of R.A. No. 9334.

Rule 58, Section 4(b) provides that a bond is executed in favor of the party enjoined to answer for all damages which it may sustain by reason of the injunction. The purpose of the injunction bond is to protect the defendant against loss or damage by reason of the injunction in case the court finally decides that the plaintiff was not entitled to it, and the bond is usually conditioned accordingly.

Recalling this Court's pronouncements in Olalia v. Hizon that:

x x x [T]here is no power the exercise of which is more delicate, which requires greater caution, deliberation and sound discretion, or more dangerous in a doubtful case, than the issuance of an injunction. It is the strong arm of equity that should never be extended unless to cases of great injury, where courts of law cannot afford an adequate or commensurate remedy in damages.

Every court should remember that an injunction is a limitation upon the freedom of action of the defendant and should not be granted lightly or precipitately. It should be granted only when the court is fully satisfied that the law permits it and the emergency demands it,

It cannot be overemphasized that any injunction that restrains the collection of taxes, which is the inevitable result of the suspension of the implementation of the assailed Section 6 of R.A. No. 9334, is a limitation upon the right of the government to its lifeline and wherewithal.

The power to tax emanates from necessity; without taxes, government cannot fulfill its mandate of promoting the general welfare and well-being of the people. That the enforcement of tax laws and the collection of taxes are of paramount importance for the sustenance of government has been repeatedly observed. Taxes being the lifeblood of the government that should be collected without unnecessary hindrance, every precaution must be taken not to unduly suppress it.

NATIONAL TELECOMMUNICATIONS COMMISSION, Petitioner, v. HONORABLE COURT OF APPEALS and PHILIPPINE LONG DISTANCE TELEPHONE COMPANY, Respondents.
G.R. No. 127937, THIRD DIVISION, July 28, 1999, PURISIMA, J.

It bears stressing that it is not the NTC that imposed such a fee. It is the legislature itself. Since ***Congress has the power to exercise the State inherent powers of Police Power, Eminent Domain and Taxation****, the distinction between police power and the power to tax, which could be significant if the exercising authority were mere political subdivisions (since delegation by it to such political subdivisions of one power does not necessarily include the other), would not be of any moment when, as in the case under consideration,* ***Congress itself exercises the power****. All that is to be done would be to apply and enforce the law when sufficiently definitive and not constitutional infirm.*

FACTS:

Sometime in 1988, the National Telecommunications Commission (NTC) served on the Philippine Long Distance Telephone Company (PLDT) the assessment notices and demands for payment. The assessment for supervision and regulation fee under Section 40(e) made by NTC for 1988, was computed at P0.50 per 100 of PLDTs **outstanding capital stock**.

In its two letter-protests dated February 23, 1988 and July 14, 1988, and position papers dated November 8, 1990 and March 12, 1991, respectively, the PLDT challenged the aforesaid assessments, theorizing inter alia that:

(a) The assessments were being made to **raise revenues** and not as mere reimbursements for actual regulatory expenses in violation of the doctrine in PLDT vs. PSC, 66 SCRA 341 [1975];

(b) The assessment under Section 40 (e) should only have been on the **basis of the par values** of private respondents outstanding capital stock;

(c) Petitioner has no authority to compel private respondents payment of the assessed fees under Section 40 (f) for the increase of its authorized capital stock since petitioner did not render any supervisory or regulatory activity and incurred no expenses in relation thereto.

ISSUE:

Whether the fee under Section 40 (e) should be based on the market value of PLDTs outstanding capital stock inclusive of stock dividends and premium, and not on the par value of PLDTs capital stock excluding stock dividends and premium, as contended by PLDT. (NO)

RULING:

Succinct and clear is the ruling of this Court in the case of Philippine Long Distance Telephone Company vs. Public Service Commission, 66 SCRA 341, that the basis for computation of the fee to be charged by NTC on PLDT, is the capital stock subscribed or paid and not, alternatively, the property and equipment.

The law in point is clear and categorical. There is no room for construction. It simply calls for application. To repeat, the fee in question is based on the capital stock subscribed or paid, nothing less nothing more.

It bears stressing that it is not the NTC that imposed such a fee. It is the legislature itself. Since Congress has the power to exercise the State inherent powers of Police Power, Eminent Domain and Taxation, the distinction between police power and the power to tax, which could be significant if the exercising authority were mere political subdivisions (since delegation by it to such political subdivisions of one power does not necessarily include the other), would not be of any moment when, as in the case under consideration, Congress itself exercises the power. All that is to be done would be to apply and enforce the law when sufficiently definitive and not constitutional infirm.

The term capital and other terms used to describe the capital structure of a corporation are of universal acceptance, and their usages have long been established in jurisprudence. Briefly, capital refers to the value of the property or assets of a corporation. The capital subscribed is the total amount of the capital that persons (subscribers or shareholders) have agreed to take and pay for, which need not necessarily be, and can be more than, the par value of the shares. In fine, it is the amount that the corporation receives, inclusive of the premiums if any, in consideration of the original issuance of the shares. In the case of stock dividends, it is the amount that the corporation transfers from its surplus profit account to its capital account. It is the same amount that can loosely be termed as the trust fund of the corporation. The Trust Fund doctrine considers this subscribed capital as a trust fund for the payment of the debts of the corporation, to which the creditors may look for satisfaction. Until the liquidation of the corporation, no part of the subscribed capital may be returned or released to the stockholder (except in the redemption of redeemable shares) without violating this principle. Thus, dividends must never impair the subscribed capital; subscription commitments cannot be condoned or remitted; nor can the corporation buy its own shares using the subscribed capital as the consideration therefor.

In the same way that the Court in PLDT vs. PSC has rejected the value of the property and equipment as being the proper basis for the fee imposed by Section 40(e) of the Public Service Act, as amended by Republic Act No. 3792, so also must the Court disallow the idea of computing the fee on the par value of [PLDTs] capital stock subscribed or paid excluding stock dividends, premiums, or capital in excess of par. Neither, however, is the assessment made by the National Telecommunications Commission on the basis of the market value of the subscribed or paid-in capital stock acceptable since it is itself a deviation from the explicit language of the law.

All things studiedly considered, and mindful of the aforesaid ruling of this Court in the case of Philippine Long Distance Telephone Company vs. Public Service Commission, it should be reiterated that the proper basis for the computation of subject fee under Section 40(e) of the Public Service Act, as amended by Republic Act No. 3792, **is the capital stock subscribed or paid and not, alternatively, the property and equipment**.

COMMISSIONER OF INTERNAL REVENUE, petitioner, vs. PASCOR REALTY AND DEVELOPMENT CORPORATION, ROGELIO A. DIO and VIRGINIA S. DIO, respondents.
G.R. No. 128315, THIRD DIVISION, June 29, 1999, PANGANIBAN, J.

An assessment contains not only a computation of tax liabilities, but also a demand for payment within a prescribed period*. It also signals the time when penalties and protests begin to accrue against the taxpayer. To enable the taxpayer to determine his remedies thereon, due process requires that it must be served on and received by the taxpayer. Accordingly, an affidavit, which was executed by revenue officers stating the tax liabilities of a taxpayer and attached to a criminal complaint for tax evasion, cannot be deemed an assessment that can be questioned before the Court of Tax Appeals.*

It should also be stressed that ***the said document is a notice duly sent to the taxpayer****. Indeed, an assessment is deemed made only when the collector of internal revenue releases, mails or sends such notice to the taxpayer.*

In the present case, the revenue officers' Affidavit merely contained a computation of respondents' tax liability. It did not state a demand or a period for payment. Worse, it was addressed to the justice secretary, not to the taxpayers.

FACTS:

It appears that by virtue of Letter of Authority No. 001198, then BIR Commissioner Jose U. Ong authorized Revenue Officers Thomas T. Que, Sonia T. Estorco and Emmanuel M. Savellano to examine the books of accounts and other accounting records of Pascor Realty and Development Corporation. (PRDC) for the years ending 1986, 1987 and 1988. The said examination resulted in a recommendation for the issuance of an assessment in the amounts of P7,498,434.65 and P3,015,236.35 for the years 1986 and 1987, respectively.

On March 1, 1995, the Commissioner of Internal Revenue filed a criminal complaint before the Department of Justice against the PRDC, its President Rogelio A. Dio, and its Treasurer Virginia S. Dio, alleging evasion of taxes in the total amount of P10,513,671 .00. Private respondents PRDC, et. al. filed an Urgent Request for Reconsideration/Reinvestigation disputing the tax assessment and tax liability.

On March 23, 1995, private respondents received a subpoena from the DOJ in connection with the criminal complaint filed by the Commissioner of Internal Revenue (BIR) against them.

In a letter dated May 17, 1995, the CIR denied the urgent request for reconsideration/reinvestigation of the private respondents on the ground that no formal assessment of the has as yet been issued by the Commissioner.

Private respondents then elevated the Decision of the CIR dated May 17, 1995 to the Court of Tax Appeals on a petition for review docketed as CTA Case No. 5271 on July 21, 1995. On September 6, 1995, the CIR filed a Motion to Dismiss the petition on the ground that the CTA has no jurisdiction over the subject matter of the petition, as there was no formal assessment issued against the petitioners. The CTA denied the said motion to dismiss in a Resolution dated January 25, 1996 and ordered the CIR to file an answer within thirty (30) days from receipt of said resolution.

ISSUE:

Whether the revenue officers' Affidavit-Report, which was attached to criminal revenue Complaint filed the Department of Justice, constituted an assessment. (NO)

RULING:

We agree with petitioner. Neither the NIRC nor the regulations governing the protest of assessments provide a specific definition or form of an assessment. However, the NIRC defines the specific functions and effects of an assessment. To consider the affidavit attached to the Complaint as a proper assessment is to subvert the nature of an assessment and to set a bad precedent that will prejudice innocent taxpayers.

True, as pointed out by the private respondents, an assessment informs the taxpayer that he or she has tax liabilities. But not all documents coming from the BIR containing a computation of the tax liability can be deemed assessments.

To start with, an assessment must be sent to and received by a taxpayer, and must demand payment of the taxes described therein within a specific period. Thus, the NIRC imposes a 25 percent penalty, in addition to the tax due, in case the taxpayer fails to pay deficiency tax within the time prescribed for its payment in the notice of assessment. Likewise, an interest of 20 percent per annum, or such higher rates as may be prescribed by rules and regulations, is to be collected form the date prescribed for its payment until the full payment.

The issuance of an assessment is vital in determining, the period of limitation regarding its proper issuance and the period within which to protest it. Section 203 of the NIRC provides that internal revenue taxes must be assessed within three years from the last day within which to file the return. Section 222, on the other hand, specifies a period of ten years in case a fraudulent return with intent to evade was submitted or in case of failure to file a return. Also, Section 228 of the same law states that said assessment may be protested only within thirty days from receipt thereof. Necessarily, the taxpayer must be certain that a specific document constitutes an assessment. Otherwise, confusion would arise regarding the period within which to make an assessment or to protest the same, or whether interest and penalty may accrue thereon.

It should also be stressed that the said document is a notice duly sent to the taxpayer. Indeed, an assessment is deemed made only when the collector of internal revenue releases, mails or sends such notice to the taxpayer.

In the present case, the revenue officers' Affidavit merely contained a computation of respondents' tax liability. It did not state a demand or a period for payment. Worse, it was addressed to the justice secretary, not to the taxpayers.

Respondents maintain that an assessment, in relation to taxation, is simply understood' to mean:

A notice to the effect that the amount therein stated is due as tax and a demand for payment thereof.

Fixes the liability of the taxpayer and ascertains the facts and furnishes the data for the proper presentation of tax rolls.

Even these definitions fail to advance private respondents' case. That the BIR examiners' Joint Affidavit attached to the Criminal Complaint contained some details of the tax liabilities of private respondents does not ipso facto make it an assessment. The purpose of the Joint Affidavit was merely to support and substantiate the Criminal Complaint for tax evasion. Clearly, it was not meant to be a notice of the tax due and a demand to the private respondents for payment thereof.

The fact that the Complaint itself was specifically directed and sent to the Department of Justice and not to private respondents shows that the intent of the commissioner was to file a criminal complaint for tax evasion, not to issue an assessment. Although the revenue officers recommended the issuance of an assessment, the commissioner opted instead to file a criminal case for tax evasion. What private respondents received was a notice from the DOJ that a criminal case for tax evasion had been filed against them, not a notice that the Bureau of Internal Revenue had made an assessment.

In addition, what private respondents sent to the commissioner was a motion for a reconsideration of the tax evasion charges filed, not of an assessment, as shown thus:

This is to request for reconsideration of the tax evasion charges against my client, PASCOR Realty and Development Corporation and for the same to be referred to the Appellate Division in order to give my client the opportunity of a fair and objective hearing.

PEPSI-COLA BOTTLING COMPANY OF THE PHILIPPINES, INC., plaintiff-appellant, vs. MUNICIPALITY OF TANAUAN, LEYTE, THE MUNICIPAL MAYOR, ET AL., defendant appellees.
G.R. No. L-31156, EN BANC, February 27, 1976, MARTIN, J.

There is no validity to the assertion that the delegated authority can be declared unconstitutional on the theory of double taxation. It must be observed that the delegating authority specifies the limitations and enumerates the taxes over which local taxation may not be exercised. The reason is that the State has exclusively reserved the same for its own prerogative. ***Moreover, double taxation, in general, is not forbidden by our fundamental law****, since We have not adopted as part thereof the injunction against double taxation found in the Constitution of the United States and some states of the Union.* ***Double taxation becomes obnoxious only where the taxpayer is taxed twice for the benefit of the same governmental entity or by the same jurisdiction for the same purpose, but not in a case where one tax is imposed by the State and the other by the city or municipality****.*

FACTS:

On February 14, 1963, the plaintiff-appellant, Pepsi-Cola Bottling Company of the Philippines, Inc., commenced a complaint with preliminary injunction before the Court of First Instance of Leyte for that court to declare Section 2 of Republic Act No. 2264, otherwise known as the Local Autonomy Act, unconstitutional as an undue delegation of taxing authority as well as to declare Ordinances Nos. 23 and 27, series of 1962, of the municipality of Tanauan, Leyte, null and void.

On July 23, 1963, the parties entered into a Stipulation of Facts, the material portions of which state that, first, both Ordinances Nos. 23 and 27 embrace or cover the same subject matter and the production tax rates imposed therein are practically the same, and second, that on January 17, 1963, the acting Municipal Treasurer of Tanauan, Leyte, as per his letter addressed to the Manager of the Pepsi-Cola Bottling Plant in said municipality, sought to enforce compliance by the latter of the provisions of said Ordinance No. 27, series of 1962.

Municipal Ordinance No. 23, of Tanauan, Leyte, which was approved on September 25, 1962, levies and collects "from soft drinks producers and manufacturers a tai of one-sixteenth (1/16) of a centavo for every bottle of soft drink corked." For the purpose of computing the taxes due, the person, firm, company or corporation producing soft drinks shall submit to the Municipal Treasurer a monthly report, of the total number of bottles produced and corked during the month.

On the other hand, Municipal Ordinance No. 27, which was approved on October 28, 1962, levies and collects "on soft drinks produced or manufactured within the territorial jurisdiction of this municipality a tax of ONE CENTAVO (P0.01) on each gallon (128 fluid ounces, U.S.) of volume capacity." For the purpose of computing the taxes due, the person, fun company, partnership, corporation or plant producing soft drinks shall submit to the Municipal Treasurer a monthly report of the total number of gallons produced or manufactured during the month.

The tax imposed in both Ordinances Nos. 23 and 27 is denominated as "municipal production tax.'

ISSUE:

Whether Section 2 of Republic Act No. 2264 is an undue delegation of power, confiscatory and oppressive. (NO)

RULING:

The power of taxation is an essential and inherent attribute of sovereignty, belonging as a matter of right to every independent government, without being expressly conferred by the people. It is a power that is purely legislative and which the central legislative body cannot delegate either to the executive or judicial department of the government without infringing upon the theory of separation of powers. The exception, however, lies in the case of municipal corporations, to which, said theory does not apply. Legislative powers may be delegated to local governments in respect of matters of local concern. This is sanctioned by immemorial practice. By necessary implication, the legislative power to create political corporations for purposes of local self-government carries with it the power to confer on such local governmental agencies the power to tax. Under the New Constitution, local governments are granted the autonomous authority to create their own sources of revenue and to levy taxes. Section 5, Article XI provides: "Each local government unit shall have the power to create its sources of revenue and to levy taxes, subject to such limitations as may be provided by law." Withal, it cannot be said that Section 2 of Republic Act No. 2264 emanated from beyond the sphere of the legislative power to enact and vest in local governments the power of local taxation.

The plenary nature of the taxing power thus delegated, contrary to plaintiff-appellant's pretense, would not suffice to invalidate the said law as confiscatory and oppressive. In delegating the authority, the State is not limited 6 the exact measure of that which is exercised by itself. When it is said that the taxing power may be delegated to municipalities and the like, it is meant that there may be delegated such measure of power to impose and collect taxes as the legislature may deem expedient. Thus, municipalities may be permitted to tax subjects which for reasons of public policy the State has not deemed wise to tax for more general purposes. This is not to say though that the constitutional injunction against deprivation of property without due process of law may be passed over under the guise of the taxing power, except when the taking of the property is in the lawful exercise of the taxing power, as when (1) the tax is for a public purpose; (2) the rule on uniformity of taxation is observed; (3) either the person or property taxed is within the jurisdiction of the government levying the tax; and (4) in the assessment and collection of certain kinds of taxes notice and opportunity for hearing are provided. Due process is usually violated where the tax imposed is for a private as distinguished from a public purpose; a tax is imposed on property outside the State, i.e., extraterritorial taxation; and arbitrary or oppressive methods are used in assessing and collecting taxes. But, a tax does not violate the due process clause, as applied to a particular taxpayer, although the purpose of the tax will result in an injury rather than a benefit to such taxpayer. Due process does not require that the property subject to the tax or the amount of tax to be raised should be determined by judicial inquiry, and a notice and hearing as to the amount of the tax and the manner in which it shall be apportioned are generally not necessary to due process of law.

There is no validity to the assertion that the delegated authority can be declared unconstitutional on the theory of double taxation. It must be observed that the delegating authority specifies the limitations and enumerates the taxes over which local taxation may not be exercised. The reason is that the State has exclusively reserved the same for its own prerogative. Moreover, double taxation, in general, is not forbidden by our fundamental law, since We have not adopted as part thereof the injunction against double taxation found in the Constitution of the United States and some states of the Union. Double taxation becomes obnoxious only where the taxpayer is taxed twice for the benefit of the same governmental entity or by the same jurisdiction for the same purpose, but not in a case where one tax is imposed by the State and the other by the city or municipality.

COMMISSIONER OF INTERNAL REVENUE, Petitioner, vs. FORTUNE TOBACCO CORPORATION, Respondent.

G.R. Nos. 167274-75, SECOND DIVISION, July 21, 2008, TINGA, J.

*The power to tax is inherent in the State, **such power being inherently legislative**, based on the principle that taxes are a grant of the people who are taxed, and the grant must be made by the immediate representatives of the people; and where the people have laid the power, there it must remain and be exercised.*

An administrative agency issuing regulations may not enlarge, alter or restrict the provisions of the law it administers, and it cannot engraft additional requirements not contemplated by the legislature. *The Court emphasized that tax administrators are not allowed to expand or contract* *the legislative mandate and that the "plain meaning rule" or verba legis in statutory construction should be applied such that where the words of a statute are clear, plain and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation.*

By adding the qualification that the tax due after the 12% increase becomes effective shall not be lower than the tax actually paid prior to 1 January 2000, Revenue Regulation No. 17-99 effectively imposes a tax which is the higher amount between the ad valorem tax being paid at the end of the three (3)-year transition period and the specific tax under paragraph C, sub-paragraph (1)-(4), as increased by 12%—a situation not supported by the plain wording of Section 145 of the Tax Code.

FACTS:

Respondent is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines. It is engaged in manufacturing of various cigarette brands.

The cigarette brands manufactured by the Respondent were subject to ad valorem tax pursuant to then Section 142 of the Tax Code of 1977, as amended. However, on January 1, 1997, R.A. No. 8240 took effect whereby a shift from the ad valorem tax (AVT) system to the specific tax system was made and subjecting the aforesaid cigarette brands to specific tax under [S]ection 142 thereof, now renumbered as Sec. 145 of the Tax Code of 1997.

Sec. 145 provides, among others, that **the rates of excise tax on cigars and cigarettes under paragraphs (1), (2) (3) and (4) hereof, shall be increased by twelve percent (12%) on January 1, 2000**.
To implement the provisions for a twelve percent (12%) increase of excise tax on, among others, cigars and cigarettes packed by machines by January 1, 2000, the Secretary of Finance, upon recommendation of the respondent Commissioner of Internal Revenue, issued Revenue Regulations No. 17-99, dated December 16, 1999.

Revenue Regulations No. 17-99 likewise provides in the last paragraph of Section 1 thereof, **"(t)hat the new specific tax rate for any existing brand of cigars, cigarettes packed by machine, distilled spirits, wines and fermented liquor shall not be lower than the excise tax that is actually being paid prior to January 1, 2000."**

On February 7, 2000, respondent filed with petitioner's Appellate Division a claim for refund or tax credit of its purportedly overpaid excise tax for the month of January 2000 in the amount of ₱35,651,410.

As there was no action on the part of the petitioner, respondent filed the instant petition for review with the Court of Appeals on December 11, 2001, in order to comply with the two-year period for filing a claim for refund.

In his answer filed on January 16, 2002, petitioner raised as Special and Affirmative Defenses, among others, that the last paragraph of Section 1 of Revenue Regulation[s] [No.]17-99 is a valid implementing regulation which has the force and effect of law.

ISSUE:

Whether the revenue regulation has exceeded the allowable limits of legislative delegation. (YES)

RULING:

The power to tax is inherent in the State, such power being inherently legislative, based on the principle that taxes are a grant of the people who are taxed, and the grant must be made by the immediate representatives of the people; and where the people have laid the power, there it must remain and be exercised.

Section 145 of the Tax Code mandates a 12% increase effective on 1 January 2000 based on the taxes indicated under paragraph C, sub-paragraph (1)-(4). However, Revenue Regulation No. 17-99 went further and added that "[T]he new specific tax rate for any existing brand of cigars, cigarettes packed by machine, distilled spirits, wines and fermented liquor shall not be lower than the excise tax that is actually being paid prior to January 1, 2000."

Parenthetically, Section 145 states that during the transition period, i.e., within the next three (3) years from the effectivity of the Tax Code, the excise tax from any brand of cigarettes shall not be lower than the tax due from each brand on 1 October 1996. This qualification, however, is conspicuously absent as regards the 12% increase which is to be applied on cigars and cigarettes packed by machine, among others, effective on 1 January 2000. Clearly and unmistakably, Section 145 mandates a new rate of excise tax for cigarettes packed by machine due to the 12% increase effective on 1 January 2000 without regard to whether the revenue collection starting from this period may turn out to be lower than that collected prior to this date.

By adding the qualification that the tax due after the 12% increase becomes effective shall not be lower than the tax actually paid prior to 1 January 2000, Revenue Regulation No. 17-99 effectively imposes a tax which is the higher amount between the ad valorem tax being paid at the end of the three (3)-year transition period and the specific tax under paragraph C, sub-paragraph (1)-(4), as increased by 12%—a situation not supported by the plain wording of Section 145 of the Tax Code.

This is not the first time that national revenue officials had ventured in the area of unauthorized administrative legislation.

In Commissioner of Internal Revenue v. Reyes, respondent was not informed in writing of the law and the facts on which the assessment of estate taxes was made pursuant to Section 228 of the 1997 Tax Code, as amended by Republic Act (R.A.) No. 8424. She was merely notified of the findings by the Commissioner, who had simply relied upon the old provisions of the law and Revenue Regulation No. 12-85 which was based on the old provision of the law. The Court held that in case of discrepancy between the law as amended and the implementing regulation based on the old law, the former necessarily prevails. The law must still be followed, even though the existing tax regulation at that time provided for a different procedure.

In Commissioner of Internal Revenue v. Central Luzon Drug Corporation, the tax authorities gave the term "tax credit" in Sections 2(i) and 4 of Revenue Regulation 2-94 a meaning utterly disparate from what R.A. No. 7432 provides. Their interpretation muddled up the intent of Congress to grant a mere discount privilege and not a sales discount. The Court, striking down the revenue regulation, held that an administrative agency issuing regulations may not enlarge, alter or restrict the provisions of the law it administers, and it cannot engraft additional requirements not contemplated by the legislature. The Court emphasized that tax administrators are not allowed to expand or contract the legislative mandate and that the "plain meaning rule" or verba legis in statutory construction should be applied such that where the words of a statute are clear, plain and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation.

As we have previously declared, rule-making power must be confined to details for regulating the mode or proceedings in order to carry into effect the law as it has been enacted, and it cannot be extended to amend or expand the statutory requirements or to embrace matters not covered by the statute. Administrative regulations must always be in harmony with the provisions of the law because any resulting discrepancy between the two will always be resolved in favor of the basic law.

In Commissioner of Internal Revenue v. Michel J. Lhuillier Pawnshop, Inc., Commissioner Jose Ong issued Revenue Memorandum Order (RMO) No. 15-91, as well as the clarificatory Revenue Memorandum Circular (RMC) 43-91, imposing a 5% lending investor's tax under the 1977 Tax Code, as amended by Executive Order (E.O.) No. 273, on pawnshops. The Commissioner anchored the imposition on the definition of lending investors provided in the 1977 Tax Code which, according to him, was broad enough to include pawnshop operators. However, the Court noted that pawnshops and lending investors were subjected to different tax treatments under the Tax Code prior to its amendment by the executive order; that Congress never intended to treat pawnshops in the same way as lending investors; and that the particularly involved section of the Tax Code explicitly subjected lending investors and dealers in securities only to percentage tax. And so the Court affirmed the invalidity of the challenged circulars, stressing that "administrative issuances must not override, supplant or modify the law, but must remain consistent with the law they intend to carry out."

In Philippine Bank of Communications v. Commissioner of Internal Revenue, the then acting Commissioner issued RMC 7-85, changing the prescriptive period of two years to ten years for claims of excess quarterly income tax payments, thereby creating a clear inconsistency with the provision of Section 230 of the 1977 Tax Code. The Court nullified the circular, ruling that the BIR did not simply interpret the law; rather it legislated guidelines contrary to the statute passed by Congress. The Court held:

It bears repeating that Revenue memorandum-circulars are considered administrative rulings (in the sense of more specific and less general interpretations of tax laws) which are issued from time to time by the Commissioner of Internal Revenue. It is widely accepted that the interpretation placed upon a statute by the executive officers, whose duty is to enforce it, is entitled to great respect by the courts. Nevertheless, such interpretation is not conclusive and will be ignored if judicially found to be erroneous. Thus, courts will not countenance administrative issuances that override, instead of remaining consistent and in harmony with, the law they seek to apply and implement.

In Commissioner of Internal Revenue v. CA, et al., the central issue was the validity of RMO 4-87 which had construed the amnesty coverage under E.O. No. 41 (1986) to include only assessments issued by the BIR after the promulgation of the executive order on 22 August 1986 and not assessments made to that date. Resolving the issue in the negative, the Court held:

x x x all such issuances must not override, but must remain consistent and in harmony with, the law they seek to apply and implement. Administrative rules and regulations are intended to carry out, neither to supplant nor to modify, the law.

x x x

If, as the Commissioner argues, Executive Order No. 41 had not been intended to include 1981-1985 tax liabilities already assessed (administratively) prior to 22 August 1986, the law could have simply so provided in its exclusionary clauses. It did not. The conclusion is unavoidable, and it is that the executive order has been designed to be in the nature of a general grant of tax amnesty subject only to the cases specifically excepted by it.

In the case at bar, the OSG's argument that by 1 January 2000, the excise tax on cigarettes should be the higher tax imposed under the specific tax system and the tax imposed under the ad valorem tax system plus the 12% increase imposed by paragraph 5, Section 145 of the Tax Code, is an unsuccessful attempt to justify what is clearly an impermissible incursion into the limits of administrative legislation. Such an interpretation is not supported by the clear language of the law and is obviously only meant to validate the OSG's thesis that Section 145 of the Tax Code is ambiguous and admits of several interpretations.

The contention that the increase of 12% starting on 1 January 2000 does not apply to the brands of cigarettes listed under Annex "D" is likewise unmeritorious, absurd even. Paragraph 8, Section 145 of the Tax Code simply states that, "[T]he classification of each brand of cigarettes based on its average net retail price as of October 1, 1996, as set forth in Annex 'D', shall remain in force until revised by Congress." This declaration certainly does not lend itself to the interpretation given to it by the OSG. As plainly worded, the average net retail prices of the listed brands under Annex "D," which classify cigarettes according to their net retail price into low, medium or high, obviously remain the bases for the application of the increase in excise tax rates effective on 1 January 2000.

The foregoing leads us to conclude that Revenue Regulation No. 17-99 is indeed indefensibly flawed. The Commissioner cannot seek refuge in his claim that the purpose behind the passage of the Tax Code is to generate additional revenues for the government. Revenue generation has undoubtedly been a major consideration in the passage of the Tax Code. However, as borne by the legislative record, the shift from the ad valorem system to the specific tax system is likewise meant to promote fair competition among the players in the industries concerned, to ensure an equitable distribution of the tax burden and to simplify tax administration by classifying cigarettes, among others, into high, medium and low-priced based on their net retail price and accordingly graduating tax rates.

THE PHILIPPINE GUARANTY CO., INC., petitioner, vs. THE COMMISSIONER OF INTERNAL REVENUE and THE COURT OF TAX APPEALS, respondents.
G.R. No. L-22074, EN BANC, April 30, 1965, BENGZON, J.P., J.

Section 24 of the Tax Code subjects foreign corporations to tax on their income from sources within the Philippines. ***The word "sources" has been interpreted as the activity, property or service giving rise to the income****. The reinsurance premiums were income created from the undertaking of the foreign reinsurance companies to reinsure Philippine Guaranty Co., Inc., against liability for loss under original insurances. Such undertaking, as explained above, took place in the Philippines. These insurance premiums, therefore, came from sources within the Philippines and, hence, are subject to corporate income tax.*

The foreign insurers' place of business should not be confused with their place of activity. Business should not be continuity and progression of transactions while activity may consist of only a single transaction. An activity may occur outside the place of business. Section 24 of the Tax Code does not require a foreign corporation to engage in business in the Philippines in subjecting its income to tax. ***It suffices that the activity creating the income is performed or done in the Philippines****.* ***What is controlling, therefore, is not the place of business but the place of activity that created an income****.*

FACTS:

The Philippine Guaranty Co., Inc., a domestic insurance company, entered into reinsurance contracts, on various dates, with foreign insurance companies not doing business in the Philippines. Philippine Guaranty Co., Inc., thereby agreed to cede to the foreign reinsurers a portion of the premiums on insurance it has originally underwritten in the Philippines, in consideration for the assumption by the latter of liability on an equivalent portion of the risks insured. Said reinsurrance contracts were signed by Philippine Guaranty Co., Inc. in Manila and by the foreign reinsurers outside the Philippines, except the contract with Swiss Reinsurance Company, which was signed by both parties in Switzerland.

The reinsurance contracts made the commencement of the reinsurers' liability simultaneous with that of Philippine Guaranty Co., Inc. under the original insurance. Philippine Guaranty Co., Inc. was required to keep a register in Manila where the risks ceded to the foreign reinsurers where entered, and entry therein was binding upon the reinsurers. A proportionate amount of taxes on insurance premiums not recovered from the original assured were to be paid for by the foreign reinsurers. The foreign reinsurers further agreed, in consideration for managing or administering their affairs in the Philippines, to compensate the Philippine Guaranty Co., Inc., in an amount equal to 5% of the reinsurance premiums. Conflicts and/or differences between the parties under the reinsurance contracts were to be arbitrated in Manila. Philippine Guaranty Co., Inc. and Swiss Reinsurance Company stipulated that their contract shall be construed by the laws of the Philippines.

Pursuant to the aforesaid reinsurance contracts, Philippine Guaranty Co., Inc. ceded to the foreign reinsurers the premiums.

Said premiums were excluded by Philippine Guaranty Co., Inc. from its gross income when it file its income tax returns for 1953 and 1954. Furthermore, it did not withhold or pay tax on them. Consequently, per letter dated April 13, 1959, the Commissioner of Internal Revenue assessed against Philippine Guaranty Co., Inc. withholding tax on the ceded reinsurance premiums.

Philippine Guaranty Co., Inc., protested the assessment on the ground that reinsurance premiums ceded to foreign reinsurers not doing business in the Philippines are not subject to withholding tax.

ISSUE:

Whether the reinsurance premiums in question constitute income from sources within the Philippines. (YES)

RULING:

The reinsurance contracts, however, show that the transactions or activities that constituted the undertaking to reinsure Philippine Guaranty Co., Inc. against loses arising from the original insurances in the Philippines were performed in the Philippines. The liability of the foreign reinsurers commenced simultaneously with the liability of Philippine Guaranty Co., Inc. under the original insurances. Philippine Guaranty Co., Inc. kept in Manila a register of the risks ceded to the foreign reinsurers. Entries made in such register bound the foreign resinsurers, localizing in the Philippines the actual cession of the risks and premiums and assumption of the reinsurance undertaking by the foreign reinsurers. Taxes on premiums imposed by Section 259 of the Tax Code for the privilege of doing insurance business in the Philippines were payable by the foreign reinsurers when the same were not recoverable from the original assured. The foreign reinsurers paid Philippine Guaranty Co., Inc. an amount equivalent to 5% of the ceded premiums, in consideration for administration and management by the latter of the affairs of the former in the Philippines in regard to their reinsurance activities here. Disputes and differences between the parties were subject to arbitration in the City of Manila. All the reinsurance contracts, except that with Swiss Reinsurance Company, were signed by Philippine Guaranty Co., Inc. in the Philippines and later signed by the foreign reinsurers abroad. Although the contract between Philippine Guaranty Co., Inc. and Swiss Reinsurance Company was signed by both parties in Switzerland, the same specifically provided that its provision shall be construed according to the laws of the Philippines, thereby manifesting a clear intention of the parties to subject themselves to Philippine law.

Section 24 of the Tax Code subjects foreign corporations to tax on their income from sources within the Philippines. The word "sources" has been interpreted as the activity, property or service giving rise to the income. The reinsurance premiums were income created from the undertaking of the foreign reinsurance companies to reinsure Philippine Guaranty Co., Inc., against liability for loss under original insurances. Such undertaking, as explained above, took place in the Philippines. These insurance premiums, therefore, came from sources within the Philippines and, hence, are subject to corporate income tax.

The foreign insurers' place of business should not be confused with their place of activity. Business should not be continuity and progression of transactions while activity may consist of only a single transaction. An activity may occur outside the place of business. Section 24 of the Tax Code does not require a foreign corporation to engage in business in the Philippines in subjecting its income to tax. It suffices that the activity creating the income is performed or done in the Philippines. What is controlling, therefore, is not the place of business but the place of activity that created an income.

Petitioner further contends that the reinsurance premiums are not income from sources within the Philippines because they are not specifically mentioned in Section 37 of the Tax Code. Section 37 is not an all-inclusive enumeration, for it merely directs that the kinds of income mentioned therein should be treated as income from sources within the Philippines but it does not require that other kinds of income should not be considered likewise.

The power to tax is an attribute of sovereignty. It is a power emanating from necessity. It is a necessary burden to preserve the State's sovereignty and a means to give the citizenry an army to resist an aggression, a navy to defend its shores from invasion, a corps of civil servants to serve, public improvement designed for the enjoyment of the citizenry and those which come within the State's territory, and facilities and protection which a government is supposed to provide. Considering that the reinsurance premiums in question were afforded protection by the government and the recipient foreign reinsurers exercised rights and privileges guaranteed by our laws, such reinsurance premiums and reinsurers should share the burden of maintaining the state.

NATIONAL POWER CORPORATION, petitioner, vs. THE PROVINCE OF ALBAY, ALBAY GOVERNOR ROMEO R. SALALIMA, and ALBAY PROVINCIAL TREASURER ABUNDIO M. NUÑEZ, respondents.

G.R. No. 87479, EN BANC, June 4, 1990, SARMIENTO, J.

*As a rule finally, **claims of tax exemption are construed strongly against the claimant**. They must also be shown to exist clearly and categorically, and supported by clear legal provisions.*

Taxes are the lifeblood of the nation. Their primary purpose is to generate funds for the State to finance the needs of the citizenry and to advance the common wealth.

***As aforestated, the franchises were approved by the President only on February 24,1948.** Therefore, before the said date, the NAPOCOR was liable for the payment of percentage and fixed taxes as seller of light, heat, and power which, as the respondent claims, amounted to P3,025.96. The legislative franchise (R.A. No. 3843) exempted the grantee from all kinds of taxes other than the 2% tax **from the date the original franchise was granted. The exemption, therefore, did not cover the period before the franchise was granted, i.e. before February 24, 1948**.*

FACTS:

It appears that on March 14 and 15, 1989, the respondents caused the publication of a notice of auction sale involving the properties of NAPOCOR and the Philippine Geothermal Inc. consisting of buildings, machines, and similar improvements standing on their offices at Tiwi, Albay. The amounts to be realized from this advertised auction sale are supposed to be applied to the tax delinquencies claimed, as and for, as we said, real property taxes. The back taxes NAPOCOR has supposedly accumulated were computed at P214,845,184.76.

NAPOCOR opposed the sale, interposing in support of its non-liability Resolution No. 17-87, of the Fiscal Incentives Review Board (FIRB), which provides as follows:

BE IT RESOLVED, AS IT IS HEREBY RESOLVED, That the tax and duty exemption privileges of the National Power Corporation, including those pertaining to its domestic purchases of petroleum and petroleum products, granted under the terms and conditions of Commonwealth Act No. 120 (Creating the National Power Corporation, defining its powers, objectives and functions, and for other purposes), as amended, are restored effective March 10, 1987, subject to the following conditions:

as well as the Memorandum of Executive Secretary Catalino Macaraig, which also states thus:

Pursuant to Sections 1 (f) and 2 (e) of Executive Order No. 93, series of 1986, FIRB Resolution No. 17-87, series of 1987, restoring, subject to certain conditions prescribed therein, the tax and duty exemption privileges of NPC as provided under Commonwealth Act No. 120, as amended, effective March 10, 1987, is hereby confirmed and approved.

The provincial government of Albay now defends the auction sale in question on the theory that the various FIRB issuances constitute an undue delegation of the taxing Power and hence, null and void, under the Constitution. It is also contended that, insofar as Executive Order No. 93 authorizes the FIRB to grant tax exemptions, the same is of no force and effect under the constitutional provision allowing the legislature alone to accord tax exemption privileges.

It is to be stressed that the provincial government of Albay admits that as of March 10, 1987 (the date Resolution No. 17-87 was affirmed by the Memorandum of the Office of the President, dated October 5, 1987), NAPOCOR's exemption had been validly restored. What it questions is NAPOCOR's liability in the interregnum between June 11, 1984, the date its tax privileges were withdrawn, and March 10, 1987, the date they were purportedly restored. To be sure, it objects to Executive Order No. 93 as alledgedly a delegation of legislative power, but only insofar as its (NAPOCOR's) June 11, 1984 to March 10, 1987 tax accumulation is concerned.

ISSUE:

Whether NAPOCOR should be held liable for taxes during the interregnum between June 11, 1984, the date its tax privileges were withdrawn, and March 10, 1987, the date they were purportedly restored. (YES)

RULING:

NAPOCOR must then be held liable for the intervening years aforesaid. So it has been held:

The last issue to be resolved is whether or not the private-respondent is liable for the fixed and deficiency percentage taxes in the amount of P3,025.96 (i.e. for the period from January 1, 1946 to February 29, 1948) before the approval of its municipal franchises. **As aforestated, the franchises were approved by the President only on February 24,1948**. Therefore, before the said date, the NAPOCOR was liable for the payment of percentage and fixed taxes as seller of light, heat, and power which, as the respondent claims, amounted to P3,025.96. The legislative franchise (R.A. No. 3843) exempted the grantee from all kinds of taxes other than the 2% tax **from the date the original franchise was granted. The exemption, therefore, did not cover the period before the franchise was granted, i.e. before February 24, 1948**.

To all intents and purposes, real property taxes are funds taken by the State with one hand and given to the other. In no measure can the Government be said to have lost anything.

As a rule finally, claims of tax exemption are construed strongly against the claimant. They must also be shown to exist clearly and categorically, and supported by clear legal provisions.

Taxes are the lifeblood of the nation. Their primary purpose is to generate funds for the State to finance the needs of the citizenry and to advance the common wealth.

WALTER LUTZ, as Judicial Administrator of the Intestate Estate of the deceased Antonio Jayme Ledesma, plaintiff-appellant, vs. J. ANTONIO ARANETA, as the Collector of Internal Revenue, defendant-appellee.
G.R. No. L-7859, EN BANC, December 22, 1955, REYES, J.B L., J.

The basic defect in the plaintiff's position is his assumption that the tax provided for in Commonwealth Act No. 567 is a pure exercise of the taxing power. Analysis of the Act, and particularly of section 6, will show that the tax is levied with a regulatory purpose, to provide means for the rehabilitation and stabilization of the threatened sugar industry. In other words, the act is primarily an exercise of the police power.

The protection of a large industry *constituting one of the great sources of the state's wealth and therefore directly or indirectly affecting the welfare of so great a portion of the population of the State* ***is affected to such an extent by public interests as to be within the police power of the sovereign****.*

That the tax to be levied should burden the sugar producers themselves can hardly be a ground of complaint; indeed, it appears rational that the tax be obtained precisely from those who are to be benefited from the expenditure of the funds derived from it. At any rate, ***it is inherent in the power to tax that a state be free to select the subjects of taxation****, and it has been repeatedly held that "****inequalities which result from a singling out of one particular class for taxation, or exemption infringe no constitutional limitation****".*

FACTS:

Promulgated in 1940, the law in question opens (section 1) with a declaration of emergency, due to the threat to our industry by the imminent imposition of export taxes upon sugar as provided in the Tydings-McDuffe Act, and the "eventual loss of its preferential position in the United States market"; wherefore, the national policy was expressed "to obtain a readjustment of the benefits derived from the sugar industry by the component elements thereof" and "to stabilize the sugar industry so as to prepare it for the eventuality of the loss of its preferential position in the United States market and the imposition of the export taxes."

In section 2, Commonwealth Act 567 provides for an increase of the existing tax on the manufacture of sugar, on a graduated basis, on each picul of sugar manufactured; while section 3 levies on owners or persons in control of lands devoted to the cultivation of sugar cane and ceded to others for a consideration, on lease or otherwise —

a tax equivalent to the difference between the money value of the rental or consideration collected and the amount representing 12 per centum of the assessed value of such land.

Plaintiff, Walter Lutz, in his capacity as Judicial Administrator of the Intestate Estate of Antonio Jayme Ledesma, seeks to recover from the Collector of Internal Revenue the sum of P14,666.40 paid by the estate as taxes, under section 3 of the Act, for the crop years 1948-1949 and 1949-1950; alleging that such tax is unconstitutional and void, being levied for the aid and support of the sugar industry exclusively, which in plaintiff's opinion is not a public purpose for which a tax may be constitutionally levied.

ISSUE:

Whether the support of the sugar industry is a public purpose to which a tax may be constitutionally levied. (YES)

RULING:

The basic defect in the plaintiff's position is his assumption that the tax provided for in Commonwealth Act No. 567 is a pure exercise of the taxing power. Analysis of the Act, and particularly of section 6, will show that the tax is levied with a regulatory purpose, to provide means for the rehabilitation and stabilization of the threatened sugar industry. In other words, the act is primarily an exercise of the police power.

This Court can take judicial notice of the fact that sugar production is one of the great industries of our nation, sugar occupying a leading position among its export products; that it gives employment to thousands of laborers in fields and factories; that it is a great source of the state's wealth, is one of the important sources of foreign exchange needed by our government, and is thus pivotal in the plans of a regime committed to a policy of currency stability. Its promotion, protection and advancement, therefore redounds greatly to the general welfare. Hence it was competent for the legislature to find that the general welfare demanded that the sugar industry should be stabilized in turn; and in the wide field of its police power, the lawmaking body could provide that the distribution of benefits therefrom be readjusted among its components to enable it to resist the added strain of the increase in taxes that it had to sustain

As stated in Johnson vs. State ex rel. Marey, with reference to the citrus industry in Florida —

The protection of a large industry constituting one of the great sources of the state's wealth and therefore directly or indirectly affecting the welfare of so great a portion of the population of the State is affected to such an extent by public interests as to be within the police power of the sovereign.

Once it is conceded, as it must, that the protection and promotion of the sugar industry is a matter of public concern, it follows that the Legislature may determine within reasonable bounds what is necessary for its protection and expedient for its promotion. Here, the legislative discretion must be allowed fully play, subject only to the test of reasonableness; and it is not contended that the means provided in section 6 of the law bear no relation to the objective pursued or are oppressive in character. If objective and methods are alike constitutionally valid, no reason is seen why the state may not levy taxes to raise funds for their prosecution and attainment. Taxation may be made the implement of the state's police power

That the tax to be levied should burden the sugar producers themselves can hardly be a ground of complaint; indeed, it appears rational that the tax be obtained precisely from those who are to be benefited from the expenditure of the funds derived from it. At any rate, it is inherent in the power to tax that a state be free to select the subjects of taxation, and it has been repeatedly held that "inequalities which result from a singling out of one particular class for taxation, or exemption infringe no constitutional limitation".

From the point of view we have taken it appears of no moment that the funds raised under the Sugar Stabilization Act, now in question, should be exclusively spent in aid of the sugar industry, since it is that very enterprise that is being protected. It may be that other industries are also in need of similar protection; that the legislature is not required by the Constitution to adhere to a policy of "all or none." As ruled in Minnesota ex rel. Pearson vs. Probate Court, 309 U. S. 270, 84 L. Ed. 744, "if the law presumably hits the evil where it is most felt, it is not to be overthrown because there are other instances to which it might have been applied;" and that "the legislative authority, exerted within its proper field, need not embrace all the evils within its reach".

Even from the standpoint that the Act is a pure tax measure, it cannot be said that the devotion of tax money to experimental stations to seek increase of efficiency in sugar production, utilization of by-products and solution of allied problems, as well as to the improvements of living and working conditions in sugar mills or plantations, without any part of such money being channeled directly to private persons, constitutes expenditure of tax money for private purposes.

ROMEO P. GEROCHI, KATULONG NG BAYAN (KB) and ENVIRONMENTALIST CONSUMERS NETWORK, INC. (ECN), Petitioners, vs. DEPARTMENT OF ENERGY (DOE), ENERGY REGULATORY COMMISSION (ERC), NATIONAL POWER CORPORATION (NPC), POWER SECTOR ASSETS AND LIABILITIES MANAGEMENT GROUP (PSALM Corp.), STRATEGIC POWER UTILITIES GROUP (SPUG), and PANAY ELECTRIC COMPANY INC. (PECO), Respondents.
G.R. No. 159796, EN BANC, July 17, 2007, NACHURA, J.

The power to tax is an incident of sovereignty and is unlimited in its range, acknowledging in its very nature no limits, so that security against its abuse is to be found only in the responsibility of the legislature which imposes the tax on the constituency that is to pay it. ***It is based on the principle that taxes are the lifeblood of the government, and their prompt and certain availability is an imperious need****. Thus, the theory behind the exercise of the power to tax emanates from necessity; without taxes, government cannot fulfill its mandate of promoting the general welfare and well-being of the people.*

The conservative and pivotal distinction between these two powers rests in the purpose for which the charge is made. ***If generation of revenue is the primary purpose and regulation is merely incidental, the imposition is a tax; but if regulation is the primary purpose, the fact that revenue is incidentally raised does not make the imposition a tax****.*

In exacting the assailed Universal Charge through ***Sec. 34 of the EPIRA, the State's police power, particularly its regulatory dimension****, is invoked. Such can be deduced from Sec. 34 which enumerates the purposes for which the Universal Charge is imposed and which can be amply discerned as regulatory in character. From the purposes of the law,* ***it can be gleaned that the assailed Universal Charge is not a tax, but an exaction in the exercise of the State's police power. Public welfare is surely promoted****.*

FACTS:

Petitioners Romeo P. Gerochi, Katulong Ng Bayan (KB), and Environmentalist Consumers Network, Inc. (ECN) (petitioners), come before this Court in this original action praying that Section 34 of Republic Act (RA) 9136, otherwise known as the "Electric Power Industry Reform Act of 2001" (EPIRA), imposing the Universal Charge, and Rule 18 of the Rules and Regulations (IRR) which seeks to implement the said imposition, be declared unconstitutional.

SECTION 34. Universal Charge. — Within one (1) year from the effectivity of this Act, a universal charge to be determined, fixed and approved by the ERC, shall be imposed on all electricity end-users for the following purposes:

(a) Payment for the stranded debts in excess of the amount assumed by the National Government and stranded contract costs of NPC and as well as qualified stranded contract costs of distribution utilities resulting from the restructuring of the industry;

(b) Missionary electrification;

(c) The equalization of the taxes and royalties applied to indigenous or renewable sources of energy vis-à-vis imported energy fuels;

(d) An environmental charge equivalent to one-fourth of one centavo per kilowatt-hour (₱0.0025/kWh), which shall accrue to an environmental fund to be used solely for watershed rehabilitation and management. Said fund shall be managed by NPC under existing arrangements; and

(e) A charge to account for all forms of cross-subsidies for a period not exceeding three (3) years.

Petitioners contend that the Universal Charge has the characteristics of a tax and is collected to fund the operations of the NPC. They argue that the cases invoked by the respondents clearly show the regulatory purpose of the charges imposed therein, which is not so in the case at bench. In said cases, the respective funds were created in order to balance and stabilize the prices of oil and sugar, and to act as buffer to counteract the changes and adjustments in prices, peso devaluation, and other variables which cannot be adequately and timely monitored by the legislature. Thus, there was a need to delegate powers to administrative bodies. Petitioners posit that the Universal Charge is imposed not for a similar purpose.

On the other hand, respondent PSALM through the Office of the Government Corporate Counsel (OGCC) contends that unlike a tax which is imposed to provide income for public purposes, such as support of the government, administration of the law, or payment of public expenses, the assailed Universal Charge is levied for a specific regulatory purpose, which is to ensure the viability of the country's electric power industry. Thus, it is exacted by the State in the exercise of its inherent police power. On this premise, PSALM submits that there is no undue delegation of legislative power to the ERC since the latter merely exercises a limited authority or discretion as to the execution and implementation of the provisions of the EPIRA.

Respondents Department of Energy (DOE), ERC, and NPC, through the Office of the Solicitor General (OSG), share the same view that the Universal Charge is not a tax because it is levied for a specific regulatory purpose, which is to ensure the viability of the country's electric power industry, and is, therefore, an exaction in the exercise of the State's police power. Respondents further contend that said Universal Charge does not possess the essential characteristics of a tax, that its imposition would redound to the benefit of the electric power industry and not to the public, and that its rate is uniformly levied on electricity end-users, unlike a tax which is imposed based on the individual taxpayer's ability to pay. Moreover, respondents deny that there is undue delegation of legislative power to the ERC since the EPIRA sets forth sufficient determinable standards which would guide the ERC in the exercise of the powers granted to it. Lastly, respondents argue that the imposition of the Universal Charge is not oppressive and confiscatory since it is an exercise of the police power of the State and it complies with the requirements of due process.

ISSUE:

Whether the Universal Charge imposed under Sec. 34 of the EPIRA is in exercise of the state's taxing power. (NO)

RULING:

The power to tax is an incident of sovereignty and is unlimited in its range, acknowledging in its very nature no limits, so that security against its abuse is to be found only in the responsibility of the legislature which imposes the tax on the constituency that is to pay it. It is based on the principle that taxes are the lifeblood of the government, and their prompt and certain availability is an imperious need. Thus, the theory behind the exercise of the power to tax emanates from necessity; without taxes, government cannot fulfill its mandate of promoting the general welfare and well-being of the people.

On the other hand, police power is the power of the state to promote public welfare by restraining and regulating the use of liberty and property. It is the most pervasive, the least limitable, and the most demanding of the three fundamental powers of the State. The justification is found in the Latin maxims salus populi est suprema lex (the welfare of the people is the supreme law) and sic utere tuo ut alienum non laedas (so use your property as not to injure the property of others). As an inherent attribute of sovereignty which virtually extends to all public needs, police power grants a wide panoply of instruments through which the State, as parens patriae, gives effect to a host of its regulatory powers. We have held that the power to "regulate" means the power to protect, foster, promote, preserve, and control, with due regard for the interests, first and foremost, of the public, then of the utility and of its patrons.

The conservative and pivotal distinction between these two powers rests in the purpose for which the charge is made. If generation of revenue is the primary purpose and regulation is merely incidental, the imposition is a tax; but if regulation is the primary purpose, the fact that revenue is incidentally raised does not make the imposition a tax.

In exacting the assailed Universal Charge through Sec. 34 of the EPIRA, the State's police power, particularly its regulatory dimension, is invoked. Such can be deduced from Sec. 34 which enumerates the purposes for which the Universal Charge is imposed and which can be amply discerned as regulatory in character. The EPIRA resonates such regulatory purposes, thus:

SECTION 2. Declaration of Policy. — It is hereby declared the policy of the State:

(a) To ensure and accelerate the total electrification of the country;

(b) To ensure the quality, reliability, security and affordability of the supply of electric power;

(c) To ensure transparent and reasonable prices of electricity in a regime of free and fair competition and full public accountability to achieve greater operational and economic efficiency and enhance the competitiveness of Philippine products in the global market;

(d) To enhance the inflow of private capital and broaden the ownership base of the power generation, transmission and distribution sectors;

(e) To ensure fair and non-discriminatory treatment of public and private sector entities in the process of restructuring the electric power industry;

(f) To protect the public interest as it is affected by the rates and services of electric utilities and other providers of electric power;

(g) To assure socially and environmentally compatible energy sources and infrastructure;

(h) To promote the utilization of indigenous and new and renewable energy resources in power generation in order to reduce dependence on imported energy;

(i) To provide for an orderly and transparent privatization of the assets and liabilities of the National Power Corporation (NPC);

(j) To establish a strong and purely independent regulatory body and system to ensure consumer protection and enhance the competitive operation of the electricity market; and

(k) To encourage the efficient use of energy and other modalities of demand side management.

From the aforementioned purposes, it can be gleaned that the assailed Universal Charge is not a tax, but an exaction in the exercise of the State's police power. Public welfare is surely promoted.

Moreover, it is a well-established doctrine that the taxing power may be used as an implement of police power. In Valmonte v. Energy Regulatory Board, et al. and in Gaston v. Republic Planters Bank, this Court held that the Oil Price Stabilization Fund (OPSF) and the Sugar Stabilization Fund (SSF) were exactions made in the exercise of the police power. The doctrine was reiterated in Osmeña v. Orbos with respect to the OPSF. Thus, we disagree with petitioners that the instant case is different from the aforementioned cases. With the Universal Charge, a Special Trust Fund (STF) is also created under the administration of PSALM. The STF has some notable characteristics similar to the OPSF and the SSF, viz.:

1) In the implementation of stranded cost recovery, the ERC shall conduct a review to determine whether there is under-recovery or over recovery and adjust (true-up) the level of the stranded cost recovery charge. In case of an over-recovery, the ERC shall ensure that any excess amount shall be remitted to the STF. A separate account shall be created for these amounts which shall be held in trust for any future claims of distribution utilities for stranded cost recovery. At the end of the stranded cost recovery period, any remaining amount in this account shall be used to reduce the electricity rates to the end-users.

2) With respect to the assailed Universal Charge, if the total amount collected for the same is greater than the actual availments against it, the PSALM shall retain the balance within the STF to pay for periods where a shortfall occurs.

3) Upon expiration of the term of PSALM, the administration of the STF shall be transferred to the DOF or any of the DOF attached agencies as designated by the DOF Secretary.

The OSG is in point when it asseverates:

Evidently, the establishment and maintenance of the Special Trust Fund, under the last paragraph of Section 34, R.A. No. 9136, is well within the pervasive and non-waivable power and responsibility of the government to secure the physical and economic survival and well-being of the community, that comprehensive sovereign authority we designate as the police power of the State.

This feature of the Universal Charge further boosts the position that the same is an exaction imposed primarily in pursuit of the State's police objectives. The STF reasonably serves and assures the attainment and perpetuity of the purposes for which the Universal Charge is imposed, i.e., to ensure the viability of the country's electric power industry.

VIRGILIO GASTON, HORTENCIA STARKE, ROMEO GUANZON, OSCAR VILLANUEVA, JOSE ABELLO, REMO RAMOS, CAROLINA LOPEZ, JESUS ISASI, MANUEL LACSON, JAVIER LACSON, TITO TAGARAO, EDUARDO SUATENGCO, AUGUSTO LLAMAS, RODOLFO SIASON, PACIFICO MAGHARI, JR., JOSE JAMANDRE, AURELIO GAMBOA, ET AL., petitioners, vs. REPUBLIC PLANTERS BANK, PHILIPPINE SUGAR COMMISSION, and SUGAR REGULATORY ADMINISTRATION, respondents, ANGEL H. SEVERINO, JR., GLICERIO JAVELLANA, GLORIA P. DE LA PAZ, JOEY P. DE LA PAZ, ET AL., and NATIONAL FEDERATION OF SUGARCANE PLANTERS, intervenors.

G.R. No. L-77194, EN BANC, March 15, 1988, MELENCIO-HERRERA, J.

The stabilization fees collected are in the nature of a tax, which is within the power of the State to impose for the promotion of the sugar industry. They constitute sugar liens. The collections made accrue to a "Special Fund," a "Development and Stabilization Fund," almost Identical to the "Sugar Adjustment and Stabilization Fund" created under Section 6 of Commonwealth Act 567. The tax collected is not in a pure exercise of the taxing power. It is levied with a regulatory purpose, to provide means for the stabilization of the sugar industry. **The levy is primarily in the exercise of the police power of the State**.

The protection of a large industry constituting one of the great sources of the state's wealth and therefore directly or indirectly affecting the welfare of so great a portion of the population of the State is affected to such an extent by public interests as to be within the police power of the sovereign.

To rule in petitioners' favor would contravene the general principle that **revenues derived from taxes cannot be used for purely private purposes or for the exclusive benefit of private persons**. The Stabilization Fund is to be utilized for the benefit of the entire sugar industry, "and all its components, stabilization of the domestic market," including the foreign market the industry being of vital importance to the country's economy and to national interest.

FACTS:

Petitioners are sugar producers, sugarcane planters and millers, who have come to this Court in their individual capacities and in representation of other sugar producers, planters and millers, said to be so numerous that it is impracticable to bring them all before the Court.

Respondent Philippine Sugar Commission (PHILSUCOM, for short) was formerly the government office tasked with the function of regulating and supervising the sugar industry until it was superseded by its co-respondent Sugar Regulatory Administration (SRA, for brevity) under Executive Order No. 18 on May 28, 1986. Although said Executive Order abolished the PHILSUCOM, its existence as a juridical entity was mandated to continue for three (3) more years "for the purpose of prosecuting and defending suits by or against it and enables it to settle and close its affairs, to dispose of and convey its property and to distribute its assets."

Respondent Republic Planters Bank (briefly, the Bank) is a commercial banking corporation.

Petitioners and Intervenors have come to the Supreme Court praying for a Writ of mandamus commanding respondents to implement and accomplish the privatization of Republic Planters Bank by the transfer and distribution of the shares of stock in the said bank to the sugar producers, planters and millers who are the true beneficial owners. The said investment having been funded by the deduction from sugar proceeds of the sugar producers as stabilization fund pursuant to P.D. # 388.

Respondents PHILSUCOM and SRA, for their part, squarely traverse the petition arguing that no trust results from Section 7 of P.D. No. 388; that the stabilization fees collected are considered government funds under the Government Auditing Code; that the transfer of shares of stock from PHILSUCOM to the sugar producers would be irregular, if not illegal; and that this suit is barred by laches.

ISSUE:

Whether the stabilization fees collected from sugar planters and millers pursuant to Section 7 of P.D. No. 388 are public funds. (YES)

RULING:

The stabilization fees collected are in the nature of a tax, which is within the power of the State to impose for the promotion of the sugar industry (Lutz vs. Araneta, 98 Phil. 148). They constitute sugar liens (Sec. 7[b], P.D. No. 388). The collections made accrue to a "Special Fund," a "Development and Stabilization Fund," almost Identical to the "Sugar Adjustment and Stabilization Fund" created under Section 6 of Commonwealth Act 567. The tax collected is not in a pure exercise of the taxing power. It is levied with a regulatory purpose, to provide means for the stabilization of the sugar industry. The levy is primarily in the exercise of the police power of the State (Lutz vs. Araneta, supra.).

The protection of a large industry constituting one of the great sources of the state's wealth and therefore directly or indirectly affecting the welfare of so great a portion of the population of the State is affected to such an extent by public interests as to be within the police power of the sovereign.

The stabilization fees in question are levied by the State upon sugar millers, planters and producers for a special purpose — that of "financing the growth and development of the sugar industry and all its components, stabilization of the domestic market including the foreign market the fact that the State has taken possession of moneys pursuant to law is sufficient to constitute them state funds, even though they are held for a special purpose. **Having been levied for a special purpose, the revenues collected are to be treated as a special fund, to be, in the language of the statute, "administered in trust' for the purpose intended. Once the purpose has been fulfilled or abandoned, the balance, if any, is to be transferred to the general funds of the Government**. That is the essence of the trust intended.

The character of the Stabilization Fund as a special fund is emphasized by the fact that the funds are deposited in the Philippine National Bank and not in the Philippine Treasury, moneys from which may be paid out only in pursuance of an appropriation made by law.

That the fees were collected from sugar producers, planters and millers, and that the funds were channeled to the purchase of shares of stock in respondent Bank do not convert the funds into a trust fired for their benefit nor make them the beneficial owners of the shares so purchased. It is but rational that the fees be collected from them since it is also they who are to be benefited from the expenditure of the funds derived from it. The investment in shares of respondent Bank is not alien to the purpose intended because of the Bank's character as a commodity bank for sugar conceived for the industry's growth and development. Furthermore, of note is the fact that one-half, (1/2) or PO.50 per picul, of the amount levied under P.D. No. 388 is to be utilized for the "payment of salaries and wages of personnel, fringe benefits and allowances of officers and employees of PHILSUCOM" thereby immediately negating the claim that the entire amount levied is in trust for sugar, producers, planters and millers.

To rule in petitioners' favor would contravene the general principle that **revenues derived from taxes cannot be used for purely private purposes or for the exclusive benefit of private persons**. The Stabilization Fund is to be utilized for the benefit of the entire sugar industry, "and all its components, stabilization of the domestic market," including the foreign market the industry being of vital importance to the country's economy and to national interest.

CHEVRON PHILIPPINES, INC. (Formerly CALTEX PHILIPPINES, INC.), Petitioner, vs. BASES CONVERSION DEVELOPMENT AUTHORITY and CLARK DEVELOPMENT CORPORATION, Respondents.
G.R. No. 173863, THIRD DIVISION, September 15, 2010, VILLARAMA, JR., J.

In distinguishing tax and regulation as a form of police power, ***the determining factor is the purpose of the implemented measure. If the purpose is primarily to raise revenue, then it will be deemed a tax even though the measure results in some form of regulation. On the other hand, if the purpose is primarily to regulate, then it is deemed a regulation and an exercise of the police power of the state, even though incidentally, revenue is generated****.*

It can be gleaned that the Policy Guidelines was issued, first and foremost, to ensure the safety, security, and good condition of the petroleum fuel industry within the CSEZ. The questioned royalty fees form part of the regulatory framework to ensure "free flow or movement" of petroleum fuel to and from the CSEZ. The fact that respondents have the exclusive right to distribute and market petroleum products within CSEZ pursuant to its JVA with SBMA and CSBTI does not diminish the regulatory purpose of the royalty fee for fuel products supplied by petitioner to its client at the CSEZ.

FACTS:

On June 28, 2002, the Board of Directors of respondent Clark Development Corporation (CDC) issued and approved Policy Guidelines on the Movement of Petroleum Fuel to and from the Clark Special Economic Zone.

The policy guidelines were implemented effective July 27, 2002. On October 1, 2002, CDC sent a letter to herein petitioner Chevron Philippines, Inc. (formerly Caltex Philippines, Inc.), a domestic corporation which has been supplying fuel to Nanox Philippines, a locator inside the CSEZ since 2001, informing the petitioner that a royalty fee of ₱0.50 per liter shall be assessed on its deliveries to Nanox Philippines effective August 1, 2002. Thereafter, on October 21, 2002 a Statement of Account was sent by CDC billing the petitioner for royalty fees in the amount of ₱115,000.00 for its fuel sales from Coastal depot to Nanox Philippines from August 1-31 to September 3-21, 2002.

Claiming that nothing in the law authorizes CDC to impose royalty fees or any fees based on a per unit measurement of any commodity sold within the special economic zone, petitioner sent a letter dated October 30, 2002 to the President and Chief Executive Officer of CDC, Mr. Emmanuel Y. Angeles, to protest the assessment for royalty fees.

Petitioner argues that CDC does not have any power to impose royalty fees on sale of fuel inside the CSEZ on the basis of purely income generating functions and its exclusive right to market and distribute goods inside the CSEZ. Such imposition of royalty fees for revenue generating purposes would amount to a tax, which the respondents have no power to impose. Petitioner stresses that the royalty fee imposed by CDC is not regulatory in nature but a revenue generating measure to increase its profits and to further enhance its exclusive right to market and distribute fuel in CSEZ.

On the part of the respondents, they argue that the purpose of the royalty fees is to regulate the flow of fuel to and from the CSEZ. Such being its main purpose, and revenue (if any) just an incidental product, the imposition cannot be considered a tax. It is their position that the regulation is a valid exercise of police power since it is aimed at promoting the general welfare of the public. They claim that being the administrator of the CSEZ, CDC is responsible for the safe distribution of fuel products inside the CSEZ.

ISSUE:

Whether the royalty fees are in the nature of taxes. (NO)

RULING:

In distinguishing tax and regulation as a form of police power, the determining factor is the purpose of the implemented measure. If the purpose is primarily to raise revenue, then it will be deemed a tax even though the measure results in some form of regulation. On the other hand, if the purpose is primarily to regulate, then it is deemed a regulation and an exercise of the police power of the state, even though incidentally, revenue is generated. Thus, in Gerochi v. Department of Energy, the Court stated:

The conservative and pivotal distinction between these two (2) powers rests in the purpose for which the charge is made. If generation of revenue is the primary purpose and regulation is merely incidental, the imposition is a tax; but if regulation is the primary purpose, the fact that revenue is incidentally raised does not make the imposition a tax.

In the case at bar, we hold that the subject royalty fee was imposed primarily for regulatory purposes, and not for the generation of income or profits as petitioner claims. The Policy Guidelines on the Movement of Petroleum Fuel to and from the Clark Special Economic Zone provides:

DECLARATION OF POLICY

It is hereby declared the policy of CDC to develop and maintain the Clark Special Economic Zone (CSEZ) as a highly secured zone free from threats of any kind, which could possibly endanger the lives and properties of locators, would-be investors, visitors, and employees.

It is also declared the policy of CDC to operate and manage the CSEZ as a separate customs territory ensuring free flow or movement of goods and capital within, into and exported out of the CSEZ.

From the foregoing, it can be gleaned that the Policy Guidelines was issued, first and foremost, to ensure the safety, security, and good condition of the petroleum fuel industry within the CSEZ. The questioned royalty fees form part of the regulatory framework to ensure "free flow or movement" of petroleum fuel to and from the CSEZ. The fact that respondents have the exclusive right to distribute and market petroleum products within CSEZ pursuant to its JVA with SBMA and CSBTI does not diminish the regulatory purpose of the royalty fee for fuel products supplied by petitioner to its client at the CSEZ.

TERMINAL FACILITIES AND SERVICES CORPORATION, petitioner, vs. PHILIPPINE PORTS AUTHORITY and PORT MANAGER, and PORT DISTRICT OFFICER OF DAVAO CITY, respondents.

G.R. No. 135639, SECOND DIVISION, February 27, 2002, DE LEON, JR., J.

PHILIPPINE PORTS AUTHORITY and PORT MANAGER, and PORT DISTRICT OFFICER OF DAVAO CITY, petitioners, vs. TERMINAL FACILITIES AND SERVICES CORPORATION, respondent.

G.R. No. 135826, SECOND DIVISION, February 27, 2002, DE LEON, JR., J.

*As an elementary principle of law, **license taxation must not be "so unreasonable to show a purpose to prohibit a business which is not itself injurious to public health or morals."** In the case at bar, the absurd and confiscatory character of government share is convincingly proved by PPA's decision itself to abandon the disadvantageous scheme through Administrative Order No. 06-95 dated 4 December 1995, Liberalized Regulation on Private Ports Construction, Development, and Operation. The PPA issuance scrapped government share in the income of private ports where no government facilities had been installed and in place thereof imposed a one-time privilege fee of ₱20,000.00 per annum for commercial ports and ₱10,000.00 yearly for non-commercial ports. In passing, we believe that this impost is more in consonance with the description of government share as consideration for the "supervision inherent in the upgrading and improvement of port operations, of which said services are an integral part."*

FACTS:

TEFASCO is a domestic corporation organized and existing under the laws of the Philippines with principal place of business at Barrio Ilang, Davao City. It is engaged in the business of providing port and terminal facilities as well as arrastre, stevedoring and other port-related services at its own private port at Barrio Ilang.

Sometime in 1975 TEFASCO submitted to PPA a proposal for the construction of a specialized terminal complex with port facilities and a provision for port services in Davao City. To ease the acute congestion in the government ports at Sasa and Sta. Ana, Davao City, PPA welcomed the proposal and organized an inter-agency committee to study the plan.
On April 21, 1976 the PPA Board of Directors passed Resolution No. 7 accepting and approving TEFASCO's project proposal.

TEFASCO contracted dollar loans from private commercial institutions abroad to construct its specialized terminal complex with port facilities and thereafter poured millions worth of investments in the process of building the port. Long after TEFASCO broke ground with massive infrastructure work, the PPA Board curiously passed on October 1, 1976 Resolution No. 50 under which TEFASCO, without asking for one, was compelled to submit an application for construction permit. Without the consent of TEFASCO, the application imposed additional significant conditions.

Two (2) years after the completion of the port facilities and the commencement of TEFASCO's port operations, or on June 10, 1978, PPA again issued to TEFASCO another permit, designated as Special Permit No. CO/CO-1-067802, under which more onerous conditions were foisted on TEFASCO's port operations. In the **purported permit appeared for the first time the contentious provisions for ten percent (10%) government share out of arrastre and stevedoring gross income and one hundred percent (100%) wharfage and berthing charges**.

Subsequent exactions of PPA included: (a) Admin. Order 09-81, s. 1981, notifying all arrastre and stevedoring operators, whether they do business in government owned port facilities, that special services income be subjected to "government share" equivalent to ten percent (10%) thereof; and, (b) Memo. Circ. 36-82, s. 1982, mandating an assessment of one hundred percent (100%) wharfage dues on commercial and third-party cargoes regardless of extent of use of private port facilities and one hundred percent (100%) berthing charges on every foreign vessel docking at private wharves loading or discharging commercial or third-party cargoes. TEFASCO repeatedly asked PPA for extensions to pay these additional obligations and for reduction in the rates. But the PPA's response was final and non-negotiable statements of arrears and current accounts and threats of business closure in case of failure to pay them.

ISSUE:

Whether the imposition by PPA of ten percent government share out of arrastre and stevedoring gross income of TEFASCO valid. (NO)

RULING:

Fourthly, we also declare void the imposition by PPA of ten percent (10%), later reduced to six percent (6%), government share out of arrastre and stevedoring gross income of TEFASCO. This exaction was never mentioned in the contract, much less is it a binding prestation, between TEFASCO and PPA. What was clearly stated in the terms and conditions appended to PPA Resolution No. 7 was for TEFASCO to pay and/or secure from the proper authorities "all fees and/or permits pertinent to the construction and operation of the proposed project." The government share demanded and collected from the gross income of TEFASCO from its arrastre and stevedoring activities in TEFASCO's wholly owned port is certainly not a fee or in any event a proper condition in a regulatory permit. Rather it is an onerous "contractual stipulation" which finds no root or basis or reference even in the contract aforementioned.

We stress that the cause of the contract between TEFASCO and PPA was, on the part of the former, to engage in the business of operating its privately owned port facilities, and for the latter, to decongest port traffic in Davao City and concomitantly to enhance regional trade. The records of the project acceptance made by PPA indicate that the contract was executed not to earn income for PPA or the government as justification for the subsequent and unfair imposition of government share in the arrastre and stevedoring gross income of TEFASCO. Hence this charge was obviously an after-thought conceived by PPA only after the TEFASCO port had already begun its operations. The sharing scheme only meant that PPA would piggy back unreasonably on the substantial investment and labor of TEFASCO. As the scheme was subsequently stipulated on percentage of gross income, it actually penalized TEFASCO for its hand work and substantial capital expenditures in the TEFASCO port and terminal.

Moreover, PPA is bereft of any authority to impose whatever amount it pleases as government share in the gross income of TEFASCO from its arrastre and stevedoring operations. As an elementary principle of law, license taxation must not be "so unreasonable to show a purpose to prohibit a business which is not itself injurious to public health or morals." **In the case at bar, the absurd and confiscatory character of government share is convincingly proved by PPA's decision itself to abandon the disadvantageous scheme through Administrative Order No. 06-95 dated 4 December 1995, Liberalized Regulation on Private Ports Construction, Development, and Operation**. The PPA issuance scrapped government share in the income of private ports where no government facilities had been installed and in place thereof imposed a one-time privilege fee of ₱20,000.00 per annum for commercial ports and ₱10,000.00 yearly for non-commercial ports. In passing, we believe that this impost is more in consonance with the description of government share as consideration for the "supervision inherent in the upgrading and improvement of port operations, of which said services are an integral part."

We do not also agree that TEFASCO subsequently acceded to paying the government share in its gross income from its arrastre and stevedoring operations, and in recognizing arrears for such charge. The Memorandum of Agreement (MOA) which it subsequently signed with PPA did not give TEFASCO any benefit so that we cannot conclude that there was indeed a voluntary settlement between them. Rather it could be described aptly as an imposition under actual threats of closure of TEFASCO's port. Verily the MOA was meant to cloak semblance of validity upon that particular charge since there was nothing in the original TEFASCO-PPA contract authorizing the PPA to collect any share in the gross income of TEFASCO in its arrastre and stevedoring operations.

The MOA is invalid for want of consideration and consent. As such, it is an invalid novation of the original agreement between TEFASCO and PPA as embodied in the inter-agency committee report, PPA Resolution No. 7 and PPA letter dated May 7, 1976 and its enclosure. Truly, the MOA was a set of stipulations executed under undue pressure on TEFASCO of permanent closure of its port and terminal. As the TEFASCO investment was worth millions of dollars in loans and equities, PPA's posture of prohibiting it from engaging in the bulk of its business presented it with no reasonable freedom of choice but to accept and sign the MOA. Furthermore, the MOA suffers from utter want of consideration since nothing more could have been stipulated in the agreement when every detail of port operation had already been previously spelled out and sanctioned in the original contract. The belated MOA citations of PPA's recognition of TEFASCO's facility as a private port and provision of arrastre and stevedoring and repair services were all part of the agreement from 1976 when the project proposal was approved by the PPA Board. Under these circumstances, it cannot be said that TEFASCO embraced voluntarily the unfair imposition in the MOA that inevitably would cause, as it did, its own bankruptcy.

In sum, TEFASCO is entitled to Five Million Ninety-Five Thousand Thirty Pesos and Seventeen Centavos (₱5,095,030.17) for reimbursement of what PPA illegally collected as "government share" in the gross income of TEFASCO's arrastre and stevedoring operations for 1977 to 1991.

MANILA MEMORIAL PARK, INC. AND LA FUNERARIA PAZ-SUCAT, INC., Petitioners, vs. SECRETARY OF THE DEPARTMENT OF SOCIAL WELFARE AND DEVELOPMENT and THE SECRETARY OF THE DEPARTMENT OF FINANCE, Respondents.
G.R. No. 175356, EN BANC, December 3, 2013, DEL CASTILLO, J.

*A fair reading of Carlos Superdrug Corporation would show that we categorically ruled therein that the 20% discount is a valid exercise of police power. Thus, **even if the current law, through its tax deduction scheme (which abandoned the tax credit scheme under the previous law), does not provide for a peso for peso reimbursement of the 20% discount given by private establishments, no constitutional infirmity obtains because, being a valid exercise of police power, payment of just compensation is not warranted**.*

Petitioners argue that the tax deduction scheme under RA 7432, as amended by RA 9257 contravenes Article III, Section 9 of the Constitution, which provides that: "[p]rivate property shall not be taken for public use without just compensation."

FACTS:

Petitioners assail the constitutionality of Section 4 of Republic Act (RA) No. 7432, as amended by RA 9257, and the implementing rules and regulations issued by the DSWD and DOF insofar as these allow business establishments to claim the 20% discount given to senior citizens as a tax deduction.

Feeling aggrieved by the tax deduction scheme, petitioners filed the present recourse, praying that Section 4 of RA 7432, as amended by RA 9257, and the implementing rules and regulations issued by the DSWD and the DOF be declared unconstitutional insofar as these allow business establishments to claim the 20% discount given to senior citizens as a tax deduction; that the DSWD and the DOF be prohibited from enforcing the same; and that the tax credit treatment of the 20% discount under the former Section 4 (a) of RA 7432 be reinstated.

Petitioners emphasize that they are not questioning the 20% discount granted to senior citizens but are only assailing the constitutionality of the tax deduction scheme prescribed under RA 9257 and the implementing rules and regulations issued by the DSWD and the DOF.

Petitioners posit that the tax deduction scheme contravenes Article III, Section 9 of the Constitution, which provides that: "[p]rivate property shall not be taken for public use without just compensation."

ISSUE:

Whether the 20% discount given to senior citizens is an exercise of the power of eminent domain, thus, requiring the payment of just compensation. (NO)

RULING:

The privilege enjoyed by senior citizens does not come directly from the State, but rather from the private establishments concerned. Accordingly, the tax credit benefit granted to these establishments can be deemed as their just compensation for private property taken by the State for public use. The concept of public use is no longer confined to the traditional notion of use by the public, but held synonymous with public interest, public benefit, public welfare, and public convenience. The discount privilege to which our senior citizens are entitled is actually a benefit enjoyed by the general public to which these citizens belong. The discounts given would have entered the coffers and formed part of the gross sales of the private establishments concerned, were it not for RA 7432. The permanent reduction in their total revenues is a forced subsidy corresponding to the taking of private property for public use or benefit. As a result of the 20 percent discount imposed by RA 7432, respondent becomes entitled to a just compensation. This term refers not only to the issuance of a tax credit certificate indicating the correct amount of the discounts given, but also to the promptness in its release. Equivalent to the payment of property taken by the State, such issuance — when not done within a reasonable time from the grant of the discounts — cannot be considered as just compensation. In effect, respondent is made to suffer the consequences of being immediately deprived of its revenues while awaiting actual receipt, through the certificate, of the equivalent amount it needs to cope with the reduction in its revenues. Besides, the taxation power can also be used as an implement for the exercise of the power of eminent domain. Tax measures are but "enforced contributions exacted on pain of penal sanctions" and "clearly imposed for a public purpose." In recent years, the power to tax has indeed become a most effective tool to realize social justice, public welfare, and the equitable distribution of wealth. While it is a declared commitment under Section 1 of RA 7432, social justice "cannot be invoked to trample on the rights of property owners who under our Constitution and laws are also entitled to protection. The social justice consecrated in our [C]onstitution [is] not intended to take away rights from a person and give them to another who is not entitled thereto." For this reason, a just compensation for income that is taken away from respondent becomes necessary. It is in the tax credit that our legislators find support to realize social justice, and no administrative body can alter that fact. To put it differently, a private establishment that merely breaks even — without the discounts yet — will surely start to incur losses because of such discounts. The same effect is expected if its mark-up is less than 20 percent, and if all its sales come from retail purchases by senior citizens. Aside from the observation we have already raised earlier, it will also be grossly unfair to an establishment if the discounts will be treated merely as deductions from either its gross income or its gross sales. Operating at a loss through no fault of its own, it will realize that the tax credit limitation under RR 2-94 is inutile, if not improper. Worse, profit-generating businesses will be put in a better position if they avail themselves of tax credits denied those that are losing, because no taxes are due from the latter.

This, notwithstanding, we went on to rule in Carlos Superdrug Corporation that the 20% discount and tax deduction scheme is a valid exercise of the police power of the State. The present case, thus, affords an opportunity for us to clarify the above-quoted statements in Central Luzon Drug Corporation and Carlos Superdrug Corporation.

First, we note that the above-quoted disquisition on eminent domain in Central Luzon Drug Corporation is obiter dicta and, thus, not binding precedent. As stated earlier, in Central Luzon Drug Corporation, we ruled that the BIR acted ultra vires when it effectively treated the 20% discount as a tax deduction, under Sections 2.i and 4 of RR No. 2-94, despite the clear wording of the previous law that the same should be treated as a tax credit. We were, therefore, not confronted in that case with the issue as to whether the 20% discount is an exercise of police power or eminent domain. Second, although we adverted to Central Luzon Drug Corporation in our ruling in Carlos Superdrug Corporation, this referred only to preliminary matters. A fair reading of Carlos Superdrug Corporation would show that we categorically ruled therein that the 20% discount is a valid exercise of police power. Thus, even if the current law, through its tax deduction scheme (which abandoned the tax credit scheme under the previous law), does not provide for a peso for peso reimbursement of the 20% discount given by private establishments, no constitutional infirmity obtains because, being a valid exercise of police power, payment of just compensation is not warranted. We have carefully reviewed the basis of our ruling in Carlos Superdrug Corporation and we find no cogent reason to overturn, modify or abandon it. We also note that petitioners' arguments are a mere reiteration of those raised and resolved in Carlos Superdrug Corporation. Thus, we sustain Carlos Superdrug Corporation.

PLANTERS PRODUCTS, INC., Petitioner, vs. FERTIPHIL CORPORATION, Respondent.
G.R. No. 166006, THIRD DIVISION, March 14, 2008, REYES, R.T., J.

An inherent limitation on the power of taxation is public purpose. ***Taxes are exacted only for a public purpose****. They cannot be used for purely private purposes or for the exclusive benefit of private persons. The reason for this is simple. The power to tax exists for the general welfare; hence, implicit in its power is the limitation that it should be used only for a public purpose. It would be a robbery for the State to tax its citizens and use the funds generated for a private purpose. As an old United States case bluntly put it: "To lay with one hand, the power of the government on the property of the citizen, and* *with the other to bestow it upon favored individuals to aid private enterprises and build up private fortunes, is nonetheless a robbery because it is done under the forms of law and is called taxation."*

Taxes are exacted only for a public purpose. The ₱10 levy is unconstitutional because it was not for a public purpose. The levy was imposed to give undue benefit to PPI.

FACTS:

Petitioner PPI and private respondent Fertiphil are private corporations incorporated under Philippine laws. They are both engaged in the importation and distribution of fertilizers, pesticides and agricultural chemicals.

On June 3, 1985, then President Ferdinand Marcos, exercising his legislative powers, issued LOI No. 1465 which provided, among others, for the imposition of a capital recovery component (CRC) on the domestic sale of all grades of fertilizers in the Philippines. The LOI provides:

3. The Administrator of the Fertilizer Pesticide Authority to include in its fertilizer pricing formula a capital contribution component of not less than ₱10 per bag. This capital contribution shall be collected until adequate capital is raised to make PPI viable. Such capital contribution shall be applied by FPA to all domestic sales of fertilizers in the Philippines.

Pursuant to the LOI, Fertiphil paid ₱10 for every bag of fertilizer it sold in the domestic market to the Fertilizer and Pesticide Authority (FPA). FPA then remitted the amount collected to the Far East Bank and Trust Company, the depositary bank of PPI. Fertiphil paid ₱6,689,144 to FPA from July 8, 1985 to January 24, 1986.

After the 1986 Edsa Revolution, FPA voluntarily stopped the imposition of the ₱10 levy. With the return of democracy, Fertiphil demanded from PPI a refund of the amounts it paid under LOI No. 1465, but PPI refused to accede to the demand.

Fertiphil filed a complaint for collection and damages against FPA and PPI with the RTC in Makati. It questioned the constitutionality of LOI No. 1465 for being unjust, unreasonable, oppressive, invalid and an unlawful imposition that amounted to a denial of due process of law. Fertiphil alleged that the LOI solely favored PPI, a privately owned corporation, which used the proceeds to maintain its monopoly of the fertilizer industry.

In its Answer, FPA, through the Solicitor General, countered that the issuance of LOI No. 1465 was a valid exercise of the police power of the State in ensuring the stability of the fertilizer industry in the country. It also averred that Fertiphil did not sustain any damage from the LOI because the burden imposed by the levy fell on the ultimate consumer, not the seller.

ISSUE:

Whether LOI 1465 is constitutional. (NO)

RULING:

Police power and the power of taxation are inherent powers of the State. These powers are distinct and have different tests for validity. Police power is the power of the State to enact legislation that may interfere with personal liberty or property in order to promote the general welfare,39 while the power of taxation is the power to levy taxes to be used for public purpose. The main purpose of police power is the regulation of a behavior or conduct, while taxation is revenue generation. The "lawful subjects" and "lawful means" tests are used to determine the validity of a law enacted under the police power. The power of taxation, on the other hand, is circumscribed by inherent and constitutional limitations.

We agree with the RTC that the imposition of the levy was an exercise by the State of its taxation power. While it is true that the power of taxation can be used as an implement of police power, the primary purpose of the levy is revenue generation. If the purpose is primarily revenue, or if revenue is, at least, one of the real and substantial purposes, then the exaction is properly called a tax.

Taxation may be made the implement of the state's police power (Lutz v. Araneta, 98 Phil. 148). If the purpose is primarily revenue, or if revenue is, at least, one of the real and substantial purposes, then the exaction is properly called a tax. Such is the case of motor vehicle registration fees. The same provision appears as Section 59(b) in the Land Transportation Code. It is patent therefrom that the legislators had in mind a regulatory tax as the law refers to the imposition on the registration, operation or ownership of a motor vehicle as a "tax or fee." x x x Simply put, if the exaction under Rep. Act 4136 were merely a regulatory fee, the imposition in Rep. Act 5448 need not be an "additional" tax. Rep. Act 4136 also speaks of other "fees" such as the special permit fees for certain types of motor vehicles (Sec. 10) and additional fees for change of registration (Sec. 11). These are not to be understood as taxes because such fees are very minimal to be revenue-raising. Thus, they are not mentioned by Sec. 59(b) of the Code as taxes like the motor vehicle registration fee and chauffeurs' license fee. Such fees are to go into the expenditures of the Land Transportation Commission as provided for in the last proviso of Sec. 61.

The ₱10 levy under LOI No. 1465 is too excessive to serve a mere regulatory purpose. The levy, no doubt, was a big burden on the seller or the ultimate consumer. It increased the price of a bag of fertilizer by as much as five percent. A plain reading of the LOI also supports the conclusion that the levy was for revenue generation. The LOI expressly provided that the levy was imposed "until adequate capital is raised to make PPI viable."

Taxes are exacted only for a public purpose. The ₱10 levy is unconstitutional because it was not for a public purpose. The levy was imposed to give undue benefit to PPI.

An inherent limitation on the power of taxation is public purpose. Taxes are exacted only for a public purpose. They cannot be used for purely private purposes or for the exclusive benefit of private persons. The reason for this is simple. The power to tax exists for the general welfare; hence, implicit in its power is the limitation that it should be used only for a public purpose. It would be a robbery for the State to tax its citizens and use the funds generated for a private purpose. As an old United States case bluntly put it: "To lay with one hand, the power of the government on the property of the citizen, and with the other to bestow it upon favored individuals to aid private enterprises and build up private fortunes, is nonetheless a robbery because it is done under the forms of law and is called taxation."

The term "public purpose" is not defined. It is an elastic concept that can be hammered to fit modern standards. Jurisprudence states that "public purpose" should be given a broad interpretation. It does not only pertain to those purposes which are traditionally viewed as essentially government functions, such as building roads and delivery of basic services, but also includes those purposes designed to promote social justice. Thus, public money may now be used for the relocation of illegal settlers, low-cost housing and urban or agrarian reform.

While the categories of what may constitute a public purpose are continually expanding in light of the expansion of government functions, the inherent requirement that taxes can only be exacted for a public purpose still stands. Public purpose is the heart of a tax law. When a tax law is only a mask to exact funds from the public when its true intent is to give undue benefit and advantage to a private enterprise, that law will not satisfy the requirement of "public purpose."

The purpose of a law is evident from its text or inferable from other secondary sources. Here, We agree with the RTC and that CA that the levy imposed under LOI No. 1465 was not for a public purpose.

First, the LOI expressly provided that the levy be imposed to benefit PPI, a private company. The purpose is explicit from Clause 3 of the law.

Second, the LOI provides that the imposition of the ₱10 levy was conditional and dependent upon PPI becoming financially "viable." This suggests that the levy was actually imposed to benefit PPI. The LOI notably does not fix a maximum amount when PPI is deemed financially "viable." Worse, the liability of Fertiphil and other domestic sellers of fertilizer to pay the levy is made indefinite. They are required to continuously pay the levy until adequate capital is raised for PPI.

Third, the RTC and the CA held that the levies paid under the LOI were directly remitted and deposited by FPA to Far East Bank and Trust Company, the depositary bank of PPI. This proves that PPI benefited from the LOI. It is also proves that the main purpose of the law was to give undue benefit and advantage to PPI.

Fourth, the levy was used to pay the corporate debts of PPI. A reading of the Letter of Understanding dated May 18, 1985 signed by then Prime Minister Cesar Virata reveals that PPI was in deep financial problem because of its huge corporate debts. There were pending petitions for rehabilitation against PPI before the Securities and Exchange Commission. The government guaranteed payment of PPI's debts to its foreign creditors. To fund the payment, President Marcos issued LOI No. 1465.

All told, the RTC and the CA did not err in holding that the levy imposed under LOI No. 1465 was not for a public purpose. LOI No. 1465 failed to comply with the public purpose requirement for tax laws.

VALENTIN TIO doing business under the name and style of OMI ENTERPRISES, Petitioner, v. VIDEOGRAM REGULATORY BOARD, MINISTER OF FINANCE, METRO MANILA COMMISSION, CITY MAYOR and CITY TREASURER OF MANILA, Respondents.
G.R. No. L-75697, EN BANC, June 18, 1987, MELENCIO-HERRERA, J.

Petitioner also submits that the thirty percent (30%) tax imposed is harsh and oppressive, confiscatory, and in restraint of trade. However, it is beyond serious question that ***a tax does not cease to be valid merely because it regulates, discourages, or even definitely deters the activities taxed. The power to impose taxes is one so unlimited in force and so searching in extent, that the courts scarcely venture to declare that it is subject to any restrictions whatever, except such as rest in the discretion of the authority which exercises it****. In imposing a tax, the legislature acts upon its constituents. This is, in general, a sufficient security against erroneous and oppressive taxation.*

It is inherent in the power to tax that a state be free to select the subjects of taxation, and it has been repeatedly held that ***"inequities which result from a singling out of one particular class for taxation or exemption infringe no constitutional limitation'."*** *Taxation has been made the implement of the state's police power.*

FACTS:

This petition was filed on September 1, 1986 by petitioner on his own behalf and purportedly on behalf of other videogram operators adversely affected. It assails the constitutionality of Presidential Decree No. 1987 entitled "An Act Creating the Videogram Regulatory Board" with broad powers to regulate and supervise the videogram industry.

The petitioner alleges that the said act is unconstitutional since Section 10 thereof, which imposes a tax of 30% on the gross receipts payable to the local government is a RIDER and the same is not germane to the subject matter thereof and that the tax imposed is harsh, confiscatory, oppressive and/or in unlawful restraint of trade in violation of the due process clause of the Constitution.

ISSUE:

Whether the thirty percent (30%) tax imposed is unconstitutional for being harsh, oppressive, confiscatory, and restrains trade. (NO)

RULING:

Petitioner also submits that the thirty percent (30%) tax imposed is harsh and oppressive, confiscatory, and in restraint of trade. However, it is beyond serious question that a tax does not cease to be valid merely because it regulates, discourages, or even definitely deters the activities taxed. The power to impose taxes is one so unlimited in force and so searching in extent, that the courts scarcely venture to declare that it is subject to any restrictions whatever, except such as rest in the discretion of the authority which exercises it. In imposing a tax, the legislature acts upon its constituents. This is, in general, a sufficient security against erroneous and oppressive taxation.

The tax imposed by the DECREE is not only a regulatory but also a revenue measure prompted by the realization that earnings of videogram establishments of around P600 million per annum have not been subjected to tax, thereby depriving the Government of an additional source of revenue. It is an end-user tax, imposed on retailers for every videogram they make available for public viewing. It is similar to the 30% amusement tax imposed or borne by the movie industry which the theater-owners pay to the government, but which is passed on to the entire cost of the admission ticket, thus shifting the tax burden on the buying or the viewing public. It is a tax that is imposed uniformly on all videogram operators.

The levy of the 30% tax is for a public purpose. It was imposed primarily to answer the need for regulating the video industry, particularly because of the rampant film piracy, the flagrant violation of intellectual property rights, and the proliferation of pornographic video tapes. And while it was also an objective of the DECREE to protect the movie industry, the tax remains a valid imposition.

"The public purpose of a tax may legally exist even if the motive which impelled the legislature to impose the tax was to favor one industry over another.

"It is inherent in the power to tax that a state be free to select the subjects of taxation, and it has been repeatedly held that "inequities which result from a singling out of one particular class for taxation or exemption infringe no constitutional limitation'." Taxation has been made the implement of the state's police power.

At bottom, the rate of tax is a matter better addressed to the taxing legislature.

NATIONAL POWER CORPORATION, petitioner, vs. THE PROVINCE OF ALBAY, ALBAY GOVERNOR ROMEO R. SALALIMA, and ALBAY PROVINCIAL TREASURER ABUNDIO M. NUÑEZ, respondents.

G.R. No. 87479, EN BANC, June 4, 1990, SARMIENTO, J.

*It is to be pointed out that under Presidential Decree No. 776, the power of the FIRB was merely to "**recommend** to the President of the Philippines and for reasons of compatibility with the declared economic policy, the withdrawal, modification, revocation or suspension of the enforceability of any of the above-cited statutory subsidies or tax exemption grants, except those granted by the Constitution." **It has no authority to impose taxes or revoke existing ones, which, after all, under the Constitution, only the legislature may accomplish**.*

*As we said, the FIRB, under its charter, Presidential Decree No. 776, had been empowered merely to "**recommend**" tax exemptions. **By itself, it could not have validly prescribed exemptions or restore taxability**. Hence, as of June 11, 1984 (promulgation of Presidential Decree No. 1931), NAPOCOR had ceased to enjoy tax exemption privileges.*

FACTS:

It appears that on March 14 and 15, 1989, the respondents caused the publication of a notice of auction sale involving the properties of NAPOCOR and the Philippine Geothermal Inc. consisting of buildings, machines, and similar improvements standing on their offices at Tiwi, Albay. The amounts to be realized from this advertised auction sale are supposed to be applied to the tax delinquencies claimed, as and for, as we said, real property taxes. The back taxes NAPOCOR has supposedly accumulated were computed at P214,845,184.76.

NAPOCOR opposed the sale, interposing in support of its non-liability Resolution No. 17-87, of the Fiscal Incentives Review Board (FIRB), which provides as follows:

BE IT RESOLVED, AS IT IS HEREBY RESOLVED, That the tax and duty exemption privileges of the National Power Corporation, including those pertaining to its domestic purchases of petroleum and petroleum products, granted under the terms and conditions of Commonwealth Act No. 120 (Creating the National Power Corporation, defining its powers, objectives and functions, and for other purposes), as amended, are restored effective March 10, 1987, subject to the following conditions:

as well as the Memorandum of Executive Secretary Catalino Macaraig, which also states thus:

Pursuant to Sections 1 (f) and 2 (e) of Executive Order No. 93, series of 1986, FIRB Resolution No. 17-87, series of 1987, restoring, subject to certain conditions prescribed therein, the tax and duty exemption privileges of NPC as provided under Commonwealth Act No. 120, as amended, effective March 10, 1987, is hereby confirmed and approved.

The provincial government of Albay now defends the auction sale in question on the theory that the various FIRB issuances constitute an undue delegation of the taxing Power and hence, null and void, under the Constitution. It is also contended that, insofar as Executive Order No. 93 authorizes the FIRB to grant tax exemptions, the same is of no force and effect under the constitutional provision allowing the legislature alone to accord tax exemption privileges.

ISSUE:

Whether FIRB has the authority to impose taxes or revoke existing ones. (NO)

RULING:

The provincial government of Albay now defends the auction sale in question on the theory that the various FIRB issuances constitute an undue delegation of the taxing Power and hence, null and void, under the Constitution. It is also contended that, insofar as Executive Order No. 93 authorizes the FIRB to grant tax exemptions, the same is of no force and effect under the constitutional provision allowing the legislature alone to accord tax exemption privileges.

It is to be pointed out that under Presidential Decree No. 776, the power of the FIRB was merely to "recommend to the President of the Philippines and for reasons of compatibility with the declared economic policy, the withdrawal, modification, revocation or suspension of the enforceability of any of the above-cited statutory subsidies or tax exemption grants, except those granted by the Constitution." It has no authority to impose taxes or revoke existing ones, which, after all, under the Constitution, only the legislature may accomplish. The question therefore is whether or not the various tax exemptions granted by virtue of FIRB Resolutions Nos. 10-85, 1-86, and 17-87 are valid and constitutional.

We shall deal with FIRB No. 17-87 later, but with respect to FIRB Resolutions Nos. 10- 85 and 1-86, we sustain the provincial government of Albay.

As we said, the FIRB, under its charter, Presidential Decree No. 776, had been empowered merely to "recommend" tax exemptions. By itself, it could not have validly prescribed exemptions or restore taxability. Hence, as of June 11, 1984 (promulgation of Presidential Decree No. 1931), NAPOCOR had ceased to enjoy tax exemption privileges.

The fact that under Executive Order No. 93, the FIRB has been given the prerogative to "restore tax and/or duty exemptions withdrawn hereunder in whole or in part," and "impose conditions for ... tax and/or duty exemption is of no moment. These provisions are prospective in character and can not affect the Board's past acts.

The Court is aware that in its preamble, Executive Order No. 93 states:

WHEREAS, a number of affected entities, government and private were able to get back their tax and duty exemption privileges through the review mechanism implemented by the Fiscal Incentives Review Board (FIRB); but by no means can we say that it has "ratified" the acts of FIRB. It is to misinterpret the scope of FIRB's powers under Presidential Decree No. 776 to say that it has. Apart from that, Section 2 of the Executive Order was clearly intended to amend Presidential Decree No. 776, which means, mutatis mutandis, that FIRB did not have the right, in the first place, to grant tax exemptions or withdraw existing ones.

Does Executive Order No. 93 constitute an unlawful delegation of legislative power? It is to be stressed that the provincial government of Albay admits that as of March 10, 1987 (the date Resolution No. 17-87 was affirmed by the Memorandum of the Office of the President, dated October 5, 1987), NAPOCOR's exemption had been validly restored. What it questions is NAPOCOR's liability in the interregnum between June 11, 1984, the date its tax privileges were withdrawn, and March 10, 1987, the date they were purportedly restored. To be sure, it objects to Executive Order No. 93 as alledgedly a delegation of legislative power, but only insofar as its (NAPOCOR's) June 11, 1984 to March 10, 1987 tax accumulation is concerned. We therefore leave the issue of "delegation" to the future and its constitutionality when the proper case arises. For the nonce, we leave Executive Order No. 93 alone, and so also, its validity as far as it grants tax exemptions (through the FIRB) beginning December 17, 1986, the date of its promulgation.

THE CITY GOVERNMENT OF QUEZON CITY, AND THE CITY TREASURER OF QUEZON CITY, DR. VICTOR B. ENRIGA, Petitioners, vs. BAYAN TELECOMMUNICATIONS, INC., Respondent.
G.R. No. 162015, SECOND DIVISION, March 6, 2006, GARCIA,J.

The power to tax is primarily vested in the Congress*; however, in our jurisdiction, it may be exercised by local legislative bodies, no longer merely be virtue of a valid delegation as before, but pursuant to direct authority conferred by Section 5, Article X of the Constitution. Under the latter, the exercise of the power may be subject to such guidelines and limitations as the Congress may provide which, however, must be consistent with the basic policy of local autonomy.*

*Clearly then, while a new slant on the subject of local taxation now prevails in the sense that the former doctrine of local government units' delegated power to tax had been effectively modified with Article X, Section 5 of the 1987 Constitution now in place, the basic doctrine on local taxation remains essentially the same. For as the Court stressed in Mactan, "****the power to tax is [still] primarily vested in the Congress."***

There can really be no dispute that the power of the Quezon City Government to tax is limited by Section 232 of the LGC which expressly provides that "a province or city or municipality within the Metropolitan Manila Area may levy an annual ad valorem tax on real property such as land, building, machinery, and other improvement not hereinafter specifically exempted." Under this law, ***the Legislature highlighted its power to thereafter exempt certain realties from the taxing power of local government units****. An interpretation denying Congress such power to exempt would reduce the phrase "not hereinafter specifically exempted" as a pure jargon, without meaning whatsoever. Needless to state, such absurd situation is unacceptable.*

FACTS:

Respondent Bayan Telecommunications, Inc. (Bayantel) is a legislative franchise holder under Republic Act (Rep. Act) No. 3259 to establish and operate radio stations for domestic telecommunications, radiophone, broadcasting and telecasting.

Of relevance to this controversy is the tax provision of Rep. Act No. 3259, embodied in Section 14 thereof, which reads:

SECTION 14. (a) The grantee shall be liable to pay the same taxes on its real estate, buildings and personal property, exclusive of the franchise, as other persons or corporations are now or hereafter may be required by law to pay. (b) The grantee shall further pay to the Treasurer of the Philippines each year, within ten days after the audit and approval of the accounts as prescribed in this Act, one and one-half per centum of all gross receipts from the business transacted under this franchise by the said grantee (Emphasis supplied).

However, with the LGC's taking effect on January 1, 1992, Bayantel's "exemption" from real estate taxes for properties of whatever kind located within the Metro Manila area was, by force of Section 234 of the Code, supra, expressly withdrawn. But, not long thereafter, however, or on July 20, 1992, Congress passed Rep. Act No. 7633 amending Bayantel's original franchise. Worthy of note is that Section 11 of Rep. Act No. 7633 is a virtual reenacment of the tax provision, i.e., Section 14, supra, of Bayantel's original franchise under Rep. Act No. 3259.

Stated otherwise, Section 14 of Rep. Act No. 3259 which was deemed impliedly repealed by Section 234 of the LGC was expressly revived under Section 14 of Rep. Act No. 7633. In concrete terms, the realty tax exemption heretofore enjoyed by Bayantel under its original franchise, but subsequently withdrawn by force of Section 234 of the LGC, has been restored by Section 14 of Rep. Act No. 7633.

ISSUE:

Whether or not Bayantel's real properties in Quezon City are, under its franchise, exempt from real property tax. (YES)

RULING:

The Court has taken stock of the fact that by virtue of Section 5, Article X of the 1987 Constitution, local governments are empowered to levy taxes. And pursuant to this constitutional empowerment, juxtaposed with Section 232 of the LGC, the Quezon City government enacted in 1993 its local Revenue Code, imposing real property tax on all real properties found within its territorial jurisdiction. And as earlier stated, the City's Revenue Code, just like the LGC, expressly withdrew, under Section 230 thereof, supra, all tax exemption privileges in general.

This thus raises the question of whether or not the City's Revenue Code pursuant to which the city treasurer of Quezon City levied real property taxes against Bayantel's real properties located within the City effectively withdrew the tax exemption enjoyed by Bayantel under its franchise, as amended.

Bayantel answers the poser in the negative arguing that once again it is only "liable to pay the same taxes, as any other persons or corporations on all its real or personal properties, exclusive of its franchise."

Bayantel's posture is well-taken. While the system of local government taxation has changed with the onset of the 1987 Constitution, the power of local government units to tax is still limited. As we explained in Mactan Cebu International Airport Authority:

The power to tax is primarily vested in the Congress; however, in our jurisdiction, it may be exercised by local legislative bodies, no longer merely be virtue of a valid delegation as before, but pursuant to direct authority conferred by Section 5, Article X of the Constitution. Under the latter, the exercise of the power may be subject to such guidelines and limitations as the Congress may provide which, however, must be consistent with the basic policy of local autonomy.

Clearly then, while a new slant on the subject of local taxation now prevails in the sense that the former doctrine of local government units' delegated power to tax had been effectively modified with Article X, Section 5 of the 1987 Constitution now in place, the basic doctrine on local taxation remains essentially the same. For as the Court stressed in Mactan, "the power to tax is [still] primarily vested in the Congress."

This new perspective is best articulated by Fr. Joaquin G. Bernas, S.J., himself a Commissioner of the 1986 Constitutional Commission which crafted the 1987 Constitution, thus:

What is the effect of Section 5 on the fiscal position of municipal corporations? Section 5 does not change the doctrine that municipal corporations do not possess inherent powers of taxation. What it does is to confer municipal corporations a general power to levy taxes and otherwise create sources of revenue. They no longer have to wait for a statutory grant of these powers. The power of the legislative authority relative to the fiscal powers of local governments has been reduced to the authority to impose limitations on municipal powers. Moreover, these limitations must be "consistent with the basic policy of local autonomy." The important legal effect of Section 5 is thus to reverse the principle that doubts are resolved against municipal corporations. Henceforth, in interpreting statutory provisions on municipal fiscal powers, doubts will be resolved in favor of municipal corporations. It is understood, however, that taxes imposed by local government must be for a public purpose, uniform within a locality, must not be confiscatory, and must be within the jurisdiction of the local unit to pass.

In net effect, the controversy presently before the Court involves, at bottom, a clash between the inherent taxing power of the legislature, which necessarily includes the power to exempt, and the local government's delegated power to tax under the aegis of the 1987 Constitution.

Now to go back to the Quezon City Revenue Code which imposed real estate taxes on all real properties within the city's territory and removed exemptions theretofore "previously granted to, or presently enjoyed by all persons, whether natural or juridical ….," there can really be no dispute that the power of the Quezon City Government to tax is limited by Section 232 of the LGC which expressly provides that "a province or city or municipality within the Metropolitan Manila Area may levy an annual ad valorem tax on real property such as land, building, machinery, and other improvement not hereinafter specifically exempted." Under this law, the Legislature highlighted its power to thereafter exempt certain realties from the taxing power of local government units. An interpretation denying Congress such power to exempt would reduce the phrase "not hereinafter specifically exempted" as a pure jargon, without meaning whatsoever. Needless to state, such absurd situation is unacceptable.

For sure, in Philippine Long Distance Telephone Company, Inc. (PLDT) vs. City of Davao, this Court has upheld the power of Congress to grant exemptions over the power of local government units to impose taxes. There, the Court wrote:

Indeed, the grant of taxing powers to local government units under the Constitution and the LGC does not affect the power of Congress to grant exemptions to certain persons, pursuant to a declared national policy. The legal effect of the constitutional grant to local governments simply means that in interpreting statutory provisions on municipal taxing powers, doubts must be resolved in favor of municipal corporations.

As we see it, then, the issue in this case no longer dwells on whether Congress has the power to exempt Bayantel's properties from realty taxes by its enactment of Rep. Act No. 7633 which amended Bayantel's original franchise. The more decisive question turns on whether Congress actually did exempt Bayantel's properties at all by virtue of Section 11 of Rep. Act No. 7633.

Admittedly, Rep. Act No. 7633 was enacted subsequent to the LGC. Perfectly aware that the LGC has already withdrawn Bayantel's former exemption from realty taxes, Congress opted to pass Rep. Act No. 7633 using, under Section 11 thereof, exactly the same defining phrase "exclusive of this franchise" which was the basis for Bayantel's exemption from realty taxes prior to the LGC. In plain language, Section 11 of Rep. Act No. 7633 states that "the grantee, its successors or assigns shall be liable to pay the same taxes on their real estate, buildings and personal property, exclusive of this franchise, as other persons or corporations are now or hereafter may be required by law to pay." The Court views this subsequent piece of legislation as an express and real intention on the part of Congress to once again remove from the LGC's delegated taxing power, all of the franchisee's (Bayantel's) properties that are actually, directly and exclusively used in the pursuit of its franchise.

PEPSI-COLA BOTTLING COMPANY OF THE PHILIPPINES, INC., plaintiff-appellant, vs. MUNICIPALITY OF TANAUAN, LEYTE, THE MUNICIPAL MAYOR, ET AL., defendant appellees.

G.R. No. L-31156, EN BANC, February 27, 1976, MARTIN, J.

The power of taxation is an essential and inherent attribute of sovereignty, belonging as a matter of right to every independent government, without being expressly conferred by the people. ***It is a power that is purely legislative and which the central legislative body cannot delegate either to the executive or judicial department of the government without infringing upon the theory of separation of powers****.* ***The exception, however, lies in the case of municipal corporations, to which, said theory does not apply****. Legislative powers may be delegated to local governments in respect of matters of local concern. This is sanctioned by immemorial practice. By necessary implication, the legislative power to create political corporations for purposes of local self-government carries with it the power to confer on such local governmental agencies the power to tax. Under the New Constitution, local governments are granted the autonomous authority to create their own sources of revenue and to levy taxes. Section 5, Article XI provides: "Each local government unit shall have the power to create its sources of revenue and to levy taxes, subject to such limitations as may be provided by law." Withal, it cannot be said that Section 2 of Republic Act No. 2264 emanated from beyond the sphere of the legislative power to enact and vest in local governments the power of local taxation.*

FACTS:

On February 14, 1963, the plaintiff-appellant, Pepsi-Cola Bottling Company of the Philippines, Inc., commenced a complaint with preliminary injunction before the Court of First Instance of Leyte for that court to declare Section 2 of Republic Act No. 2264, otherwise known as the Local Autonomy Act, unconstitutional as an undue delegation of taxing authority as well as to declare Ordinances Nos. 23 and 27, series of 1962, of the municipality of Tanauan, Leyte, null and void.

On July 23, 1963, the parties entered into a Stipulation of Facts, the material portions of which state that, first, both Ordinances Nos. 23 and 27 embrace or cover the same subject matter and the production tax rates imposed therein are practically the same, and second, that on January 17, 1963, the acting Municipal Treasurer of Tanauan, Leyte, as per his letter addressed to the Manager of the Pepsi-Cola Bottling Plant in said municipality, sought to enforce compliance by the latter of the provisions of said Ordinance No. 27, series of 1962.

Municipal Ordinance No. 23, of Tanauan, Leyte, which was approved on September 25, 1962, levies and collects "from soft drinks producers and manufacturers a tai of one-sixteenth (1/16) of a centavo for every bottle of soft drink corked." For the purpose of computing the taxes due, the person, firm, company or corporation producing soft drinks shall submit to the Municipal Treasurer a monthly report, of the total number of bottles produced and corked during the month.

On the other hand, Municipal Ordinance No. 27, which was approved on October 28, 1962, levies and collects "on soft drinks produced or manufactured within the territorial jurisdiction of this municipality a tax of ONE CENTAVO (P0.01) on each gallon (128 fluid ounces, U.S.) of volume capacity." For the purpose of computing the taxes due, the person, fun company, partnership, corporation or plant producing soft drinks shall submit to the Municipal Treasurer a monthly report of the total number of gallons produced or manufactured during the month.

The tax imposed in both Ordinances Nos. 23 and 27 is denominated as "municipal production tax.'

ISSUE:

Whether Section 2 of Republic Act No. 2264 is an undue delegation of power, confiscatory and oppressive. (NO)

RULING:

The power of taxation is an essential and inherent attribute of sovereignty, belonging as a matter of right to every independent government, without being expressly conferred by the people. It is a power that is purely legislative and which the central legislative body cannot delegate either to the executive or judicial department of the government without infringing upon the theory of separation of powers. The exception, however, lies in the case of municipal corporations, to which, said theory does not apply. Legislative powers may be delegated to local governments in respect of matters of local concern. This is sanctioned by immemorial practice. By necessary implication, the legislative power to create political corporations for purposes of local self-government carries with it the power to confer on such local governmental agencies the power to tax. Under the New Constitution, local governments are granted the autonomous authority to create their own sources of revenue and to levy taxes. Section 5, Article XI provides: "Each local government unit shall have the power to create its sources of revenue and to levy taxes, subject to such limitations as may be provided by law." Withal, it cannot be said that Section 2 of Republic Act No. 2264 emanated from beyond the sphere of the legislative power to enact and vest in local governments the power of local taxation.

The plenary nature of the taxing power thus delegated, contrary to plaintiff-appellant's pretense, would not suffice to invalidate the said law as confiscatory and oppressive. In delegating the authority, the State is not limited 6 the exact measure of that which is exercised by itself. When it is said that the taxing power may be delegated to municipalities and the like, it is meant that there may be delegated such measure of power to impose and collect taxes as the legislature may deem expedient. Thus, municipalities may be permitted to tax subjects which for reasons of public policy the State has not deemed wise to tax for more general purposes. This is not to say though that the constitutional injunction against deprivation of property without due process of law may be passed over under the guise of the taxing power, except when the taking of the property is in the lawful exercise of the taxing power, as when (1) the tax is for a public purpose; (2) the rule on uniformity of taxation is observed; (3) either the person or property taxed is within the jurisdiction of the government levying the tax; and (4) in the assessment and collection of certain kinds of taxes notice and opportunity for hearing are provided. Due process is usually violated where the tax imposed is for a private as distinguished from a public purpose; a tax is imposed on property outside the State, i.e., extraterritorial taxation; and arbitrary or oppressive methods are used in assessing and collecting taxes. But, a tax does not violate the due process clause, as applied to a particular taxpayer, although the purpose of the tax will result in an injury rather than a benefit to such taxpayer. Due process does not require that the property subject to the tax or the amount of tax to be raised should be determined by judicial inquiry, and a notice and hearing as to the amount of the tax and the manner in which it shall be apportioned are generally not necessary to due process of law.

There is no validity to the assertion that the delegated authority can be declared unconstitutional on the theory of double taxation. It must be observed that the delegating authority specifies the limitations and enumerates the taxes over which local taxation may not be exercised. The reason is that the State has exclusively reserved the same for its own prerogative. Moreover, double taxation, in general, is not forbidden by our fundamental law, since We have not adopted as part thereof the injunction against double taxation found in the Constitution of the United States and some states of the Union. Double taxation becomes obnoxious only where the taxpayer is taxed twice for the benefit of the same governmental entity or by the same jurisdiction for the same purpose, but not in a case where one tax is imposed by the State and the other by the city or municipality.

PLANTERS PRODUCTS, INC., Petitioner, vs. FERTIPHIL CORPORATION, Respondent.
G.R. No. 166006, THIRD DIVISION, March 14, 2008, REYES, R.T., J.

An inherent limitation on the power of taxation is public purpose. ***Taxes are exacted only for a public purpose****. They cannot be used for purely private purposes or for the exclusive benefit of private persons. The reason for this is simple. The power to tax exists for the general welfare; hence, implicit in its power is the limitation that it should be used only for a public purpose. It would be a robbery for the State to tax its citizens and use the funds generated for a private purpose. As an old United States case bluntly put it: "To lay with one hand, the power of the government on the property of the citizen, and with the other to bestow it upon favored individuals to aid private enterprises and build up private fortunes, is nonetheless a robbery because it is done under the forms of law and is called taxation."*

Taxes are exacted only for a public purpose. The ₱10 levy is unconstitutional because it was not for a public purpose. The levy was imposed to give undue benefit to PPI.

FACTS:

Petitioner PPI and private respondent Fertiphil are private corporations incorporated under Philippine laws. They are both engaged in the importation and distribution of fertilizers, pesticides and agricultural chemicals.

On June 3, 1985, then President Ferdinand Marcos, exercising his legislative powers, issued LOI No. 1465 which provided, among others, for the imposition of a capital recovery component (CRC) on the domestic sale of all grades of fertilizers in the Philippines. The LOI provides:

3. The Administrator of the Fertilizer Pesticide Authority to include in its fertilizer pricing formula a capital contribution component of not less than ₱10 per bag. This capital contribution shall be collected until adequate capital is raised to make PPI viable. Such capital contribution shall be applied by FPA to all domestic sales of fertilizers in the Philippines.

Pursuant to the LOI, Fertiphil paid ₱10 for every bag of fertilizer it sold in the domestic market to the Fertilizer and Pesticide Authority (FPA). FPA then remitted the amount collected to the Far East Bank and Trust Company, the depositary bank of PPI. Fertiphil paid ₱6,689,144 to FPA from July 8, 1985 to January 24, 1986.

After the 1986 Edsa Revolution, FPA voluntarily stopped the imposition of the ₱10 levy. With the return of democracy, Fertiphil demanded from PPI a refund of the amounts it paid under LOI No. 1465, but PPI refused to accede to the demand.

Fertiphil filed a complaint for collection and damages against FPA and PPI with the RTC in Makati. It questioned the constitutionality of LOI No. 1465 for being unjust, unreasonable, oppressive, invalid and an unlawful imposition that amounted to a denial of due process of law. Fertiphil alleged that the LOI solely favored PPI, a privately owned corporation, which used the proceeds to maintain its monopoly of the fertilizer industry.

In its Answer, FPA, through the Solicitor General, countered that the issuance of LOI No. 1465 was a valid exercise of the police power of the State in ensuring the stability of the fertilizer industry in the country. It also averred that Fertiphil did not sustain any damage from the LOI because the burden imposed by the levy fell on the ultimate consumer, not the seller.

ISSUE:

Whether LOI 1465 is constitutional. (NO)

RULING:

Police power and the power of taxation are inherent powers of the State. These powers are distinct and have different tests for validity. Police power is the power of the State to enact legislation that may interfere with personal liberty or property in order to promote the general welfare,39 while the power of taxation is the power to levy taxes to be used for public purpose. The main purpose of police power is the regulation of a behavior or conduct, while taxation is revenue generation. The "lawful subjects" and "lawful means" tests are used to determine the validity of a law enacted under the police power. The power of taxation, on the other hand, is circumscribed by inherent and constitutional limitations.

We agree with the RTC that the imposition of the levy was an exercise by the State of its taxation power. While it is true that the power of taxation can be used as an implement of police power, the primary purpose of the levy is revenue generation. If the purpose is primarily revenue, or if revenue is, at least, one of the real and substantial purposes, then the exaction is properly called a tax.

Taxation may be made the implement of the state's police power (Lutz v. Araneta, 98 Phil. 148). If the purpose is primarily revenue, or if revenue is, at least, one of the real and substantial purposes, then the exaction is properly called a tax. Such is the case of motor vehicle registration fees. The same provision appears as Section 59(b) in the Land Transportation Code. It is patent therefrom that the legislators had in mind a regulatory tax as the law refers to the imposition on the registration, operation or ownership of a motor vehicle as a "tax or fee." x x x Simply put, if the exaction under Rep. Act 4136 were merely a regulatory fee, the imposition in Rep. Act 5448 need not be an "additional" tax. Rep. Act 4136 also speaks of other "fees" such as the special permit fees for certain types of motor vehicles (Sec. 10) and additional fees for change of registration (Sec. 11). These are not to be understood as taxes because such fees are very minimal to be revenue-raising. Thus, they are not mentioned by Sec. 59(b) of the Code as taxes like the motor vehicle registration fee and chauffeurs' license fee. Such fees are to go into the expenditures of the Land Transportation Commission as provided for in the last proviso of Sec. 61.

The ₱10 levy under LOI No. 1465 is too excessive to serve a mere regulatory purpose. The levy, no doubt, was a big burden on the seller or the ultimate consumer. It increased the price of a bag of fertilizer by as much as five percent. A plain reading of the LOI also supports the conclusion that the levy was for revenue generation. The LOI expressly provided that the levy was imposed "until adequate capital is raised to make PPI viable."

Taxes are exacted only for a public purpose. The ₱10 levy is unconstitutional because it was not for a public purpose. The levy was imposed to give undue benefit to PPI.

An inherent limitation on the power of taxation is public purpose. Taxes are exacted only for a public purpose. They cannot be used for purely private purposes or for the exclusive benefit of private persons. The reason for this is simple. The power to tax exists for the general welfare; hence, implicit in its power is the limitation that it should be used only for a public purpose. It would be a robbery for the State to tax its citizens and use the funds generated for a private purpose. As an old United States case bluntly put it: "To lay with one hand, the power of the government on the property of the citizen, and with the other to bestow it upon favored individuals to aid private enterprises and build up private fortunes, is nonetheless a robbery because it is done under the forms of law and is called taxation."

The term "public purpose" is not defined. It is an elastic concept that can be hammered to fit modern standards. Jurisprudence states that "public purpose" should be given a broad interpretation. It does not only pertain to those purposes which are traditionally viewed as essentially government functions, such as building roads and delivery of basic services, but also includes those purposes designed to promote social justice. Thus, public money may now be used for the relocation of illegal settlers, low-cost housing and urban or agrarian reform.

While the categories of what may constitute a public purpose are continually expanding in light of the expansion of government functions, the inherent requirement that taxes can only be exacted for a public purpose still stands. Public purpose is the heart of a tax law. When a tax law is only a mask to exact funds from the public when its true intent is to give undue benefit and advantage to a private enterprise, that law will not satisfy the requirement of "public purpose."

The purpose of a law is evident from its text or inferable from other secondary sources. Here, We agree with the RTC and that CA that the levy imposed under LOI No. 1465 was not for a public purpose.

First, the LOI expressly provided that the levy be imposed to benefit PPI, a private company. The purpose is explicit from Clause 3 of the law.

Second, the LOI provides that the imposition of the ₱10 levy was conditional and dependent upon PPI becoming financially "viable." This suggests that the levy was actually imposed to benefit PPI. The LOI notably does not fix a maximum amount when PPI is deemed financially "viable." Worse, the liability of Fertiphil and other domestic sellers of fertilizer to pay the levy is made indefinite. They are required to continuously pay the levy until adequate capital is raised for PPI.

Third, the RTC and the CA held that the levies paid under the LOI were directly remitted and deposited by FPA to Far East Bank and Trust Company, the depositary bank of PPI. This proves that PPI benefited from the LOI. It is also proves that the main purpose of the law was to give undue benefit and advantage to PPI.

Fourth, the levy was used to pay the corporate debts of PPI. A reading of the Letter of Understanding dated May 18, 1985 signed by then Prime Minister Cesar Virata reveals that PPI was in deep financial problem because of its huge corporate debts. There were pending petitions for rehabilitation against PPI before the Securities and Exchange Commission. The government guaranteed payment of PPI's debts to its foreign creditors. To fund the payment, President Marcos issued LOI No. 1465.

All told, the RTC and the CA did not err in holding that the levy imposed under LOI No. 1465 was not for a public purpose. LOI No. 1465 failed to comply with the public purpose requirement for tax laws.

ATLAS CONSOLIDATED MINING AND DEVELOPMENT CORPORATION, petitioner, vs. COMMISSIONER OF INTERNAL REVENUE, respondent.
G.R. Nos. 141104 & 148763, THIRD DIVISION, June 8, 2007, CHICO-NAZARIO, J.

Such tax treatment of goods brought into the export processing zones are only consistent with the Destination Principle and Cross Border Doctrine to which the Philippine VAT system adheres. According to the ***Destination Principle, goods and services are taxed only in the country where these are consumed****. In connection with the said principle, the* ***Cross Border Doctrine mandates that no VAT shall be imposed to form part of the cost of the goods destined for consumption outside the territorial border of the taxing authority****. Hence, actual export of goods and services from the Philippines to a foreign country must be free of VAT, while those destined for use or consumption within the Philippines shall be imposed with 10% VAT.* ***Export processing zones are to be managed as a separate customs territory from the rest of the Philippines and, thus, for tax purposes, are effectively considered as foreign territory****. For this reason, sales by persons from the Philippine customs territory to those inside the export processing zones are already taxed as exports.*

Plainly, sales to enterprises operating within the export processing zones are export sales, which, under the Tax Code of 1977, as amended, were subject to 0% VAT. It is on this ground that petitioner corporation is claiming refund/credit of the input VAT on its zero-rated sales to PASAR and PHILPHOS.

FACTS:
Petitioner corporation filed with the BIR its VAT Return for the first quarter of 1992. It alleged that it likewise filed with the BIR the corresponding application for the refund/credit of its input VAT on its purchases of capital goods and on its zero-rated sales in the amount of P26,030,460.00. When its application for refund/credit remained unresolved by the BIR, petitioner corporation filed on 20 April 1994 its Petition for Review with the CTA, docketed as CTA Case No. 5102. Asserting that it was a "zero-rated VAT person," it prayed that the CTA order herein respondent Commissioner of Internal Revenue (respondent Commissioner) to refund/credit petitioner corporation with the amount of P26,030,460.00, representing the input VAT it had paid for the first quarter of 1992. The respondent Commissioner opposed and sought the dismissal of the petition for review of petitioner corporation for failure to state a cause of action.

Petitioner corporation questions the validity of Revenue Regulations No. 2-88 averring that the said regulations imposed additional requirements, not found in the law itself, for the zero-rating of its sales to Philippine Smelting and Refining Corporation (PASAR) and Philippine Phosphate, Inc. (PHILPHOS), both of which are registered not only with the BOI, but also with the then Export Processing Zone Authority (EPZA).

It is the position of the respondent Commissioner, affirmed by the CTA and the Court of Appeals, that Section 2 of Revenue Regulations No. 2-88 should be applied in the cases at bar; and to be entitled to the zero-rating of its sales to PASAR and PHILPHOS, petitioner corporation, as a VAT-registered seller, must be able to prove not only that PASAR and PHILPHOS are BOI-registered corporations, but also that more than 70% of the total annual production of these corporations are actually exported. Revenue Regulations No. 2-88 merely echoed the requirement imposed by the BOI on export-oriented corporations registered with it.

ISSUE:

Whether sales to enterprises operating within the export processing zones are export sales. (YES)

RULING:

Without actual exportation, Article 23 of the Omnibus Investments Code of 1987 also considers constructive exportation as export sales. Among other types of constructive exportation specifically identified by the said provision are sales to export processing zones. Sales to export processing zones are subjected to special tax treatment. Article 77 of the same Code establishes the tax treatment of goods or merchandise brought into the export processing zones. Of particular relevance herein is paragraph 2, which provides that "Merchandise purchased by a registered zone enterprise from the customs territory and subsequently brought into the zone, shall be considered as export sales and the exporter thereof shall be entitled to the benefits allowed by law for such transaction."

Such tax treatment of goods brought into the export processing zones are only consistent with the Destination Principle and Cross Border Doctrine to which the Philippine VAT system adheres. According to the Destination Principle, goods and services are taxed only in the country where these are consumed. In connection with the said principle, the Cross Border Doctrine mandates that no VAT shall be imposed to form part of the cost of the goods destined for consumption outside the territorial border of the taxing authority. Hence, actual export of goods and services from the Philippines to a foreign country must be free of VAT, while those destined for use or consumption within the Philippines shall be imposed with 10% VAT. Export processing zones are to be managed as a separate customs territory from the rest of the Philippines and, thus, for tax purposes, are effectively considered as foreign territory. For this reason, sales by persons from the Philippine customs territory to those inside the export processing zones are already taxed as exports.

Plainly, sales to enterprises operating within the export processing zones are export sales, which, under the Tax Code of 1977, as amended, were subject to 0% VAT. It is on this ground that petitioner corporation is claiming refund/credit of the input VAT on its zero-rated sales to PASAR and PHILPHOS.

The distinction made by this Court in the preceding paragraphs between the zero-rated sales to export-oriented BOI-registered enterprises and zero-rated sales to EPZA-registered enterprises operating within export processing zones is actually supported by subsequent development in tax laws and regulations. In Revenue Regulations No. 7-95, the Consolidated VAT Regulations, as amended, the BIR defined with more precision what are zero-rated export sales –

(1) The sale and actual shipment of goods from the Philippines to a foreign country, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the goods so exported paid for in acceptable foreign currency or its equivalent in goods or services, and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);

(2) The sale of raw materials or packaging materials to a non-resident buyer for delivery to a resident local export-oriented enterprise to be used in manufacturing, processing, packing or repacking in the Philippines of the said buyer's goods and paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);

(3) The sale of raw materials or packaging materials to an export-oriented enterprise whose export sales exceed seventy percent (70%) of total annual production;

Any enterprise whose export sales exceed 70% of the total annual production of the preceding taxable year shall be considered an export-oriented enterprise upon accreditation as such under the provisions of the Export Development Act (R.A. 7844) and its implementing rules and regulations;

(4) Sale of gold to the Bangko Sentral ng Pilipinas (BSP); and

(5) Those considered export sales under Articles 23 and 77 of Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1987, and other special laws, e.g. Republic Act No. 7227, otherwise known as the Bases Conversion and Development Act of 1992.

The Tax Code of 1997, as amended, later adopted the foregoing definition of export sales, which are subject to 0% VAT.

This Court then reiterates its conclusion that Section 2 of Revenue Regulations No. 2-88, which applied to zero-rated export sales to export-oriented BOI-registered enterprises, should not be applied to the applications for refund/credit of input VAT filed by petitioner corporation since it based its applications on the zero-rating of export sales to enterprises registered with the EPZA and located within export processing zones.

COMMISSIONER OF INTERNAL REVENUE, petitioner, vs. MITSUBISHI METAL CORPORATION, ATLAS CONSOLIDATED MINING AND DEVELOPMENT CORPORATION and the COURT OF TAX APPEALS, respondents.
G.R. No. L-54908, SECOND DIVISION, January 22, 1990, REGALADO, J.

COMMISSIONER OF INTERNAL REVENUE, petitioner, vs. MITSUBISHI METAL CORPORATION, ATLAS CONSOLIDATED MINING AND DEVELOPMENT CORPORATION and the COURT OF TAX APPEALS, respondents.
G.R. No. 80041, SECOND DIVISION, January 22, 1990, REGALADO, J.

It is too settled a rule in this jurisdiction, as to dispense with the need for citations, that ***laws granting exemption from tax are construed strictissimi juris against the taxpayer and liberally in favor of the taxing power****. Taxation is the rule and exemption is the exception.* ***The burden of proof rests upon the party claiming exemption to prove that it is in fact covered by the exemption so claimed, which onus petitioners have failed to discharge****. Significantly, private respondents are not even among the entities which, under Section 29 (b) (7) (A) of the tax code, are entitled to exemption and which should indispensably be the party in interest in this case.*

Definitely, the taxability of a party cannot be blandly glossed over on the basis of a supposed "broad, pragmatic analysis" alone without substantial supportive evidence, lest governmental operations suffer due to diminution of much needed funds. Nor can we close this discussion without taking cognizance of petitioner's warning, of pervasive relevance at this time, that ***while international comity is invoked in this case on the nebulous representation that the funds involved in the loans are those of a foreign government, scrupulous care must be taken to avoid opening the floodgates to the violation of our tax laws****. Otherwise, the mere expedient of having a Philippine corporation enter into a contract for loans or other domestic securities with private foreign entities, which in turn will negotiate independently with their governments, could be availed of to take advantage of the tax exemption law under discussion.*

FACTS:

The records reflect that on April 17, 1970, Atlas Consolidated Mining and Development Corporation (hereinafter, Atlas) entered into a Loan and Sales Contract with Mitsubishi Metal Corporation (Mitsubishi, for brevity), a Japanese corporation licensed to engage in business in the Philippines, for purposes of the projected expansion of the productive capacity of the former's mines in Toledo, Cebu. Under said contract, Mitsubishi agreed to extend a loan to Atlas 'in the amount of $20,000,000.00, United States currency, for the installation of a new concentrator for copper production. Atlas, in turn undertook to sell to Mitsubishi all the copper concentrates produced from said machine for a period of fifteen (15) years. It was contemplated that $9,000,000.00 of said loan was to be used for the purchase of the concentrator machinery from Japan.

Mitsubishi thereafter applied for a loan with the Export-Import Bank of Japan (Eximbank for short) obviously for purposes of its obligation under said contract. Its loan application was approved on May 26, 1970 in the sum of ¥4,320,000,000.00, at about the same time as the approval of its loan for ¥2,880,000,000.00 from a consortium of Japanese banks. The total amount of both loans is equivalent to $20,000,000.00 in United States currency at the then prevailing exchange rate. The records in the Bureau of Internal Revenue show that the approval of the loan by Eximbank to Mitsubishi was subject to the condition that Mitsubishi would use the amount as a loan to Atlas and as a consideration for importing copper concentrates from Atlas, and that Mitsubishi had to pay back the total amount of loan by September 30, 1981.

Pursuant to the contract between Atlas and Mitsubishi, interest payments were made by the former to the latter totalling P13,143,966.79 for the years 1974 and 1975. The corresponding 15% tax thereon in the amount of P1,971,595.01 was withheld pursuant to Section 24 (b) (1) and Section 53 (b) (2) of the National Internal Revenue Code, as amended by Presidential Decree No. 131, and duly remitted to the Government.

On March 5, 1976, private respondents filed a claim for tax credit requesting that the sum of P1,971,595.01 be applied against their existing and future tax liabilities.

The petitioner not having acted on the claim for tax credit, on April 23, 1976 private respondents filed a petition for review with respondent court. The petition was grounded on the claim that Mitsubishi was a mere agent of Eximbank, which is a financing institution owned, controlled and financed by the Japanese Government. Such governmental status of Eximbank, if it may be so called, is the basis for private repondents' claim for exemption from paying the tax on the interest payments on the loan as earlier stated. It was further claimed that the interest payments on the loan from the consortium of Japanese banks were likewise exempt because said loan supposedly came from or were financed by Eximbank. The provision of the National Internal Revenue Code relied upon is Section 29 (b) (7) (A), 6 which excludes from gross income:

A. Income received from their investments in the Philippines in loans, stocks, bonds or other domestic securities, or from interest on their deposits in banks in the Philippines by (1) foreign governments, (2) financing institutions owned, controlled, or enjoying refinancing from them, and (3) international or regional financing institutions established by governments.

ISSUE:

Whether or not Mitsubishi is a mere conduit of Eximbank which will then be considered as the creditor whose investments in the Philippines on loans are exempt from taxes under the code. (NO)

RULING:

Respondents postulate that Mitsubishi had to be a conduit because Eximbank's charter prevents it from making loans except to Japanese individuals and corporations. We are not impressed. Not only is there a failure to establish such submission by adequate evidence but it posits the unfair and unexplained imputation that, for reasons subject only of surmise, said financing institution would deliberately circumvent its own charter to accommodate an alien borrower through a manipulated subterfuge, but with it as a principal and the real obligee.

The allegation that the interest paid by Atlas was remitted in full by Mitsubishi to Eximbank, assuming the truth thereof, is too tenuous and conjectural to support the proposition that Mitsubishi is a mere conduit. Furthermore, the remittance of the interest payments may also be logically viewed as an arrangement in paying Mitsubishi's obligation to Eximbank. Whatever arrangement was agreed upon by Eximbank and Mitsubishi as to the manner or procedure for the payment of the latter's obligation is their own concern. It should also be noted that Eximbank's loan to Mitsubishi imposes interest at the rate of 75% per annum, while Mitsubishis contract with Atlas merely states that the "interest on the amount of the loan shall be the actual cost beginning from and including other dates of releases against loan."

It is too settled a rule in this jurisdiction, as to dispense with the need for citations, that laws granting exemption from tax are construed strictissimi juris against the taxpayer and liberally in favor of the taxing power. Taxation is the rule and exemption is the exception. The burden of proof rests upon the party claiming exemption to prove that it is in fact covered by the exemption so claimed, which onus petitioners have failed to discharge. Significantly, private respondents are not even among the entities which, under Section 29 (b) (7) (A) of the tax code, are entitled to exemption and which should indispensably be the party in interest in this case.

Definitely, the taxability of a party cannot be blandly glossed over on the basis of a supposed "broad, pragmatic analysis" alone without substantial supportive evidence, lest governmental operations suffer due to diminution of much needed funds. Nor can we close this discussion without taking cognizance of petitioner's warning, of pervasive relevance at this time, that while international comity is invoked in this case on the nebulous representation that the funds involved in the loans are those of a foreign government, scrupulous care must be taken to avoid opening the floodgates to the violation of our tax laws. Otherwise, the mere expedient of having a Philippine corporation enter into a contract for loans or other domestic securities with private foreign entities, which in turn will negotiate independently with their governments, could be availed of to take advantage of the tax exemption law under discussion.

CBK POWER COMPANY LIMITED, Petitioner, v. COMMISSIONER OF INTERNAL REVENUE, Respondent.
G.R. Nos. 193383-84, FIRST DIVISION, January 14, 2015, PERLAS-BERNABE, J.

Bearing in mind the rationale of tax treaties, the period of application for the availment of tax treaty relief as required by RMO No. 1-2000 ***should not operate to divest entitlement to the relief*** *as it would constitute a* ***violation of the duty*** *required by good faith in complying with a tax treaty. The denial of the availment of tax relief for the failure of a taxpayer to apply within the prescribed period under the administrative issuance would* ***impair the value*** *of the tax treaty. At most, the application for a tax treaty relief from the BIR should* ***merely operate to confirm*** *the entitlement of the taxpayer to the relief.*

The obligation to comply with a tax treaty must take precedence over the objective of RMO No. 1-2000*. Logically, noncompliance with tax treaties has negative implications on international relations, and unduly discourages foreign investors. While the consequences sought to be prevented by RMO No. 1-2000 involve an administrative procedure, these may be remedied through other system management processes, e.g., the imposition of a fine or penalty.* ***But we cannot totally deprive those who are entitled to the benefit of a treaty for failure to strictly comply with an administrative issuance requiring prior application for tax treaty relief****.*

FACTS:

CBK Power is a limited partnership duly organized and existing under the laws of the Philippines, and primarily engaged in the development and operation of hydroelectric power generating plants in Laguna. It is registered with the Board of Investments (BOI) as engaged in a preferred pioneer area of investment under the Omnibus Investment Code of 1987.

In February 2001, CBK Power borrowed money from Industrial Bank of Japan, Fortis-Netherlands, Raiffesen Bank, Fortis-Belgium, and Mizuho Bank for which it remitted interest payments from May 2001 to May 2003. It allegedly withheld final taxes from said payments based on the following rates, and paid the same to the Revenue District Office No. 55 of the Bureau of Internal Revenue (BIR): (a) fifteen percent (15%) for Fortis-Belgium, Fortis-Netherlands, and Raiffesen Bank; and (b) twenty percent (20%) for Industrial Bank of Japan and Mizuho Bank.12chanRoblesvirtualLawlibrary

However, according to CBK Power, under the relevant tax treaties between the Philippines and the respective countries in which each of the banks is a resident, the interest income derived by the aforementioned banks are subject only to a preferential tax rate of 10%.

Accordingly, on April 14, 2003, CBK Power filed a claim for refund of its excess final withholding taxes allegedly erroneously withheld and collected for the years 2001 and 2002 with the BIR Revenue Region No. 9. The claim for refund of excess final withholding taxes in 2003 was subsequently filed on March 4, 2005.

The Commissioner of Internal Revenue's (Commissioner) inaction on said claims prompted CBK Power to file petitions for review before the CTA.

The CTA First Division granted the petitions and ordered the refund of the amount of P15,672,958.42 upon a finding that the relevant tax treaties were applicable to the case. The CTA First Division categorically declared in the August 28, 2008 Decision that the required International Tax Affairs Division (ITAD) ruling was not a condition sine qua non for the entitlement of the tax relief sought by CBK Power. However, upon motion for reconsideration filed by the Commissioner, the CTA First Division amended its earlier decision by reducing the amount of the refund from P15,672,958.42 to P14,835,720.39 on the ground that CBK Power failed to obtain an ITAD ruling with respect to its transactions with Fortis-Netherlands.

CBK Power elevated the matter to the CTA En Banc on petition for review.

The CTA En Banc affirmed the ruling of the CTA First Division that a prior application with the ITAD is indeed required by Revenue Memorandum Order (RMO) 1-2000, which administrative issuance has the force and effect of law and is just as binding as a tax treaty.

ISSUE:

Whether the BIR may add a requirement – prior application for an ITAD ruling – that is not found in the income tax treaties signed by the Philippines before a taxpayer can avail of preferential tax rates under said treaties. (NO)

RULING:

The Philippine Constitution provides for adherence to the general principles of international law as part of the law of the land. The time-honored international principle of pacta sunt servanda demands the performance in good faith of treaty obligations on the part of the states that enter into the agreement. In this jurisdiction, treaties have the force and effect of law.

The issue of whether the failure to strictly comply with RMO No. 1-2000 will deprive persons or corporations of the benefit of a tax treaty was squarely addressed in the recent case of Deutsche Bank AG Manila Branch v. Commissioner of Internal Revenue (Deutsche Bank), where the Court emphasized that the obligation to comply with a tax treaty must take precedence over the objective of RMO No. 1-2000, viz.:

We recognize the clear intention of the BIR in implementing RMO No. 1-2000, but the CTA's outright denial of a tax treaty relief for failure to strictly comply with the prescribed period is not in harmony with the objectives of the contracting state to ensure that the benefits granted under tax treaties are enjoyed by duly entitled persons or corporations.

Bearing in mind the rationale of tax treaties, the period of application for the availment of tax treaty relief as required by RMO No. 1-2000 **should not operate to divest entitlement to the relief** as it would constitute a **violation of the duty** required by good faith in complying with a tax treaty. The denial of the availment of tax relief for the failure of a taxpayer to apply within the prescribed period under the administrative issuance would **impair the value** of the tax treaty. At most, the application for a tax treaty relief from the BIR should **merely operate to confirm** the entitlement of the taxpayer to the relief.

The obligation to comply with a tax treaty must take precedence over the objective of RMO No. 1-2000. Logically, noncompliance with tax treaties has negative implications on international relations, and unduly discourages foreign investors. While the consequences sought to be prevented by RMO No. 1-2000 involve an administrative procedure, these may be remedied through other system management processes, e.g., the imposition of a fine or penalty. **But we cannot totally deprive those who are entitled to the benefit of a treaty for failure to strictly comply with an administrative issuance requiring prior application for tax treaty relief**.

The objective of RMO No. 1-2000 in requiring the application for treaty relief with the ITAD before a party's availment of the preferential rate under a tax treaty is to avert the consequences of any erroneous interpretation and/or application of treaty provisions, such as claims for refund/credit for overpayment of taxes, or deficiency tax liabilities for underpayment. However, as pointed out in Deutsche Bank, the underlying principle of prior application with the BIR becomes moot in refund cases – as in the present case – where the very basis of the claim is erroneous or there is excessive payment arising from the non-availment of a tax treaty relief at the first instance. Just as Deutsche Bank was not faulted by the Court for not complying with RMO No. 1-2000 prior to the transaction, so should CBK Power. In parallel, CBK Power could not have applied for a tax treaty relief 15 days prior to its payment of the final withholding tax on the interest paid to its lenders precisely because it erroneously paid said tax on the basis of the regular rate as prescribed by the NIRC, and not on the preferential tax rate provided under the different treaties. As stressed by the Court, the prior application requirement under RMO No. 1-2000 then becomes illogical.

Not only is the requirement illogical, but it is also an imposition that is not found at all in the applicable tax treaties. In Deutsche Bank, the Court categorically held that the BIR should not impose additional requirements that would negate the availment of the reliefs provided for under international agreements, especially since said tax treaties do not provide for any prerequisite at all for the availment of the benefits under said agreements.

It bears reiterating that the application for a tax treaty relief from the BIR should merely operate to confirm the entitlement of the taxpayer to the relief. Since CBK Power had requested for confirmation from the ITAD on June 8, 2001 and October 28, 2002 before it filed on April 14, 2003 its administrative claim for refund of its excess final withholding taxes, the same should be deemed substantial compliance with RMO No. 1-2000, as in Deutsche Bank. To rule otherwise would defeat the purpose of Section 229 of the NIRC in providing the taxpayer a remedy for erroneously paid tax solely on the ground of failure to make prior application for tax treaty relief. As the Court exhorted in Republic v. GST Philippines, Inc., while the taxpayer has an obligation to honestly pay the right taxes, the government has a corollary duty to implement tax laws in good faith; to discharge its duty to collect what is due to it; and to justly return what has been erroneously and excessively given to it.

In view of the foregoing, the Court holds that the CTA En Banc committed reversible error in affirming the reduction of the amount of refund to CBK Power from P15,672,958.42 to P14,835,720.39 to exclude its transactions with Fortis-Netherlands for which no ITAD ruling was obtained. CBK Power's petition in G.R. Nos. 193383-84 is therefore granted.

ABAKADA GURO PARTY LIST (Formerly AASJAS) OFFICERS SAMSON S. ALCANTARA and ED VINCENT S. ALBANO, Petitioners, vs.THE HONORABLE EXECUTIVE SECRETARY EDUARDO ERMITA; HONORABLE SECRETARY OF THE DEPARTMENT OF FINANCE CESAR PURISIMA; and HONORABLE COMMISSIONER OF INTERNAL REVENUE GUILLERMO PARAYNO, JR., Respondent.
G.R. No. 168056, EN BANC, September 1, 2005, AUSTRIA-MARTINEZ, *J.*

There is no undue delegation of legislative power but only of the discretion as to the execution of a law. This is constitutionally permissible*. Congress does not abdicate its functions or unduly delegate power when it describes what job must be done, who must do it, and what is the scope of his authority; in our complex economy that is frequently the only way in which the legislative process can go forward.*

The case before the Court is not a delegation of legislative power. It is simply a delegation of ascertainment of facts upon which enforcement and administration of the increase rate under the law is contingent. The legislature has made the operation of the 12% rate effective January 1, 2006, contingent upon a specified fact or condition. It leaves the entire operation or non-operation of the 12% rate upon factual matters outside of the control of the executive.

FACTS:

Petitioners assail sections 4 to 6 of Republic Act No. 9337 as violative of the principle of non-delegation of legislative power. These sections authorize the President, upon recommendation of the Secretary of Finance, to raise the value-added tax (VAT) rate to 12% effective January 1, 2006, upon satisfaction of the following conditions: viz:

(i) Value-added tax collection as a percentage of Gross Domestic Product (GDP) of the previous year exceeds two and four-fifth percent (2 4/5%); or

(ii) National government deficit as a percentage of GDP of the previous year exceeds one and one-half percent (1 ½%).

On the other hand, respondents contend that there is no undue delegation of legislative power since the law is complete and leaves no discretion to the President but to increase the rate to 12% once any of the two conditions provided therein arise.

ISSUE:

Whether sections 4 to 6 of Republic Act No. 9337 are unconstitutional for being violative of the principle of non-delegation of legislative power. (NO)

RULING:

The case before the Court is not a delegation of legislative power. It is simply a delegation of ascertainment of facts upon which enforcement and administration of the increase rate under the law is contingent. The legislature has made the operation of the 12% rate effective January 1, 2006, contingent upon a specified fact or condition. It leaves the entire operation or non-operation of the 12% rate upon factual matters outside of the control of the executive.

No discretion would be exercised by the President. Highlighting the absence of discretion is the fact that the word shall is used in the common proviso. The use of the word shall connotes a mandatory order. Its use in a statute denotes an imperative obligation and is inconsistent with the idea of discretion. Where the law is clear and unambiguous, it must be taken to mean exactly what it says, and courts have no choice but to see to it that the mandate is obeyed.

Thus, it is the ministerial duty of the President to immediately impose the 12% rate upon the existence of any of the conditions specified by Congress. This is a duty which cannot be evaded by the President. Inasmuch as the law specifically uses the word shall, the exercise of discretion by the President does not come into play. It is a clear directive to impose the 12% VAT rate when the specified conditions are present. The time of taking into effect of the 12% VAT rate is based on the happening of a certain specified contingency, or upon the ascertainment of certain facts or conditions by a person or body other than the legislature itself.

The Court finds no merit to the contention of petitioners ABAKADA GURO Party List, et al. that the law effectively nullified the President's power of control over the Secretary of Finance by mandating the fixing of the tax rate by the President upon the recommendation of the Secretary of Finance.

When one speaks of the Secretary of Finance as the alter ego of the President, it simply means that as head of the Department of Finance he is the assistant and agent of the Chief Executive. The multifarious executive and administrative functions of the Chief Executive are performed by and through the executive departments, and the acts of the secretaries of such departments, such as the Department of Finance, performed and promulgated in the regular course of business, are, unless disapproved or reprobated by the Chief Executive, presumptively the acts of the Chief Executive. The Secretary of Finance, as such, occupies a political position and holds office in an advisory capacity, and, in the language of Thomas Jefferson, "should be of the President's bosom confidence" and, in the language of Attorney-General Cushing, is "subject to the direction of the President."

In the present case, in making his recommendation to the President on the existence of either of the two conditions, the Secretary of Finance is not acting as the alter ego of the President or even her subordinate. In such instance, he is not subject to the power of control and direction of the President. He is acting as the agent of the legislative department, to determine and declare the event upon which its expressed will is to take effect. The Secretary of Finance becomes the means or tool by which legislative policy is determined and implemented, considering that he possesses all the facilities to gather data and information and has a much broader perspective to properly evaluate them. His function is to gather and collate statistical data and other pertinent information and verify if any of the two conditions laid out by Congress is present. His personality in such instance is in reality but a projection of that of Congress. Thus, being the agent of Congress and not of the President, the President cannot alter or modify or nullify, or set aside the findings of the Secretary of Finance and to substitute the judgment of the former for that of the latter.

Congress simply granted the Secretary of Finance the authority to ascertain the existence of a fact, namely, whether by December 31, 2005, the value-added tax collection as a percentage of Gross Domestic Product (GDP) of the previous year exceeds two and four-fifth percent (24/5%) or the national government deficit as a percentage of GDP of the previous year exceeds one and one-half percent (1½%). If either of these two instances has occurred, the Secretary of Finance, by legislative mandate, must submit such information to the President. Then the 12% VAT rate must be imposed by the President effective January 1, 2006. There is no undue delegation of legislative power but only of the discretion as to the execution of a law. This is constitutionally permissible. Congress does not abdicate its functions or unduly delegate power when it describes what job must be done, who must do it, and what is the scope of his authority; in our complex economy that is frequently the only way in which the legislative process can go forward.

SOUTHERN CROSS CEMENT CORPORATION, *Petitioners*, *v.* CEMENT MANUFACTURERS ASSOCIATION OF THE PHILIPPINES, THE SECRETARY OF THE DEPARTMENT OF TRADE AND INDUSTRY, THE SECRETARY OF THE DEPARTMENT OF FINANCE and THE COMMISSIONER OF THE BUREAU OF CUSTOMS, *Respondent*.

G.R. NO. 158540, EN BANC, August 3, 2005, PANGANIBAN, *J.*

Section 5 plainly evinces legislative intent to restrict the DTI Secretary's power to impose a general safeguard measure by preconditioning such imposition on a positive determination by the Tariff Commission. Such legislative intent should be given full force and effect, as the executive power to impose definitive safeguard measures is but a delegated power. The power of taxation, by nature and by command of the fundamental law, being a preserve of the legislature. ***Section 28(2), Article VI of the 1987 Constitution confirms the delegation of legislative power, yet ensures that the prerogative of Congress to impose limitations and restrictions on the executive exercise of this power:***

The Congress may, by law, authorize the President to fix within specified limits, and subject to such limitations and restrictions as it may impose, tariff rates, import and export quotas, tonnage and wharfage dues, and other duties or imposts within the framework of the national development program of the Government.

This delegation of the taxation power by the legislative to the executive is authorized by the Constitution itself. ***At the same time, the Constitution also grants the delegating authority (Congress) the right to impose restrictions and limitations on the taxation power delegated to the President****. The restrictions and limitations imposed by Congress take on the mantle of a constitutional command, which the executive branch is obliged to observe.*

The SMA empowered the DTI Secretary, as alter ego of the President, to impose definitive general safeguard measures, which basically are tariff imposts of the type spoken of in the Constitution. However, the law did not grant him full, uninhibited discretion to impose such measures. The DTI Secretary authority is derived from the SMA; it does not flow from any inherent executive power. Thus, the limitations imposed by Section 5 are absolute, warranted as they are by a constitutional fiat.

FACTS:

The case centers on the interpretation of provisions of Republic Act No. 8800, the Safeguard Measures Act ("SMA"), which was one of the laws enacted by Congress soon after the Philippines ratified the General Agreement on Tariff and Trade (GATT) and the World Trade Organization (WTO) Agreement. The SMA provides the structure and mechanics for the imposition of emergency measures, including tariffs, to protect domestic industries and producers from increased imports, which inflict or could inflict serious injury on them.

Philcemcor, an association of at least eighteen (18) domestic cement manufacturers filed with the DTI a petition seeking the imposition of safeguard measures on gray Portland cement, in accordance with the SMA. After the DTI issued a provisional safeguard measure, the application was referred to the Tariff Commission for a formal investigation pursuant to Section 9 of the SMA and its Implementing Rules and Regulations, in order to determine whether or not to impose a definitive safeguard measure on imports of gray Portland cement.

The DTI sought the opinion of the Secretary of Justice whether it could still impose a definitive safeguard measure notwithstanding the negative finding of the Tariff Commission. After the Secretary of Justice opined that the DTI could not do so under the SMA, the DTI Secretary then promulgated a decision wherein he expressed the DTI's disagreement with the conclusions of the Tariff Commission, but at the same time, ultimately denying Philcemcor's application for safeguard measures on the ground that the he was bound to do so in light of the Tariff Commission's negative findings.

Philcemcor challenged this decision of the DTI Secretary by filing with the Court of Appeals a Petition for Certiorari, Prohibition and Mandamus seeking to set aside the DTI Decision, as well as the Tariff Commission's Report. The Court of Appeals partially granted Philcemcor's petition. The appellate court ruled that it had jurisdiction over the petition for certiorari since it alleged grave abuse of discretion. While it refused to annul the findings of the Tariff Commission, it also held that the DTI Secretary was not bound by the factual findings of the Tariff Commission since such findings are merely recommendatory and they fall within the ambit of the Secretary's discretionary review. It determined that the legislative intent is to grant the DTI Secretary the power to make a final decision on the Tariff Commission's recommendation.

ISSUE:

Whether the DTI Secretary may impose general safeguard measures in the absence of a positive final determination by the Tariff Commission. (NO)

RULING:

Undoubtedly, Section 13 prescribes certain limitations and restrictions before general safeguard measures may be imposed. However, the most fundamental restriction on the DTI Secretary's power in that respect is contained in Section 5 of the SMA that there should first be a positive final determination of the Tariff Commission which the Court of Appeals curiously all but ignored. Section 5 reads:

Sec. 5. Conditions for the Application of General Safeguard Measures. – The Secretary shall apply a general safeguard measure **upon a positive final determination of the [Tariff] Commission** that a product is being imported into the country in increased quantities, whether absolute or relative to the domestic production, as to be a substantial cause of serious injury or threat thereof to the domestic industry; however, in the case of non-agricultural products, the Secretary shall first establish that the application of such safeguard measures will be in the public interest.

Section 5 plainly evinces legislative intent to restrict the DTI Secretary's power to impose a general safeguard measure by preconditioning such imposition on a positive determination by the Tariff Commission. Such legislative intent should be given full force and effect, as the executive power to impose definitive safeguard measures is but a delegated power. The power of taxation, by nature and by command of the fundamental law, being a preserve of the legislature. Section 28(2), Article VI of the 1987 Constitution confirms the delegation of legislative power, yet ensures that the prerogative of Congress to impose limitations and restrictions on the executive exercise of this power:

The Congress may, by law, authorize the President to fix within specified limits, and subject to such limitations and restrictions as it may impose, tariff rates, import and export quotas, tonnage and wharfage dues, and other duties or imposts within the framework of the national development program of the Government.

The safeguard measures which the DTI Secretary may impose under the SMA may take the following variations, to wit: (a) an increase in, or imposition of any duty on the imported product; (b) a decrease in or the imposition of a tariff-rate quota on the product; (c) a modification or imposition of any quantitative restriction on the importation of the product into the Philippines; (d) one or more appropriate adjustment measures, including the provision of trade adjustment assistance; and € any combination of the above-described actions. Except for the provision of trade adjustment assistance, the measures enumerated by the SMA are essentially imposts, which precisely are the subject of delegation under Section 28(2), Article VI of the 1987 Constitution.

This delegation of the taxation power by the legislative to the executive is authorized by the Constitution itself. At the same time, the Constitution also grants the delegating authority (Congress) the right to impose restrictions and limitations on the taxation power delegated to the President. The restrictions and limitations imposed by Congress take on the mantle of a constitutional command, which the executive branch is obliged to observe.

The SMA empowered the DTI Secretary, as alter ego of the President, to impose definitive general safeguard measures, which basically are tariff imposts of the type spoken of in the Constitution. However, the law did not grant him full, uninhibited discretion to impose such measures. The DTI Secretary authority is derived from the SMA; it does not flow from any inherent executive power. Thus, the limitations imposed by Section 5 are absolute, warranted as they are by a constitutional fiat.

CAMARINES NORTE ELECTRIC COOPERATIVE, INC. (CANORECO); RUBEN, N. BARRAMEDA; ELVIS L. ESPIRITU; MERARDO G. ENERO, JR.; MERCELITO B. ABAS; and REYNALDO V. ABUNDO, Petitioners vs. HON. RUBEN D. TORRES, in his capacity as Executive Secretary; REX TANTIONGCO; HONESTO DE JESUS; ANDRES IBASCO; TEODULO M. MEA; and VICENTE LUKBAN, Respondents.

G.R. No. 127249, EN BANC, February 27, 1998, DAVIDE, JR., *J.*

Neither can police power be invoked to clothe with validity the assailed Memorandum Order No. 409. Police power is the power inherent in a government to enact laws, within constitutional limits, to promote the order, safety, health, morals, and general welfare of society. It is lodged primarily in the legislature. ***By virtue of a valid delegation of legislative power, it may also be exercised by the President*** *and administrative boards, as well as the lawmaking bodies on all municipal levels, including the barangay.* ***Delegation of legislative powers to the President is permitted in Sections 23(2) and 28(2) of Article VI of the Constitution****. The pertinent laws on cooperatives, namely, R.A. No. 6938, R.A. No. 6939, and P.D. No. 269 as amended by P.D. No. 1645* ***do not provide for the President*** *or any other administrative body to take over the internal management of a cooperative.*

We do not then hesitate to rule that Memorandum Order No. 409 has no constitutional and statutory basis. It violates the basic underlying principle enshrined in Article 4(2) of R.A. No. 6938 that cooperatives are democratic organizations and that their affairs shall be administered by persons elected or appointed in a manner agreed upon by the members.

FACTS:

Petitioner CANORECO is an electric cooperative organized under the provisions of P.D. No. 269, otherwise known as the National Electrification Administration Decree, as amended by P.D. No. 1645.

On 3 December 1996, the President of the Philippines issued Memorandum Order No. 409 constituting an Ad Hoc Committee to temporarily take over and manage the affairs of CANORECO. It reads as follows:

To efficiently and effectively address the worsening problem of the Camarines Norte Electric Cooperative, Inc. (CANORECO) and in order not to prejudice and endanger the interest of the people who rely on the said cooperative for their supply of electricity, an AD HOC Committee is hereby constituted to take over and manage the affairs of CANORECO until such time as a general membership meeting can be called to decide the serious issues affecting the said cooperative and normalcy in operations is restored. Further, if and when warranted, the present Board of Directors may be called upon by the Committee for advisory services without prejudice to the receipt of their per diems as may be authorized by existing rules and regulations.

On 11 December 1996, the petitioners filed this petition wherein they claim that the president has no power to take over and manage or to order the take-over or management of CANORECO.

ISSUE:

Whether Memorandum Order No. 409 is constitutional. (NO)

RULING:

Neither can police power be invoked to clothe with validity the assailed Memorandum Order No. 409. Police power is the power inherent in a government to enact laws, within constitutional limits, to promote the order, safety, health, morals, and general welfare of society. It is lodged primarily in the legislature. By virtue of a valid delegation of legislative power, it may also be exercised by the President and administrative boards, as well as the lawmaking bodies on all municipal levels, including the barangay. Delegation of legislative powers to the President is permitted in Sections 23(2) and 28(2) of Article VI of the Constitution. The pertinent laws on cooperatives, namely, R.A. No. 6938, R.A. No. 6939, and P.D. No. 269 as amended by P.D. No. 1645 do not provide for the President or any other administrative body to take over the internal management of a cooperative. Article 98 of R.A. 6938 instead provides:

Art. 98. Regulation of Public Service Cooperatives. — (1) The internal affairs of public service cooperatives such as the rights and privileges of members, the rules and procedures for meetings of the general assembly, board of directors and committees; for the election and qualification of officers, directors, and committee members; allocation and distribution of surpluses, and all other matters relating to their internal affairs shall be governed by this Code.

We do not then hesitate to rule that Memorandum Order No. 409 has no constitutional and statutory basis. It violates the basic underlying principle enshrined in Article 4(2) of R.A. No. 6938 that cooperatives are democratic organizations and that their affairs shall be administered by persons elected or appointed in a manner agreed upon by the members. Likewise, it runs counter to the policy set forth in Section 1 of R.A. No. 6939 that the State shall, except as provided in said Act, maintain a policy of non-interference in the management and operation of cooperatives.

PHILIPPINE FISHERIES DEVELOPMENT AUTHORITY, Petitioner, vs. THE HONORABLE COURT OF APPEALS, THE HONORABLE REGIONAL TRIAL COURT, BRANCH 169, MALABON, METRO MANILA, THE MUNICIPALITY OF NAVOTAS, METRO MANILA, HON. FLORANTE M. BARREDO, in his official capacity as Municipal Treasurer of Navotas, Metro Manila, and HON. NORBERTO E. AZARCON, in his capacity as Chairman of the Public Auction Sale Committee of Navotas, Metro Manila, Respondent.
G.R. No. 150301, First Division, October 2, 2007 AZCUNA, *J.*:

SEC. 133. Common Limitations on the Taxing Power of Local Government Units. – Unless otherwise provided herein, the exercise of the taxing powers of provinces, cities, municipalities, and barangays ***shall not extend*** *to the levy of the following:*

*(o****) taxes, fees, charges of any kind on the national government, its agencies and instrumentalities, and local government units****.*

Nonetheless, the above exemption does not apply when the beneficial use of the government property has been granted to a taxable person. Section 234 (a) of the Code states that ***real property owned by the Republic of the Philippines or any of its political subdivisions is exempted from payment of the real property tax "except when the beneficial use thereof has been granted, for consideration or otherwise, to a taxable person."***

Thus, as a rule, petitioner PFDA, being an instrumentality of the national government, is exempt from real property tax but the exemption does not extend to the portions of the NFPC that were leased to taxable or private persons and entities for their beneficial use.

FACTS:

The controversy arose when respondent Municipality of Navotas assessed the real estate taxes allegedly due from petitioner Philippine Fisheries Development Authority (PFDA) for the period 1981-1990 on properties under its jurisdiction, management and operation located inside the Navotas Fishing Port Complex (NFPC).

The assessed taxes had remained unpaid despite the demands made by the municipality which prompted it to give notice to petitioner on October 29, 1990 that the NFPC will be sold at public auction on November 30, 1990 in order that the municipality will be able to collect on petitioner's delinquent realty taxes which, as of June 30, 1990, amounted to P23,128,304.51, inclusive of penalties.

Petitioner sought the deferment of the auction sale claiming that the NFPC is owned by the Republic of the Philippines, and pursuant to Presidential Decree (P.D.) No. 977, it (PFDA) is not a taxable entity.

In view of the refusal of PFDA to pay the assessed realty taxes, the matter was referred to the Department of Finance (DOF). On July 14, 1990 the DOF stated that the use of the property should first be identified to determine its tax liability. If used by a non-taxable person other than PFDA itself, it remains to be non-taxable. Otherwise, if said properties are being used by taxable persons, same becomes taxable properties.

Notwithstanding the DOF's instruction, respondent Municipality proceeded to publish the notice of sale of NFPC in the November 2, 1990 issue of Balita, a local newspaper.

On November 19, 1990, petitioner instituted Civil Case in the RTC of Malabon, Metro Manila against respondent Municipality, and its officers. Petitioner asked the RTC to enjoin the auction of the NFPC on the ground that the properties comprising the NFPC are owned by the Republic of the Philippines and are, thus, exempt from taxation. According to petitioner, only a small portion of NFPC which had been leased to private parties may be subjected to real property tax which should be paid by the latter.

On December 8, 1990, the RTC issued a writ of preliminary injunction enjoining respondent Municipality from proceeding with the public auction. On February 19, 1993, the RTC dismissed the case and dissolved the writ of preliminary injunction, ruling in favor of the Municipality's right to collect said tax. The CA affirmed the ruling of the RTC. Motion for Reconsideration was filed but the same was denied by the CA.

ISSUE:

Whether PFDA is entirely exempted from the payment of real property tax. (NO)

RULING:

Local government units, pursuant to the fiscal autonomy granted by the provisions of Republic Act No. 7160 or the 1991 Local Government Code, can impose realty taxes on juridical persons subject to the limitations enumerated in Section 133 of the Code:

SEC. 133. Common Limitations on the Taxing Power of Local Government Units. – Unless otherwise provided herein, the exercise of the taxing powers of provinces, cities, municipalities, and barangays shall not extend to the levy of the following:

(o) taxes, fees, charges of any kind on the national government, its agencies and instrumentalities, and local government units.

Nonetheless, the above exemption does not apply when the beneficial use of the government property has been granted to a taxable person. Section 234 (a) of the Code states that real property owned by the Republic of the Philippines or any of its political subdivisions is exempted from payment of the real property tax "except when the beneficial use thereof has been granted, for consideration or otherwise, to a taxable person."

Thus, as a rule, petitioner PFDA, being an instrumentality of the national government, is exempt from real property tax but the exemption does not extend to the portions of the NFPC that were leased to taxable or private persons and entities for their beneficial use.

CITY OF LAPU-LAPU, *Petitioner,* -versus- PHILIPPINE ECONOMIC ZONE AUTHORITY, *Respondents*
G.R. No. 187583, SECOND DIVISION, November 26, 2014, LEONEN, *J.*

All told, the PEZA is an instrumentality of the national government. Furthermore, the lands owned by the PEZA are real properties owned by the Republic of the Philippines. The City of Lapu-Lapu and the Province of Bataan cannot collect real property taxes from the PEZA.

FACTS:
After the City of Lapu-Lapu had demanded payment of real property taxes from the PEZA, the Province of Bataan followed suit. In its letter dated May 29, 2003, the Province, through the Office of the Provincial Treasurer, informed the PEZA that it would be sending a real property tax billing to the PEZA. Arguing that the PEZA is a developer of economic zones, the Province claimed that the PEZA is liable for real property taxes under Section 24 of the Special Economic Zone Act of 1995.

In its reply letter dated June 18, 2003, the PEZA requested the Province to suspend the service of the real property tax billing. It cited its petition for declaratory relief against the City of Lapu-Lapu pending before the Regional Trial Court, Branch 111, Pasay City as basis.

The Province argued that serving a real property tax billing on the PEZA "would not in any way affect its petition for declaratory relief before [the Regional Trial Court] of Pasay City." Thus, in its letter58 dated June 27, 2003, the Province notified the PEZA of its real property tax liabilities for June 1, 1995 to December 31, 2002 totalling P110,549,032.55.

After having been served a tax billing, the PEZA again requested the Province to suspend collecting its alleged real property tax liabilities until the Regional Trial Court of Pasay City resolves its petition for declaratory relief.

ISSUE:
Whether PEZA is exempt from payment of real property taxes. (YES)

RULING:
The PEZA is an instrumentality of the national government

An instrumentality is "any agency of the National Government, not integrated within the department framework, vested with special functions or jurisdiction by law, endowed with some if not all corporate powers, administering special funds, and enjoying operational autonomy, usually through a charter."

Examples of instrumentalities of the national government are the Manila International Airport Authority, the Philippine Fisheries Development Authority, the Government Service Insurance System, and the Philippine Reclamation Authority. These entities are not integrated within the department framework but are nevertheless vested with special functions to carry out a declared policy of the national government.

Similarly, the PEZA is an instrumentality of the national government. It is not integrated within the department framework but is an agency attached to the Department of Trade and Industry.250 Book IV, Chapter 7, Section 38(3)(a) of the Administrative Code of 1987 defines "attachment

An attached agency has a larger measure of independence from the Department to which it is attached than one which is under departmental supervision and control or administrative supervision. This is borne out by the "lateral relationship" between the Department and the attached agency. The attachment is merely for "policy and program coordination." With respect to administrative matters, the independence of an attached agency from Departmental control and supervision is further reinforced by the fact that even an agency under a Department's administrative supervision is free from Departmental interference with respect to appointments and other personnel actions "in accordance with the decentralization of personnel functions" under the Administrative Code of 1987. Moreover, the Administrative Code explicitly provides that Chapter 8 of Book IV on supervision and control shall not apply to chartered institutions attached to a Department.

With the PEZA as an attached agency to the Department of Trade and Industry, the 13-person PEZA Board is chaired by the Department Secretary.254 Among the powers and functions of the PEZA is its ability to coordinate with the Department of Trade and Industry for policy and program formulation and implementation.255 In strategizing and prioritizing the development of special economic zones, the PEZA coordinates with the Department of Trade and Industry.256chanRoblesvirtualLawlibrary

The PEZA also administers its own funds and operates autonomously, with the PEZA Board formulating and approving the PEZA's annual budget. Appointments and other personnel actions in the PEZA are also free from departmental interference, with the PEZA Board having the exclusive and final authority to promote, transfer, assign and reassign officers of the PEZA.

As an instrumentality of the national government, the PEZA is vested with special functions or jurisdiction by law. Congress created the PEZA to operate, administer, manage and develop special economic zones in the Philippines. Special economic zones are areas with highly developed or which have the potential to be developed into agro-industrial, industrial tourist/recreational, commercial, banking, investment and financial centers. By operating, administering, managing, and developing special economic zones which attract investments and promote use of domestic labor, the PEZA carries out the policy of the Government:
Being an instrumentality of the national government, the PEZA cannot be taxed by local government units.

Although a body corporate vested with some corporate powers, the PEZA is not a government-owned or controlled corporation taxable for real property taxes.

To be considered a government-owned or controlled corporation, the entity must have been organized as a stock or non-stock corporation.

Government instrumentalities, on the other hand, are also created by law but partake of sovereign functions. When a government entity performs sovereign functions, it need not meet the test of economic viability. In Manila International Airport Authority v. Court of Appeals, this court explained:

In contrast, government instrumentalities vested with corporate powers and performing governmental or public functions need not meet the test of economic viability. These instrumentalities perform essential public services for the common good, services that every modern State must provide its citizens. These instrumentalities need not be economically viable since the government may even subsidize their entire operations. These instrumentalities are not the "government-owned or controlled corporations" referred to in Section 16, Article XII of the 1987 Constitution.

Thus, the Constitution imposes no limitation when the legislature creates government instrumentalities vested with corporate powers but performing essential governmental or public functions. Congress has plenary authority to create government instrumentalities vested with corporate powers provided these instrumentalities perform essential government functions or public services. However, when the legislature creates through special charters corporations that perform economic or commercial activities, such entities — known as "government-owned or controlled corporations" — must meet the test of economic viability because they compete in the market place.

The law created the PEZA's charter. Under the Special Economic Zone Act of 1995, the PEZA was established primarily to perform the governmental function of operating, administering, managing, and developing special economic zones to attract investments and provide opportunities for preferential use of Filipino labor.

Under its charter, the PEZA was created a body corporate endowed with some corporate powers. However, it was not organized as a stock270 or non-stock271 corporation. Nothing in the PEZA's charter provides that the PEZA's capital is divided into shares.272 The PEZA also has no members who shall share in the PEZA's profits.

The PEZA does not compete with other economic zone authorities in the country. The government may even subsidize the PEZA's operations. Under Section 47 of the Special Economic Zone Act of 1995, "any sum necessary to augment [the PEZA's] capital outlay shall be included in the General Appropriations Act to be treated as an equity of the national government."273chanRoblesvirtualLawlibrary

The PEZA, therefore, need not be economically viable. It is not a government-owned or controlled corporation liable for real property taxes.

V. **(B)**

The PEZA assumed the non-profit character, including the tax exempt status, of the EPZA

The PEZA's predecessor, the EPZA, was declared non-profit in character with all its revenues devoted for its development, improvement, and maintenance. Consistent with this non-profit character, the EPZA was explicitly declared exempt from real property taxes under its charter.

Nevertheless, we rule that the PEZA is exempt from real property taxes by virtue of its charter. A provision in the Special Economic Zone Act of 1995 explicitly exempting the PEZA is unnecessary. The PEZA assumed the real property exemption of the EPZA under Presidential Decree No. 66.

Section 11 of the Special Economic Zone Act of 1995 mandated the EPZA "to evolve into the PEZA in accordance with the guidelines and regulations set forth in an executive order issued for this purpose." President Ramos then issued Executive Order No. 282 in 1995, ordering the PEZA to assume the EPZA's powers, functions, and responsibilities under Presidential Decree No. 66 not inconsistent with the Special Economic Zone Act of 1995

Tax exemptions provided under Section 24 apply only to business establishments operating within economic zones. Considering that the PEZA is not a business establishment but an instrumentality performing governmental functions, Section 24 is inapplicable to the PEZA.

Also, contrary to the PEZA's claim, developers of economic zones, whether public or private developers, are liable for real property taxes on lands they own. Section 24 does not distinguish between a public and private developer. Thus, courts cannot distinguish. Unless the public developer is exempt under the Local Government Code or under its charter enacted after the Local Government Code's effectivity, the public developer must pay real property taxes on their land.

At any rate, the PEZA cannot be taxed for real property taxes even if it acts as a developer or operator of special economic zones. The PEZA is an instrumentality of the national government exempt from payment of real property taxes under Section 133(o) of the Local Government Code. As this court said in Manila International Airport Authority, "there must be express language in the law empowering local governments to tax national government instrumentalities. Any doubt whether such power exists is resolved against local governments."277chanRoblesvirtualLawlibrary

V. (C)

Real properties under the PEZA's title are owned by the Republic of the Philippines

Under Section 234(a) of the Local Government Code, real properties owned by the Republic of the Philippines are exempt from real property taxes:

Properties of public dominion are outside the commerce of man. These properties are exempt from "levy, encumbrance or disposition through public or private sale." As this court explained in Manila International Airport Authority:chanroblesvirtuallawlibrary

Properties of public dominion, being for public use, are not subject to levy, encumbrance or disposition through public or private sale. Any encumbrance, levy on execution or auction sale of any property of public dominion is void for being contrary to public policy. Essential public services will stop if properties of public dominion are subject to encumbrances, foreclosures and auction sale[.]279

On the other hand, all other properties of the state that are not intended for public use or are not intended for some public service or for the development of the national wealth are patrimonial properties. Article 421 of the Civil Code of the Philippines provides:chanroblesvirtuallawlibrary

Art. 421. All other property of the State, which is not of the character stated in the preceding article, is patrimonial property.

Patrimonial properties are also properties of the state, but the state may dispose of its patrimonial property similar to private persons disposing of their property. Patrimonial properties are within the commerce of man and are susceptible to prescription, unless otherwise provided.

In this case, the properties sought to be taxed are located in publicly owned economic zones. These economic zones are property of public dominion. The City seeks to tax properties located within the Mactan Economic Zone,281 the site of which was reserved by President Marcos under Proclamation No. 1811, Series of 1979. Reserved lands are lands of the public domain set aside for settlement or public use, and for specific public purposes by virtue of a presidential proclamation.282 Reserved lands are inalienable and outside the commerce of man,283 and remain property of the Republic until withdrawn from public use either by law or presidential proclamation.284 Since no law or presidential proclamation has been issued withdrawing the site of the Mactan Economic Zone from public use, the property remains reserved land.

As for the Bataan Economic Zone, the law consistently characterized the property as a port. Under Republic Act No. 5490, Congress declared Mariveles, Bataan "a principal port of entry"285 to serve as site of a foreign trade zone where foreign and domestic merchandise may be brought in without being subject to customs and internal revenue laws and regulations of the Philippines. Section 4 of Republic Act No. 5490 provided that the foreign trade zone in Mariveles, Bataan "shall at all times remain to be owned by the Government":

SEC. 4. Powers and Duties. – The Foreign Trade Zone Authority shall have the following powers and duties:
To fix and delimit the site of the Zone which at all times remain to be owned by the Government, and which shall have a contiguous and adequate area with well defined and policed boundaries, with adequate enclosures to segregate the Zone from the customs territory for protection of revenues, together with suitable provisions for ingress and egress of persons, conveyance, vessels and merchandise sufficient for the purpose of this Act[.] (Emphasis supplied)

The port in Mariveles, Bataan then became the Bataan Economic Zone under the Special Economic Zone Act of 1995.287 Republic Act No. 9728 then converted the Bataan Economic Zone into the Freeport Area of Bataan.288chanRoblesvirtualLawlibrary

A port of entry, where imported goods are unloaded then introduced in the market for public consumption, is considered property for public use. Thus, Article 420 of the Civil Code classifies a port as property of public dominion. The Freeport Area of Bataan, where the government allows tax and duty-free importation of goods,289 is considered property of public dominion. The Freeport Area of Bataan is owned by the state and cannot be taxed under Section 234(a) of the Local Government Code.

In Manila International Airport Authority, this court explained:chanroblesvirtuallawlibrary

[The exemption under Section 234(a) of the Local Government Code] should be read in relation with Section 133(o) of the same Code, which prohibits local governments from imposing "[t]axes, fess or charges of any kind on the National Government, its agencies and instrumentalities x x x." The real properties owned by the Republic are titled either in the name of the Republic itself or in the name of agencies or instrumentalities of the National Government. The Administrative Code allows real property owned by the Republic to be titled in the name of agencies or instrumentalities of the national government. Such real properties remained owned by the Republic of the Philippines and continue to be exempt from real estate tax.

The Republic may grant the beneficial use of its real property to an agency or instrumentality of the national government. This happens when title of the real property is transferred to an agency or instrumentality even as the Republic remains the owner of the real property. Such arrangement does not result in the loss of the tax exemption/ Section 234(a) of the Local Government Code states that real property owned by the Republic loses its tax exemption only if the "beneficial use thereof has been granted, for consideration or otherwise, to a taxable person." . . .290 (Emphasis in the original; italics supplied)

Even the PEZA's lands and buildings whose beneficial use have been granted to other persons may not be taxed with real property taxes. The PEZA may only lease its lands and buildings to PEZA-registered economic zone enterprises and entities.291 These PEZA-registered enterprises and entities, which operate within economic zones, are not subject to real property taxes. Under Section 24 of the Special Economic Zone Act of 1995, no taxes, whether local or national, shall be imposed on all business establishments operating within the economic zones

Petitioners, therefore, are not deprived of revenues from the operations of economic zones within their respective territorial jurisdictions. The national government ensured that local government units comprising economic zones shall retain their basic autonomy and identity.

All told, the PEZA is an instrumentality of the national government. Furthermore, the lands owned by the PEZA are real properties owned by the Republic of the Philippines. The City of Lapu-Lapu and the Province of Bataan cannot collect real property taxes from the PEZA.

MANILA INTERNATIONAL AIRPORT AUTHORITY, *Petitioner,* -versus- COURT OF APPEALS, CITY OF PARAÑAQUE, CITY MAYOR OF PARAÑAQUE, SANGGUNIANG PANGLUNGSOD NG PARAÑAQUE, CITY ASSESSOR OF PARAÑAQUE, and CITY TREASURER OF PARAÑAQUE, *Respondents*

G.R. No. 155650, EN BANC, July 20, 2006, CARPIO, *J.*

We rule that MIAA's Airport Lands and Buildings are exempt from real estate tax imposed by local governments.

First, MIAA is not a government-owned or controlled corporation but an instrumentality of the National Government and thus exempt from local taxation. Second, the real properties of MIAA are owned by the Republic of the Philippines and thus exempt from real estate tax.

FACTS:

Petitioner Manila International Airport Authority (MIAA) operates the Ninoy Aquino International Airport (NAIA) Complex in Parañaque City under Executive Order No. 903, otherwise known as the *Revised Charter of the Manila International Airport Authority* ("MIAA Charter"). Executive Order No. 903 was issued on 21 July 1983 by then President Ferdinand E. Marcos. Subsequently, Executive Order Nos. 909 and 298 amended the MIAA Charter.

As operator of the international airport, MIAA administers the land, improvements and equipment within the NAIA Complex. The MIAA Charter transferred to MIAA approximately 600 hectares of land, including the runways and buildings ("Airport Lands and Buildings") then under the Bureau of Air Transportation. The MIAA Charter further provides that no portion of the land transferred to MIAA shall be disposed of through sale or any other mode unless specifically approved by the President of the Philippines.

On 21 March 1997, the Office of the Government Corporate Counsel (OGCC) issued Opinion No. 061. The OGCC opined that the Local Government Code of 1991 withdrew the exemption from real estate tax granted to MIAA under Section 21 of the MIAA Charter. Thus, MIAA negotiated with respondent City of Parañaque to pay the real estate tax imposed by the City. MIAA then paid some of the real estate tax already due.

On 28 June 2001, MIAA received Final Notices of Real Estate Tax Delinquency from the City of Parañaque for the taxable years 1992 to 2001

ISSUE:

Whether the Airport Lands and Buildings of MIAA are exempt from real estate tax under existing laws. (YES)

RULING:

First, MIAA is not a government-owned or controlled corporation but an **instrumentality** of the

National Government and thus exempt from local taxation. *Second*, the real properties of MIAA are **owned by the Republic** of the Philippines and thus exempt from real estate tax.

<u>1. MIAA is Not a Government-Owned or Controlled Corporation</u>
There is no dispute that a government-owned or controlled corporation is not exempt from real estate tax. However, MIAA is not a government-owned or controlled corporation.

MIAA is not organized as a stock or non-stock corporation. MIAA is not a stock corporation because it has **no capital stock divided into shares**.

MIAA has capital but it is not divided into shares of stock. MIAA has no stockholders or voting shares. Hence, MIAA is not a stock corporation.

MIAA is also not a non-stock corporation because it has no members. Section 87 of the Corporation Code defines a non-stock corporation as "one where no part of its income is distributable as dividends to its members, trustees or officers." A non-stock corporation must have members. Even if we assume that the Government is considered as the sole member of MIAA, this will not make MIAA a non-stock corporation. Non-stock corporations cannot distribute any part of their income to their members. Section 11 of the MIAA Charter mandates MIAA to remit 20% of its annual gross operating income to the National Treasury. This prevents MIAA from qualifying as a non-stock corporation.

Section 88 of the Corporation Code provides that non-stock corporations are "organized for charitable, religious, educational, professional, cultural, recreational, fraternal, literary, scientific, social, civil service, or similar purposes, like trade, industry, agriculture and like chambers." MIAA is not organized for any of these purposes. MIAA, a public utility, is organized to operate an international and domestic airport for public use.

Since MIAA is neither a stock nor a non-stock corporation, MIAA does not qualify as a government-owned or controlled corporation. What then is the legal status of MIAA within the National Government?
MIAA is a **government instrumentality** vested with corporate powers to perform efficiently its governmental functions. MIAA is like any other government instrumentality, the only difference is that MIAA is vested with corporate powers. Section 2(10) of the Introductory Provisions of the Administrative Code defines a government "**instrumentality**" as follows:
SEC. 2. *General Terms Defined*. –– x x x x
(10) *Instrumentality* refers to any agency of the National Government, not integrated within the department framework, vested with special functions or jurisdiction by law, **endowed with some if not all corporate powers**, administering special funds, and enjoying operational autonomy, usually through a charter. x x x (Emphasis supplied)

When the law vests in a government instrumentality corporate powers, the instrumentality does not become a corporation. Unless the government instrumentality is organized as a stock or non-stock corporation, it remains a government instrumentality exercising not only governmental but also corporate powers. Thus, MIAA exercises the governmental powers of eminent domain, police authority and the levying of fees and charges. At the same time, MIAA exercises "all the powers of a corporation under the Corporation Law, insofar as these powers are not inconsistent with the provisions of this Executive Order."

A government **instrumentality** like MIAA falls under Section 133(o) of the Local Government Code, which states:
SEC. 133. *Common Limitations on the Taxing Powers of Local Government Units*. – **Unless otherwise provided herein, the exercise of the taxing powers of provinces, cities, municipalities, and barangays shall not extend to the levy of the following**:
x x x x
(o) **Taxes, fees or charges of any kind on the National Government, its agencies and instrumentalities**and local government units.(Emphasis and underscoring supplied)

Section 133(o) recognizes the basic principle that local governments cannot tax the national government, which historically merely delegated to local governments the power to tax. While the

1987 Constitution now includes taxation as one of the powers of local governments, local governments may only exercise such power "subject to such guidelines and limitations as the Congress may provide."

When local governments invoke the power to tax on national government instrumentalities, such power is construed strictly against local governments. The rule is that a tax is never presumed and there must be clear language in the law imposing the tax. Any doubt whether a person, article or activity is taxable is resolved against taxation. This rule applies with greater force when local governments seek to tax national government instrumentalities.

Thus, Section 133 of the Local Government Code states that "**unless otherwise provided**" in the Code, local governments cannot tax national government instrumentalities. As this Court held in ***Basco v. Philippine Amusements and Gaming Corporation***:
The states have no power by taxation or otherwise, to retard, impede, burden or in any manner control the operation of constitutional laws enacted by Congress to carry into execution the powers vested in the federal government. (MC Culloch v. Maryland, 4 Wheat 316, 4 L Ed. 579)

This doctrine emanates from the "supremacy" of the National Government over local governments.
"Justice Holmes, speaking for the Supreme Court, made reference to the entire absence of power on the part of the States to touch, in that way (taxation) at least, the instrumentalities of the United States (Johnson v. Maryland, 254 US 51) and it can be agreed that *no state or political subdivision can regulate a federal instrumentality in such a way as to prevent it from consummating its federal responsibilities, or even to seriously burden it in the accomplishment of them*." (Antieau, Modern Constitutional Law, Vol. 2, p. 140, emphasis supplied)

Otherwise, mere creatures of the State can defeat National policies thru extermination of what local authorities may perceive to be undesirable activities or enterprise using the power to tax as "a tool for regulation" (U.S. v. Sanchez, 340 US 42).

The power to tax which was called by Justice Marshall as the "power to destroy" (Mc Culloch v. Maryland, supra) cannot be allowed to defeat an instrumentality or creation of the very entity which has the inherent power to wield it.

2. Airport Lands and Buildings of MIAA are Owned by the Republic
a. Airport Lands and Buildings are of Public Dominion
The Airport Lands and Buildings of MIAA are property of **public dominion and therefore owned by the State or the Republic of the Philippines**.

The Airport Lands and Buildings are devoted to public use because they are **used by the public for international and domestic travel and transportation**. The fact that the MIAA collects terminal fees and other charges from the public does not remove the character of the Airport Lands and Buildings as properties for public use. The operation by the government of a tollway does not change the character of the road as one for public use. Someone must pay for the maintenance of the road, either the public indirectly through the taxes they pay the government, or only those among the public who actually use the road through the toll fees they pay upon using the road. The tollway system is even a more efficient and equitable manner of taxing the public for the maintenance of public roads.
The charging of fees to the public does not determine the character of the property whether it is of public dominion or not. Article 420 of the Civil Code defines property of public dominion as one "intended for public use." Even if the government collects toll fees, the road is still "intended for public use" if anyone can use the road under the same terms and conditions as the rest of the public. The charging of fees, the limitation on the kind of vehicles that can use the road, the speed restrictions and other conditions for the use of the road do not affect the public character of the road.

The terminal fees MIAA charges to passengers, as well as the landing fees MIAA charges to airlines, constitute the bulk of the income that maintains the operations of MIAA. The collection of such fees does not change the character of MIAA as an airport for public use. Such fees are often termed user's tax. This means taxing those among the public who actually use a public facility instead of taxing all the public including those who never use the particular public facility. A user's tax is more equitable — a principle of taxation mandated in the 1987 Constitution.

The Airport Lands and Buildings of MIAA, which its Charter calls the "principal airport of the Philippines for both international and domestic air traffic," are properties of public dominion because they are intended for public use. **As properties of public dominion, they indisputably belong to the State or the Republic of the Philippines**.

b. Airport Lands and Buildings are Outside the Commerce of Man

The Airport Lands and Buildings of MIAA are devoted to public use and thus are properties of public dominion. **As properties of public dominion, the Airport Lands and Buildings are outside the commerce of man**. The Court has ruled repeatedly that properties of public dominion are outside the commerce of man. As early as 1915, this Court already ruled in ***Municipality of Cavite v. Rojas*** that properties devoted to public use are outside the commerce of man, thus:
According to article 344 of the Civil Code: "Property for public use in provinces and in towns comprises the provincial and town roads, the squares, streets, fountains, and public waters, the promenades, and public works of general service supported by said towns or provinces."
The said Plaza Soledad being a promenade for public use, the municipal council of Cavite could not in 1907 withdraw or exclude from public use a portion thereof in order to lease it for the sole benefit of the defendant Hilaria Rojas. In leasing a portion of said plaza or public place to the defendant for private use the plaintiff municipality exceeded its authority in the exercise of its powers by executing a contract over a thing of which it could not dispose, nor is it empowered so to do.

The Civil Code, article 1271, prescribes that everything which is not outside the commerce of man may be the object of a contract, and plazas and streets are **outside of this commerce**, as was decided by the supreme court of Spain in its decision of February 12, 1895, which says: "**Communal things that cannot be sold because they are by their very nature outside of commerce are those for public use, such as the plazas, streets, common lands, rivers, fountains, etc.**" (Emphasis supplied)

Properties of public dominion, being for public use, are not subject to levy, encumbrance or disposition through public or private sale. Any encumbrance, levy on execution or auction sale of any property of public dominion is void for being contrary to public policy. Essential public services will stop if properties of public dominion are subject to encumbrances, foreclosures and auction sale. This will happen if the City of Parañaque can foreclose and compel the auction sale of the 600-hectare runway of the MIAA for non-payment of real estate tax.

Before MIAA can encumber the Airport Lands and Buildings, the President must first **withdraw from public use** the Airport Lands and Buildings. Sections 83 and 88 of the Public Land Law or Commonwealth Act No. 141, which "remains to this day the existing general law governing the classification and disposition of lands of the public domain other than timber and mineral lands,"

There is no question, therefore, that unless the Airport Lands and Buildings are withdrawn by law or presidential proclamation from public use, they are properties of public dominion, owned by the Republic and outside the commerce of man.

c. MIAA is a Mere Trustee of the Republic

MIAA is merely holding title to the Airport Lands and Buildings in trust for the Republic. Section 48, Chapter 12, Book I of **the Administrative Code allows instrumentalities like MIAA to hold title to real properties owned by the Republic**, thus:
SEC. 48. *Official Authorized to Convey Real Property*. — Whenever real property of the Government is authorized by law to be conveyed, the deed of conveyance shall be executed in behalf of the government by the following:
(1) For property belonging to and titled in the name of the Republic of the Philippines, by the President, unless the authority therefor is expressly vested by law in another officer.
(2) **For property belonging to the Republic of the Philippines but titled in the name of any political subdivision or of any corporate agency or instrumentality**, by the executive head of the agency or instrumentality. (Emphasis supplied)
In MIAA's case, its status as a mere trustee of the Airport Lands and Buildings is clearer because even its executive head cannot sign the deed of conveyance on behalf of the Republic. Only the

President of the Republic can sign such deed of conveyance.

d. Transfer to MIAA was Meant to Implement a Reorganization

The MIAA Charter, which is a law, transferred to MIAA the title to the Airport Lands and Buildings from the Bureau of Air Transportation of the Department of Transportation and Communications. The MIAA Charter provides:

SECTION 3. *Creation of the Manila International Airport Authority*. — x x x x

The land where the Airport is presently located as well as the surrounding land area of approximately six hundred hectares, are hereby transferred, conveyed and assigned to the ownership and administration of the Authority, subject to existing rights, if any. The Bureau of Lands and other appropriate government agencies shall undertake an actual survey of the area transferred within one year from the promulgation of this Executive Order and the corresponding title to be issued in the name of the Authority. **Any portion thereof shall not be disposed through sale or through any other mode unless specifically approved by the President of the Philippines**. (Emphasis supplied)

SECTION 22. *Transfer of Existing Facilities and Intangible Assets*. — All existing **public airport facilities, runways, lands, buildings and other property**, movable or immovable, belonging to the Airport, and all assets, powers, rights, interests and privileges **belonging to the Bureau of Air Transportation** relating to airport works or air operations, including all equipment which are necessary for the operation of crash fire and rescue facilities, are hereby transferred to the Authority. (Emphasis supplied)

SECTION 25. *Abolitio*
n of the Manila International Airport as a Division in the Bureau of Air Transportation and Transitory Provisions. — The Manila International Airport including the Manila Domestic Airport as a division under the Bureau of Air Transportation is hereby abolished.

x x x x.

The MIAA Charter transferred the Airport Lands and Buildings to MIAA without the Republic receiving cash, promissory notes or even stock since MIAA is not a stock corporation.

The whereas clauses of the MIAA Charter explain the rationale for the transfer of the Airport Lands and Buildings to MIAA, thus:

WHEREAS, the Manila International Airport as the principal airport of the Philippines for both international and domestic air traffic, is required to provide standards of airport accommodation and service comparable with the best airports in the world;

WHEREAS, domestic and other terminals, general aviation and other facilities, have to be upgraded to meet the current and future air traffic and other demands of aviation in Metro Manila;

WHEREAS, a management and organization study has indicated that **the objectives of providing high standards of accommodation and service within the context of a financially viable operation, will best be achieved by a separate and autonomous body**; and

WHEREAS, under Presidential Decree No. 1416, as amended by Presidential Decree No. 1772, the President of the Philippines is given continuing authority **to reorganize the National Government, which authority includes the creation of new entities, agencies and instrumentalities of the Government**[.] (Emphasis supplied)

The transfer of the Airport Lands and Buildings from the Bureau of Air Transportation to MIAA was not meant to transfer beneficial ownership of these assets from the Republic to MIAA. The purpose was merely to **reorganize a division in the Bureau of Air Transportation into a separate and autonomous body**. The Republic remains the beneficial owner of the Airport Lands and Buildings. MIAA itself is owned solely by the Republic. No party claims any ownership rights over MIAA's assets adverse to the Republic.

The MIAA Charter expressly provides that the Airport Lands and Buildings "**shall not be disposed through sale or through any other mode unless specifically approved by the President of the Philippines**." This only means that the Republic retained the beneficial ownership of the Airport Lands and Buildings because under Article 428 of the Civil Code, only the "owner has the right to x x x dispose of a thing." Since MIAA cannot dispose of the Airport Lands and Buildings, MIAA does not own the Airport Lands and Buildings.

At any time, the President can transfer back to the Republic title to the Airport Lands and Buildings without the Republic paying MIAA any consideration. Under Section 3 of the MIAA Charter, the President is the only one who can authorize the sale or disposition of the Airport Lands and Buildings. This only confirms that the Airport Lands and Buildings belong to the Republic.

e. Real Property Owned by the Republic is Not Taxable

Section 234(a) of the Local Government Code exempts from real estate tax any "[r]eal property owned by the Republic of the Philippines." Section 234(a) provides:
SEC. 234. *Exemptions from Real Property Tax.* — **The following are exempted from payment of the real property tax**:
(a) **Real property owned by the Republic of the Philippines or any of its political subdivisions except when the beneficial use thereof has been granted, for consideration or otherwise, to a taxable person**;
x x x. (Emphasis supplied)

This exemption should be read in relation with Section 133(o) of the same Code, which prohibits local governments from imposing "[t]axes, fees or charges of any kind on the National Government, its agencies and **instrumentalities**x x x." The real properties owned by the Republic are titled either in the name of the Republic itself or in the name of agencies or instrumentalities of the National Government. The Administrative Code allows real property owned by the Republic to be titled in the name of agencies or instrumentalities of the national government. Such real properties remain owned by the Republic and continue to be exempt from real estate tax.

The Republic may grant the beneficial use of its real property to an agency or instrumentality of the national government. This happens when title of the real property is transferred to an agency or instrumentality even as the Republic remains the owner of the real property. Such arrangement does not result in the loss of the tax exemption. Section 234(a) of the Local Government Code states that real property owned by the Republic loses its tax exemption only if the "beneficial use thereof has been granted, for consideration or otherwise, to a **taxable person**." MIAA, as a government instrumentality, is not a taxable person under Section 133(o) of the Local Government Code. Thus, even if we assume that the Republic has granted to MIAA the beneficial use of the Airport Lands and Buildings, such fact does not make these real properties subject to real estate tax.

However, portions of the Airport Lands and Buildings that MIAA leases to private entities are not exempt from real estate tax. For example, the land area occupied by hangars that MIAA leases to private corporations is subject to real estate tax. In such a case, MIAA has granted the beneficial use of such land area for a consideration to a **taxable person** and therefore such land area is subject to real estate tax.

MIAA performs an essential public service that every modern State must provide its citizens. MIAA derives its revenues principally from the mandatory fees and charges MIAA imposes on passengers and airlines. The terminal fees that MIAA charges every passenger are regulatory or administrative fees[4]and not income from commercial transactions.
MIAA falls under the definition of a government instrumentality under Section 2(10) of the Introductory Provisions of the Administrative Code

The fact alone that MIAA is endowed with corporate powers does not make MIAA a government-owned or controlled corporation. Without a change in its capital structure, MIAA remains a government instrumentality under Section 2(10) of the Introductory Provisions of the Administrative Code. More importantly, as long as MIAA renders essential public services, it need not comply with the test of economic viability. Thus, MIAA is outside the scope of the phrase "government-owned or controlled corporations" under Section 16, Article XII of the 1987 Constitution.

Finally, the Airport Lands and Buildings of MIAA are properties devoted to public use and thus are properties of public dominion. Properties of public dominion are owned by the State or the Republic.

Under Article 420 of the Civil Code, the Airport Lands and Buildings of MIAA, being devoted to public use, are properties of public dominion and thus owned by the State or the Republic of the Philippines. Article 420 specifically mentions "ports x x x constructed by the State," which includes public airports and seaports, as properties of public dominion and owned by the Republic. As properties of public dominion owned by the Republic, there is no doubt whatsoever that the Airport Lands and Buildings are expressly exempt from real estate tax under Section 234(a) of the Local Government Code. This Court has also repeatedly ruled that properties of public dominion are not subject to execution or foreclosure sale.

MACTAN-CEBU INTERNATIONAL AIRPORT AUTHORITY (MCIAA), ***Petitioner,*** **-versus- CITY OF LAPU-LAPU and ELENA T. PACALDO,** ***Respondents***

G.R. No. 181756, FIRST DIVISION, June 15, 2015, LEONARDO-DE CASTRO, *J.*

The petitioner is an instrumentality of the government; thus, its properties actually, solely and exclusively used for public purposes, consisting of the airport terminal building, airfield, runway, taxiway and the lots on which they are situated, are not subject to real property tax and respondent City is not justified in collecting taxes from petitioner over said properties.

FACTS:

Petitioner Mactan-Cebu International Airport Authority (MCIAA) was created by Congress on July 31, 1990 under Republic Act No. 6958 to "undertake the economical, efficient and effective control, management and supervision of the Mactan International Airport in the Province of Cebu and the Lahug Airport in Cebu City x x x and such other airports as may be established in the Province of Cebu." It is represented in this case by the Office of the Solicitor General. Respondent City of Lapu-Lapu is a local government unit and political subdivision, created and existing under its own charter with capacity to sue and be sued. Respondent Elena T. Pacaldo was impleaded in her capacity as the City Treasurer of respondent City.

Upon its creation, petitioner enjoyed exemption from realty taxes under the following provision of Republic Act No. 6958:

Section 14. Tax Exemptions.– The Authority shall be exempt from realty taxes imposed by the National Government or any of its political subdivisions, agencies and instrumentalities: Provided, That no tax exemption herein granted shall extend to any subsidiary which may be organized by the Authority.

On September 11, 1996, however, this Court rendered a decision in Mactan-Cebu International Airport Authority v. Marcos4 (the 1996 MCIAA case) declaring that upon the effectivity of Republic Act No. 7160 (The Local Government Code of 1991), petitioner was no longer exempt from real estate taxes. The Court held:

Since the last paragraph of Section 234 unequivocally withdrew, upon the effectivity of the LGC, exemptions from payment of real property taxes granted to natural or juridical persons, including government-owned or controlled corporations, except as provided in the said section, and the petitioner is, undoubtedly, a government-owned corporation, it necessarily follows that its exemption from such tax granted it in Section 14 of its Charter, R.A. No. 6958, has been withdrawn. x x x.

On January 7, 1997, respondent City issued to petitioner a Statement of Real Estate Tax assessing the lots comprising the Mactan International Airport in the amount of ₱162,058,959.52. Petitioner complained that there were discrepancies in said Statement of Real Estate Tax as follows:

(a) The statement included lots and buildings not found in the inventory of petitioner's real properties;

(b) Some of the lots were covered by two separate tax declarations which resulted in double assessment;

(c) There were double entries pertaining to the same lots; and

(d) The statement included lots utilized exclusively for governmental purposes.

Respondent City amended its billing and sent a new Statement of Real Estate Tax to petitioner in the amount of ₱151,376,134.66. Petitioner averred that this amount covered real estate taxes on the lots utilized solely and exclusively for public or governmental purposes such as the airfield, runway and taxiway, and the lots on which they are situated.

Petitioner paid respondent City the amount of four million pesos (₱4,000,000.00) monthly, which was later increased to six million pesos (₱6,000,000.00) monthly. As of December 2003, petitioner had paid respondent City a total of ₱275,728,313.36.

Respondent City Treasurer Elena T. Pacaldo sent petitioner a Statement of Real Property Tax Balances up to the year 2002 reflecting the amount of ₱246,395,477.20. Petitioner claimed that the statement again included the lots utilized solely and exclusively for public purpose such as the airfield, runway, and taxiway and the lots on which these are built. Respondent Pacaldo then issued Notices of Levy on 18 sets of real properties of petitioner.

Petitioner filed a petition for prohibitionwith the Regional Trial Court (RTC) of Lapu-Lapu City with prayer for the issuance of a temporary restraining order (TRO) and/or a writ of preliminary injunction, docketed as SCA No. 6056-L. Branch 53 of RTC Lapu-Lapu City then issued a 72-hour TRO. The petition for prohibition sought to enjoin respondent City from issuing a warrant of levy against petitioner's properties and from selling them at public auction for delinquency in realty tax obligations. The petition likewise prayed for a declaration that the airport terminal building, the airfield, runway, taxiway and the lots on which they are situated are exempted from real estate taxes after due hearing. Petitioner based its claim of exemption on DOJ Opinion No. 50.

ISSUE:
Whether petitioner's properties actually, solely and exclusively used for public purposes are exempt from tax (YES)

RULING:
Under Section 2(10) and (13) of the Introductory Provisions of the Administrative Code, which governs the legal relation and status of government units, agencies and offices within the entire government machinery, MIAA is a government instrumentality and not a government-owned or controlled corporation. Under Section 133(o) of the Local Government Code, MIAA as a government instrumentality is not a taxable person because it is not subject to "[t]axes, fees or charges of any kind" by local governments. The only exception is when MIAA leases its real property to a "taxable person" as provided in Section 234(a) of the Local Government Code, in which case the specific real property leased becomes subject to real estate tax. Thus, only portions of the Airport Lands and Buildings leased to taxable persons like private parties are subject to real estate tax by the City of Parañaque.

Under Article 420 of the Civil Code, the Airport Lands and Buildings of MIAA, being devoted to public use, are properties of public dominion and thus owned by the State or the Republic of the Philippines. Article 420 specifically mentions "ports x x x constructed by the State," which includes public airports and seaports, as properties of public dominion and owned by the Republic. As properties of public dominion owned by the Republic, there is no doubt whatsoever that the Airport Lands and Buildings are expressly exempt from real estate tax under Section 234(a) of the Local Government Code. This Court has also repeatedly ruled that properties of public dominion are not subject to execution or foreclosure sale.

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,* -versus- SM PRIME HOLDINGS, INC. and FIRST ASIA REALTY DEVELOPMENT CORPORATION, *Respondents*
G.R. No. 183505, SECOND DIVISION, February 26, 2010, DEL CASTILLO, *J.*

These reveal the legislative intent not to impose VAT on persons already covered by the amusement tax. This holds true even in the case of cinema/theater operators taxed under the LGC of 1991 precisely because the VAT law was intended to replace the percentage tax on certain services. The mere fact that they are taxed by the local government unit and not by the national government is immaterial. The Local Tax Code, in transferring the power to tax gross receipts derived by cinema/theater operators or proprietor from admission tickets to the local government, did not intend to treat cinema/theater houses as a separate class. No distinction must, therefore, be made between the places of amusement taxed by the national government and those taxed by the local government.

FACTS:
On April 16, 2004, the BIR sent a PAN to First Asia for VAT deficiency on cinema ticket sales for taxable year 2000 in the amount of ₱35,840,895.78. First Asia protested the PAN through a letter dated April 22, 2004.

Thereafter, the BIR issued a Formal Letter of Demand for alleged VAT deficiency.[19] First Asia protested the same in a letter dated July 9, 2004.

On October 5, 2004, the BIR denied the protest and ordered First Asia to pay the VAT deficiency in the amount of ₱35,840,895.78 for taxable year 2000.

This prompted First Asia to file a Petition for Review before the CTA on December 16, 2004.

A PAN for VAT deficiency on cinema ticket sales for the taxable year 2002 in the total amount of ₱32,802,912.21 was issued against First Asia by the BIR. In response, First Asia filed a protest-letter dated November 11, 2004. The BIR then sent a Formal Letter of Demand, which was protested by First Asia on December 14, 2004

A PAN for VAT deficiency on cinema ticket sales in the total amount of ₱28,196,376.46 for the taxable year 2003 was issued by the BIR against First Asia. In a letter dated September 23, 2004, First Asia protested the PAN. A Formal Letter of Demand was thereafter issued by the BIR to First Asia, which the latter protested through a letter dated November 11, 2004.

On May 11, 2005, the BIR rendered a Decision denying the protests. It ordered First Asia to pay the amounts of ₱33,610,202.91 and ₱28,590,826.50 for VAT deficiency for taxable years 2002 and 2003, respectively.

ISSUE:
Whether the gross receipts derived by operators or proprietors of cinema/theater houses from admission tickets are subject to VAT (NO)

RULING:
The legislature never intended operators or proprietors of cinema/theater houses to be covered by VAT

Under the NIRC of 1939,41 the national government imposed amusement tax on proprietors, lessees, or operators of theaters, cinematographs, concert halls, circuses, boxing exhibitions, and other places of amusement, including cockpits, race tracks, and cabaret. In the case of theaters or cinematographs, the taxes were first deducted, withheld, and paid by the proprietors, lessees, or operators of such theaters or cinematographs before the gross receipts were divided between the proprietors, lessees, or operators of the theaters or cinematographs and the distributors of the cinematographic films. Section 1143 of the Local Tax Code, however, amended this provision by transferring the power to impose amusement tax on admission from theaters, cinematographs, concert halls, circuses and other places of amusements exclusively to the local government. Thus, when the NIRC of 1977 was enacted, the national government imposed amusement tax only on proprietors, lessees or operators of cabarets, day and night clubs, Jai-Alai and race tracks.

On January 1, 1988, the VAT Law was promulgated. It amended certain provisions of the NIRC of 1977 by imposing a multi-stage VAT to replace the tax on original and subsequent sales tax and percentage tax on certain services. It imposed VAT on sales of services under Section 102.

Persons subject to amusement tax under the NIRC of 1977, as amended, however, were exempted from the coverage of VAT.

On February 19, 1988, then Commissioner Bienvenido A. Tan, Jr. issued RMC 8-88, which clarified that the power to impose amusement tax on gross receipts derived from admission tickets was exclusive with the local government units and that only the gross receipts of amusement places derived from sources other than from admission tickets were subject to amusement tax under the NIRC of 1977, as amended. Pertinent portions of RMC 8-88 read:
Under the Local Tax Code (P.D. 231, as amended), the jurisdiction to levy amusement tax on gross receipts arising from admission to places of amusement has been transferred to the local governments to the exclusion of the national government.
x x x x

Since the promulgation of the Local Tax Code which took effect on June 28, 1973 none of the amendatory laws which amended the National Internal Revenue Code, including the value added tax law under Executive Order No. 273, has amended the provisions of Section 11 of the Local Tax Code. Accordingly, the sole jurisdiction for collection of amusement tax on admission receipts in places of amusement rests exclusively on the local government, to the exclusion of the national

government. Since the Bureau of Internal Revenue is an agency of the national government, then it follows that it has no legal mandate to levy amusement tax on admission receipts in the said places of amusement.
Considering the foregoing legal background, the provisions under Section 123 of the National Internal Revenue Code as renumbered by Executive Order No. 273 (Sec. 228, old NIRC) pertaining to amusement taxes on places of amusement shall be implemented in accordance with BIR RULING, dated December 4, 1973 and BIR RULING NO. 231-86 dated November 5, 1986 to wit:
"x x x Accordingly, **only the gross receipts of the amusement places derived from sources other than from admission tickets shall be subject to x x x amusement tax prescribed under Section 228 of the Tax Code, as amended** (now Section 123, NIRC, as amended by E.O. 273). **The tax on gross receipts derived from admission tickets shall be levied and collected by the city government pursuant to Section 23 of Presidential Decree No. 231, as amended x x x" or by the provincial government, pursuant to Section 11 of P.D. 231, otherwise known as the Local Tax Code**. (Emphasis supplied)

On October 10, 1991, the LGC of 1991 was passed into law. The local government retained the power to impose amusement tax on proprietors, lessees, or operators of theaters, cinemas, concert halls, circuses, boxing stadia, and other places of amusement at a rate of not more than thirty percent (30%) of the gross receipts from admission fees under Section 140 thereof. In the case of theaters or cinemas, the tax shall first be deducted and withheld by their proprietors, lessees, or operators and paid to the local government before the gross receipts are divided between said proprietors, lessees, or operators and the distributors of the cinematographic films. However, the provision in the Local Tax Code expressly excluding the national government from collecting tax from the proprietors, lessees, or operators of theaters, cinematographs, concert halls, circuses and other places of amusements was no longer included.

In 1994, RA 7716 restructured the VAT system by widening its tax base and enhancing its administration. Three years later, RA 7716 was amended by RA 8241. Shortly thereafter, the NIRC of 1997 was signed into law. Several amendments were made to expand the coverage of VAT. However, none pertain to cinema/theater operators or proprietors. At present, only lessors or distributors of cinematographic films are subject to VAT. While persons subject to amusement tax[53] under the NIRC of 1997 are exempt from the coverage of VAT.

Based on the foregoing, the following facts can be established:
(1) Historically, the activity of showing motion pictures, films or movies by cinema/theater operators or proprietors has always been considered as a form of entertainment subject to amusement tax.
(2) Prior to the Local Tax Code, all forms of amusement tax were imposed by the national government.
(3) When the Local Tax Code was enacted, amusement tax on admission tickets from theaters, cinematographs, concert halls, circuses and other places of amusements were transferred to the local government.
(4) Under the NIRC of 1977, the national government imposed amusement tax only on proprietors, lessees or operators of cabarets, day and night clubs, Jai-Alai and race tracks.
(5) The VAT law was enacted to replace the tax on original and subsequent sales tax and percentage tax on certain services.
(6) When the VAT law was implemented, it exempted persons subject to amusement tax under the NIRC from the coverage of VAT.
(7) When the Local Tax Code was repealed by the LGC of 1991, the local government continued to impose amusement tax on admission tickets from theaters, cinematographs, concert halls, circuses and other places of amusements.
(8) Amendments to the VAT law have been consistent in exempting persons subject to amusement tax under the NIRC from the coverage of VAT.
(9) Only lessors or distributors of cinematographic films are included in the coverage of VAT.

These reveal the legislative intent not to impose VAT on persons already covered by the amusement tax. This holds true even in the case of cinema/theater operators taxed under the LGC of 1991 precisely because the VAT law was intended to replace the percentage tax on certain services. The mere fact that they are taxed by the local government unit and not by the national government is immaterial. The Local Tax Code, in transferring the power to tax gross receipts derived by cinema/theater operators or proprietor from admission tickets to the local government, did not intend to treat cinema/theater houses as a separate class. No distinction must, therefore, be made between the places of amusement taxed by the national government and those taxed by the local government.

To hold otherwise would impose an unreasonable burden on cinema/theater houses operators or proprietors, who would be paying an additional 10% VAT on top of the 30% amusement tax imposed by Section 140 of the LGC of 1991, or a total of 40% tax. Such imposition would result in injustice, as persons taxed under the NIRC of 1997 would be in a better position than those taxed under the LGC of 1991. We need not belabor that a literal application of a law must be rejected if it will operate unjustly or lead to absurd results. Thus, we are convinced that the legislature never intended to include cinema/theater operators or proprietors in the coverage of VAT.

The repeal of the Local Tax Code by the LGC of 1991 is not a legal basis for the imposition of VAT on the gross receipts of cinema/theater operators or proprietors derived from admission tickets. The removal of the prohibition under the Local Tax Code did not grant nor restore to the national government the power to impose amusement tax on cinema/theater operators or proprietors. Neither did it expand the coverage of VAT. Since the imposition of a tax is a burden on the taxpayer, it cannot be presumed nor can it be extended by implication. A law will not be construed as imposing a tax unless it does so clearly, expressly, and unambiguously. As it is, the power to impose amusement tax on cinema/theater operators or proprietors remains with the local government.

Revenue Memorandum Circular No. 28-2001 is invalid.
Considering that there is no provision of law imposing VAT on the gross receipts of cinema/theater operators or proprietors derived from admission tickets, RMC No. 28-2001 which imposes VAT on the gross receipts from admission to cinema houses must be struck down. We cannot overemphasize that RMCs must not override, supplant, or modify the law, but must remain consistent and in harmony with, the law they seek to apply and implement.

PHILIPPINE AMUSEMENT AND GAMING CORPORATION (PAGCOR), *Petitioner*, -versus- THE BUREAU OF INTERNAL REVENUE, represented by JOSE MARIO BUNAG, in his capacity as Commissioner of the Bureau of Internal Revenue, and JOHN DOE and JANE DOE, who are Promulgated: persons acting for, in behalf or under the authority of respondent, *Respondents*
G.R. No. 215427, EN BANC, December 10, 2014, PERALTA, *J.*

In fine, we uphold our earlier ruling that Section 1 of R.A. No. 9337, amending Section 27(c) of R.A. No. 8424, by excluding petitioner from the enumeration of GOCCs exempted from corporate income tax, is valid and constitutional. In addition, we hold that:
1. Petitioner's tax privilege of paying five percent (5%) franchise tax in lieu of all other taxes with respect to its income from gaming operations, pursuant to P.D. 1869, as amended, is not repealed or amended by Section l(c) ofR.A. No. 9337;
2. Petitioner's income from gaming operations is subject to the five percent (5%) franchise tax only; and
3. Petitioner's income from other related services is subject to corporate income tax only.

FACTS:
On April 17, 2006, petitioner filed before this Court a Petition for Review on Certiorari and Prohibition (With Prayer for the Issuance of a Temporary Restraining Order and/or Preliminary Injunction) seeking the declaration of nullity of Section 12 of Republic Act (R.A.)No. 93373 insofar as it amends Section 27(C)4 of R.A. No. 8424, otherwise known as the National Internal Revenue Code (NIRC) by excluding petitioner from the enumeration of government-owned or controlled corporations (GOCCs) exempted from liability for corporate income tax.

On March 15, 2011, this Court rendered a Decision granting in part the petition filed by petitioner.

Both petitioner and respondent filed their respective motions for partial reconsideration, but the samewere denied by this Court in a Resolution dated May 31, 2011.

Resultantly, respondent issued RMC No. 33-2013 on April 17, 2013 pursuant to the Decision dated March 15, 2011 and the Resolution dated May 31, 2011, which clarifies the "Income Tax and

Franchise Tax Due from the Philippine Amusement and Gaming Corporation (PAGCOR), its Contractees and Licensees."

On May 20, 2011, petitioner wrote the BIR Commissioner requesting for reconsideration of the tax treatment of its income from gaming operations and other related operations under RMC No. 33-2013. The request was, however, denied by the BIR Commissioner.

On August 4, 2011, the Decision dated March 15, 2011 became final and executory and was, accordingly, recorded in the Book of Entries of Judgment.

Consequently, petitioner filed a Motion for Clarification alleging that RMC No. 33-2013 is an erroneous interpretation and application of the aforesaid Decision, and seeking clarification with respect to the following:
1. Whether PAGCOR's tax privilege of paying 5% franchise tax in lieu of all other taxes with respect toits gaming income, pursuant to its Charter – P.D. 1869, as amended by R.A. 9487, is deemed repealed or amended by Section 1 (c) of R.A. 9337.
2. If it is deemed repealed or amended, whether PAGCOR's gaming income is subject to both 5% franchise tax and income tax.
3. Whether PAGCOR's income from operation of related services is subject to both income tax and 5% franchise tax.
4. Whether PAGCOR's tax privilege of paying 5% franchise tax inures to the benefit of third parties with contractual relationship with PAGCOR in connection with the operation of casinos.[11]
In our Decision dated March 15, 2011, we have already declared petitioner's income tax liability in view of the withdrawal of its tax privilege under R.A. No. 9337. However, we made no distinction as to which income is subject to corporate income tax, considering that the issue raised therein was only the constitutionality of Section 1 of R.A. No. 9337, which excluded petitioner from the enumeration of GOCCs exempted from corporate income tax.

ISSUE:
Whether PAGCOR is exempt insofar as its gaming income is concerned (YES)

RULING:
For clarity, it is worthy to note that under P.D. 1869, as amended, PAGCOR's income is classified into two: (1) income from its operations conducted under its Franchise, pursuant to Section 13(2) (b) thereof (income from gaming operations); and (2) income from its operation of necessary and related services under Section 14(5) thereof (income from other related services). In RMC No. 33-2013, respondent further classified the aforesaid income as follows:
1. PAGCOR's income from its operations and licensing of gambling casinos, gaming clubs and other similar recreation or amusement places, gaming pools, includes, among others:
(a) Income from its casino operations;
(b) Income from dollar pit operations;
(c) Income from regular bingo operations; and
(d) Income from mobile bingo operations operated by it, with agents on commission basis. Provided, however, that the agents' commission income shall be subject to regular income tax, and consequently, to withholding tax under existing regulations.
2. Income from "other related operations"includes, but is not limited to:
(a) Income from licensed private casinos covered by authorities to operate issued to private operators;
(b) Income from traditional bingo, electronic bingo and other bingo variations covered by authorities to operate issued to private operators;
(c) Income from private internet casino gaming, internet sports betting and private mobile gaming operations;
(d) Income from private poker operations;
(e) Income from junket operations;
(f) Income from SM demo units; and
(g) Income from other necessary and related services, shows and entertainment.

After a thorough study of the arguments and points raised by the parties, and in accordance with our Decision dated March 15, 2011, we sustain petitioner's contention that its income from gaming operations is subject only to five percent (5%) franchise tax under P.D. 1869, as amended, while its income from other related services is subject to corporate income tax pursuant to P.D. 1869, as amended, as well as R.A. No. 9337. This is demonstrable.

First. Under P.D. 1869, as amended, petitioner is subject to income tax only with respect to its operation of related services. Accordingly, the income tax exemption ordained under Section 27(c) of R.A. No. 8424 clearly pertains only to petitioner'sincome from operation of related services. Such income tax exemption could not have been applicable to petitioner's income from gaming operations as it is already exempt therefrom under P.D. 1869, as amended, to wit: SECTION 13. Exemptions. –
x x x x
(2) Income and other taxes. — (a) Franchise Holder: No tax of any kind or form, income or otherwise, as well as fees, charges or levies of whatever nature, whether National or Local, shall be assessed and collected under this Franchise from the Corporation; nor shall any form of tax or charge attach in any way to the earnings of the Corporation, except a Franchise Tax of five (5%) percent of the gross revenue or earnings derived by the Corporation from its operation under this Franchise. Such tax shall be due and payable quarterly to the National Government and shall be in lieu of all kinds of taxes, levies, fees or assessments of any kind, nature or description, levied, established or collected by any municipal, provincial, or national government authority.

Indeed, the grant of tax exemption or the withdrawal thereof assumes that the person or entity involved is subject to tax. This is the most sound and logical interpretation because petitioner could not have been exempted from paying taxes which it was not liable to pay in the first place. This is clear from the wordings of P.D. 1869, as amended, imposing a franchise tax of five percent (5%) on its gross revenue or earnings derived by petitioner from its operation under the Franchise in lieuof all taxes of any kind or form, as well as fees, charges or leviesof whatever nature, which necessarily include corporate income tax.

In other words, there was no need for Congress to grant tax exemption to petitioner with respect to its income from gaming operations as the same is already exempted from all taxes of any kind or form, income or otherwise, whether national or local, under its Charter, save only for the five percent (5%) franchise tax. The exemption attached to the income from gaming operations exists independently from the enactment of R.A. No. 8424. To adopt an assumption otherwise would be downright ridiculous, if not deleterious, since petitioner would be in a worse position if the exemption was granted (then withdrawn) than when it was not granted at all in the first place.
Moreover, as may be gathered from the legislative records of the Bicameral Conference Meeting of the Committee on Ways and Means dated October 27, 1997, the exemption of petitioner from the payment of corporate income tax was due to the acquiescence of the Committee on Ways and Means to the request of petitioner that it be exempt from such tax. Based on the foregoing, it would be absurd for petitioner to seek exemption from income tax on its gaming operations when under its Charter, it is already exempted from paying the same.

Second. Every effort must be exerted to avoid a conflict between statutes; so that if reasonable construction is possible, the laws must be reconciled in that manner.

As we see it, there is no conflict between P.D. 1869, as amended, and R.A. No. 9337. The former lays down the taxes imposable upon petitioner, as follows: (1) a five percent (5%) franchise tax of the gross revenues or earnings derived from its operations conducted under the Franchise, which shall be due and payable in lieu of all kinds of taxes, levies, fees or assessments of any kind, nature or description, levied, established or collected by any municipal, provincial or national government authority; (2) income tax for income realized from other necessary and related services, shows and entertainment of petitioner.With the enactment of R.A. No. 9337, which withdrew the income tax exemption under R.A. No. 8424, petitioner's tax liability on income from other related services was merely reinstated.

It cannot be gain said, therefore, that the nature of taxes imposable is well defined for each kind of activity oroperation. There is no inconsistency between the statutes; and in fact, they complement each other.

Third. Even assuming that an inconsistency exists, P.D. 1869, as amended, which expressly provides the tax treatment of petitioner's income prevails over R.A. No. 9337, which is a general law. It is a

canon of statutory construction that a special law prevails over a general law — regardless of their dates of passage — and the special is to be considered as remaining an exception to the general.[17] The rationale is:
Why a special law prevails over a general law has been put by the Court as follows: x x x x
x x x The Legislature consider and make provision for all the circumstances of the particular case. The Legislature having specially considered all of the facts and circumstances in the particular case in granting a special charter, it will not be considered that the Legislature, by adopting a general law containing provisions repugnant to the provisions of the charter, and without making any mention of its intention to amend or modify the charter, intended to amend, repeal, or modify the special act. (Lewis vs. Cook County, 74 I11. App., 151; Philippine Railway Co. vs. Nolting 34 Phil., 401.)

Where a general law is enacted to regulate an industry, it is common for individual franchises subsequently granted to restate the rights and privileges already mentioned in the general law, or to amend the later law, as may be needed, to conform to the general law. However, if no provision or amendment is stated in the franchise to effect the provisions of the general law, it cannot be said that the same is the intent of the lawmakers, for repeal of laws by implication is not favored.

In this regard, we agree with petitioner that if the lawmakers had intended to withdraw petitioner's tax exemption of its gaming income, then Section 13(2)(a) of P.D. 1869 should have been amended expressly in R.A. No. 9487, or the same, at the very least, should have been mentioned in the repealing clause of R.A. No. 9337. However, the repealing clause never mentioned petitioner's Charter as one of the laws being repealed. On the other hand, the repeal of other special laws, namely, Section 13 of R.A. No. 6395 as well as Section 6, fifth paragraph of R.A. No. 9136, is categorically provided under Section 24 (a) (b) of R.A. No. 9337

When petitioner's franchise was extended on June 20, 2007 without revoking or withdrawing itstax exemption, it effectively reinstated and reiterated all of petitioner's rights, privileges and authority granted under its Charter. Otherwise, Congress would have painstakingly enumerated the rights and privileges that it wants to withdraw, given that a franchise is a legislative grant of a special privilege to a person. Thus, the extension of petitioner's franchise under the same terms and conditions means a continuation of its tax exempt status with respect to its income from gaming operations.

It is settled that where a statute is susceptible of more than one interpretation, the court should adopt such reasonable and beneficial construction which will render the provision thereof operative and effective, as well as harmonious with each other.

Given that petitioner's Charter is not deemed repealed or amended by R.A. No. 9337, petitioner's income derived from gaming operations is subject only to the five percent (5%)franchise tax, in accordance with P.D. 1869, as amended. With respect to petitioner's income from operation of other related services, the same is subject to income tax only. The five percent (5%) franchise tax finds no application with respect to petitioner's income from other related services, in view of the express provision of Section 14(5) of P.D. 1869

Thus, it would be the height of injustice to impose franchise tax upon petitioner for its income from other related services without basis therefor.

For proper guidance, the first classification of PAGCOR's income under RMC No. 33-2013 (i.e., income from its operations and licensing of gambling casinos, gaming clubs and other similar recreation or amusement places, gambling pools) should be interpreted in relation to Section 13(2) of P.D. 1869, which pertains to the income derived from issuing and/or granting the license to operate casinos to PAGCOR's contractees and licensees, as well as earnings derived by PAGCOR from its own operations under the Franchise. On the other hand, the second classification of PAGCOR's income under RMC No. 33-2013 (i.e., income from other related operations) should be interpreted in relation to Section 14(5) of P.D. 1869, which pertains to income received by PAGCOR from its contractees and licensees in the latter's operation of casinos, as well as PAGCOR's own income from operating necessary and related services, shows and entertainment.

As to whether petitioner's tax privilege of paying five percent (5%) franchise tax inures to the benefit of third parties with contractual relationship with petitioner in connection with the operation of casinos, we find no reason to rule upon the same. The resolution of the instant petition

is limited to clarifying the tax treatment of petitioner's income vis-à-visour Decision dated March 15, 2011. This Decision is not meant to expand our original Decision by delving into new issues involving petitioner's contractees and licensees. For one, the latter are not parties to the instant case, and may not therefore stand to benefit or bear the consequences of this resolution. For another, to answer the fourth issue raised by petitioner relative to its contractees and licensees would be downright premature and iniquitous as the same would effectively countenance sidesteps to judicial process.
In view of the foregoing disquisition, respondent, therefore, committed grave abuse of discretion amounting to lack of jurisdiction when it issued RMC No. 33-2013 subjecting both income from gaming operations and other related services to corporate income tax and five percent (5%) franchise tax.*1âwphi1* This unduly expands our Decision dated March 15, 2011 without due process since the imposition creates additional burden upon petitioner. Such act constitutes an overreach on the part of the respondent, which should be immediately struck down, lest grave injustice results. More, it is settled that in case of discrepancy between the basic law and a rule or regulation issued to implement said law, the basic law prevails, because the said rule or regulation cannot go beyond the terms and provisions of the basic law.

In fine, we uphold our earlier ruling that Section 1 of R.A. No. 9337, amending Section 27(c) of R.A. No. 8424, by excluding petitioner from the enumeration of GOCCs exempted from corporate income tax, is valid and constitutional. In addition, we hold that:
1. Petitioner's tax privilege of paying five percent (5%) franchise tax in lieu of all other taxes with respect to its income from gaming operations, pursuant to P.D. 1869, as amended, is not repealed or amended by Section l(c) ofR.A. No. 9337;
2. Petitioner's income from gaming operations is subject to the five percent (5%) franchise tax only; and
3. Petitioner's income from other related services is subject to corporate income tax only.

In view of the above-discussed findings, this Court ORDERS the respondent to cease and desist the implementation of RMC No. 33-2013 insofar as it imposes: (1) corporate income tax on petitioner's income derived from its gaming operations; and (2) franchise tax on petitioner's income from other related services.

PHILIPPINE TRUST COMPANY, PEOPLES BANK AND TRUST COMPANY, THE YOKOHAMA SPECIE BANK, LTD., and THE CHARTERED BANK OF INDIA, AUSTRALIA AND CHINA,, *Petitioners,* -versus- A. L. YATCO, *Respondent*
G.R. No. 46255, EN BANC, January 23, 1940, LAUREL, *J.*

The method of assessment prescribed in section 1502, in relation to section 1499, of the Revised Administrative Code, for domestic banks while different from that prescribed for foreign banks is permissible. This conclusion flows from the legal proposition that "a state may impose a different rate of taxation upon a foreign corporation for the privilege of doing business within the state than it applies to its own corporations upon the franchise which the state grants in creating them."

FACTS:
The records disclosed that prior to the filing of these suits, and for a number of years, the plaintiffs-appellants had been paying capital and deposit taxes without protest, formerly under section 111 of Act No. 1189, and later under section 1499 of the Revised Administrative Code of 1917, as amended. The taxes paid under protest

In the trial court, by agreement of the parties, the case were submitted and heard together on a joint stipulation of facts. After trial, the Court of First Instance of Manila dismissed the actions and upheld the validity of section 1499 of the Revised Administrative Code, as amended by Act No. 3199.

The provision of the law involved reads:
SEC. 1499. *Tax on capital, deposits, and circulation of banks*. — Subject to the exemption herein made there shall be collected from banks the following taxes on capital, deposits, and circulation:
(*a*) Upon the capital employed by the bank, for each month, one twenty-fourth of one per centrum.
(*b*) Upon the average amount of deposits of money, subject to payment by check or draft, or

represented by certificates of deposits, or otherwise, whether payable on demand, or on some future day, for each month, one eighteenth of one per centrum.
(*c*) Upon the average amount of circulation issued by the bank, including as circulation all notes, and other obligations calculated or intended to circulate or be used as money, but not including such as may be retained in the vault of the bank or redeemed and on deposits for said bank, for each month, one-twelfth of one per centrum.
(*d*) 'Bank' as herein used, includes every incorporated or other bank, and every person, association, or company having a place of business where credits are opened by the deposit or collection of money or currency subject to be paid or remitted upon draft, check, or order, or where money is advanced or loaned on stocks, bonds, bullions, bills of exchange, or promissory notes are received for discount or for sale.
"Capital employed" does not include money borrowed or received from time to time in the usual course of business from any person not a partner of or interested in such bank; and no tax shall be imposed on the capital employed by any person whose sole business is lending money on real-state security. (Revised Administrative Code.)

Act No. 3199 repealed the first paragraph of subjection (*d*) of this section.

Appellants stoutly maintain that although the foregoing provision is of general application and operates on all banks of the same kind doing business in the Philippines, the exemption of the National City Bank of New York from the impositions therein specifically provided (National City Bank of New York v. Posadas [296 U.S. 497, 80 Law ed. 351], makes the law discriminatory and violates the rule of uniformity in taxation. In support of this contention, appellants rely on State Bank of Ohama v. Endres (1923), 109 Neb. 753, 192 N.W. 322; Central Nat. Bank of Lincoln v. Sutherland (1925) 113 Nev. 126, 202 N. W. 428; Commercial State Bank v. Wilson (1928), 53 S.D. 82, 220 N. W. 152; Security Sav. Bank v. Board of Review (1920), 189 lo. 463, 178 N.W. 562; ans State ex rel. Conrad Banking Corporation, etc. v. Mady (1928) 83 Mont. 418, 272 Pac. 691. The exemption, however, of an instrumentality of the Federal Government does not deprive the Commonwealth of the Philippines of the power to tax competitors of such instrumentality. (Union Bank & Trust Co. v. Phelps (1933), 288 U.S. 181, 77 Lae. ed. 687.) And the lack of uniformity in the result furnishes no ground of complaint. (Merchants' Bank v. Pennsylvania, 167 U.S. 461, 42 Law. ed. 236). These decisions of the Supreme Court of the United States are of controlling persuasive effect. (83 Am. Law Rep. Ann. 1441.)

Appellants challenge the constitutionality of the aforesaid section of the Revised Administrative Code, principally on the grounds that it violates the rule regarding uniformity of taxation, and that it is discriminatory, and therefore violative of the equal protection clause of the Constitution.

ISSUE:
Whether the aforementioned section of the Administrative Code is constitutional (YES)

RULING:
A tax is considered uniform when it operates with the same force and effect in every place where the subject may be found. (State v. Railroad Tax Cases, 92 U.S. 575, 595, 612, 23 Law. ed. 363, 373.) Section 1499 of the Revised Administrative Code, as amended, applies uniformly to, and operates on, all banks in the Philippines without distinction and discrimination, and if the National City Bank of New York is exempted from its operation because it is a federal instrumentality subject only to the authority of Congress, that alone could have the effect of rendering it violative of the rule of uniformity. In every well-regulated and enlightened state or government, certain descriptions of property and also certain institutions are exempt from taxation, but these exemptions have never been regarded as disturbing the rules of taxation, even where the fundamental law had ordained that it should be uniform. (Des Moines Bank v. Fairweather, 263 U.S. 103,118). The rule of uniformity does not call for perfect uniformity or perfect equality, because this is hardly attainable.

It is vaguely argued that section 1499 of the Revised Administrative Code was declared unconstitutional by the Supreme Court of the United States insofar as the National City Bank of New York was concerned. This is an error. In *Posadas v. National City Bank*, 296 U.S. 499, 80 Law. ed. 352, it was held that the National City Bank of New York in the Philippines was established by virtue of section 25 of the Federal Reserve Act of 1913, which authorized the establishment of branches of national banking associations in foreign countries or dependencies of the United States," and that the Philippines being a possession and dependency of the United States, the rule laid down in Domenech v. National City Bank, 294 U.S. 199, 204, 79 Law. ed. 857, 861, 55 S. Ct. 366, that "a dependency may not tax its sovereign," must be considered controlling. There was no declaration, either express or implied, that section 1499 is unconstitutional and void.

The method of assessment prescribed in section 1502, in relation to section 1499, of the Revised Administrative Code, for domestic banks while different from that prescribed for foreign banks is permissible. This conclusion flows from the legal proposition that "a state may impose a different rate of taxation upon a foreign corporation for the privilege of doing business within the state than it applies to its own corporations upon the franchise which the state grants in creating them." (Kansas City, Memphis & Birmingham R.R. Co. vs. Stiles, 242 U.S. 111, 118, 37 S. Ct. 58, 61, 61, Law. ed. 176.)

RUFINO R. TAN, *Petitioner,* -versus- RAMON R. DEL ROSARIO, JR., as SECRETARY OF FINANCE & JOSE U. ONG, as COMMISSIONER OF INTERNAL REVENUE, *Respondents*
G.R. No. 109289, EN BANC, October 3, 1994, VITUG, *J.*

In fine, we uphold our earlier ruling that Section 1 of R.A. No. 9337, amending Section 27(c) of R.A. No. 8424, by excluding petitioner from the enumeration of GOCCs exempted from corporate income tax, is valid and constitutional. In addition, we hold that:
1. Petitioner's tax privilege of paying five percent (5%) franchise tax in lieu of all other taxes with respect to its income from gaming operations, pursuant to P.D. 1869, as amended, is not repealed or amended by Section l(c) ofR.A. No. 9337;
2. Petitioner's income from gaming operations is subject to the five percent (5%) franchise tax only; and
3. Petitioner's income from other related services is subject to corporate income tax only.

FACTS:
These two consolidated special civil actions for prohibition challenge, in G.R. No. 109289, the constitutionality of Republic Act No. 7496, also commonly known as the Simplified Net Income Taxation Scheme ("SNIT"), amending certain provisions of the National Internal Revenue Code and, in G.R. No. 109446, the validity of Section 6, Revenue Regulations No. 2-93, promulgated by public respondents pursuant to said law.

Petitioners claim to be taxpayers adversely affected by the continued implementation of the amendatory legislation.

In G.R. No. 109289, it is asserted that the enactment of Republic Act
No. 7496 violates the following provisions of the Constitution:

Article VI, Section 26(1) — Every bill passed by the Congress shall embrace only one subject which shall be expressed in the title thereof.

Article VI, Section 28(1) — The rule of taxation shall be uniform and equitable. The Congress shall evolve a progressive system of taxation.

Article III, Section 1 — No person shall be deprived of . . . property without due process of law, nor shall any person be denied the equal protection of the laws.

In G.R. No. 109446, petitioners, assailing Section 6 of Revenue Regulations No. 2-93, argue that public respondents have exceeded their rule-making authority in applying SNIT to general professional partnerships.

The Solicitor General espouses the position taken by public respondents.

The Court has given due course to both petitions. The parties, in compliance with the Court's directive, have filed their respective memoranda.

ISSUE:
Whether public respondents have exceeded their authority in promulgating Section 6, Revenue

Regulations No. 2-93, to carry out Republic Act No. 7496. (NO)

RULING:
The questioned regulation reads:

Sec. 6. General Professional Partnership — The general professional partnership (GPP) and the partners comprising the GPP are covered by R. A. No. 7496. Thus, in determining the net profit of the partnership, only the direct costs mentioned in said law are to be deducted from partnership income. Also, the expenses paid or incurred by partners in their individual capacities in the practice of their profession which are not reimbursed or paid by the partnership but are not considered as direct cost, are not deductible from his gross income.

The Court, first of all, should like to correct the apparent misconception that general professional partnerships are subject to the payment of income tax or that there is a difference in the tax treatment between individuals engaged in business or in the practice of their respective professions and partners in general professional partnerships. The fact of the matter is that a general professional partnership, unlike an ordinary business partnership (which is treated as a corporation for income tax purposes and so subject to the corporate income tax), is not itself an income taxpayer. The income tax is imposed not on the professional partnership, which is tax exempt, but on the partners themselves in their individual capacity computed on their distributive shares of partnership profits. Section 23 of the Tax Code, which has not been amended at all by Republic Act 7496, is explicit:

Sec. 23. Tax liability of members of general professional partnerships. — (a) Persons exercising a common profession in general partnership shall be liable for income tax only in their individual capacity, and the share in the net profits of the general professional partnership to which any taxable partner would be entitled whether distributed or otherwise, shall be returned for taxation and the tax paid in accordance with the provisions of this Title.

(b) In determining his distributive share in the net income of the partnership, each partner —

(1) Shall take into account separately his distributive share of the partnership's income, gain, loss, deduction, or credit to the extent provided by the pertinent provisions of this Code, and

(2) Shall be deemed to have elected the itemized deductions, unless he declares his distributive share of the gross income undiminished by his share of the deductions.

There is, then and now, no distinction in income tax liability between a person who practices his profession alone or individually and one who does it through partnership (whether registered or not) with others in the exercise of a common profession. Indeed, outside of the gross compensation income tax and the final tax on passive investment income, under the present income tax system all individuals deriving income from any source whatsoever are treated in almost invariably the same manner and under a common set of rules.

We can well appreciate the concern taken by petitioners if perhaps we were to consider Republic Act No. 7496 as an entirely independent, not merely as an amendatory, piece of legislation. The view can easily become myopic, however, when the law is understood, as it should be, as only forming part of, and subject to, the whole income tax concept and precepts long obtaining under the National Internal Revenue Code. To elaborate a little, the phrase "income taxpayers" is an all embracing term used in the Tax Code, and it practically covers all persons who derive taxable income. The law, in levying the tax, adopts the most comprehensive tax situs of nationality and residence of the taxpayer (that renders citizens, regardless of residence, and resident aliens subject to income tax liability on their income from all sources) and of the generally accepted and internationally recognized income taxable base (that can subject non-resident aliens and foreign corporations to income tax on their income from Philippine sources). In the process, the Code classifies taxpayers into four main groups, namely: (1) Individuals, (2) Corporations, (3) Estates under Judicial Settlement and (4) Irrevocable Trusts (irrevocable both as to corpus and as to income).

Partnerships are, under the Code, either "taxable partnerships" or "exempt partnerships."

Ordinarily, partnerships, no matter how created or organized, are subject to income tax (and thus alluded to as "taxable partnerships") which, for purposes of the above categorization, are by law assimilated to be within the context of, and so legally contemplated as, corporations. Except for few variances, such as in the application of the "constructive receipt rule" in the derivation of income, the income tax approach is alike to both juridical persons. Obviously, SNIT is not intended or envisioned, as so correctly pointed out in the discussions in Congress during its deliberations on Republic Act 7496, aforequoted, to cover corporations and partnerships which are independently subject to the payment of income tax.

"Exempt partnerships," upon the other hand, are not similarly identified as corporations nor even considered as independent taxable entities for income tax purposes. A general professional partnership is such an example.4 Here, the partners themselves, not the partnership (although it is still obligated to file an income tax return [mainly for administration and data]), are liable for the payment of income tax in their individual capacity computed on their respective and distributive shares of profits. In the determination of the tax liability, a partner does so as an individual, and there is no choice on the matter. In fine, under the Tax Code on income taxation, the general professional partnership is deemed to be no more than a mere mechanism or a flow-through entity in the generation of income by, and the ultimate distribution of such income to, respectively, each of the individual partners.

Section 6 of Revenue Regulation No. 2-93 did not alter, but merely confirmed, the above standing rule as now so modified by Republic Act
No. 7496 on basically the extent of allowable deductions applicable to all individual income taxpayers on their non-compensation income. There is no evident intention of the law, either before or after the amendatory legislation, to place in an unequal footing or in significant variance the income tax treatment of professionals who practice their respective professions individually and of those who do it through a general professional partnership..

CHAMBER OF REAL ESTATE AND BUILDERS' ASSOCIATIONS, INC., *Petitioner,* -versus- THE HON. EXECUTIVE SECRETARY ALBERTO ROMULO, THE HON. ACTING SECRETARY OF FINANCE JUANITA D. AMATONG, and THE HON. COMMISSIONER OF INTERNAL REVENUE GUILLERMO PARAYNO, JR., *Respondents*

G.R. No. 160756, EN BANC, March 9, 2010, CORONA, *J.*

Certainly, an income tax is arbitrary and confiscatory if it taxes capital because capital is not income. In other words, it is income, not capital, which is subject to income tax. However, the MCIT is not a tax on capital.

The MCIT is imposed on gross income which is arrived at by deducting the capital spent by a corporation in the sale of its goods, i.e., the cost of goods and other direct expenses from gross sales. Clearly, the capital is not being taxed.

FACTS:

Petitioner assails the validity of the imposition of minimum corporate income tax (MCIT) on corporations and creditable withholding tax (CWT) on sales of real properties classified as ordinary assets.

Section 27(E) of RA 8424 provides for MCIT on domestic corporations and is implemented by RR 9-98. Petitioner argues that the MCIT violates the due process clause because it levies income tax even if there is no realized gain.

Petitioner also seeks to nullify Sections 2.57.2(J) (as amended by RR 6-2001) and 2.58.2 of RR 2-98, and Section 4(a)(ii) and (c)(ii) of RR 7-2003, all of which prescribe the rules and procedures for the collection of CWT on the sale of real properties categorized as ordinary assets. Petitioner contends that these revenue regulations are contrary to law for two reasons: *first*, they ignore the different treatment by RA 8424 of ordinary assets and capital assets and *second*, respondent Secretary of Finance has no authority to collect CWT, much less, to base the CWT on the gross selling price or fair market value of the real properties classified as ordinary assets.

Petitioner also asserts that the enumerated provisions of the subject revenue regulations violate the due process clause because, like the MCIT, the government collects income tax even when the net income has not yet been determined. They contravene the equal protection clause as well because the CWT is being levied upon real estate enterprises but not on other business enterprises, more particularly those in the manufacturing sector.

ISSUES:
1. Whether the imposition of the MCIT on domestic corporations is unconstitutional (NO)
2. Whether the imposition of CWT on income from sales of real properties classified as ordinary assets under RRs 2-98, 6-2001 and 7-2003, is unconstitutional. (NO)

RULING:
I.
Petitioner is correct in saying that income is distinct from capital. Income means all the wealth which flows into the taxpayer other than a mere return on capital. Capital is a fund or property existing at one distinct point in time while income denotes a flow of wealth during a definite period of time. Income is gain derived and severed from capital. For income to be taxable, the following requisites must exist:
(1) there must be gain;
(2) the gain must be realized or received and
(3) the gain must not be excluded by law or treaty from taxation.

Certainly, an income tax is arbitrary and confiscatory if it taxes capital because capital is not income. In other words, it is income, not capital, which is subject to income tax. However, the MCIT is not a tax on capital.
The MCIT is imposed on gross income which is arrived at by deducting the capital spent by a corporation in the sale of its goods, *i.e.*, the cost of goods and other direct expenses from gross sales. Clearly, the capital is not being taxed.

Furthermore, the MCIT is not an additional tax imposition. It is imposed **in lieu of** the normal net income tax, and only if the normal income tax is suspiciously low. The MCIT merely approximates the amount of net income tax due from a corporation, pegging the rate at a very much reduced 2% and uses as the base the corporation's gross income.

Besides, there is no legal objection to a broader tax base or taxable income by eliminating all deductible items and at the same time reducing the applicable tax rate.

Statutes taxing the **gross** "receipts," "earnings," or "**income**" **of particular corporations** are found in many jurisdictions. Tax thereon is generally held to be within the power of a state to impose; or constitutional, unless it interferes with interstate commerce or violates the requirement as to uniformity of taxation.

The United States has a similar alternative minimum tax (AMT) system which is generally characterized by a lower tax rate but a broader tax base. Since our income tax laws are of American origin, interpretations by American courts of our parallel tax laws have persuasive effect on the interpretation of these laws. Although our MCIT is not exactly the same as the AMT, the policy behind them and the procedure of their implementation are comparable. On the question of the AMT's constitutionality, the United States Court of Appeals for the Ninth Circuit stated in *Okin v. Commissioner*:

In enacting the minimum tax, Congress attempted to remedy general taxpayer distrust of the system growing from large numbers of taxpayers with large incomes who were yet paying no taxes.
x x x x x x x x x
We thus join a number of other courts in upholding the constitutionality of the [AMT]. xxx [It] is a rational means of obtaining a broad-based tax, and therefore is constitutional.[54]
The U.S. Court declared that the congressional intent to ensure that corporate taxpayers would contribute a minimum amount of taxes was a legitimate governmental end to which the AMT bore a reasonable relation.

American courts have also emphasized that Congress has the power to condition, limit or deny deductions from gross income in order to arrive at the net that it chooses to tax. This is because deductions are a matter of legislative grace.

Absent any other valid objection, the assignment of gross income, instead of net income, as the tax base of the MCIT, taken with the reduction of the tax rate from 32% to 2%, is not constitutionally objectionable.

Moreover, petitioner does not cite any actual, specific and concrete negative experiences of its members nor does it present empirical data to show that the implementation of the MCIT resulted in the confiscation of their property.

In sum, petitioner failed to support, by any factual or legal basis, its allegation that the MCIT is arbitrary and confiscatory.

II.
RR 9-98 Merely Clarifies Section 27(E) of RA 8424.

Also, authority of the Secretary of Finance to Order the Collection of CWT on Sales of Real Property Considered as Ordinary Assets
The Secretary of Finance is granted, under Section 244 of RA 8424, the authority to promulgate the necessary rules and regulations for the effective enforcement of the provisions of the law. Such authority is subject to the limitation that the rules and regulations must not override, but must remain consistent and in harmony with, the law they seek to apply and implement. It is well-settled that an administrative agency cannot amend an act of Congress.

We have long recognized that the method of withholding tax at source is a procedure of collecting income tax which is sanctioned by our tax laws. The withholding tax system was devised for three primary reasons: first, to provide the taxpayer a convenient manner to meet his probable income tax liability; second, to ensure the collection of income tax which can otherwise be lost or substantially reduced through failure to file the corresponding returns and third, to improve the government's cash flow. This results in administrative savings, prompt and efficient collection of taxes, prevention of delinquencies and reduction of governmental effort to collect taxes through more complicated means and remedies.

Respondent Secretary has the authority to require the withholding of a tax on items of income payable to any person, national or juridical, residing in the Philippines. Such authority is derived from Section 57(B) of RA 8424

The questioned provisions of RR 2-98, as amended, are well within the authority given by Section 57(B) to the Secretary, *i.e.*, the graduated rate of 1.5%-5% is between the 1%-32% range; the withholding tax is imposed on the income payable and the tax is creditable against the income tax liability of the taxpayer for the taxable year.

Effect of RRs on the Tax Base for the Income Tax of Individuals or Corporations Engaged in the Real Estate Business
Petitioner maintains that RR 2-98, as amended, arbitrarily shifted the tax base of a real estate business' income tax from net income to GSP or FMV of the property sold.
Petitioner is wrong.

The taxes withheld are in the nature of advance tax payments by a taxpayer in order to extinguish its possible tax obligation. They are installments on the annual tax which may be due at the end of the taxable year.

Under RR 2-98, the tax base of the income tax from the sale of real property classified as ordinary assets remains to be the entity's net income imposed under Section 24 (resident individuals) or Section 27 (domestic corporations) in relation to Section 31 of RA 8424, *i.e.* gross income less allowable deductions. The CWT is to be deducted from the net income tax payable by the taxpayer at the end of the taxable year. Precisely, Section 4(a)(ii) and (c)(ii) of RR 7-2003 reiterate that the tax base for the sale of real property classified as ordinary assets remains to be the net taxable income.

The sale of land and/or building classified as ordinary asset and other real property (other than land and/or building treated as capital asset), regardless of the classification thereof, all of which are located in the Philippines, shall be **subject to** the [CWT] (expanded) under Sec. 2.57.2(J) of [RR 2-98], as amended, and consequently, to **the ordinary income tax under Sec. 27(A)** of the Code. In lieu of the ordinary income tax, however, domestic corporations may become subject to the [MCIT] under Sec. 27(E) of the same Code, whichever is applicable. (Emphasis supplied)

Accordingly, at the end of the year, the taxpayer/seller shall file its income tax return and credit the taxes withheld (by the withholding agent/buyer) against its tax due. If the tax due is greater than the tax withheld, then the taxpayer shall pay the difference. If, on the other hand, the tax due is less than the tax withheld, the taxpayer will be entitled to a refund or tax credit. Undoubtedly, the taxpayer is taxed on its net income.

The use of the GSP/FMV as basis to determine the withholding taxes is evidently for purposes of practicality and convenience. Obviously, the withholding agent/buyer who is obligated to withhold the tax does not know, nor is he privy to, how much the taxpayer/seller will have as its net income at the end of the taxable year. Instead, said withholding agent's knowledge and privity are limited only to the particular transaction in which he is a party. In such a case, his basis can only be the GSP or FMV as these are the only factors reasonably known or knowable by him in connection with the performance of his duties as a withholding agent.

No Blurring of Distinctions Between Ordinary Assets and Capital Assets
RR 2-98 imposes a graduated CWT on income based on the GSP or FMV of the real property categorized as ordinary assets. On the other hand, Section 27(D)(5) of RA 8424 imposes a final tax and flat rate of 6% on the gain presumed to be realized from the sale of a capital asset based on its GSP or FMV. This final tax is also withheld at source.

The differences between the two forms of withholding tax, *i.e.*, creditable and final, show that ordinary assets are not treated in the same manner as capital assets. Final withholding tax (FWT) and CWT are distinguished as follows:

FWT	CWT
a) The amount of income tax withheld by the withholding agent is constituted as a full and final payment of the income tax due from the payee on the said income.	a) Taxes withheld on certain income payments are intended to equal or at least approximate the tax due of the payee on said income.
b)The liability for payment of the tax rests primarily on the payor as a withholding agent.	b) Payee of income is required to report the income and/or pay the difference between the tax withheld and the tax due on the income. The payee also has the right to ask for a refund if the tax withheld is more than the tax due.
c) The payee is not required to file an income tax return for the particular income.[73]	c) The income recipient is still required to file an income tax return, as prescribed in Sec. 51 and Sec. 52 of the NIRC, as amended.[74]

As previously stated, FWT is imposed on the sale of capital assets. On the other hand, CWT is imposed on the sale of ordinary assets. The inherent and substantial differences between FWT and CWT disprove petitioner's contention that ordinary assets are being lumped together with, and treated similarly as, capital assets in contravention of the pertinent provisions of RA 8424.

Petitioner insists that the levy, collection and payment of CWT at the time of transaction are contrary to the provisions of RA 8424 on the manner and time of filing of the return, payment and assessment of income tax involving ordinary assets.

The fact that the tax is withheld at source does not automatically mean that it is treated exactly the same way as capital gains. As aforementioned, the mechanics of the FWT are distinct from those of the CWT. The withholding agent/buyer's act of collecting the tax at the time of the transaction by withholding the tax due from the income payable is the essence of the withholding tax method of tax collection.

No Rule that Only Passive Incomes Can Be Subject to CWT
Section 57(A) expressly states that final tax can be imposed on certain kinds of income and enumerates these as passive income. The BIR defines passive income by stating what it is not:
…if the income is generated in the active pursuit and performance of the corporation's primary purposes, the same is not passive income…

It is income generated by the taxpayer's assets. These assets can be in the form of real properties that return rental income, shares of stock in a corporation that earn dividends or interest income received from savings.

On the other hand, Section 57(B) provides that the Secretary can require a CWT on "income payable to natural or juridical persons, residing in the Philippines." There is no requirement that this income be passive income. If that were the intent of Congress, it could have easily said so.
Indeed, Section 57(A) and (B) are distinct. Section 57(A) refers to FWT while Section 57(B) pertains to CWT. The former covers the kinds of passive income enumerated therein and the latter encompasses *any income other than those listed in 57(A).* Since the law itself makes distinctions, it is wrong to regard 57(A) and 57(B) in the same way.

To repeat, the assailed provisions of RR 2-98, as amended, do not modify or deviate from the text of Section 57(B). RR 2-98 merely implements the law by specifying what income is subject to CWT. It has been held that, where a statute does not require any particular procedure to be followed by an administrative agency, the agency may adopt any reasonable method to carry out its functions. Similarly, considering that the law uses the general term "income," the Secretary and CIR may specify the kinds of income the rules will apply to based on what is feasible. In addition, administrative rules and regulations ordinarily deserve to be given weight and respect by the courts in view of the rule-making authority given to those who formulate them and their specific expertise in their respective fields.

No Deprivation of Property Without Due Process
Again, it is stressed that the CWT is creditable against the tax due from the seller of the property at the end of the taxable year. The seller will be able to claim a tax refund if its net income is less than the taxes withheld. Nothing is taken that is not due so there is no confiscation of property repugnant to the constitutional guarantee of due process. More importantly, the due process requirement applies to the power to tax. The CWT does not impose new taxes nor does it increase taxes. It relates entirely to the method and time of payment.

No Violation of Equal Protection
The taxing power has the authority to make reasonable classifications for purposes of taxation. Inequalities which result from a singling out of one particular class for taxation, or exemption, infringe no constitutional limitation. The real estate industry is, by itself, a class and can be validly treated differently from other business enterprises.

Petitioner, in insisting that its industry should be treated similarly as manufacturing enterprises, fails to realize that what distinguishes the real estate business from other manufacturing enterprises, for purposes of the imposition of the CWT, is not their production processes but the prices of their goods sold and the number of transactions involved. The income from the sale of a real property is bigger and its frequency of transaction limited, making it less cumbersome for the parties to comply with the withholding tax scheme.

On the other hand, each manufacturing enterprise may have tens of thousands of transactions with several thousand customers every month involving both minimal and substantial amounts. To require the customers of manufacturing enterprises, at present, to withhold the taxes on each of their transactions with their tens or hundreds of suppliers may result in an inefficient and unmanageable system of taxation and may well defeat the purpose of the withholding tax system.

Petitioner counters that there are other businesses wherein expensive items are also sold infrequently, *e.g.* heavy equipment, jewelry, furniture, appliance and other capital goods yet these are not similarly subjected to the CWT. As already discussed, the Secretary may adopt any reasonable method to carry out its functions. Under Section 57(B), it may choose what to subject to CWT.
A reading of Section 2.57.2 (M) of RR 2-98 will also show that petitioner's argument is not accurate. The sales of manufacturers who have clients within the top 5,000 corporations, as specified by the BIR, are also subject to CWT for their transactions with said 5,000 corporations.

Section 2.58.2 of RR No. 2-98 Merely Implements Section 58 of RA 8424
Lastly, petitioner assails Section 2.58.2 of RR 2-98, which provides that the Registry of Deeds should not effect the regisration of any document transferring real property unless a certification is issued by the CIR that the withholding tax has been paid. Petitioner proffers hardly any reason to strike down this rule except to rely on its contention that the CWT is unconstitutional. We have ruled that it is not. Furthermore, this provision uses almost exactly the same wording as Section 58(E) of RA 8424 and is unquestionably in accordance with it:
Sec. 58. *Returns and Payment of Taxes Withheld at Source*. –
(E) *Registration with Register of Deeds*. - **No registration of any document transferring real property shall be effected by the Register of Deeds unless the [CIR] or his duly authorized representative has certified that such transfer has been reported, and the capital gains or [CWT], if any, has been paid**: xxxx any violation of this provision by the Register of Deeds shall be subject to the penalties imposed under Section 269 of this Co

ANTONIO ROXAS, EDUARDO ROXAS and ROXAS Y CIA., in their own respective behalf and as judicial co-guardians of JOSE ROXAS, *Petitioners*, -versus- COURT OF TAX APPEALS and COMMISSIONER OF INTERNAL REVENUE, *Respondents*
G.R. No. L-25043, EN BANC, April 26, 1968, BENGZON, J.P, *J.*

The power of taxation is sometimes called also the power to destroy. Therefore it should be exercised with caution to minimize injury to the proprietary rights of a taxpayer. It must be exercised fairly, equally and uniformly, lest the tax collector kill the "hen that lays the golden egg". And, in order to maintain the general public's trust and confidence in the Government this power must be used justly and not treacherously. It does not conform with Our sense of justice in the instant case for the Government to persuade the taxpayer to lend it a helping hand and later on to penalize him for duly answering the urgent call.

In fine, Roxas y Cia. cannot be considered a real estate dealer for the sale in question. Hence, pursuant to Section 34 of the Tax Code the lands sold to the farmers are capital assets, and the gain derived from the sale thereof is capital gain, taxable only to the extent of 50%.

FACTS:
During their bachelor days the Roxas brothers lived in the residential house at Wright St., Malate, Manila, which they inherited from their grandparents. After Antonio and Eduardo got married, they resided somewhere else leaving only Jose in the old house. In fairness to his brothers, Jose paid to Roxas y Cia. rentals for the house in the sum of P8,000.00 a year.

On June 17, 1958, the Commissioner of Internal Revenue demanded from Roxas y Cia the payment of real estate dealer's tax for 1952 in the amount of P150.00 plus P10.00 compromise penalty for late payment, and P150.00 tax for dealers of securities for 1952 plus P10.00 compromise penalty for late payment. The assessment for real estate dealer's tax was based on the fact that Roxas y Cia.

received house rentals from Jose Roxas in the amount of P8,000.00. Pursuant to Sec. 194 of the Tax Code, an owner of a real estate who derives a yearly rental income therefrom in the amount of P3,000.00 or more is considered a real estate dealer and is liable to pay the corresponding fixed tax.

The Commissioner of Internal Revenue justified his demand for the fixed tax on dealers of securities against Roxas y Cia., on the fact that said partnership made profits from the purchase and sale of securities.

In the same assessment, the Commissioner assessed deficiency income taxes against the Roxas Brothers for the years 1953 and 1955

The deficiency income taxes resulted from the inclusion as income of Roxas y Cia. of the unreported 50% of the net profits for 1953 and 1955 derived from the sale of the Nasugbu farm lands to the tenants, and the disallowance of deductions from gross income of various business expenses and contributions claimed by Roxas y Cia. and the Roxas brothers. For the reason that Roxas y Cia. subdivided its Nasugbu farm lands and sold them to the farmers on installment, the Commissioner considered the partnership as engaged in the business of real estate, hence, 100% of the profits derived therefrom was taxed.

The Commissioner of Internal Revenue contends that Roxas y Cia. could be considered a real estate dealer because it engaged in the business of selling real estate. The business activity alluded to was the act of subdividing the Nasugbu farm lands and selling them to the farmers-occupants on installment.

Roxas y Cia. questions the imposition of the real estate dealer's fixed tax upon it, because although it earned a rental income of P8,000.00 per annum in 1952, said rental income came from Jose Roxas, one of the partners. Section 194 of the Tax Code, in considering as real estate dealers owners of real estate receiving rentals of at least P3,000.00 a year, does not provide any qualification as to the persons paying the rentals.

ISSUE:
Whether Roxas y Cia. liable for the payment of the fixed tax on real estate dealers (NO)

RULING:
It should be borne in mind that the sale of the Nasugbu farm lands to the very farmers who tilled them for generations was not only in consonance with, but more in obedience to the request and pursuant to the policy of our Government to allocate lands to the landless. It was the bounden duty of the Government to pay the agreed compensation after it had persuaded Roxas y Cia. to sell its haciendas, and to subsequently subdivide them among the farmers at very reasonable terms and prices. However, the Government could not comply with its duty for lack of funds. Obligingly, Roxas y Cia. shouldered the Government's burden, went out of its way and sold lands directly to the farmers in the same way and under the same terms as would have been the case had the Government done it itself. For this magnanimous act, the municipal council of Nasugbu passed a resolution expressing the people's gratitude.

The power of taxation is sometimes called also the power to destroy. Therefore it should be exercised with caution to minimize injury to the proprietary rights of a taxpayer. It must be exercised fairly, equally and uniformly, lest the tax collector kill the "hen that lays the golden egg". And, in order to maintain the general public's trust and confidence in the Government this power must be used justly and not treacherously. It does not conform with Our sense of justice in the instant case for the Government to persuade the taxpayer to lend it a helping hand and later on to penalize him for duly answering the urgent call.

In fine, Roxas y Cia. cannot be considered a real estate dealer for the sale in question. Hence, pursuant to Section 34 of the Tax Code the lands sold to the farmers are capital assets, and the gain derived from the sale thereof is capital gain, taxable only to the extent of 50%.

BRITISH AMERICAN TOBACCO, *Petitioner,* -versus- JOSE ISIDRO N. CAMACHO, in his capacity as Secretary of the Department of Finance and GUILLERMO L. PARAYNO, JR., in his capacity as Commissioner of the Bureau of Internal Revenue, respondents.

Philip Morris Philippines Manufacturing, Inc., fortune tobacco, corp., MIGHTY CORPORATION, and JT InTERNATIONAL, S.A., respondents-in-intervention, *Respondents*
G.R. No. 163583, EN BANC, August 20, 2008, YNARES-SANTIAGO, *J.*

We cannot declare a statute unconstitutional merely because it can be improved or that it does not tend to achieve all of its stated objectives. This is especially true for tax legislation which simultaneously addresses and impacts multiple state interests. Absent a clear showing of breach of constitutional limitations, Congress, owing to its vast experience and expertise in the field of taxation, must be given sufficient leeway to formulate and experiment with different tax systems to address the complex issues and problems related to tax administration. Whatever imperfections that may occur, the same should be addressed to the democratic process to refine and evolve a taxation system which ideally will achieve most, if not all, of the state's objectives.%.

FACTS:
Petitioner assails the validity of: (1) Section 145 of the National Internal Revenue Code (NIRC), as recodified by Republic Act (RA) 8424; (2) RA 9334, which further amended Section 145 of the NIRC on January 1, 2005; (3) Revenue Regulations Nos. 1-97, 9-2003, and 22-2003; and (4) Revenue Memorandum Order No. 6-2003. Petitioner argues that the said provisions are violative of the equal protection and uniformity clauses of the Constitution.

RA 8240, entitled "An Act Amending Sections 138, 139, 140, and 142 of the NIRC, as Amended and For Other Purposes," took effect on January 1, 1997. In the same year, Congress passed RA 8424 or The Tax Reform Act of 1997, re-codifying the NIRC. Section 142 was renumbered as Section 145 of the NIRC.

Paragraph (c) of Section 145 provides for four tiers of tax rates based on the net retail price per pack of cigarettes. To determine the applicable tax rates of existing cigarette brands, a survey of the net retail prices per pack of cigarettes was conducted as of October 1, 1996, the results of which were embodied in Annex "D" of the NIRC as the duly registered, existing or active brands of cigarettes.

It states that **New brands** shall be classified according to their **current net retail price**.
For the above purpose, net retail price shall mean the price at which the cigarette is sold on retail in 20 major supermarkets in Metro Manila (for brands of cigarettes marketed nationally), excluding the amount intended to cover the applicable excise tax and the value-added tax. For brands which are marketed only outside Metro Manila, the net retail price shall mean the price at which the cigarette is sold in five major supermarkets in the region excluding the amount intended to cover the applicable excise tax and the value-added tax.

The **classification of each brand of cigarettes based on its average net retail price as of October 1, 1996, as set forth in Annex "D" of this Act, shall remain in force until revised by Congress**. (Emphasis supplied)

As such, new brands of cigarettes shall be taxed according to their **current net retail price** while existing or "old" brands shall be taxed based on their **net retail price as of October 1, 1996**.
To implement RA 8240, the Bureau of Internal Revenue (BIR) issued **Revenue Regulations No. 1-97**, which classified the existing brands of cigarettes as those duly registered or active brands prior to January 1, 1997. New brands, or those registered after January 1, 1997, shall be initially assessed at their suggested retail price until such time that the appropriate survey to determine their current net retail price is conducted.

In June 2001, petitioner British American Tobacco introduced into the market Lucky Strike Filter, Lucky Strike Lights and Lucky Strike Menthol Lights cigarettes, with a suggested retail price of P9.90 per pack. Pursuant to Sec. 145 (c) quoted above, the Lucky Strike brands were initially assessed the excise tax at P8.96 per pack.

On February 17, 2003, **Revenue Regulations No. 9-2003**,[4] amended Revenue Regulations No. 1-97 by providing, among others, a periodic review every two years or earlier of the current net retail price of new brands and variants thereof for the purpose of establishing and updating their tax classification, thus:

For the purpose of establishing or updating the tax classification of new brands and variant(s) thereof, their current net retail price shall be reviewed periodically through the conduct of survey or any other appropriate activity, as mentioned above, every two (2) years unless earlier ordered by the Commissioner. However, notwithstanding any increase in the current net retail price, the tax classification of such new brands shall remain in force until the same is altered or changed through the issuance of an appropriate Revenue Regulations.

Pursuant thereto, **Revenue Memorandum Order No. 6-2003** was issued on March 11, 2003, prescribing the guidelines and procedures in establishing current net retail prices of new brands of cigarettes and alcohol products.

Subsequently, **Revenue Regulations No. 22-2003**[6] was issued on August 8, 2003 to implement the revised tax classification of certain new brands introduced in the market after January 1, 1997, based on the survey of their current net retail price. The survey revealed that Lucky Strike Filter, Lucky Strike Lights, and Lucky Strike Menthol Lights, are sold at the current net retail price of P22.54, P22.61 and P21.23, per pack, respectively.[7] Respondent Commissioner of the Bureau of Internal Revenue thus recommended the applicable tax rate of P13.44 per pack inasmuch as Lucky Strike's average net retail price is above P10.00 per pack.

Thus, on September 1, 2003, petitioner filed before the Regional Trial Court (RTC) of Makati, Branch 61, a petition for injunction with prayer for the issuance of a temporary restraining order (TRO) and/or writ of preliminary injunction, docketed as Civil Case No. 03-1032. Said petition sought to enjoin the implementation of Section 145 of the NIRC, Revenue Regulations Nos. 1-97, 9-2003, 22-2003 and Revenue Memorandum Order No. 6-2003 on the ground that they discriminate against new brands of cigarettes, in violation of the equal protection and uniformity provisions of the Constitution.

While the petition was pending, RA 9334 (An Act Increasing The Excise Tax Rates Imposed on Alcohol And Tobacco Products, Amending For The Purpose Sections 131, 141, 143, 144, 145 and 288 of the NIRC of 1997, As Amended), took effect on January 1, 2005.

Under RA 9334, the excise tax due on petitioner's products was increased to P25.00 per pack. In the implementation thereof, respondent Commissioner assessed petitioner's importation of 911,000 packs of Lucky Strike cigarettes at the increased tax rate of P25.00 per pack, rendering it liable for taxes in the total sum of P22,775,000.00.

Hence, petitioner filed a Motion to Admit Attached Supplement and a Supplement to the petition for review, assailing the constitutionality of RA 9334 insofar as it retained Annex "D" and praying for a downward classification of Lucky Strike products at the bracket taxable at P8.96 per pack. Petitioner contended that the continued use of Annex "D" as the tax base of existing brands of cigarettes gives undue protection to said brands which are still taxed based on their price as of October 1996 notwithstanding that they are now sold at the same or even at a higher price than new brands like Lucky Strike. Thus, old brands of cigarettes such as Marlboro and Philip Morris which, like Lucky Strike, are sold at or more than P22.00 per pack, are taxed at the rate of P10.88 per pack, while Lucky Strike products are taxed at P26.06 per pack.

ISSUE:
Whether the assailed provisions are constitutional (YES)

RULING:
All in all, the *classification freeze provision* addressed Congress's administrative concerns in the simplification of tax administration of sin products, elimination of potential areas for abuse and corruption in tax collection, buoyant and stable revenue generation, and ease of projection of revenues. *Consequently, there can be no denial of the equal protection of the laws since the rational-basis test is amply satisfied*.

Going now to the contention of petitioner that the *classification freeze provision* unduly favors older brands over newer brands, we must first contextualize the basis of this claim. As previously discussed, the evidence presented by the petitioner merely showed that in 2004, Marlboro and Philip Morris, on the one hand, and Lucky Strike, on the other, would have been taxed at the same rate had the *classification freeze provision* been not in place. But due to the operation of the *classification freeze provision*, Lucky Strike was taxed higher. From here, petitioner generalizes that this differential tax treatment arising from the *classification freeze provision* adversely impacts the fairness of the playing field in the industry, particularly, between older and newer brands. Thus, it is virtually impossible for new brands to enter the market.

Petitioner did not, however, clearly demonstrate the exact extent of such impact. It has not been shown that the net retail prices of other older brands previously classified under this classification system have already pierced their tax brackets, and, if so, how this has affected the overall competition in the market. Further, it does not necessarily follow that newer brands cannot compete against older brands because price is not the only factor in the market as there are other factors like consumer preference, brand loyalty, etc. In other words, even if the newer brands are priced higher due to the differential tax treatment, it does not mean that they cannot compete in the market especially since cigarettes contain addictive ingredients so that a consumer may be willing to pay a higher price for a particular brand solely due to its unique formulation. It may also be noted that in 2003, the BIR surveyed 29 new brands that were introduced in the market after the effectivity of RA 8240 on January 1, 1997, thus negating the sweeping generalization of petitioner that the *classification freeze provision* has become an insurmountable barrier to the entry of new brands. Verily, where there is a claim of breach of the due process and equal protection clauses, considering that they are not fixed rules but rather broad standards, there is a need for proof of such persuasive character as would lead to such a conclusion. Absent such a showing, the presumption of validity must prevail.

Be that as it may, petitioner's evidence does suggest that, at least in 2004, Philip Morris and Marlboro, older brands, would have been taxed at the same rate as Lucky Strike, a newer brand, due to certain conditions (*i.e.*, the increase of the older brands' net retail prices beyond the tax bracket to which they were previously classified after the lapse of some time) were it not for the *classification freeze provision*. It may be conceded that this has adversely affected, to a certain extent, the ability of petitioner to competitively price its newer brands *vis-à-vis* the subject older brands. Thus, to a limited extent, the assailed law seems to derogate one of its avowed objectives, *i.e.* promoting fair competition among the players in the industry. Yet, will this occurrence, by itself, render the assailed law unconstitutional on equal protection grounds?

We answer in the negative.

Whether Congress acted improvidently in derogating, to a limited extent, the state's interest in promoting fair competition among the players in the industry, while pursuing other state interests regarding the simplification of tax administration of sin products, elimination of potential areas for abuse and corruption in tax collection, buoyant and stable revenue generation, and ease of projection of revenues through the *classification freeze provision*, and whether the questioned provision is the best means to achieve these state interests, necessarily go into the wisdom of the assailed law which we cannot inquire into, much less overrule. The *classification freeze provision* has not been shown to be precipitated by a veiled attempt, or hostile attitude on the part of Congress to unduly favor older brands over newer brands. On the contrary, we must reasonably assume, owing to the respect due a co-equal branch of government and as revealed by the Congressional deliberations, that the enactment of the questioned provision was impelled by an earnest desire to improve the efficiency and effectivity of the tax administration of sin products. For as long as the legislative classification is rationally related to furthering some legitimate state interest, as here, the rational-basis test is satisfied and the constitutional challenge is perfunctorily defeated.

We do not sit in judgment as a supra-legislature to decide, after a law is passed by Congress, which state interest is superior over another, or which method is better suited to achieve one, some or all of the state's interests, or what these interests should be in the first place. This policy-determining power, by constitutional fiat, belongs to Congress as it is its function to determine and balance these interests or choose which ones to pursue. Time and again we have ruled that the judiciary does not settle policy issues. The Court can only declare what the law is and not what the law should be. Under our system of government, policy issues are within the domain of the political branches of government and of the people themselves as the repository of all state power. Thus, the legislative classification under the *classification freeze provision*, after having been shown to be rationally related to achieve certain legitimate state interests and done in good faith, must, perforce, end our

inquiry.
Concededly, the finding that the assailed law seems to derogate, to a limited extent, one of its avowed objectives (i.e. promoting fair competition among the players in the industry) would suggest that, by Congress's own standards, the current excise tax system on sin products is imperfect. But, certainly, we cannot declare a statute unconstitutional merely because it can be improved or that it does not tend to achieve all of its stated objectives. This is especially true for tax legislation which simultaneously addresses and impacts multiple state interests. Absent a clear showing of breach of constitutional limitations, Congress, owing to its vast experience and expertise in the field of taxation, must be given sufficient leeway to formulate and experiment with different tax systems to address the complex issues and problems related to tax administration. Whatever imperfections that may occur, the same should be addressed to the democratic process to refine and evolve a taxation system which ideally will achieve most, if not all, of the state's objectives.

In fine, petitioner may have valid reasons to disagree with the policy decision of Congress and the method by which the latter sought to achieve the same. But its remedy is with Congress and not this Court. As succinctly articulated in *Vance v. Bradley*:

The Constitution presumes that, absent some reason to infer antipathy, even improvident decisions will eventually be rectified by the democratic process, and that judicial intervention is generally unwarranted no matter how unwisely we may think a political branch has acted. Thus, we will not overturn such a statute unless the varying treatment of different groups or persons is so unrelated to the achievement of any combination of legitimate purposes that we can only conclude that the legislature's actions were irrational.

SILVESTER M. PUNSALAN, ET AL., *Petitioner*, -versus- THE MUNICIPAL BOARD OF THE CITY OF MANILA, ET AL., *Respondent*
G.R. No. L-4817, EN BANC, May 26, 1954, REYES, *J.*

The ordinance imposes the tax upon every person "exercising" or "pursuing" — in the City of Manila naturally — any one of the occupations named, but does not say that such person must have his office in Manila. What constitutes exercise or pursuit of a profession in the city is a matter of judicial determination. The argument against double taxation may not be invoked where one tax is imposed by the state and the other is imposed by the city (1 Cooley on Taxation, 4th ed., p. 492), it being widely recognized that there is nothing inherently obnoxious in the requirement that license fees or taxes be exacted with respect to the same occupation, calling or activity by both the state and the political subdivisions thereof.

FACTS:
This suit was commenced in the Court of First Instance of Manila by two lawyers, a medical practitioner, a public accountant, a dental surgeon and a pharmacist, purportedly "in their own behalf and in behalf of other professionals practising in the City of Manila who may desire to join it." Object of the suit is the annulment of Ordinance No. 3398 of the City of Manila together with the provision of the Manila charter authorizing it and the refund of taxes collected under the ordinance but paid under protest.

The ordinance in question, which was approved by the municipal board of the City of Manila on July 25, 1950, imposes a municipal occupation tax on persons exercising various professions in the city and penalizes non-payment of the tax "by a fine of not more than two hundred pesos or by imprisonment of not more than six months, or by both such fine and imprisonment in the discretion of the court." Among the professions taxed were those to which plaintiffs belong. The ordinance was enacted pursuant to paragraph (1) of section 18 of the Revised Charter of the City of Manila (as amended by Republic Act No. 409), which empowers the Municipal Board of said city to impose a municipal occupation tax, not to exceed P50 *per annum*, on persons engaged in the various professions above referred to.

Having already paid their occupation tax under section 201 of the National Internal Revenue Code, plaintiffs, upon being required to pay the additional tax prescribed in the ordinance, paid the same under protest and then brought the present suit for the purpose already stated.

ISSUE:

Whether the assailed provisions are constitutional (YES)

RULING:
In raising the hue and cry of "class legislation", the burden of plaintiffs' complaint is not that the professions to which they respectively belong have been singled out for the imposition of this municipal occupation tax; and in any event, the Legislature may, in its discretion, select what occupations shall be taxed, and in the exercise of that discretion it may tax all, or it may select for taxation certain classes and leave the others untaxed. (Cooley on Taxation, Vol. 4, 4th ed., pp. 3393-3395.) Plaintiffs' complaint is that while the law has authorized the City of Manila to impose the said tax, it has withheld that authority from other chartered cities, not to mention municipalities. We do not think it is for the courts to judge what particular cities or municipalities should be empowered to impose occupation taxes in addition to those imposed by the National Government. That matter is peculiarly within the domain of the political departments and the courts would do well not to encroach upon it. Moreover, as the seat of the National Government and with a population and volume of trade many times that of any other Philippine city or municipality, Manila, no doubt, offers a more lucrative field for the practice of the professions, so that it is but fair that the professionals in Manila be made to pay a higher occupation tax than their brethren in the provinces.

Plaintiffs brand the ordinance unjust and oppressive because they say that it creates discrimination within a class in that while professionals with offices in Manila have to pay the tax, outsiders who have no offices in the city but practice their profession therein are not subject to the tax. Plaintiffs make a distinction that is not found in the ordinance. The ordinance imposes the tax upon every person "exercising" or "pursuing" — in the City of Manila naturally — any one of the occupations named, but does not say that such person must have his office in Manila. What constitutes exercise or pursuit of a profession in the city is a matter of judicial determination. The argument against double taxation may not be invoked where one tax is imposed by the state and the other is imposed by the city (1 Cooley on Taxation, 4th ed., p. 492), it being widely recognized that there is nothing inherently obnoxious in the requirement that license fees or taxes be exacted with respect to the same occupation, calling or activity by both the state and the political subdivisions thereof. (51 Am. Jur., 341.)

JUAN LUNA SUBDIVISION, INC., *Petitioner*, -versus- M. SARMIENTO, ET AL, *Respondents*
G.R. No. L-3538, EN BANC, May 28, 1952, TUASON, *J.*

We do not see that literal interpretation of Commonwealth Act No. 703 runs counter and does violence to its spirit and intention , nor do we think that such interpretation would be "constitutionally bad" in that "it would unduly discriminate against taxpayers who had paid in favor of delinquent taxpayers."

The remission of taxes due and payable to the exclusion of taxes already collected does not constitute unfair discrimination. Each set of taxes is a class by itself, and the law would be open to attack as class legislation only if all taxpayers belonging to one class were not treated alike. They are not.

FACTS:
The plaintiff was a corporation duly organized and existing under the laws of the Philippines with principal office in Manila. On December 29, 1941 it issued to the City Treasurer of Manila, and the City Treasurer accepted checks No. 628334 for P2,210.52 drawn upon the Philippine Trust Company with which it had a credit balance of P4,940.17 on its account. This check was to be applied to plaintiff's land tax for the second semester of 1941 the exact amount of which was yet undetermine and so it was entered in the ledger, Exhibit "F", as deposit by the taxpayer. On February 20, 1942, presumably after the exact amount had been verified, which was P341.60, the balance of P1,868.92, covered by voucher No. 1487 of the City Treasure's office, was noted in the ledger as a credit to the Juan Luna Subdivision, Inc.

Further than this, the records of the City Treasurer's office do not show what was done with the check. But the books of the Philippine Trust Company do reveal that it was deposited with the Philippine National Bank, the City Treasurer's sole depository, on December 29, 1941, and that it was presented by that Bank to the Philippine Trust Company on May 1, 1944 and was cashed by the drawee. Manuel F. Garcia, Assistant Treasurer of the Philippine Trust Company, testified that soon after his bank was authorized in March, 1942, to reopen for business (it had been closed by order of the Japanese military authorities,) it received from the Philippine National Bank a bundle of checks, including appellees check No. 628334, drawn upon the Philippine Trust Company before the Japanese occupation and held in abeyance by the Philippine National Bank pending resumption of operation by the Philippine Trust Company; that these checks, including the appellee's check, were accepted and the amounts thereof debited against the respective drawer's accounts; that with respect to check No. 628334, the operation was effected on May 1, 1944.

The City refused after liberation to refund the plaintiff's deposit or apply it to such future taxes as might be found due, while the Philippine Trust Company was unwilling to reverse its debit entry against the Juan Luna Subdivision, Inc. It was upon this predicament that the Juan Luna Subdivision, Inc. brought this suit against the City Treasurer and the Philippine Trust Company as defendants in the alternative. The purpose of the action is determine which of the two defendants is liable for plaintiff's check. There is a separate cause of action which concerns the plaintiff and the City Treasurer alone.

The amount to be refunded to the plaintiff is the subject of another disagreement between the Juan Luna Subdivision, Inc. and the City Treasurer. This is the ground of other cause of action heretofore referred to.

The plaintiff claims the whole amount of the check contending that taxes for the last semester of 1941 have been remitted by Commonwealth Act No. 703.

Section 1 of this Act, which was approved on November 1, 1945, provides:

All land taxes and penalties due and payable for the years nineteen hundred and forty-two nineteen hundred and forty-three nineteen hundred and forty-four and fifty per cent of the tax due for nineteen hundred and forty-five, are hereby remitted. The land taxes and penalties due and payable for the second semester of the year nineteen hundred and forty-one shall also be remitted the if the remaining fifty per cent corresponding to the year nineteen hundred and forty-five shall been paid on or before December thirty-first, nineteen hundred and forty-five.

ISSUE:
Whether the provision cover taxes paid before its enactment as the plaintiff maintains and the court below held, or does it refer, (YES)

RULING:
There is no ambiguity in the language of the law. It says "taxes and penalties due and payable," the literal meaning of which taxes owned or owing. (See Webster's New International Dictionary) Note that the provision speaks of penalties, and note that penalties accrue only when taxes are not paid on time. The word "remit" underlined by the appellant does not help its theory, for to remit to desist or refrain from exacting, inflicting, or enforcing something as well as to restore what has already been taken. (Webster's New International Dictionary.)

We do not see that literal interpretation of Commonwealth Act No. 703 runs counter and does violence to its spirit and intention , nor do we think that such interpretation would be "constitutionally bad" in that "it would unduly discriminate against taxpayers who had paid in favor of delinquent taxpayers."

The remission of taxes due and payable to the exclusion of taxes already collected does not constitute unfair discrimination. Each set of taxes is a class by itself, and the law would be open to attack as class legislation only if all taxpayers belonging to one class were not treated alike. They are not.

As to the justice of the measure, the confinement of the condonation to deliquent taxes was not without good reason. The property owners who had paid their taxes before liberation and those who had not were not on the same footing on the need of material relief. It is true that the ravages and devastations wrought by was operations had rendered the bulk of the people destitute or impoverished and that it was this situation which prompted the passage of Commonwealth Act No. 703. But it is also true that the taxpayers who had been in arrears in their obligation would have to satisfy their liability with genuine currency, while the taxes paid during the occupation had been satisfied in Japanese military notes, many of them at a time when those notes were well-nigh worthless. To refund those taxes with the restored currency, even if the Government could afford to do so, would be unduly to enrich many of the payers at a greater expense to the people at large. What is more, the process of refunding would entail a tremendous amount of work and difficulties, what with the destruction of tax records and the great number of claimants who would take advantage of such grace.

It is said that the plaintiff's check was in the nature of deposit, held trust by the City Treasurer, and that for this reason, plaintiff's taxes are to be regarded as still due and payable. This argument is well taken but only to the extent of P1,868.92. The amount of P341.60 as early as February 20, 1942, had been applied to the second half of plaintiff's 1941 tax and become part of the general funds of the city treasury. From that date that tax was legally and actually paid and settled.

PEPSI-COLA BOTTLING CO. OF THE PHILIPPINES, INC., *Petitioner*, -versus- CITY OF BUTUAN, MEMBERS OF THE MUNICIPAL BOARD,
THE CITY MAYOR and THE CITY TREASURER, all of the CITY OF BUTUAN, *Respondents*
G.R. No. L-22814, EN BANC, August 28, 1968, CONCEPCION, *CJ.*

The ordinance imposes the tax upon every person "exercising" or "pursuing" — in the City of Manila naturally — any one of the occupations named, but does not say that such person must have his office in Manila. What constitutes exercise or pursuit of a profession in the city is a matter of judicial determination. The argument against double taxation may not be invoked where one tax is imposed by the state and the other is imposed by the city (1 Cooley on Taxation, 4th ed., p. 492), it being widely recognized that there is nothing inherently obnoxious in the requirement that license fees or taxes be exacted with respect to the same occupation, calling or activity by both the state and the political subdivisions thereof.

FACTS:
That plaintiff's warehouse in the City of Butuan serves as a storage for its products the "Pepsi-Cola" soft drinks for sale to customers in the City of Butuan and all the municipalities in the Province of Agusan. These "Pepsi-Cola Cola" soft drinks are bottled in Cebu City and shipped to the Butuan City warehouse of plaintiff for distribution and sale in the City of Butuan and all municipalities of Agusan.

On August 16, 1960, the City of Butuan enacted Ordinance No. 110 which was subsequently amended by Ordinance No. 122 and effective November 28, 1960. A copy of Ordinance No. 110, Series of 1960 and Ordinance No. 122 are incorporated herein as Exhibits "A" and "B", respectively.

Ordinance No. 110 as amended, imposes a tax on any person, association, etc., of P0.10 per case of 24 bottles of Pepsi-Cola and the plaintiff paid under protest the amount of P4,926.63 from August 16 to December 31, 1960 and the amount of P9,250.40 from January 1 to July 30, 1961.

Plaintiff filed the foregoing complaint for the recovery of the total amount of P14,177.03 paid under protest and those that if may later on pay until the termination of this case on the ground that Ordinance No. 110 as amended of the City of Butuan is illegal, that the tax imposed is excessive and that it is unconstitutional.

Section 1 of said Ordinance No. 110, as amended, states what products are "liquors", within the purview thereof. Section 2 provides for the payment by "any agent and/or consignee" of any dealer "engaged in selling liquors, imported or local, in the City," of taxes at specified rates. Section 3 prescribes a tax of P0.10 per case of 24 bottles of the soft drinks and carbonated beverages therein named, and "all other soft drinks or carbonated drinks." Section 3-A, defines the meaning of the term "consignee or agent" for purposes of the ordinance. Section 4 provides that said taxes "shall be paid at the end of every calendar month." Pursuant to Section 5, the taxes "shall be based and computed from the cargo manifest or bill of lading or any other record showing the number of cases of soft drinks, liquors or all other soft drinks or carbonated drinks received within the month." Sections 6, 7 and 8 specify the surcharge to be added for failure to pay the taxes within the period prescribed and the penalties imposable for "deliberate and willful refusal to pay the tax mentioned in Sections 2 and 3" or for failure "to furnish the office of the City Treasurer a copy of the bill of lading or cargo manifest or record of soft drinks, liquors or carbonated drinks for sale in the City."

Section 9 makes the ordinance applicable to soft drinks, liquors or carbonated drinks "received outside" but "sold within" the City. Section 10 of the ordinance provides that the revenue derived therefrom "shall be alloted as follows: 40% for Roads and Bridges Fund; 40% for the General Fund and 20% for the School Fund."

Plaintiff maintains that the disputed ordinance is null and void because: (1) it partakes of the nature of an import tax; (2) it amounts to double taxation; (3) it is excessive, oppressive and confiscatory; (4) it is highly unjust and discriminatory; and (5) section 2 of Republic Act No. 2264, upon the authority of which it was enacted, is an unconstitutional delegation of legislative powers.

ISSUE:
Whether the ordinance is constitutional (NO)

RULING:
The second and last objections are manifestly devoid of merit. Indeed — independently of whether or not the tax in question, when considered in relation to the sales tax prescribed by Acts of Congress, amounts to double taxation, on which we need not and do not express any opinion - double taxation, in general, is not forbidden by our fundamental law. We have not adopted, as part thereof, the injunction against double taxation found in the Constitution of the United States and of some States of the Union.1 Then, again, the general principle against delegation of legislative powers, in consequence of the theory of separation of powers2 is subject to one well-established exception, namely: legislative powers may be delegated to local governments — to which said theory does not apply3 — in respect of matters of local concern.

The third objection is, likewise, untenable. The tax of "P0.10 per case of 24 bottles," of soft drinks or carbonated drinks — in the production and sale of which plaintiff is engaged — or less than P0.0042 per bottle, is manifestly too small to be excessive, oppressive, or confiscatory.

The first and the fourth objections merit, however, serious consideration. In this connection, it is noteworthy that the tax prescribed in section 3 of Ordinance No. 110, as originally approved, was imposed upon dealers "engaged in selling" soft drinks or carbonated drinks. Thus, it would seem that the intent was then to levy a tax upon the sale of said merchandise. As amended by Ordinance No. 122, the tax is, however, imposed only upon "any agent and/or consignee of any person, association, partnership, company or corporation engaged in selling ... soft drinks or carbonated drinks." And, pursuant to section 3-A, which was inserted by said Ordinance No. 122:

... — Definition of the Term Consignee or Agent. — For purposes of this Ordinance, a consignee of agent shall mean any person, association, partnership, company or corporation who acts in the place of another by authority from him or one entrusted with the business of another or to whom is consigned or shipped no less than 1,000 cases of hard liquors or soft drinks every month for resale, either retail or wholesale.

As a consequence, merchants engaged in the sale of soft drink or carbonated drinks, are not subject to the tax, unless they are agents and/or consignees of another dealer, who, in the very nature of things, must be one engaged in business outside the City. Besides, the tax would not be applicable to such agent and/or consignee, if less than 1,000 cases of soft drinks are consigned or shipped to him every month. When we consider, also, that the tax "shall be based and computed from the cargo manifest or bill of lading ... showing the number of cases" — not sold — but "received" by the taxpayer, the intention to limit the application of the ordinance to soft drinks and carbonated drinks brought into the City from outside thereof becomes apparent. Viewed from this angle, the tax partakes of the nature of an import duty, which is beyond defendant's authority to impose by express provision of law.4

Even however, if the burden in question were regarded as a tax on the sale of said beverages, it would still be invalid, as discriminatory, and hence, violative of the uniformity required by the Constitution and the law therefor, since only sales by "agents or consignees" of outside dealers would be subject to the tax. Sales by local dealers, not acting for or on behalf of other merchants, regardless of the volume of their sales, and even if the same exceeded those made by said agents or consignees of producers or merchants established outside the City of Butuan, would be exempt from the disputed tax.

It is true that the uniformity essential to the valid exercise of the power of taxation does not require identity or equality under all circumstances, or negate the authority to classify the objects of taxation.5 The classification made in the exercise of this authority, to be valid, must, however, be reasonable6 and this requirement is not deemed satisfied unless: (1) it is based upon substantial distinctions which make real differences; (2) these are germane to the purpose of the legislation or ordinance; (3) the classification applies, not only to present conditions, but, also, to future conditions substantially identical to those of the present; and (4) the classification applies equally all those who belong to the same class.7

These conditions are not fully met by the ordinance in question.8 Indeed, if its purpose were merely to levy a burden upon the sale of soft drinks or carbonated beverages, there is no reason why sales thereof by sealers other than agents or consignees of producers or merchants established outside the City of Butuan should be exempt from the tax.

J. CASANOVAS, *Petitioner,* -versus- JNO. S. HORD, *Respondent*
G.R. No. 3473, EN BANC, March 22, 1907, WILLARD, *J.*

Our conclusion is that the concessions granted by the Government of Spain to the plaintiff, constitute contracts between the parties; that section 134 of the Internal Revenue Law impairs the obligation of these contracts, and is therefore void as to them.

FACTS:
In January, 1897, the Spanish Government, in accordance with the provisions of the royal decree of the 14th of May, 1867, granted to the plaintiff certain mines in the said Province of Ambos Camarines, of which mines the plaintiff is now the owner.

That there were valid perfected mining concessions granted prior to the 11th of April, 1899, is conceded. They were so considered by the Collector of Internal Revenue and were by him said to fall within the provisions of section 134 of Act No. 1189, known as the Internal Revenue Act.

The defendant accordingly imposed upon these properties the tax mentioned in section 134, which tax, as has before been stated, plaintiff paid under protest.

ISSUE:
Whether section 134 is valid (NO)

RULING:
The royal decree and regulation for its enforcement provided that the deeds granted by the Government should be in a particular form, which form was inserted in the regulations. It must be presumed that the deeds granted to the plaintiff were made as provided by law, and, in fact, one of such concessions was exhibited during the argument in this court, and was found to be in exact conformity with the form prescribed by law

It seems very clear to us that this deed constituted a contract between the Spanish Government and the plaintiff, the obligation of which contract was impaired by the enactment of section 134 of the Internal Revenue Law above cited, thereby infringing the provisions above quoted from section 5 of the act of Congress of July 1, 1902. This conclusion seems necessarily to result from the decisions of the Supreme Court of the United States in similar cases. In the case of McGee vs. Mathis (4 Wallace, 143), it appeared that the State of Arkansas, by an act of the legislature of 1851, provided for the sale of certain swamp lands granted to it by the United States; for the issue of transferable scrip receivable for any lands not already taken up at the time of selection by the holder; for contracts for the making of levees and drains, and for the payment of contractors in scrip and otherwise.

The fact that this concession was made by the Government of Spain, and not by the Government of the United States, is not important. (Trustees of Dartmouth College vs. Woodward, 4 Wheaton, 518.)

Our conclusion is that the concessions granted by the Government of Spain to the plaintiff, constitute contracts between the parties; that section 134 of the Internal Revenue Law impairs the obligation of these contracts, and is therefore void as to them.

MACTAN CEBU INTERNATIONAL AIRPORT AUTHORITY, *Petitioner,* -versus- HON. FERDINAND J. MARCOS, in his capacity as the Presiding Judge of the Regional Trial Court, Branch 20, Cebu City, THE CITY OF CEBU, represented by its Mayor HON. TOMAS R. OSMEÑA, and EUSTAQUIO B. CESA, *Respondent*

G.R. No. 120082, EN BANC, September 11, 1996, DAVIDE, JR., *J.*

There can be no question that under Section 14 of R.A. No. 6958 the petitioner is exempt from the payment of realty taxes imposed by the National Government or any of its political subdivisions, agencies, and instrumentalities. Nevertheless, since taxation is the rule and exemption therefrom the exception, the exemption may thus be withdrawn at the pleasure of the taxing authority. The only exception to this rule is where the exemption was granted to private parties based on material consideration of a mutual nature, which then becomes contractual and is thus covered by the non-impairment clause of the Constitution.

Since the last paragraph of Section 234 unequivocally withdrew, upon the effectivity of the LGC, exemptions from real property taxes granted to natural or juridical persons, including government-owned or controlled corporations, except as provided in the said section, and the petitioner is, undoubtedly, a government-owned corporation, it necessarily follows that its exemption from such tax granted it in Section 14 of its charter, R.A. No. 6958, has been withdrawn. Any claim to the contrary can only be justified if the petitioner can seek refuge under any of the exceptions provided in Section 234, but not under Section 133, as it now asserts, since, as shown above, the said section is qualified by Section 232 and 234.

FACTS:

Petitioner MCIAA enjoyed the privilege of exemption from payment of realty taxes in accordance with Section 14 of its Charter.

On October 11, 1994, however, Mr. Eustaquio B. Cesa, Officer-in-Charge, Office of the Treasurer of the City of Cebu, demanded payment for realty taxes on several parcels of land belonging to the petitioner, located at Barrio Apas and Barrio Kasambagan, Lahug, Cebu City, in the total amount of P2,229,078.79.

Petitioner objected to such demand for payment as baseless and unjustified, claiming in its favor the aforecited Section 14 of RA 6958 which exempt it from payment of realty taxes. It was also asserted that it is an instrumentality of the government performing governmental functions, citing section 133 of the Local Government Code of 1991 which puts limitations on the taxing powers of local government units

Respondent City refused to cancel and set aside petitioner's realty tax account, insisting that the MCIAA is a government-controlled corporation whose tax exemption privilege has been withdrawn by virtue of Sections 193 and 234 of the Local Governmental Code that took effect on January 1, 1992

ISSUE:

Whether MCIAA is now subject to tax (YES)

RULING:

The power to tax is primarily vested in the Congress; however, in our jurisdiction, it may be exercised by local legislative bodies, no longer merely by virtue of a valid delegation as before, but pursuant to direct authority conferred by Section 5, Article X of the Constitution.22 Under the latter, the exercise of the power may be subject to such guidelines and limitations as the Congress may provide which, however, must be consistent with the basic policy of local autonomy.

There can be no question that under Section 14 of R.A. No. 6958 the petitioner is exempt from the payment of realty taxes imposed by the National Government or any of its political subdivisions, agencies, and instrumentalities. Nevertheless, since taxation is the rule and exemption therefrom the exception, the exemption may thus be withdrawn at the pleasure of the taxing authority. The only exception to this rule is where the exemption was granted to private parties based on material consideration of a mutual nature, which then becomes contractual and is thus covered by the non-impairment clause of the Constitution.

The LGC, enacted pursuant to Section 3, Article X of the constitution provides for the exercise by local government units of their power to tax, the scope thereof or its limitations, and the exemption from taxation.

Reading together Section 133, 232 and 234 of the LGC, we conclude that as a general rule, as laid down in Section 133 the taxing powers of local government units cannot extend to the levy of inter alia, "taxes, fees, and charges of any kind of the National Government, its agencies and instrumentalties, and local government units"; however, pursuant to Section 232, provinces, cities, municipalities in the Metropolitan Manila Area may impose the real property tax except on, inter alia, "real property owned by the Republic of the Philippines or any of its political subdivisions except when the beneficial used thereof has been granted, for consideration or otherwise, to a taxable person", as provided in item (a) of the first paragraph of Section 234.

As to tax exemptions or incentives granted to or presently enjoyed by natural or juridical persons, including government-owned and controlled corporations, Section 193 of the LGC prescribes the general rule, viz., they are withdrawn upon the effectivity of the LGC, except upon the effectivity of the LGC, except those granted to local water districts, cooperatives duly registered under R.A. No. 6938, non stock and non-profit hospitals and educational institutions, and unless otherwise provided in the LGC. The latter proviso could refer to Section 234, which enumerates the properties exempt from real property tax. But the last paragraph of Section 234 further qualifies the retention of the exemption in so far as the real property taxes are concerned by limiting the retention only to those enumerated there-in; all others not included in the enumeration lost the privilege upon the effectivity of the LGC. Moreover, even as the real property is owned by the Republic of the Philippines, or any of its political subdivisions covered by item (a) of the first paragraph of Section 234, the exemption is withdrawn if the beneficial use of such property has been granted to taxable person for consideration or otherwise.

Since the last paragraph of Section 234 unequivocally withdrew, upon the effectivity of the LGC, exemptions from real property taxes granted to natural or juridical persons, including government-owned or controlled corporations, except as provided in the said section, and the petitioner is, undoubtedly, a government-owned corporation, it necessarily follows that its exemption from such tax granted it in Section 14 of its charter, R.A. No. 6958, has been withdrawn. Any claim to the contrary can only be justified if the petitioner can seek refuge under any of the exceptions provided in Section 234, but not under Section 133, as it now asserts, since, as shown above, the said section is qualified by Section 232 and 234.

In short, the petitioner can no longer invoke the general rule in Section 133 that the taxing powers of the local government units cannot extend to the levy of:

(o) taxes, fees, or charges of any kind on the National Government, its agencies, or instrumentalities, and local government units

ARTURO M. TOLENTINO, *Petitioner*, -versus- THE SECRETARY OF FINANCE and THE COMMISSIONER OF INTERNAL REVENUE, *Respondents*
G.R. No. 115455, EN BANC, October 30, 1995, MENDOZA, *J.*

Authorities from numerous sources are cited by the plaintiffs, but none of them show that a lawful tax on a new subject, or an increased tax on an old one, interferes with a contract or impairs its obligation, within the meaning of the Constitution. Even though such taxation may affect particular contracts, as it may increase the debt of one person and lessen the security of another, or may impose additional burdens upon one class and release the burdens of another, still the tax must be paid unless prohibited by the Constitution, nor can it be said that it impairs the obligation of any existing contract in its true legal sense.

FACTS:
These are motions seeking reconsideration of our decision dismissing the petitions filed in these cases for the declaration of unconstitutionality of R.A. No. 7716, otherwise known as the Expanded Value-Added Tax Law. The motions, of which there are 10 in all, have been filed by the several

petitioners in these cases, with the exception of the Philippine Educational Publishers Association, Inc. and the Association of Philippine Booksellers, petitioners in G.R. No. 115931.

It is claimed that the application of the tax to existing contracts of the sale of real property by installment or on deferred payment basis would result in substantial increases in the monthly amortizations to be paid because of the 10% VAT. The additional amount, it is pointed out, is something that the buyer did not anticipate at the time he entered into the contract. Thus, they alleged that the said law impairs the obligation of contracts.

ISSUE:
Whether R.A. No. 7716 impairs the obligations of contracts (NO)

RULING:
Authorities from numerous sources are cited by the plaintiffs, but none of them show that a lawful tax on a new subject, or an increased tax on an old one, interferes with a contract or impairs its obligation, within the meaning of the Constitution. Even though such taxation may affect particular contracts, as it may increase the debt of one person and lessen the security of another, or may impose additional burdens upon one class and release the burdens of another, still the tax must be paid unless prohibited by the Constitution, nor can it be said that it impairs the obligation of any existing contract in its true legal sense." (La Insular v. Machuca Go-Tauco and Nubla Co-Siong, 39 Phil. 567, 574 (1919)). Indeed not only existing laws but also "the reservation of the essential attributes of sovereignty, is . . . read into contracts as a postulate of the legal order." (Philippine-American Life Ins. Co. v. Auditor General, 22 SCRA 135, 147 (1968)) Contracts must be understood as having been made in reference to the possible exercise of the rightful authority of the government and no obligation of contract can extend to the defeat of that authority. (Norman v. Baltimore and Ohio R.R., 79 L. Ed. 885 (1935)).

PHILIPPINE BANK OF COMMUNICATIONS, *Petitioner*, -versus- COMMISSIONER OF INTERNAL REVENUE, COURT OF TAX APPEALS and COURT OF APPEALS, *Respondent*
G.R. No. 112024, EN BANC, January 28, 1999, QUISUMBING, *J.*

Basic is the principle that "taxes are the lifeblood of the nation." The primary purpose is to generate funds for the State to finance the needs of the citizenry and to advance the common weal. Due process of law under the Constitution does not require judicial proceedings in tax cases. This must necessarily be so because it is upon taxation that the government chiefly relies to obtain the means to carry on its operations and it is of utmost importance that the modes adopted to enforce the collection of taxes levied should be summary and interfered with as little as possible.

From the same perspective, claims for refund or tax credit should be exercised within the time fixed by law because the BIR being an administrative body enforced to collect taxes, its functions should not be unduly delayed or hampered by incidental matters.

The rule states that the taxpayer may file a claim for refund or credit with the Commissioner of Internal Revenue, within two (2) years after payment of tax, before any suit in CTA is commenced. The two-year prescriptive period provided, should be computed from the time of filing the Adjustment Return and final payment of the tax for the year.

FACTS:
Petitioner, Philippine Bank of Communications (PBCom), a commercial banking corporation duly organized under Philippine laws, filed its quarterly income tax returns for the first and second quarters of 1985, reported profits, and paid the total income tax of P5,016,954.00. The taxes due were settled by applying PBCom's tax credit memos and accordingly, the Bureau of Internal Revenue (BIR) issued Tax Debit Memo Nos. 0746-85 and 0747-85 for P3,401,701.00 and P1,615,253.00, respectively.

Subsequently, however, PBCom suffered losses so that when it filed its Annual Income Tax Returns for the year-ended December 31, 1986, the petitioner likewise reported a net loss of P14,129,602.00, and thus declared no tax payable for the year.

But during these two years, PBCom earned rental income from leased properties. The lessees withheld and remitted to the BIR withholding creditable taxes of P282,795.50 in 1985 and P234,077.69 in 1986.

On August 7, 1987, petitioner requested the Commissioner of Internal Revenue, among others, for a tax credit of P5,016,954.00 representing the overpayment of taxes in the first and second quarters of 1985.

Thereafter, on July 25, 1988, petitioner filed a claim for refund of creditable taxes withheld by their lessees from property rentals in 1985 for P282,795.50 and in 1986 for P234,077.69.

Pending the investigation of the respondent Commissioner of Internal Revenue, petitioner instituted a Petition for Review on November 18, 1988 before the Court of Tax Appeals (CTA).

On May 20, 1993, the CTA rendered a decision which, as stated on the outset, denied the request of petitioner for a tax refund or credit in the sum amount of P5,299,749.95, on the ground that it was filed beyond the two-year reglementary period provided for by law. The petitioner's claim for refund in 1986 amounting to P234,077.69 was likewise denied on the assumption that it was automatically credited by PBCom against its tax payment in the succeeding year.

CA affirmed in toto.

ISSUE:
Whether Court of Appeals erred in denying the plea for tax refund or tax credits on the ground of prescription, despite petitioner's reliance on RMC No. 7-85, changing the prescriptive period of two years to ten years (NO)

RULING:
Basic is the principle that "taxes are the lifeblood of the nation." The primary purpose is to generate funds for the State to finance the needs of the citizenry and to advance the common weal. Due process of law under the Constitution does not require judicial proceedings in tax cases. This must necessarily be so because it is upon taxation that the government chiefly relies to obtain the means to carry on its operations and it is of utmost importance that the modes adopted to enforce the collection of taxes levied should be summary and interfered with as little as possible.

From the same perspective, claims for refund or tax credit should be exercised within the time fixed by law because the BIR being an administrative body enforced to collect taxes, its functions should not be unduly delayed or hampered by incidental matters.

The rule states that the taxpayer may file a claim for refund or credit with the Commissioner of Internal Revenue, within two (2) years after payment of tax, before any suit in CTA is commenced. The two-year prescriptive period provided, should be computed from the time of filing the Adjustment Return and final payment of the tax for the year.

In *Commissioner of Internal Revenue vs. Philippine American Life Insurance Co*., this Court explained the application of Sec. 230 of 1977 NIRC, as follows:
Clearly, the prescriptive period of two years should commence to run only from the time that the refund is ascertained, which can only be determined after a final adjustment return is accomplished. In the present case, this date is April 16, 1984, and two years from this date would be April 16, 1986. . . . As we have earlier said in the TMX Sales case, Sections 68, 69, and 70 on Quarterly Corporate Income Tax Payment and Section 321 should be considered in conjunction with it

When the Acting Commissioner of Internal Revenue issued RMC 7-85, changing the prescriptive period of two years to ten years on claims of excess quarterly income tax payments, such circular created a clear inconsistency with the provision of Sec. 230 of 1977 NIRC. In so doing, the BIR did not simply interpret the law; rather it legislated guidelines contrary to the statute passed by Congress.
It bears repeating that Revenue memorandum-circulars are considered administrative rulings (in the sense of more specific and less general interpretations of tax laws) which are issued from time to time by the Commissioner of Internal Revenue. It is widely accepted that the interpretation placed upon a statute by the executive officers, whose duty is to enforce it, is entitled to great

respect by the courts. Nevertheless, such interpretation is not conclusive and will be ignored if judicially found to be erroneous. Thus, courts will not countenance administrative issuances that override, instead of remaining consistent and in harmony with the law they seek to apply and implement.

LORENZO M. TAÑADA, ABRAHAM F. SARMIENTO, and MOVEMENT OF ATTORNEYS FOR BROTHERHOOD, INTEGRITY AND NATIONALISM, INC. [MABINI], *Petitioner,* -versus- HON. JUAN C. TUVERA, in his capacity as Executive Assistant to the President, HON. JOAQUIN VENUS, in his capacity as Deputy Executive Assistant to the President , MELQUIADES P. DE LA CRUZ, in his capacity as Director, Malacañang Records Office, and FLORENDO S. PABLO, in his capacity as Director, Bureau of Printing, *Respondents*
G.R. No. L-63915, EN BANC, April 24, 1985, ESCOLIN, *J.*

The clear object of Article 2 of the New Civil Code is to give the general public adequate notice of the various laws which are to regulate their actions and conduct as citizens. Without such notice and publication, there would be no basis for the application of the maxim "ignorantia legis non excusat." It would be the height of injustice to punish or otherwise burden a citizen for the transgression of a law of which he had no notice whatsoever, not even a constructive one.

FACTS:
Invoking the people's right to be informed on matters of public concern, a right recognized in Section 6, Article IV of the 1973 Philippine Constitution, 1 as well as the principle that laws to be valid and enforceable must be published in the Official Gazette or otherwise effectively promulgated, petitioners seek a writ of mandamus to compel respondent public officials to publish, and/or cause the publication in the Official Gazette of various presidential decrees, letters of instructions, general orders, proclamations, executive orders, letter of implementation and administrative orders.

ISSUE:
Whether the subject presidential decrees, letters of instructions, general orders, proclamations, executive orders, letter of implementation and administrative orders are valid (NO)

RULING:
Respondents contend that publication in the Official Gazette is not a sine qua non requirement for the effectivity of laws where the laws themselves provide for their own effectivity dates. It is thus submitted that since the presidential issuances in question contain special provisions as to the date they are to take effect, publication in the Official Gazette is not indispensable for their effectivity. The point stressed is anchored on Article 2 of the Civil Code

The interpretation given by respondent is in accord with this Court's construction of said article. In a long line of decisions, this Court has ruled that publication in the Official Gazette is necessary in those cases where the legislation itself does not provide for its effectivity date-for then the date of publication is material for determining its date of effectivity, which is the fifteenth day following its publication-but not when the law itself provides for the date when it goes into effect.

Respondents' argument, however, is logically correct only insofar as it equates the effectivity of laws with the fact of publication. Considered in the light of other statutes applicable to the issue at hand, the conclusion is easily reached that said Article 2 does not preclude the requirement of publication in the Official Gazette, even if the law itself provides for the date of its effectivity.

The clear object of the above-quoted provision is to give the general public adequate notice of the various laws which are to regulate their actions and conduct as citizens. Without such notice and publication, there would be no basis for the application of the maxim "ignorantia legis non excusat." It would be the height of injustice to punish or otherwise burden a citizen for the transgression of a law of which he had no notice whatsoever, not even a constructive one.

Perhaps at no time since the establishment of the Philippine Republic has the publication of laws taken so vital significance that at this time when the people have bestowed upon the President a power heretofore enjoyed solely by the legislature. While the people are kept abreast by the mass media of the debates and deliberations in the Batasan Pambansa—and for the diligent ones, ready access to the legislative records—no such publicity accompanies the law-making process of the President. Thus, without publication, the people have no means of knowing what presidential decrees have actually been promulgated, much less a definite way of informing themselves of the specific contents and texts of such decrees. As the Supreme Court of Spain ruled: "Bajo la denominacion generica de leyes, se comprenden tambien los reglamentos, Reales decretos, Instrucciones, Circulares y Reales ordines dictadas de conformidad con las mismas por el Gobierno en uso de su potestad.[5]

The very first clause of Section I of Commonwealth Act 638 reads: "There shall be published in the Official Gazette ... ." The word "shall" used therein imposes upon respondent officials an imperative duty. That duty must be enforced if the Constitutional right of the people to be informed on matters of public concern is to be given substance and reality. The law itself makes a list of what should be published in the Official Gazette. Such listing, to our mind, leaves respondents with no discretion whatsoever as to what must be included or excluded from such publication.

The publication of all presidential issuances "of a public nature" or "of general applicability" is mandated by law. Obviously, presidential decrees that provide for fines, forfeitures or penalties for their violation or otherwise impose a burden or. the people, such as tax and revenue measures, fall within this category. Other presidential issuances which apply only to particular persons or class of persons such as administrative and executive orders need not be published on the assumption that they have been circularized to all concerned.

It is needless to add that the publication of presidential issuances "of a public nature" or "of general applicability" is a requirement of due process. It is a rule of law that before a person may be bound by law, he must first be officially and specifically informed of its contents. As Justice Claudio Teehankee said in *Peralta vs. COMELEC*:

In a time of proliferating decrees, orders and letters of instructions which all form part of the law of the land, the requirement of due process and the Rule of Law demand that the Official Gazette as the official government repository promulgate and publish the texts of all such decrees, orders and instructions so that the people may know where to obtain their official and specific contents.

The Court therefore declares that presidential issuances of general application, which have not been published, shall have no force and effect.

COMMISSIONER OF INTERNAL REVENUE, *Petitioner*, -versus- METRO STAR SUPERAMA, INC., *Respondent*

G.R. No. 185371, SECOND DIVISION, December 8, 2010, MENDOZA, *J.*

Indeed, Section 228 of the Tax Code clearly requires that the taxpayer must first be informed that he is liable for deficiency taxes through the sending of a PAN. He must be informed of the facts and the law upon which the assessment is made. The law imposes a substantive, not merely a formal, requirement. To proceed heedlessly with tax collection without first establishing a valid assessment is evidently violative of the cardinal principle in administrative investigations - that taxpayers should be able to present their case and adduce supporting evidence.

Since Metro Star did not receive the PAN, failure to comply with such is tantamount to a denial of due process.

FACTS:

On November 8, 2001, Revenue District Officer Socorro O. Ramos-Lafuente issued a Preliminary 15-day Letter, which Metro Star received on November 9, 2001. The said letter stated that a post audit review was held and it was ascertained that there was deficiency value-added and withholding taxes due from respondent in the amount of ₱ 292,874.16.

On April 11, 2002, Metro Star received a Formal Letter of Demand dated April 3, 2002 from Revenue District No. 67, Legazpi City, assessing Metro Star the amount of Two Hundred Ninety Two Thousand Eight Hundred Seventy Four Pesos and Sixteen Centavos (₱292,874.16.) for deficiency value-added and withholding taxes for the taxable year 1999.

Subsequently, Revenue District Office No. 67 sent a copy of the Final Notice of Seizure dated May 12, 2003, which Metro Star received on May 15, 2003, giving the latter last opportunity to settle its deficiency tax liabilities within ten (10) [days] from receipt thereof, otherwise respondent BIR shall be constrained to serve and execute the Warrants of Distraint and/or Levy and Garnishment to enforce collection.

On February 6, 2004, Metro Star received from Revenue District Office No. 67 a Warrant of Distraint and/or Levy No. 67-0029-23 dated May 12, 2003 demanding payment of deficiency value-added tax and withholding tax payment in the amount of ₱292,874.16.

Denying that it received a Preliminary Assessment Notice *(PAN)* and claiming that it was not accorded due process, Metro Star filed a petition for review with the CTA which ruled in its favor.

Aggrieved, the CIR filed a petition for review with the CTA-En Banc, but the petition was dismissed after a determination that no new matters were raised

ISSUE:
Whether failure to strictly comply with notice requirements prescribed under Section 228 of the National Internal Revenue Code of 1997 and Revenue Regulations (R.R.) No. 12-99 tantamount to a denial of due process (YES)

RULING:
Jurisprudence is replete with cases holding that if the taxpayer denies ever having received an assessment from the BIR, it is incumbent upon the latter to prove by competent evidence that such notice was indeed received by the addressee. The onus probandi was shifted to respondent to prove by contrary evidence that the Petitioner received the assessment in the due course of mail. The Supreme Court has consistently held that while a mailed letter is deemed received by the addressee in the course of mail, this is merely a disputable presumption subject to controversion and a direct denial thereof shifts the burden to the party favored by the presumption to prove that the mailed letter was indeed received by the addressee

The Court agrees with the CTA that the CIR failed to discharge its duty and present any evidence to show that Metro Star indeed received the PAN dated January 16, 2002. It could have simply presented the registry receipt or the certification from the postmaster that it mailed the PAN, but failed. Neither did it offer any explanation on why it failed to comply with the requirement of service of the PAN. It merely accepted the letter of Metro Star's chairman dated April 29, 2002, that stated that he had received the FAN dated April 3, 2002, but not the PAN; that he was willing to pay the tax as computed by the CIR; and that he just wanted to clarify some matters with the hope of lessening its tax liability.

The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.

Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.

If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.

Indeed, Section 228 of the Tax Code clearly requires that the taxpayer must first be informed that he is liable for deficiency taxes through the sending of a PAN. He must be informed of the facts and the law upon which the assessment is made. The law imposes a substantive, not merely a formal, requirement. To proceed heedlessly with tax collection without first establishing a valid assessment is evidently violative of the cardinal principle in administrative investigations - that taxpayers should be able to present their case and adduce supporting evidence.

The Court need not belabor to discuss the matter of Metro Star's failure to file its protest, for it is well-settled that a void assessment bears no fruit.

It is an elementary rule enshrined in the 1987 Constitution that no person shall be deprived of property without due process of law. In balancing the scales between the power of the State to tax and its inherent right to prosecute perceived transgressors of the law on one side, and the constitutional rights of a citizen to due process of law and the equal protection of the laws on the other, the scales must tilt in favor of the individual, for a citizen's right is amply protected by the Bill of Rights under the Constitution. Thus, while "taxes are the lifeblood of the government," the power to tax has its limits, in spite of all its plenitude. Hence in Commissioner of Internal Revenue v. Algue, Inc. it was said –

Taxes are the lifeblood of the government and so should be collected without unnecessary hindrance. On the other hand, such collection should be made in accordance with law as any arbitrariness will negate the very reason for government itself. It is therefore necessary to reconcile the apparently conflicting interests of the authorities and the taxpayers so that the real purpose of taxation, which is the promotion of the common good, may be achieved.

Even as we concede the inevitability and indispensability of taxation, it is a requirement in all democratic regimes that it be exercised reasonably and in accordance with the prescribed procedure. If it is not, then the taxpayer has a right to complain and the courts will then come to his succor. For all the awesome power of the tax collector, he may still be stopped in his tracks if the taxpayer can demonstrate x x x that the law has not been observed.

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,* -versus- COURT OF APPEALS, COURT OF TAX APPEALS and YOUNG MEN'S CHRISTIAN ASSOCIATION OF THE PHILIPPINES, INC., *Respondents*

G.R. No. 124043, FIRST DIVISION, October 14, 1998, PANGANIBAN, *J.*

Is the YMCA an educational institution within the purview of Article XIV, Section 4, par. 3 of the Constitution? We rule that it is not. The term "educational institution" or "institution of learning" has acquired a well-known technical meaning, of which the members of the Constitutional Commission are deemed cognizant. Under the Education Act of 1982, such term refers to schools. The school system is synonymous with formal education, which "refers to the hierarchically structured and chronologically graded learnings organized and provided by the formal school system and for which certification is required in order for the learner to progress through the grades or move to the higher levels." The Court has examined the "Amended Articles of Incorporation" and "By-Laws" of the YMCA, but found nothing in them that even hints that it is a school or an educational institution

FACTS:

Private Respondent YMCA is a non-stock, non-profit institution, which conducts various programs and activities that are beneficial to the public, especially the young people, pursuant to its religious, educational and charitable objectives.

In 1980, private respondent earned, among others, an income of P676,829.80 from leasing out a portion of its premises to small shop owners, like restaurants and canteen operators, and P44,259.00 from parking fees collected from non-members. On July 2, 1984, the commissioner of internal revenue (CIR) issued an assessment to private respondent, in the total amount of P415,615.01 including surcharge and interest, for deficiency income tax, deficiency expanded withholding taxes on rentals and professional fees and deficiency withholding tax on wages. Private respondent formally protested the assessment and, as a supplement to its basic protest, filed a letter dated October 8, 1985. In reply, the CIR denied the claims of YMCA.

Contesting the denial of its protest, the YMCA filed a petition for review at the Court of Tax Appeals (CTA) on March 14, 1989. In due course, the CTA ruled in favor of the YMCA. CA initially ruled in favor of YMCA but reversed itself on MR.

ISSUE:
Whether YMCA is subject to income tax (YES)

RULING:
Private respondent also invokes Article XIV, Section 4, par. 3 of the Character, 36 claiming that the YMCA "is a non-stock, non-profit educational institution whose revenues and assets are used actually, directly and exclusively for educational purposes so it is exempt from taxes on its properties and income." 37 We reiterate that private respondent is exempt from the payment of property tax, but not income tax on the rentals from its property. The bare allegation alone that it is a non-stock, non-profit educational institution is insufficient to justify its exemption from the payment of income tax

Is the YMCA an *educational* institution within the purview of Article XIV, Section 4, par. 3 of the Constitution? We rule that it is not. The term "educational institution" or "institution of learning" has acquired a well-known technical meaning, of which the members of the Constitutional Commission are deemed cognizant. Under the Education Act of 1982, such term refers to schools. The school system is synonymous with formal education, which "refers to the hierarchically structured and chronologically graded learnings organized and provided by the formal school system and for which certification is required in order for the learner to progress through the grades or move to the higher levels." The Court has examined the "Amended Articles of Incorporation" and "By-Laws" of the YMCA, but found nothing in them that even hints that it is a school or an educational institution.

Furthermore, under the Education Act of 1982, even non-formal education is understood to be school-based and "private auspices such as foundations and civic-spirited organizations" are ruled out. It is settled that the term "educational institution," when used in laws granting tax exemptions, refers to a ". . . school seminary, college or educational establishment . . . ." Therefore, the private respondent cannot be deemed one of the educational institutions covered by the constitutional provision under consideration.

. . . Words used in the Constitution are to be taken in their ordinary acceptation. While in its broadest and best sense education embraces all forms and phases of instruction, improvement and development of mind and body, and as well of religious and moral sentiments, yet in the common understanding and application it means a place where systematic instruction in any or all of the useful branches of learning is given by methods common to schools and institutions of learning. That we conceive to be the true intent and scope of the term [educational institutions,] as used in the
Constitution.

Moreover, without conceding that Private Respondent YMCA is an educational institution, the Court also notes that the former did not submit proof of the proportionate amount of the subject income that was actually, directly and exclusively used for educational purposes. Article XIII, Section 5 of the YMCA by-laws, which formed part of the evidence submitted, is patently insufficient, since the same merely signified that "[t]he net income derived from the rentals of the commercial buildings shall be apportioned to the Federation and Member Associations as the National Board may decide." In sum, we find no basis for granting the YMCA exemption from income tax under the constitutional provision invoked.

REV. FR. CASIMIRO LLADOC, *Petitioner*, -versus- The COMMISSIONER OF INTERNAL REVENUE and The COURT of TAX APPEALS, *Respondents*
G.R. No. L-19201, EN BANC, June 16, 1965, PAREDES, *J.*

Section 22 (3), Art. VI of the Constitution of the Philippines, exempts from taxation cemeteries, churches and parsonages or convents, appurtenant thereto, and all lands, buildings, and improvements used exclusively for religious purposes. The exemption is only from the payment of taxes assessed on such properties enumerated, as property taxes, as contra distinguished from excise taxes. In the present case, what the Collector assessed was a donee's gift tax; the assessment was not on the properties themselves. It did not rest upon general ownership; it was an excise upon the use made of the *properties, upon the exercise of the privilege of receiving the properties*

FACTS:
Sometime in 1957, the M.B. Estate, Inc., of Bacolod City, donated P10,000.00 in cash to Rev. Fr. Crispin Ruiz, then parish priest of Victorias, Negros Occidental, and predecessor of herein petitioner, for the construction of a new Catholic Church in the locality. The total amount was actually spent for the purpose intended.

On March 3, 1958, the donor M.B. Estate, Inc., filed the donor's gift tax return. Under date of April 29, 1960, the respondent Commissioner of Internal Revenue issued an assessment for donee's gift tax against the Catholic Parish of Victorias, Negros Occidental, of which petitioner was the priest. The tax amounted to P1,370.00 including surcharges, interests of 1% monthly from May 15, 1958 to June 15, 1960, and the compromise for the late filing of the return.

Petitioner lodged a protest to the assessment and requested the withdrawal thereof.

ISSUE:
Whether petitioner should be liable for the assessed donee's gift tax on the P10,000.00 donated for the construction of the Victorias Parish Church. (YES)

RULING:
Section 22 (3), Art. VI of the Constitution of the Philippines, exempts from taxation cemeteries, churches and parsonages or convents, appurtenant thereto, and all lands, buildings, and improvements used exclusively for religious purposes. The exemption is only from the payment of taxes assessed on such properties enumerated, as property taxes, as contra distinguished from excise taxes. In the present case, what the Collector assessed was a donee's gift tax; the assessment was not on the properties themselves. It did not rest upon general ownership; it was an excise upon the use made of the properties, upon the exercise of the privilege of receiving the properties (Phipps vs. Com. of Int. Rec. 91 F 2d 627). Manifestly, gift tax is not within the exempting provisions of the section just mentioned. A gift tax is not a property tax, but an excise tax imposed on the transfer of property by way of gift inter vivos, the imposition of which on property used exclusively for religious purposes, does not constitute an impairment of the Constitution. As well observed by the learned respondent Court, the phrase "exempt from taxation," as employed in the Constitution (supra) should not be interpreted to mean exemption from all kinds of taxes. And there being no clear, positive or express grant of such privilege by law, in favor of petitioner, the exemption herein must be denied.

C. N. HODGES, *Petitioner,* -versus- THE MUNICIPAL BOARD OF THE CITY OF ILOILO; Honorable Rodolfo Ganzon, in his capacity as City Mayor of the City of Iloilo; and the CITY OF ILOILO., *Respondents*

G.R. No. L-18276, EN BANC, January 12, 1967, CASTRO, *J.*

The doctrine that the grant of the power to tax to chartered cities under section 2 of the Local Autonomy Act is sufficiently plenary to cover "everything, excepting those which are mention" therein, subject only to the limitation that the tax so levied is for "public purposes, just and uniform" (Nin Bay Mining Company vs. Municipality of Roxas, Province of Palawan G.R. L-20125, July 20, 1965). There is no showing, and We do not believe it is possible to show, that the tax levied, called by any name — percentage tax or sales tax — comes under any of the specific exceptions listed in section 2 of the Local Autonomy Act. Not being excepted, it must be regarded as coming within the purview of the general rule. As the maxim goes, Exceptio firmat regulam in casibus non exceptis". Since its public purpose, justness and uniformity of application are not disputed, the tax so levied must be sustained as valid.

FACTS:
On June 7, 1960, invoking Republic Act 2264, otherwise known as the Local Autonomy Act, the municipal board of the City of Iloilo enacted ordinance 31, entitled "An Ordinance Imposing Municipal Tax On The Sale of Real Property Situated In The City of Iloilo", which ordains that "Any

person, firm, association or corporation who shall sell real property situated in the City of Iloilo shall pay a real property sales tax of one-half (½) of one percent (1%) of the contract price and/or consideration before such sale could be registered and the ownership thereof transferred in the Office of the Register of Deeds of Iloilo" (section 1) It is therein expressly provided that the tax is to be paid to the city treasurer "within five (5) days from the sale", subject to the payment of a surcharge of 20% of the tax due in case of default, and such payment, the receipt whereof is made part of the documents on the sale, "shall be a requirement for the registration ... of the sale in the Office of the Register of Deeds or the Office of the City Treasurer of the City of Iloilo" (sections 3 and 4). Penal sanction consisting of a fine of not less than fifty pesos (P50) nor more than two hundred pesos (P200) or imprisonment of not less than five (5) days nor more than thirty (30) days, at the discretion of the court, is prescribed for any infraction of the said ordinance (section 7). By its terms, the ordinance took effect on July 1, 1960.

The petitioner C. N. Hodges, who was engaged in the business of buying and selling real estate in the city and the Province of Iloilo, stood to be subjected to the tax thus imposed. Contending that the ordinance was beyond the corporate powers of the respondent City, he instituted on June 28, 1960 — prior to the effectivity date of the ordinance — an action for declaratory relief to test the validity thereof. Meanwhile after the ordinance became effective, the petitioner paid taxes imposed under the authority thereof upon sales of real estate made by him. He accordingly amended his petition to include the City itself as a party-respondent, as well as to incorporate therein a prayer for the reimbursement to him of the amounts thus far paid by him pursuant to the ordinance.

In their return to the petition, the respondents justified the enactment of the ordinance not only under the city charter but also upon the authority vested in the respondent City by section 2 of the Local Autonomy Act. By way of special defense, they contended that the petition states no cause of action for declaratory relief.

ISSUE:
Whether the ordinance in the case at bar is valid (YES)

RULING:
Heretofore, We have announced the doctrine that the grant of the power to tax to chartered cities under section 2 of the Local Autonomy Act is sufficiently plenary to cover "*everything*, excepting those which are mention" therein, subject only to the limitation that the tax so levied is for "public purposes, just and uniform" (Nin Bay Mining Company vs. Municipality of Roxas, Province of Palawan G.R. L-20125, July 20, 1965). There is no showing, and We do not believe it is possible to show, that the tax levied, called by any name — percentage tax or sales tax — comes under any of the specific exceptions listed in section 2 of the Local Autonomy Act. Not being excepted, it must be regarded as coming within the purview of the general rule. As the maxim goes, *Exceptio firmat regulam in casibus non exceptis*". Since its public purpose, justness and uniformity of application are not disputed, the tax so levied must be sustained as valid.

Nor is this without precedent. On all fours to the case at bar is C.N. Hodges vs. The Municipal Board of the City of Iloilo, et al., G.R. L- 18129, January 31, 1963, which, significantly enough, not only involved the same parties but as well concerned another ordinance of the appellant City, ordinance 33, series of 1960, enacted barely six days after the enactment of the ordinance now under scrutiny, that is, on June 13, 1960. Ordinance 33, similar to the one now in controversy, levied as sales tax of one-half (½) of one percent (1%) of the selling price of any motor vehicle sold in the City of Iloilo, imposing the payment of the said tax as a condition to the registration of the sale in the Motor Vehicles Office as well as the transfer of ownership of the vehicle sold. In an action similar to the case at bar, the appellee herein, invoking grounds and advancing arguments similar to those herein relied upon, also challenged the validity of the ordinance. Upholding the validity thereof and affirming the corporate power of the appellant City to enact the same, this Court made the following pronouncement:

It would appear that the City of Iloilo, thru its municipal board, is empowered (a) to impose municipal licenses, taxes or fees upon any person engaged in any occupation or business, or exercising any privilege, in the city; (b) to regulate and impose reasonable fees for services rendered in connection with any business, profession or occupation conducted within the city; and (c) to levy for public purposes just and uniform taxes, licenses and fees. It would also appear that municipalities and municipal districts are prohibited from imposing any percentage tax on sales, or other taxes in any form on articles subject to specific tax, except gasoline, under the provisions of the National Internal Revenue Code.

From a cursory analysis of the provisions above-stated We can readily draw the conclusion that the City of Iloilo has the authority and power to approve the ordinance in question for it merely imposes a percentage tax on the sale of a second-hand motor vehicle that may be carried out within the city by any person, firm, association or corporation owning or dealing with it who may come within its jurisdiction. Indeed, it cannot be disputed that a sales tax of ½ of 1% of the selling price of a second-hand motor vehicle comes within the purview of the provisions of Section 2 of Republic Act 2264. It is true that the tax in question is in the form of a percentage tax on the proceeds of the sale of a second-hand motor vehicle which comes within the prohibition of the section above adverted to; but the prohibition only refers to municipalities and municipal districts and does not comprehend chartered cities as the City of Iloilo.

We perceive no overriding reason to depart from the doctrine thus laid down.

LUNG CENTER OF THE PHILIPPINES, *Petitioner,* -versus- QUEZON CITY and CONSTANTINO P. ROSAS, in his capacity as City Assessor of Quezon City, *Respondents*
G.R. No. 144104, EN BANC, June 29, 2004, CALLEJO, SR., *J.*

What is meant by actual, direct and exclusive use of the property for charitable purposes is the direct and immediate and actual application of the property itself to the purposes for which the charitable institution is organized. It is not the use of the income from the real property that is determinative of whether the property is used for tax-exempt purposes.

The petitioner failed to discharge its burden to prove that the entirety of its real property is actually, directly and exclusively used for charitable purposes. While portions of the hospital are used for the treatment of patients and the dispensation of medical services to them, whether paying or non-paying, other portions thereof are being leased to private individuals for their clinics and a canteen. Further, a portion of the land is being leased to a private individual for her business enterprise under the business name "Elliptical Orchids and Garden Center." Indeed, the petitioner's evidence shows that it collected ₱1,136,483.45 as rentals in 1991 and ₱1,679,999.28 for 1992 from the said lessees.

Accordingly, we hold that the portions of the land leased to private entities as well as those parts of the hospital leased to private individuals are not exempt from such taxes. On the other hand, the portions of the land occupied by the hospital and portions of the hospital used for its patients, whether paying or non-paying, are exempt from real property taxes.

FACTS:
The petitioner Lung Center of the Philippines is a non-stock and non-profit entity established on January 16, 1981 by virtue of Presidential Decree No. 182 It is the registered owner of a parcel of land, particularly described as Lot No. RP-3-B-3A-1-B-1, SWO-04-000495, located at Quezon Avenue corner Elliptical Road, Central District, Quezon City. The lot has an area of 121,463 square meters and is covered by Transfer Certificate of Title (TCT) No. 261320 of the Registry of Deeds of Quezon City. Erected in the middle of the aforesaid lot is a hospital known as the Lung Center of the Philippines. A big space at the ground floor is being leased to private parties, for canteen and small store spaces, and to medical or professional practitioners who use the same as their private clinics for their patients whom they charge for their professional services. Almost one-half of the entire area on the left side of the building along Quezon Avenue is vacant and idle, while a big portion on the right side, at the corner of Quezon Avenue and Elliptical Road, is being leased for commercial purposes to a private enterprise known as the Elliptical Orchids and Garden Center.

The petitioner accepts paying and non-paying patients. It also renders medical services to out-patients, both paying and non-paying. Aside from its income from paying patients, the petitioner receives annual subsidies from the government.

On June 7, 1993, both the land and the hospital building of the petitioner were assessed for real property taxes in the amount of ₱4,554,860 by the City Assessor of Quezon City.[3] Accordingly, Tax Declaration Nos. C-021-01226 (16-2518) and C-021-01231 (15-2518-A) were issued for the land

and the hospital building, respectively.[4] On August 25, 1993, the petitioner filed a Claim for Exemption[5] from real property taxes with the City Assessor, predicated on its claim that it is a charitable institution. The petitioner's request was denied, and a petition was, thereafter, filed before the Local Board of Assessment Appeals of Quezon City (QC-LBAA, for brevity) for the reversal of the resolution of the City Assessor. The petitioner alleged that under Section 28, paragraph 3 of the 1987 Constitution, the property is exempt from real property taxes. It averred that a minimum of 60% of its hospital beds are exclusively used for charity patients and that the major thrust of its hospital operation is to serve charity patients. The petitioner contends that it is a charitable institution and, as such, is exempt from real property taxes

ISSUES:
I. Whether petitioner is a charitable institution within the context of Presidential Decree No. 1823 and the 1973 and 1987 Constitutions and Section 234(b) of Republic Act No. 7160 (YES)
II. Whether real properties of the petitioner are exempt from real property taxes (NO)

RULING:
I.
The medical services of the petitioner are to be rendered to the public in general in any and all walks of life including those who are poor and the needy without discrimination. After all, any person, the rich as well as the poor, may fall sick or be injured or wounded and become a subject of charity.

As a general principle, a charitable institution does not lose its character as such and its exemption from taxes simply because it derives income from paying patients, whether out-patient, or confined in the hospital, or receives subsidies from the government, so long as the money received is devoted or used altogether to the charitable object which it is intended to achieve; and no money inures to the private benefit of the persons managing or operating the institution. In *Congregational Sunday School, etc. v. Board of Review*,[19] the State Supreme Court of Illinois held, thus:

… [A]n institution does not lose its charitable character, and consequent exemption from taxation, by reason of the fact that those recipients of its benefits who are able to pay are required to do so, where no profit is made by the institution and the amounts so received are applied in furthering its charitable purposes, and those benefits are refused to none on account of inability to pay therefor. The fundamental ground upon which all exemptions in favor of charitable institutions are based is the benefit conferred upon the public by them, and a consequent relief, to some extent, of the burden upon the state to care for and advance the interests of its citizens

As aptly stated by the State Supreme Court of South Dakota in *Lutheran Hospital Association of South Dakota v. Baker*:

… [T]he fact that paying patients are taken, the profits derived from attendance upon these patients being exclusively devoted to the maintenance of the charity, seems rather to enhance the usefulness of the institution to the poor; for it is a matter of common observation amongst those who have gone about at all amongst the suffering classes, that the deserving poor can with difficulty be persuaded to enter an asylum of any kind confined to the reception of objects of charity; and that their honest pride is much less wounded by being placed in an institution in which paying patients are also received. The fact of receiving money from some of the patients does not, we think, at all impair the character of the charity, so long as the money thus received is devoted altogether to the charitable object which the institution is intended to further.

The money received by the petitioner becomes a part of the trust fund and must be devoted to public trust purposes and cannot be diverted to private profit or benefit.

Under P.D. No. 1823, the petitioner is entitled to receive donations. The petitioner does not lose its character as a charitable institution simply because the gift or donation is in the form of subsidies granted by the government. As held by the State Supreme Court of Utah in *Yorgason v. County Board of Equalization of Salt Lake County*:

Second, the … government subsidy payments are provided to the project. Thus, those payments are like a gift or donation of any other kind except they come from the government. In both *Intermountain Health Care*and the present case, the crux is the presence or absence of material reciprocity. It is entirely irrelevant to this analysis that the government, rather than a private benefactor, chose to make up the deficit resulting from the exchange between St. Mark's Tower and the tenants by making a contribution to the landlord, just as it would have been irrelevant in *Intermountain Health Care* if the patients' income supplements had come from private individuals rather than the government.

Therefore, the fact that subsidization of part of the cost of furnishing such housing is by the government rather than private charitable contributions does not dictate the denial of a charitable exemption if the facts otherwise support such an exemption, as they do here.[25]

In this case, the petitioner adduced substantial evidence that it spent its income, including the subsidies from the government for 1991 and 1992 for its patients and for the operation of the hospital. It even incurred a net loss in 1991 and 1992 from its operations.

II.
Under the 1973 and 1987 Constitutions and Rep. Act No. 7160 in order to be entitled to the exemption, the petitioner is burdened to prove, by clear and unequivocal proof, that (a) it is a charitable institution; and (b) its real properties are **ACTUALLY, DIRECTLY** and **EXCLUSIVELY** used for charitable purposes. "Exclusive" is defined as possessed and enjoyed to the exclusion of others; debarred from participation or enjoyment; and "exclusively" is defined, "in a manner to exclude; as enjoying a privilege exclusively. If real property is used for one or more commercial purposes, it is not exclusively used for the exempted purposes but is subject to taxation. The words "dominant use" or "principal use" cannot be substituted for the words "used exclusively" without doing violence to the Constitutions and the law. Solely is synonymous with exclusively.

What is meant by actual, direct and exclusive use of the property for charitable purposes is the direct and immediate and actual application of the property itself to the purposes for which the charitable institution is organized. It is not the use of the income from the real property that is determinative of whether the property is used for tax-exempt purposes.

The petitioner failed to discharge its burden to prove that the entirety of its real property is actually, directly and exclusively used for charitable purposes. While portions of the hospital are used for the treatment of patients and the dispensation of medical services to them, whether paying or non-paying, other portions thereof are being leased to private individuals for their clinics and a canteen. Further, a portion of the land is being leased to a private individual for her business enterprise under the business name "Elliptical Orchids and Garden Center." Indeed, the petitioner's evidence shows that it collected ₱1,136,483.45 as rentals in 1991 and ₱1,679,999.28 for 1992 from the said lessees.

Accordingly, we hold that the portions of the land leased to private entities as well as those parts of the hospital leased to private individuals are not exempt from such taxes. On the other hand, the portions of the land occupied by the hospital and portions of the hospital used for its patients, whether paying or non-paying, are exempt from real property taxes.

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,* -versus- ST. LUKE'S MEDICAL CENTER, INC., *Respondent*
G.R. No. 195909, SECOND DIVISION, September 26, 2012, CARPIO, *J.*

The last paragraph of Section 30 provides that if a tax exempt charitable institution conducts "any" activity for profit, such activity is not tax exempt even as its not-for-profit activities remain tax exempt. This paragraph qualifies the requirements in Section 30(E) that the "[n]on-stock corporation or association [must be] organized and operated exclusively for x x x charitable x x x purposes x x x." It likewise qualifies the requirement in Section 30(G) that the civic organization must be "operated exclusively" for the promotion of social welfare.

Thus, even if the charitable institution must be "organized and operated exclusively" for charitable purposes, it is nevertheless allowed to engage in "activities conducted for profit" without losing its tax exempt status for its not-for-profit activities. The only consequence is that the "income of whatever *kind and character" of a charitable institution "from any of its activities conducted for profit, regardless of the disposition made of such income, shall be subject to tax." Prior to the introduction of Section 27(B), the tax rate on such income from for-profit activities was the ordinary corporate rate under Section 27(A). With the introduction of Section 27(B), the tax rate is now 10%.*

FACTS:
On 16 December 2002, the Bureau of Internal Revenue (BIR) assessed St. Luke's deficiency taxes amounting to ₱76,063,116.06 for 1998, comprised of deficiency income tax, value-added tax, withholding tax on compensation and expanded withholding tax. The BIR reduced the amount to ₱63,935,351.57 during trial in the First Division of the CTA. 4

On 14 January 2003, St. Luke's filed an administrative protest with the BIR against the deficiency tax assessments. The BIR did not act on the protest within the 180-day period under Section 228 of the NIRC. Thus, St. Luke's appealed to the CTA.

St. Luke's contended that the BIR should not consider its total revenues, because its free services to patients was ₱218,187,498 or 65.20% of its 1998 operating income (i.e., total revenues less operating expenses) of ₱334,642,615. St. Luke's also claimed that its income does not inure to the benefit of any individual.

St. Luke's maintained that it is a non-stock and non-profit institution for charitable and social welfare purposes under Section 30(E) and (G) of the NIRC. It argued that the making of profit per se does not destroy its income tax exemption.

ISSUE:
Whether St. Luke's is liable for deficiency income tax in 1998 under Section 27(B) of the NIRC, which imposes a preferential tax rate of 10% on the income of proprietary non-profit hospitals. (YES)

RULING:
The Court partly grants the petition of the BIR but on a different ground. We hold that Section 27(B) of the NIRC does not remove the income tax exemption of proprietary non-profit hospitals under Section 30(E) and (G). Section 27(B) on one hand, and Section 30(E) and (G) on the other hand, can be construed together without the removal of such tax exemption. The effect of the introduction of Section 27(B) is to subject the taxable income of two specific institutions, namely, proprietary non-profit educational institutions and proprietary non-profit hospitals, among the institutions covered by Section 30, to the 10% preferential rate under Section 27(B) instead of the ordinary 30% corporate rate under the last paragraph of Section 30 in relation to Section 27(A)(1).

Section 27(B) of the NIRC imposes a 10% preferential tax rate on the income of (1) proprietary non-profit educational institutions and (2) proprietary non-profit hospitals. The only qualifications for hospitals are that they must be proprietary and non-profit. "Proprietary" means private, following the definition of a "proprietary educational institution" as "any private school maintained and administered by private individuals or groups" with a government permit. "Non-profit" means no net income or asset accrues to or benefits any member or specific person, with all the net income or asset devoted to the institution's purposes and all its activities conducted not for profit.

"Non-profit" does not necessarily mean "charitable." In Collector of Internal Revenue v. Club Filipino Inc. de Cebu, this Court considered as non-profit a sports club organized for recreation and entertainment of its stockholders and members. The club was primarily funded by membership fees and dues. If it had profits, they were used for overhead expenses and improving its golf course. [38] The club was non-profit because of its purpose and there was no evidence that it was engaged in a profit-making enterprise.

The sports club in Club Filipino Inc. de Cebu may be non-profit, but it was not charitable. The Court defined "charity" in Lung Center of the Philippines v. Quezon City as "a gift, to be applied consistently with existing laws, for the benefit of an indefinite number of persons, either by bringing their minds and hearts under the influence of education or religion, by assisting them to establish themselves in life or [by] otherwise lessening the burden of government." A non-profit club for the benefit of its members fails this test. An organization may be considered as non-profit if it does not distribute any part of its income to stockholders or members. However, despite its being a tax exempt institution, any income such institution earns from activities conducted for profit is taxable, as expressly provided in the last paragraph of Section 30.

To be a charitable institution, however, an organization must meet the substantive test of charity in Lung Center. The issue in Lung Center concerns exemption from real property tax and not income tax. However, it provides for the test of charity in our jurisdiction. Charity is essentially a gift to an indefinite number of persons which lessens the burden of government. In other words, charitable institutions provide for free goods and services to the public which would otherwise fall on the shoulders of government. Thus, as a matter of efficiency, the government forgoes taxes which should have been spent to address public needs, because certain private entities already assume a part of the burden. This is the rationale for the tax exemption of charitable institutions. The loss of taxes by the government is compensated by its relief from doing public works which would have been funded by appropriations from the Treasury.

Charitable institutions, however, are not ipso facto entitled to a tax exemption. The requirements for a tax exemption are specified by the law granting it. The power of Congress to tax implies the power to exempt from tax. Congress can create tax exemptions, subject to the constitutional provision that "[n]o law granting any tax exemption shall be passed without the concurrence of a majority of all the Members of Congress." The requirements for a tax exemption are strictly construed against the taxpayer because an exemption restricts the collection of taxes necessary for the existence of the government.

The Court in Lung Center declared that the Lung Center of the Philippines is a charitable institution for the purpose of exemption from real property taxes. This ruling uses the same premise as Hospital de San Juan and Jesus Sacred Heart College which says that receiving income from paying patients does not destroy the charitable nature of a hospital.

As a general principle, a charitable institution does not lose its character as such and its exemption from taxes simply because it derives income from paying patients, whether out-patient, or confined in the hospital, or receives subsidies from the government, so long as the money received is devoted or used altogether to the charitable object which it is intended to achieve; and no money inures to the private benefit of the persons managing or operating the institution.

For real property taxes, the incidental generation of income is permissible because the test of exemption is the use of the property. The Constitution provides that "[c]haritable institutions, churches and personages or convents appurtenant thereto, mosques, non-profit cemeteries, and all lands, buildings, and improvements, actually, directly, and exclusively used for religious, charitable, or educational purposes shall be exempt from taxation." The test of exemption is not strictly a requirement on the intrinsic nature or character of the institution. The test requires that the institution use the property in a certain way, i.e. for a charitable purpose. Thus, the Court held that the Lung Center of the Philippines did not lose its charitable character when it used a portion of its lot for commercial purposes. The effect of failing to meet the use requirement is simply to remove from the tax exemption that portion of the property not devoted to charity.

The Constitution exempts charitable institutions only from real property taxes. In the NIRC, Congress decided to extend the exemption to income taxes. However, the way Congress crafted Section 30(E) of the NIRC is materially different from Section 28(3), Article VI of the Constitution. Section 30(E) of the NIRC defines the corporation or association that is exempt from income tax. On the other hand, Section 28(3), Article VI of the Constitution does not define a charitable institution, but requires that the institution "actually, directly and exclusively" use the property for a charitable purpose.

The last paragraph of Section 30 provides that if a tax exempt charitable institution conducts "any" activity for profit, such activity is not tax exempt even as its not-for-profit activities remain tax exempt. This paragraph qualifies the requirements in Section 30(E) that the "[n]on-stock corporation or association [must be] organized and operated exclusively for x x x charitable x x x purposes x x x." It likewise qualifies the requirement in Section 30(G) that the civic organization must be "operated exclusively" for the promotion of social welfare.

Thus, even if the charitable institution must be "organized and operated exclusively" for charitable purposes, it is nevertheless allowed to engage in "activities conducted for profit" without losing its tax exempt status for its not-for-profit activities. The only consequence is that the "income of whatever kind and character" of a charitable institution "from any of its activities conducted for profit, regardless of the disposition made of such income, shall be subject to tax." Prior to the introduction of Section 27(B), the tax rate on such income from for-profit activities was the ordinary corporate rate under Section 27(A). With the introduction of Section 27(B), the tax rate is now 10%.

In 1998, St. Luke's had total revenues of ₱1,730,367,965 from services to paying patients. It cannot be disputed that a hospital which receives approximately ₱1.73 billion from paying patients is not an institution "operated exclusively" for charitable purposes. Clearly, revenues from paying patients are income received from "activities conducted for profit." Indeed, St. Luke's admits that it derived profits from its paying patients. St. Luke's declared ₱1,730,367,965 as "Revenues from Services to Patients" in contrast to its "Free Services" expenditure of ₱218,187,498. In its Comment in G.R. No. 195909, St. Luke's showed the following "calculation" to support its claim that 65.20% of its "income after expenses was allocated to free or charitable services" in 1998

ANGELES UNIVERSITY FOUNDATION, *Petitioner*, -versus- CITY OF ANGELES, JULIET G. QUINSAAT, in her capacity as Treasurer of Angeles City and ENGR. DONATO N. DIZON, in his capacity as Acting Angeles City Building Official., *Respondent*
G.R. No. 189999, SECOND DIVISION, June 27, 2012, VILLARAMA, JR., *J.*

In distinguishing tax and regulation as a form of police power, the determining factor is the purpose of the implemented measure. If the purpose is primarily to raise revenue, then it will be deemed a tax even though the measure results in some form of regulation. On the other hand, if the purpose is primarily to regulate, then it is deemed a regulation and an exercise of the police power of the state, even though incidentally, revenue is generated.

FACTS:
Petitioner Angeles University Foundation (AUF) is an educational institution established on May 25, 1962 and was converted into a non-stock, non-profit education foundation under the provisions of Republic Act (R.A.) No. 6055 on December 4, 1975.

Sometime in August 2005, petitioner filed with the Office of the City Building Official an application for a building permit for the construction of an 11-storey building of the Angeles University Foundation Medical Center in its main campus located at MacArthur Highway, Angeles City, Pampanga. Said office issued a Building Permit Fee Assessment in the amount of P126,839.20. An Order of Payment was also issued by the City Planning and Development Office, Zoning Administration Unit requiring petitioner to pay the sum of P238,741.64 as Locational Clearance Fee. In separate letters dated November 15, 2005 addressed to respondents City Treasurer Juliet G. Quinsaat and Acting City Building Official Donato N. Dizon, petitioner claimed that it is exempt from the payment of the building permit and locational clearance fees, citing legal opinions rendered by the Department of Justice (DOJ). Petitioner also reminded the respondents that they have previously issued building permits acknowledging such exemption from payment of building permit fees on the construction of petitioner's 4-storey AUF Information Technology Center building and the AUF Professional Schools building on July 27, 2000 and March 15, 2004, respectively.

Respondent City Treasurer referred the matter to the Bureau of Local Government Finance (BLGF) of the Department of Finance, which in turn endorsed the query to the DOJ. Then Justice Secretary Raul M. Gonzalez, in his letter-reply dated December 6, 2005, cited previous issuances of his office (Opinion No. 157, s. 1981 and Opinion No. 147, s. 1982) declaring petitioner to be exempt from the payment of building permit fees. Under the 1st Indorsement dated January 6, 2006, BLGF reiterated the aforesaid opinion of the DOJ stating further that "xxx the Department of Finance, thru this Bureau, has no authority to review the resolution or the decision of the DOJ."

Petitioner wrote the respondents reiterating its request to reverse the disputed assessments and invoking the DOJ legal opinions which have been affirmed by Secretary Gonzalez. Despite petitioner's plea, however, respondents refused to issue the building permits for the construction of the AUF Medical Center in the main campus and renovation of a school building located at Marisol

Village. Petitioner then appealed the matter to City Mayor Carmelo F. Lazatin but no written response was received by petitioner

By reason of the above payments, petitioner was issued the corresponding Building Permit, Wiring Permit, Electrical Permit and Sanitary Building Permit. On June 9, 2006, petitioner formally requested the respondents to refund the fees it paid under protest. Under letters dated June 15, 2006 and August 7, 2006, respondent City Treasurer denied the claim for refund.

Petitioner filed a Complaint before the trial court seeking the refund of P826,662.99 plus interest at the rate of 12% per annum, and also praying for the award of attorney's fees in the amount of P300,000.00 and litigation expenses.

Petitioner stresses that the tax exemption granted to educational stock corporations which have converted into non-profit foundations was broadened to include any other charges imposed by the Government as one of the incentives for such conversion. These incentives necessarily included exemption from payment of building permit and related fees as otherwise there would have been no incentives for educational foundations if the privilege were only limited to exemption from taxation, which is already provided under the Constitution.

Petitioner further contends that this Court has consistently held in several cases that the primary purpose of the exaction determines its nature.

ISSUES:
I. Whether petitioner is exempt from the payment of building permit and related fees imposed under the National Building Code. (NO)
II. Whether the parcel of land owned by petitioner which has been assessed for real property tax is likewise exempt. (NO).

RULING:
I.
In distinguishing tax and regulation as a form of police power, the determining factor is the purpose of the implemented measure. If the purpose is primarily to raise revenue, then it will be deemed a tax even though the measure results in some form of regulation. On the other hand, if the purpose is primarily to regulate, then it is deemed a regulation and an exercise of the police power of the state, even though incidentally, revenue is generated. Thus, in Gerochi v. Department of Energy, the Court stated:

"The conservative and pivotal distinction between these two (2) powers rests in the purpose for which the charge is made. If generation of revenue is the primary purpose and regulation is merely incidental, the imposition is a tax; but if regulation is the primary purpose, the fact that revenue is incidentally raised does not make the imposition a tax."30 (Emphasis supplied.)

Concededly, in the case of building permit fees imposed by the National Government under the National Building Code, revenue is incidentally generated for the benefit of local government units.).

II.
In Lung Center of the Philippines v. Quezon City, this Court held that only portions of the hospital actually, directly and exclusively used for charitable purposes are exempt from real property taxes, while those portions leased to private entities and individuals are not exempt from such taxes. We explained the condition for the tax exemption privilege of charitable and educational institutions, as follows:
Under the 1973 and 1987 Constitutions and Rep. Act No. 7160 in order to be entitled to the exemption, the petitioner is burdened to prove, by clear and unequivocal proof, that (a) it is a charitable institution; and (b) its real properties are **ACTUALLY**, **DIRECTLY** and **EXCLUSIVELY** used for charitable purposes. "Exclusive" is defined as possessed and enjoyed to the exclusion of others; debarred from participation or enjoyment; and "exclusively" is defined, "in a manner to exclude; as enjoying a privilege exclusively." If real property is used for one or more commercial purposes, it is not exclusively used for the exempted purposes but is subject to taxation. The words "dominant use" or "principal use" cannot be substituted for the words "used exclusively" without doing violence to the Constitutions and the law. Solely is synonymous with exclusively.

What is meant by actual, direct and exclusive use of the property for charitable purposes is the direct and immediate and actual application of the property itself to the purposes for which the charitable institution is organized. It is not the use of the income from the real property that is determinative of whether the property is used for tax-exempt purposes.

Petitioner failed to discharge its burden to prove that its real property is actually, directly and exclusively used for educational purposes. While there is no allegation or proof that petitioner leases the land to its present occupants, still there is no compliance with the constitutional and statutory requirement that said real property is actually, directly and exclusively used for educational purposes. The respondents correctly assessed the land for real property taxes for the taxable period during which the land is not being devoted solely to petitioner's educational activities. Accordingly, the CA did not err in ruling that petitioner is likewise not entitled to a refund of the real property tax it paid under protest.

AMERICAN BIBLE SOCIETY, *Petitioner,* -versus- CITY OF MANILA, *Respondent*
G.R. No. L-9637, EN BANC, April 30, 1957, FELIX, *J.*

The constitutional guaranty of the free exercise and enjoyment of religious profession and worship carries with it the right to disseminate religious information. Any restraints of such right can only be justified like other restraints of freedom of expression on the grounds that there is a clear and present danger of any substantive evil which the State has the right to prevent".

It may be true that in the case at bar the price asked for the bibles and other religious pamphlets was in some instances a little bit higher than the actual cost of the same but this cannot mean that appellant was engaged in the business or occupation of selling said "merchandise" for profit. For this reason We believe that the provisions of City of Manila Ordinance No. 2529, as amended, cannot be applied to appellant, for in doing so it would impair its free exercise and enjoyment of its religious profession and worship as well as its rights of dissemination of religious beliefs.

FACTS:
Plaintiff-appellant is a foreign, non-stock, non-profit, religious, missionary corporation duly registered and doing business in the Philippines through its Philippine agency established in Manila in November, 1898, with its principal office at 636 Isaac Peral in said City. The defendant appellee is a municipal corporation with powers that are to be exercised in conformity with the provisions of Republic Act No. 409, known as the Revised Charter of the City of Manila.

In the course of its ministry, plaintiff's Philippine agency has been distributing and selling bibles and/or gospel portions thereof (except during the Japanese occupation) throughout the Philippines and translating the same into several Philippine dialects. On May 29 1953, the acting City Treasurer of the City of Manila informed plaintiff that it was conducting the business of general merchandise since November, 1945, without providing itself with the necessary Mayor's permit and municipal license, in violation of Ordinance No. 3000, as amended, and Ordinances Nos. 2529, 3028 and 3364, and required plaintiff to secure, within three days, the corresponding permit and license fees, together with compromise covering the period from the 4th quarter of 1945 to the 2nd quarter of 1953, in the total sum of P5,821.45

Plaintiff protested against this requirement, but the City Treasurer demanded that plaintiff deposit and pay under protest the sum of P5,891.45, if suit was to be taken in court regarding the same (Annex B). To avoid the closing of its business as well as further fines and penalties in the premises on October 24, 1953, plaintiff paid to the defendant under protest the said permit and license fees in the aforementioned amount, giving at the same time notice to the City Treasurer that suit would be taken in court to question the legality of the ordinances under which, the said fees were being collected, which was done on the same date by filing the complaint that gave rise to this action. In its complaint plaintiff prays that judgment be rendered declaring the said Municipal Ordinance No. 3000, as amended, and Ordinances Nos. 2529, 3028 and 3364 illegal and unconstitutional, and that the defendant be ordered to refund to the plaintiff the sum of P5,891.45 paid under protest, together with legal interest thereon, and the costs, plaintiff further praying for such other relief and remedy as the court may deem just equitable.

ISSUE:
Whether American Bible Society liable to pay sales tax for the distribution and sale of bibles (NO)

RULING:
Article III, section 1, clause (7) of the Constitution of the Philippines aforequoted, guarantees the freedom of religious profession and worship. "Religion has been spoken of as a profession of faith to an active power that binds and elevates man to its Creator" (Aglipay *vs*. Ruiz, 64 Phil., 201).It has reference to one's views of his relations to His Creator and to the obligations they impose of reverence to His being and character, and obedience to His Will (Davis *vs*. Beason, 133 U.S., 342). The constitutional guaranty of the free exercise and enjoyment of religious profession and worship carries with it the right to disseminate religious information. Any restraints of such right can only be justified like other restraints of freedom of expression on the grounds that there is a clear and present danger of any substantive evil which the State has the right to prevent". (Tañada and Fernando on the Constitution of the Philippines, Vol. 1, 4th ed., p. 297). In the case at bar the license fee herein involved is imposed upon appellant for its distribution and sale of bibles and other religious literature:
In the case of *Murdock vs. Pennsylvania*, it was held that an ordinance requiring that a license be obtained before a person could canvass or solicit orders for goods, paintings, pictures, wares or merchandise cannot be made to apply to members of Jehovah's Witnesses who went about from door to door distributing literature and soliciting people to "purchase" certain religious books and pamphlets, all published by the Watch Tower Bible & Tract Society. The "price" of the books was twenty-five cents each, the "price" of the pamphlets five cents each. It was shown that in making the solicitations there was a request for additional "contribution" of twenty-five cents each for the books and five cents each for the pamphlets. Lesser sum were accepted, however, and books were even donated in case interested persons were without funds.

On the above facts the Supreme Court held that it could not be said that petitioners were engaged in commercial rather than a religious venture. Their activities could not be described as embraced in the occupation of selling books and pamphlets. Then the Court continued:

"We do not mean to say that religious groups and the press are free from all financial burdens of government. See *Grosjean vs. American Press Co*., 297 U.S., 233, 250, 80 L. ed. 660, 668, 56 S. Ct. 444. We have here something quite different, for example, from a tax on the income of one who engages in religious activities or a tax on property used or employed in connection with activities. It is one thing to impose a tax on the income or property of a preacher. It is quite another to exact a tax from him for the privilege of delivering a sermon. The tax imposed by the City of Jeannette is a flat license tax, payment of which is a condition of the exercise of these constitutional privileges. The power to tax the exercise of a privilege is the power to control or suppress its enjoyment. . . . Those who can tax the exercise of this religious practice can make its exercise so costly as to deprive it of the resources necessary for its maintenance. Those who can tax the privilege of engaging in this form of missionary evangelism can close all its doors to all those who do not have a full purse. Spreading religious beliefs in this ancient and honorable manner would thus be denied the needy. . . .

It is contended however that the fact that the license tax can suppress or control this activity is unimportant if it does not do so. But that is to disregard the nature of this tax. It is a license tax — a flat tax imposed on the exercise of a privilege granted by the Bill of Rights . . . The power to impose a license tax on the exercise of these freedom is indeed as potent as the power of censorship which this Court has repeatedly struck down. . . . It is not a nominal fee imposed as a regulatory measure to defray the expenses of policing the activities in question. It is in no way apportioned. It is flat license tax levied and collected as a condition to the pursuit of activities whose enjoyment is guaranteed by the constitutional liberties of press and religion and inevitably tends to suppress their exercise. That is almost uniformly recognized as the inherent vice and evil of this flat license tax."
Nor could dissemination of religious information be conditioned upon the approval of an official or manager even if the town were owned by a corporation as held in the case of *Marsh vs. State of Alabama* (326 U.S. 501), or by the United States itself as held in the case of Tucker vs. Texas (326 U.S. 517). In the former case the Supreme Court expressed the opinion that the right to enjoy freedom of the press and religion occupies a preferred position as against the constitutional right of property owners.

"When we balance the constitutional rights of owners of property against those of the people to enjoy freedom of press and religion, as we must here, we remain mindful of the fact that the latter occupy a preferred position. . . . In our view the circumstance that the property rights to the premises where the deprivation of property here involved, took place, were held by others than the public, is not sufficient to justify the State's permitting a corporation to govern a community of citizens so as to restrict their fundamental liberties and the enforcement of such restraint by the application of a State statute." (Tañada and Fernando on the Constitution of the Philippines, Vol. 1, 4th ed., p. 304-306).

It may be true that in the case at bar the price asked for the bibles and other religious pamphlets was in some instances a little bit higher than the actual cost of the same but this cannot mean that appellant was engaged in the business or occupation of selling said "merchandise" for profit. For this reason We believe that the provisions of City of Manila Ordinance No. 2529, as amended, cannot be applied to appellant, for in doing so it would impair its free exercise and enjoyment of its religious profession and worship as well as its rights of dissemination of religious beliefs.

With respect to Ordinance No. 3000, as amended, which requires the obtention the Mayor's permit before any person can engage in any of the businesses, trades or occupations enumerated therein, We do not find that it imposes any charge upon the enjoyment of a right granted by the Constitution, nor tax the exercise of religious practices.

ARTURO M. TOLENTINO, *Petitioner*, -versus- THE SECRETARY OF FINANCE and THE COMMISSIONER OF INTERNAL REVENUE, *Respondents*
G.R. No. 115455, EN BANC, October 30, 1995, MENDOZA, *J.*

Authorities from numerous sources are cited by the plaintiffs, but none of them show that a lawful tax on a new subject, or an increased tax on an old one, interferes with a contract or impairs its obligation, within the meaning of the Constitution. Even though such taxation may affect particular contracts, as it may increase the debt of one person and lessen the security of another, or may impose additional burdens upon one class and release the burdens of another, still the tax must be paid unless prohibited by the Constitution, nor can it be said that it impairs the obligation of any existing contract in its true legal sense.

FACTS:
These are motions seeking reconsideration of our decision dismissing the petitions filed in these cases for the declaration of unconstitutionality of R.A. No. 7716, otherwise known as the Expanded Value-Added Tax Law. The motions, of which there are 10 in all, have been filed by the several petitioners in these cases, with the exception of the Philippine Educational Publishers Association, Inc. and the Association of Philippine Booksellers, petitioners in G.R. No. 115931.

The PPI says that the discriminatory treatment of the press is highlighted by the fact that transactions, which are profit oriented, continue to enjoy exemption under R.A. No. 7716. An enumeration of some of these transactions will suffice to show that by and large this is not so and that the exemptions are granted for a purpose. As the Solicitor General says, such exemptions are granted, in some cases, to encourage agricultural production and, in other cases, for the personal benefit of the end-user rather than for profit. The exempt transactions are:

(a) Goods for consumption or use which are in their original state (agricultural, marine and forest products, cotton seeds in their original state, fertilizers, seeds, seedlings, fingerlings, fish, prawn livestock and poultry feeds) and goods or services to enhance agriculture (milling of palay, corn, sugar cane and raw sugar, livestock, poultry feeds, fertilizer, ingredients used for the manufacture of feeds).

(b) Goods used for personal consumption or use (household and personal effects of citizens returning to the Philippines) or for professional use, like professional instruments and implements, by persons coming to the Philippines to settle here.

(c) Goods subject to excise tax such as petroleum products or to be used for manufacture of petroleum products subject to excise tax and services subject to percentage tax.

(d) Educational services, medical, dental, hospital and veterinary services, and services rendered under employer-employee relationship.

(e) Works of art and similar creations sold by the artist himself.

(f) Transactions exempted under special laws, or international agreements.

(g) Export-sales by persons not VAT-registered.

(h) Goods or services with gross annual sale or receipt not exceeding P500,000.00.

(Respondents' Consolidated Comment on the Motions for Reconsideration, pp. 58-60)

The PPI asserts that it does not really matter that the law does not discriminate against the press because "even nondiscriminatory taxation on constitutionally guaranteed freedom is unconstitutional." PPI cites in support of this assertion the following statement in Murdock v. Pennsylvania, 319 U.S. 105, 87 L. Ed. 1292 (1943):

The fact that the ordinance is "nondiscriminatory" is immaterial. The protection afforded by the First Amendment is not so restricted. A license tax certainly does not acquire constitutional validity because it classifies the privileges protected by the First Amendment along with the wares and merchandise of hucksters and peddlers and treats them all alike. Such equality in treatment does not save the ordinance. Freedom of press, freedom of speech, freedom of religion are in preferred position.

ISSUE:
Whether the VAT is discriminatory to the freedom of the press due to the fact that it exempts the sale of bibles (NO)

RULING:
The Court was speaking in that case of a license tax, which, unlike an ordinary tax, is mainly for regulation. Its imposition on the press is unconstitutional because it lays a prior restraint on the exercise of its right. Hence, although its application to others, such those selling goods, is valid, its application to the press or to religious groups, such as the Jehovah's Witnesses, in connection with the latter's sale of religious books and pamphlets, is unconstitutional. As the U.S. Supreme Court put it, "it is one thing to impose a tax on income or property of a preacher. It is quite another thing to exact a tax on him for delivering a sermon."

A similar ruling was made by this Court in American Bible Society v. City of Manila, 101 Phil. 386 (1957) which invalidated a city ordinance requiring a business license fee on those engaged in the sale of general merchandise. It was held that the tax could not be imposed on the sale of bibles by the American Bible Society without restraining the free exercise of its right to propagate.

The VAT is, however, different. It is not a license tax. It is not a tax on the exercise of a privilege, much less a constitutional right. It is imposed on the sale, barter, lease or exchange of goods or properties or the sale or exchange of services and the lease of properties purely for revenue purposes. To subject the press to its payment is not to burden the exercise of its right any more than to make the press pay income tax or subject it to general regulation is not to violate its freedom under the Constitution.

Additionally, the Philippine Bible Society, Inc. claims that although it sells bibles, the proceeds derived from the sales are used to subsidize the cost of printing copies which are given free to those who cannot afford to pay so that to tax the sales would be to increase the price, while reducing the volume of sale. Granting that to be the case, the resulting burden on the exercise of religious freedom is so incidental as to make it difficult to differentiate it from any other economic imposition that might make the right to disseminate religious doctrines costly. Otherwise, to follow the petitioner's argument, to increase the tax on the sale of vestments would be to lay an impermissible burden on the right of the preacher to make a sermon.

On the other hand the registration fee of P1,000.00 imposed by §107 of the NIRC, as amended by §7 of R.A. No. 7716, although fixed in amount, is really just to pay for the expenses of registration and enforcement of provisions such as those relating to accounting in §108 of the NIRC. That the PBS distributes free bibles and therefore is not liable to pay the VAT does not excuse it from the payment of this fee because it also sells some copies. At any rate whether the PBS is liable for the VAT must be decided in concrete cases, in the event it is assessed this tax by the Commissioner of Internal Revenue.

COMMISSIONER OF INTERNAL REVENUE*, Petitioner,* -versus – UNITED SALVAGE AND TOWAGE (PHILS.), INC., *Respondent.*
G.R. No. 197515, THIRD DIVISION, July 2, 2014, PERALTA, *J.*

It is clear that a taxpayer must be informed in writing of the legal and factual bases of the tax assessment made against him. The use of the word "shall" in these legal provisions indicates the mandatory nature of the requirements laid down therein.

In the present case, a mere perusal of the FAN for the deficiency EWT for taxable year 1994 will show that other than a tabulation of the alleged deficiency taxes due, no further detail regarding the assessment was provided by petitioner. Only the resulting interest, surcharge and penalty were anchored with legal basis.45 Petitioner should have at least attached a detailed notice of discrepancy or stated an explanation why the amount of ₱48,461.76 is collectible against respondent46 and how the same was arrived at. Any short-cuts to the prescribed content of the assessment or the process thereof should not be countenanced.

FACTS

Respondent is engaged in the business of sub-contracting work for service contractors engaged in petroleum operations in the Philippines. During the taxable years in question, it had entered into various contracts and/or sub-contracts with several petroleum service contractors, such as Shell Philippines Exploration, B.V. and Alorn Production Philippines for the supply of service vessels.

In the course of respondent's operations, petitioner found respondent liable for deficiency income tax, withholding tax, value-added tax (VAT) and documentary stamp tax (DST) for taxable years 1992,1994, 1997 and 1998. Particularly, petitioner, through BIR officials, issued demand letters with attached assessment notices for withholding tax on compensation (WTC) and expanded withholding tax (EWT) for taxable years 1992, 1994 and 1998.

On January 29, 1998 and October 24, 2001, USTP filed administrative protests against the 1994 and 1998 EWT assessments, respectively.

On February 21, 2003, USTP appealed by way of Petition for Review before the Court in action (which was thereafter raffled to the CTA-Special First Division) alleging that the Notices of Assessment are bereft of any facts, law, rules and regulations or jurisprudence; thus, the assessments are void and the right of the government to assess and collect deficiency taxes from it has prescribed on account of the failure to issue a valid notice of assessment within the applicable period.

During the pendency of the proceedings, USTP moved to withdraw the aforesaid Petition because it availed of the benefits of the Tax Amnesty Program under Republic Act (R.A.) No. 9480. Having complied with all the requirements therefor, the CTA-Special First Division partially granted the Motion to Withdraw and declared the issues on income tax, VAT and DST deficiencies closed and terminated in accordance with the pronouncement in *Philippine Banking Corporation v. Commissioner of Internal Revenue*. Consequently, the case was submitted for decision covering the remaining issue on deficiency EWT and WTC, respectively, for taxable years 1992, 1994 and 1998.

The CTA-Special First Division held that the Preliminary Assessment Notices (PANs) for deficiency EWT for taxable years 1994 and 1998 were not formally offered; hence, pursuant to Section 34, Rule 132 of the Revised Rules of Court, the Court shall neither consider the same as evidence nor rule on their validity. As regards the Final Assessment Notices (FANs) for deficiency EWT for taxable years 1994 and 1998, the CTA-Special First Division held that the same do not show the law and the facts on which the assessments were based. Said assessments were, therefore, declared void for failure to comply with Section 228 of the 1997 National Internal Revenue Code (Tax Code). From the foregoing, the only remaining valid assessment is for taxable year 1992.

Nevertheless, the CTA-Special First Division declared that the right of petitioner to collect the deficiency EWT and WTC, respectively, for taxable year 1992 had already lapsed pursuant to Section 203 of the Tax Code. Thus, in ruling for USTP, the CTA-Special First Division cancelled Assessment Notice Nos. 25-1-00546-92 and 25-1-000545-92, both dated January 9, 1996 and covering the period of 1992.

Petitioner moved to reconsider the aforesaid ruling however it was denied the same for lack of merit.

Upon appeal, the CTA En Banc affirmed with modification the of the CTA-Special First Division. The CTA En Banc upheld the 1998 EWT assessment. In addition to the basic EWT deficiency of ₱14,496.79, USTP is ordered to pay surcharge, annual deficiency interest, and annual delinquency interest from the date due until full payment pursuant to Section 249 of the 1997 NIRC.

ISSUE

Whether or not the Expanded Withholding Tax Assessments issued by petitioner against the respondent for taxable year 1994 was without any factual and legal basis; and

RULING

In order to determine whether the requirement for a valid assessment is duly complied with, it is important to ascertain the governing law, rules and regulations and jurisprudence at the time the assessment was issued. In the instant case, the PANs and FANs pertaining to the deficiency EWT for taxable years 1994 and 1998, respectively, were issued on January 19, 1998, when the Tax Code was already in effect, as correctly found by the CTA En Banc:

The date of issuance of the notice of assessment determines which law applies- the 1997 NIRC or the old Tax Code. The case of Commissioner of Internal Revenue v. Bank of Philippine Islands is instructive:

In merely notifying BPI of his findings, the CIR relied on the provisions of the former Section 270 prior to its amendment by RA 8424 (also known as the Tax Reform Act of 1997). In CIR v. Reyes, we held that:

In the present case, Reyes was not informed in writing of the law and the facts on which the assessment of estate taxes had been made. She was merely notified of the findings by the CIR, who had simply relied upon the provisions of former Section 229 prior to its amendment by [RA] 8424, otherwise known as the Tax Reform Act of 1997.

First, RA 8424 has already amended the provision of Section 229 on protesting an assessment. The old requirement of merely notifying the taxpayer of the CIR's findings was changed in 1998to informing the taxpayer of not only the law, but also of the facts on which an assessment would be made; otherwise, the assessment itself would be invalid.

It was on February 12, 1998, that a preliminary assessment notice was issued against the estate. On April 22, 1998, the final estate tax assessment notice, as well as demand letter, was also issued. During those dates, RA 8424 was already in effect. The notice required under the old law was no longer sufficient under the new law.

In the instant case, the 1997 NIRC covers the 1994 and 1998 EWT FANs because there were issued on January 19, 1998 and September 21, 2001, respectively, at the time of the effectivity of the 1997 NIRC. Clearly, the assessments are governed by the law.

Indeed, Section 228 of the Tax Code provides that the taxpayer shall be informed in writing of the law and the facts on which the assessment is made. Otherwise, the assessment is void. To implement the aforesaid provision, Revenue Regulation No. 12-99was enacted by the BIR, of which Section 3.1.4 thereof reads:

3.1.4. Formal Letter of Demand and Assessment Notice. –The formal letter of demand and assessment notice shall be issued by the Commissioner or his duly authorized representative. The letter of demand calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based, otherwise, the formal letter of demand and assessment notice shall be void. The same shall be sent to the taxpayer only by registered mail or by personal delivery. x x x44

It is clear from the foregoing that a taxpayer must be informed in writing of the legal and factual bases of the tax assessment made against him. The use of the word "shall" in these legal provisions indicates the mandatory nature of the requirements laid down therein.

In the present case, a mere perusal of the FAN for the deficiency EWT for taxable year 1994 will show that other than a tabulation of the alleged deficiency taxes due, no further detail regarding the assessment was provided by petitioner. Only the resulting interest, surcharge and penalty were anchored with legal basis.45 Petitioner should have at least attached a detailed notice of discrepancy or stated an explanation why the amount of ₱48,461.76 is collectible against respondent46 and how the same was arrived at. Any short-cuts to the prescribed content of the assessment or the process thereof should not be countenanced.

The law requires that the legal and factual bases of the assessment be stated in the formal letter of demand and assessment notice. Thus, such cannot be presumed. Otherwise, the express provisions of Article 228 of the NIRC and RR No. 12-99 would be rendered nugatory. The alleged "factual bases" in the advice, preliminary letter and "audit working papers" did not suffice. There was no going around the mandate of the law that the legal and factual bases of the assessment be stated in writing in the formal letter of demand accompanying the assessment notice.

We note that the old law merely required that the taxpayer be notified of the assessment made by the CIR. This was changed in 1998 and the taxpayer must now be informed not only of the law but also of the facts on which the assessment is made. Such amendment is in keeping with the constitutional principle that no person shall be deprived of property without due process. In view of the absence of a fair opportunity for Enron to be informed of the legal and factual bases of the assessment against it, the assessment in question was void.

ALHAMBRA CIGAR and CIGARETTE MANUFACTURING COMPANY, *Petitioner*, -versus – THE COMMISSIONER OF INTERNAL REVENUE, *Respondent.*
G.R. No. L-12026, EN BANC, May 29, 1959, CONCEPCION, *J.*

FACTS

The Alhambra Cigar and Cigarette Manufacturing Co. filed its income tax returns for the years 1949, 1950, 1951, 1952 and 1953, and paid the income taxes computed in accordance with said returns. Upon subsequent verification thereof, on November 27, 1954, the Collector of Internal Revenue assessed and demanded from the company, by way of deficiency taxes for said years, the sums of P26,369.04, P42,653.00, P61,308.00, P58,404.00 and P51,826.00, respectively, or the aggregate sum of P240.560.04, plus 5% surcharge and 1% monthly interest from January 15, 1955. The Company appealed through the CTA and rendered a decision reducing the deficiency income taxes to P14,458.05, P20,176.00, P27,010.00, P21,759.00 and P20,201.00, respectively, or a total of P103,604.05.

ISSUE
Whether or not the expenses claimed by the company are allowable deductions. (YES)

RULING

Under Section 30 of the Tax Code, whenever a controversy arises on the deductibility, for purposes of income tax, of certain items for alleged compensation of officers of the taxpayer, two questions become material, namely: (a) Have "personal services" been "actually rendered" by said officers? (b) In the affirmative case, what is the "reasonable allowance" therefor? When the Collector disallowed the fees, bonuses and commissions aforementioned, and the company appealed there from, it became necessary for the lower court to determine whether said officer had correctly applied section 30 of the Tax Code, and this, in turn, required the consideration of the two questions already adverted to.

In the circumstances surrounding the case, the lower court has correctly construed and applied said provision.

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,* -versus – THE STANLEY WORKS SALES (PHILS.), INCORPORATED, *Respondent.*
G.R. No. 187589, FIRST DIVISION, December 3, 2014, SERENO, *J.*

The period to assess and collect deficiency taxes may be extended only upon a written agreement between the CIR and the taxpayer prior to the expiration of the three-year prescribed period in accordance with Section 222 (b) of the NIRC.

In this case, the Supreme Court upheld the ruling of the CTA Division that there were infirmities on the Waiver executed by respondent on 16 November 1993. The Court found that the following requisites were absent:

(1) Conformity of either petitioner or a duly authorized representative;

(2) Date of acceptance showing that both parties had agreed on the Waiver before the expiration of the prescriptive period; and

(3) Proof that respondent was furnished a copy of the Waiver.

FACTS

Respondent is a domestic corporation duly organized and existing under Philippine laws and duly registered with the Securities and Exchange Commission.

On March 19, 1993, the BIR issued to Stanley Works a Pre-Assessment Notice No. 002523 for 1989 deficiency income tax. It was received by the corporation on April 21, 1993.

On May 19, 1993, Stanley Works through its external auditors Punongbayan & Araullo, filed a protest letter and requested reconsideration and cancellation of the assessment.

On November 16, 1993, a certain Mr. John Ang, on behalf of the corporation, executed a "Waiver of the Defense of Prescription Under the Statute of Limitations of the National Internal Revenue Code" (Waiver).

The Waiver was not signed by Stanley Works or any of its authorized representatives and did not state the date of acceptance as prescribed under Revenue Memorandum Order No. 20-90.

Under the terms of the Waiver, Stanley Works waived its right to raise the defense of prescription under Section 223 of the NIRC of 1977 insofar as the assessment and collection of any deficiency taxes for the year ended December 31, 1989, but not after June 30, 1994.

On March 4, 2002, Stanley Works submitted a Supplemental Memorandum alleging that CIR's right to collect the alleged deficiency income tax has prescribed.

The CTA Division ruled that the request for reconsideration did not suspend the running of the prescriptive period to collect deficiency income tax. This decision was affirmed by the CTA en banc.

CIR rendered a Decision denying respondent's request for reconsideration and ordering respondent to pay the deficiency income tax plus interest that may have accrued.

Stanley Works assailed the decision before the Court of Tax Appeals Division which ordered the cancellation of the assessment ruling that although the assessment was made within the prescribed period, the period within which petitioner may collect deficiency income taxes had already lapsed.

Upon appeal, the CTA En Banc affirmed the CTA First Division Decision

ISSUE

Whether or not petitioner's right to collect the deficiency income tax of respondent for taxable year 1989 has prescribed. (YES)

RULING

The statute of limitations on the right to assess and collect a tax means that once the period established by law for the assessment and collection of taxes has lapsed, the government's corresponding right to enforce that action is barred by provision of law.

The period to assess and collect deficiency taxes may be extended only upon a written agreement between the CIR and the taxpayer prior to the expiration of the three-year prescribed period in accordance with Section 222 (b) of the NIRC.

Furthermore, jurisprudence is replete with requisites of a valid waiver:

1. The waiver must be in the proper form prescribed by RMO 20-90. The phrase "but not after ______ 19 ___", which indicates the expiry date of the period agreed upon to assess/collect the tax after the regular three-year period of prescription, should be filled up.

2. The waiver must be signed by the taxpayer himself or his duly authorized representative. In the case of a corporation, the waiver must be signed by any of its responsible officials. In case the authority is delegated by the taxpayer to a representative, such delegation should be in writing and duly notarized.

3. The waiver should be duly notarized.

4. The CIR or the revenue official authorized by him must sign the waiver indicating that the BIR has accepted and agreed to the waiver. The date of such acceptance by the BIR should be indicated. However, before signing the waiver, the CIR or the revenue official authorized by him must make sure that the waiver is in the prescribed form, duly notarized, and executed by the taxpayer or his duly authorized representative.

5. Both the date of execution by the taxpayer and date of acceptance by the Bureau should be before the expiration of the period of prescription or before the lapse of the period agreed upon in case a subsequent agreement is executed.

6. The waiver must be executed in three copies, the original copy to be attached to the docket of the case, the second copy for the taxpayer and the third copy for the Office accepting the waiver. The fact of receipt by the taxpayer of his/her file copy must be indicated in the original copy to show that the taxpayer was notified of the acceptance of the BIR and the perfection of the agreement.11

In *Philippine Journalist, Inc. v. Commissioner of Internal Revenue*, the Court categorically stated that a Waiver must strictly conform to RMO No. 20-90. The mandatory nature of the requirements set forth in RMO No. 20-90, as ruled upon by this Court, was recognized by the BIR itself in the latter's subsequent issuances, namely, Revenue Memorandum Circular (RMC) Nos. 6-200513 and 29-2012.14 Thus, the BIR cannot claim the benefits of extending the period to collect the deficiency tax as a consequence of the Waiver when, in truth it was the BIR's inaction which is the proximate cause of the defects of the Waiver. The BIR has the burden of ensuring compliance with the requirements of RMO No. 20-90, as they have the burden of securing the right of the government to assess and collect tax deficiencies. This right would prescribe absent any showing of a valid extension of the period set by the law.

To emphasize, the Waiver was not a unilateral act of the taxpayer; hence, the BIR must act on it, either by conforming to or by disagreeing with the extension. A waiver of the statute of limitations, whether on assessment or collection, should not be construed asa waiver of the right to invoke the defense of prescription but, rather, an agreement between the taxpayer and the BIR to extend the period to a date certain, within which the latter could still assess or collect taxes due. The waiver does not imply that the taxpayer relinquishes the right to invoke prescription unequivocally.

Although we recognize that the power of taxation is deemed inherent in order to support the government, tax provisions are not all about raising revenue. Our legislature has provided safeguards and remedies beneficial to both the taxpayer, to protect against abuse; and the government, to promptly act for the availability and recovery of revenues. A statute of limitations on the assessment and collection of internal revenue taxes was adopted to serve a purpose that would benefit both the taxpayer and the government.

This Court has expounded on the significance of adopting a statute of limitation on tax assessment and collection in this case:

The provision of law on prescription was adopted in our statute books upon recommendation of the tax commissioner of the Philippines which declares:

Under the former law, the right of the Government to collect the tax does not prescribe. However, in fairness to the taxpayer, the Government should be estopped from collecting the tax where it failed to make the necessary investigation and assessment within 5 years after the filing of the return and where it failed to collect the tax within 5 years from the date of assessment thereof. Just as the government is interested in the stability of its collection, so alsoare the taxpayers entitled to an assurance that they will not be subjected to further investigation for tax purposes after the expiration of a reasonable period of time. (Vol. II, Report of the Tax Commission of the Philippines, pp. 321-322)

The law prescribing a limitation of actions for the collection of the income tax is beneficial both to the Government and to its citizens; to the Government because tax officers would be obliged to act promptly in the making of assessment, and to citizens because after the lapse of the period of prescription citizens would havea feeling of security against unscrupulous tax agents who will always find an excuse to inspect the books of taxpayers, not to determine the latter's real liability, but to take advantage of every opportunity to molest peaceful, law-abiding citizens. Without such legal defense taxpayers would furthermore be under obligation to always keep their books and keep them open for inspection subject to harassment by unscrupulous tax agents. The law on prescription being a remedial measure should be interpreted in a way conducive to bringing about the beneficient purpose of affording protection to the taxpayer within the contemplation of the Commission which recommends the approval of the law.

QUIRICO P. UNGAB*, Petitioner,* -versus – HON. VICENTE N. CUSI, JR., in his capacity as Judge of the Court of First Instance, Branch 1, 16TH Judicial District, Davao City, THE COMMISSIONER OF INTERNAL REVENUE, and JESUS N. ACEBES, in his capacity as State Prosecutor, *Respondent.*

G.R. No. L-41919-24, SECOND DIVISION, May 30, 1980, CONCEPCION JR., *J.*

An assessment of a deficiency is not necessary to a criminal prosecution for willful attempt to defeat and evade the income tax. A crime is complete when the violator has knowingly and willfuly filed a fraudulent return with intent to evade and defeat the tax. The perpetration of the crime is grounded upon knowledge on the part of the taxpayer that he has made an inaccurate return, and the government's failure to discover the error and promptly to assess has no connections with the commission of the crime.

Obviously, the protest of the petitioner against the assessment of the District Revenue Officer cannot stop his prosecution for violation of the National Internal Revenue Code. Accordingly, the respondent Judge did not abuse his discretion in denying the motion to quash filed by the petitioner.

FACTS

BIR Examiner Ben Garcia examined the income tax returns filed by petitioner, Quirico P. Ungab, for the calendar year ending December 31, 1973. In the course of his examination, he discovered that the petitioner failed to report his income derived from sales of banana saplings. As a result, the BIR District Revenue Officer at Davao City sent a "Notice of Taxpayer" to the petitioner informing him that there is due from him (petitioner) the amount of P104,980.81, representing income, business tax and forest charges for the year 1973 and inviting petitioner to an informal conference where the petitioner, duly assisted by counsel, may present his objections to the findings of the BIR Examiner.

Upon receipt of the notice, the petitioner wrote the BIR District Revenue Officer protesting the assessment, claiming that he was only a dealer or agent on commission basis in the banana sapling business and that his income, as reported in his income tax returns for the said year, was accurately stated. BIR Examiner Ben Garcia, however, was fully convinced that the petitioner had filed a fraudulent income tax return so that he submitted a "Fraud Referral Report," to the Tax Fraud Unit of the Bureau of Internal Revenue. After examining the records of the case, the Special Investigation Division of the Bureau of Internal Revenue found sufficient proof that the herein petitioner is guilty of tax evasion for the taxable year 1973.

In a second indorsement to the Chief of the Prosecution Division, the Commissioner of Internal Revenue approved the prosecution of the petitioner.

Thereafter, State Prosecutor Jesus Acebes who had been designated to assist all Provincial and City Fiscals throughout the Philippines in the investigation and prosecution, if the evidence warrants, of all violations of the National Internal Revenue Code, as amended, and other related laws, in Administrative Order No. 116 dated December 5, 1974, and to whom the case was assigned, conducted a preliminary investigation of the case, and finding probable cause, filed six (6) informations against the petitioner with the Court of First Instance of Davao City.

petitioner filed a motion to quash the informations upon the grounds that: (1) the informations are null and void for want of authority on the part of the State Prosecutor to initiate and prosecute the said cases; and (2) the trial court has no jurisdiction to take cognizance of the above-entitled cases in view of his pending protest against the assessment made by the BIR Examiner.

However, the trial court denied the motion.

ISSUE

Whether the filing of the informations was precipitate and premature since the Commissioner of Internal Revenue has not yet resolved petitioner's protests against the assessment of the Revenue District Officer. (NO)

RULING

The contention is without merit. What is involved here is not the collection of taxes where the assessment of the Commissioner of Internal Revenue may be reviewed by the Court of Tax Appeals, but a criminal prosecution for violations of the National Internal Revenue Code which is within the cognizance of courts of first instance. While there can be no civil action to enforce collection before the assessment procedures provided in the Code have been followed, there is no requirement for the precise computation and assessment of the tax before there can be a criminal prosecution under the Code.

The contention is made, and is here rejected, that an assessment of the deficiency tax due is necessary before the taxpayer can be prosecuted criminally for the charges preferred. The crime is complete when the violator has, as in this case, knowingly and willfully filed fraudulent returns with intent to evade and defeat a part or all of the tax.

An assessment of a deficiency is not necessary to a criminal prosecution for willful attempt to defeat and evade the income tax. A crime is complete when the violator has knowingly and willfuly filed a fraudulent return with intent to evade and defeat the tax. The perpetration of the crime is grounded upon knowledge on the part of the taxpayer that he has made an inaccurate return, and the government's failure to discover the error and promptly to assess has no connections with the commission of the crime.

Besides, it has been ruled that a petition for reconsideration of an assessment may affect the suspension of the prescriptive period for the collection of taxes, but not the prescriptive period of a criminal action for violation of law. Obviously, the protest of the petitioner against the assessment of the District Revenue Officer cannot stop his prosecution for violation of the National Internal Revenue Code. Accordingly, the respondent Judge did not abuse his discretion in denying the motion to quash filed by the petitioner.

COMMISSIONER OF INTERNAL REVENUE, *Petitioner*, -versus – PASCOR REALTY AND DEVELOPMENT CORPORATION, ROGELIO A. DIO and VIRGINIA S. DIO, *Respondents.*
G.R. No. 128315, THIRD DIVISION, June 29, 1999, PANGANIBAN., *J.*

An assessment contains not only a computation of tax liabilities, but also a demand for payment within a prescribed period. It also signals the time when penalties and protests begin to accrue against the taxpayer. To enable the taxpayer to determine his remedies thereon, due process requires that it must be served on and received by the taxpayer.

Accordingly, an affidavit, which was executed by revenue officers stating the tax liabilities of a taxpayer and attached to a criminal complaint for tax evasion, cannot be deemed an assessment that can be questioned before the Court of Tax Appeals.

FACTS

The BIR examine the books of accounts and other accounting records of Pascor Realty and Development Corporation. (PRDC) for the years ending 1986, 1987 and 1988 by virtue of a Letter of Authority. The said examination resulted in a recommendation for the issuance of an assessment in the amounts of P7,498,434.65 and P3,015,236.35 for the years 1986 and 1987.

On March 1, 1995, the CIR filed a criminal complaint before the Department of Justice against the PRDC, its President Rogelio A. Dio, and its Treasurer Virginia S. Dio, alleging evasion of taxes in the total amount of P10,513,671 .00. Private respondents PRDC, et. al. filed an Urgent Request for Reconsideration/Reinvestigation disputing the tax assessment and tax liability.

Subsequently, private respondents received a subpoena from the DOJ in connection with the criminal complaint filed by the Commissioner of Internal Revenue (BIR) against them.

The CIR denied the urgent request for reconsideration/reinvestigation of the private respondents on the ground that no formal assessment of the has as yet been issued by the Commissioner.

Private respondents then elevated the Decision of the CIR to the Court of Tax Appeals on a petition for review, to which the CIR sough to dismiss on the ground that the CTA has no jurisdiction over the subject matter of the petition, as there was no formal assessment issued against the petitioners. The CTA denied the said motion to dismiss and ordered the CIR to file an answer but did not file an answer nor did she move to reconsider the resolution.

Instead, the CIR filed before the Court of Appeals a petition alleging that respondent Court of Tax Appeals acted with grave abuse of discretion and without jurisdiction in considering the affidavit/report of the revenue officer and the indorsement of said report to the secretary of justice as assessment which may be appealed to the Court of Tax Appeals.

The CA sustained the CTA and dismissed the petition.

ISSUES

1. Whether the revenue officers' Affidavit-Report, which was attached to criminal revenue Complaint filed the Department of Justice, constituted an assessment that could be questioned before the Court of Tax Appeals. (NO)

2. Whether an assessment is necessary before filing of criminal complaint. (NO)

RULING

1. Neither the NIRC nor the regulations governing the protest of assessments provide a specific definition or form of an assessment. However, the NIRC defines the specific functions and effects of an assessment. To consider the affidavit attached to the Complaint as a proper assessment is to subvert the nature of an assessment and to set a bad precedent that will prejudice innocent taxpayers.

True, as pointed out by the private respondents, an assessment informs the taxpayer that he or she has tax liabilities. But not all documents coming from the BIR containing a computation of the tax liability can be deemed assessments.

To start with, an assessment must be sent to and received by a taxpayer, and must demand payment of the taxes described therein within a specific period. Thus, the NIRC imposes a 25 percent penalty, in addition to the tax due, in case the taxpayer fails to pay deficiency tax within the time prescribed for its payment in the notice of assessment. Likewise, an interest of 20 percent per annum, or such higher rates as may be prescribed by rules and regulations, is to be collected form the date prescribed for its payment until the full payment.

The issuance of an assessment is vital in determining, the period of limitation regarding its proper issuance and the period within which to protest it. Section 203 of the NIRC provides that internal revenue taxes must be assessed within three years from the last day within which to file the return. Section 222, on the other hand, specifies a period of ten years in case a fraudulent return with intent to evade was submitted or in case of failure to file a return. Also, Section 228 of the same law states that said assessment may be protested only within thirty days from receipt thereof. Necessarily, the taxpayer must be certain that a specific document constitutes an assessment. Otherwise, confusion would arise regarding the period within which to make an assessment or to protest the same, or whether interest and penalty may accrue thereon.

It should also be stressed that the said document is a notice duly sent to the taxpayer. Indeed, an assessment is deemed made only when the collector of internal revenue releases, mails or sends such notice to the taxpayer.

In the present case, the revenue officers' Affidavit merely contained a computation of respondents' tax liability. It did not state a demand or a period for payment. Worse, it was addressed to the justice secretary, not to the taxpayers.

The fact that the Complaint itself was specifically directed and sent to the Department of Justice and not to private respondents shows that the intent of the commissioner was to file a criminal complaint for tax evasion, not to issue an assessment. Although the revenue officers recommended the issuance of an assessment, the commissioner opted instead to file a criminal case for tax evasion. What private respondents received was a notice from the DOJ that a criminal case for tax evasion had been filed against them, not a notice that the Bureau of Internal Revenue had made an assessment.

In addition, what private respondents sent to the commissioner was a motion for a reconsideration of the tax evasion charges filed, not of an assessment, as shown thus:

This is to request for reconsideration of the tax evasion charges against my client, PASCOR Realty and Development Corporation and for the same to be referred to the Appellate Division in order to give my client the opportunity of a fair and objective hearing.

Additional Issues:

Assessment Not

Necessary Before Filing of

Criminal Complaint

2. Section 222 of the NIRC specifically states that in cases where a false or fraudulent return is submitted or in cases of failure to file a return such as this case, proceedings in court may be commenced without an assessment. Furthermore, Section 205 of the same Code clearly mandates that the civil and criminal aspects of the case may be pursued simultaneously. In Ungab v. Cusi, petitioner therein sought the dismissal of the criminal Complaints for being premature, since his protest to the CTA had not yet been resolved. The Court held that such protests could not stop or suspend the criminal action which was independent of the resolution of the protest in the CTA. This was because the commissioner of internal revenue had, in such tax evasion cases, discretion on whether to issue an assessment or to file a criminal case against the taxpayer or to do both.

Private respondents insist that Section 222 should be read in relation to Section 255 of the NLRC, which penalizes failure to file a return. They add that a tax assessment should precede a criminal indictment. We disagree. To reiterate, said Section 222 states that an assessment is not necessary before a criminal charge can be filed. This is the general rule. Private respondents failed to show that they are entitled to an exception. Moreover, the criminal charge need only be supported by a prima facie showing of failure to file a required return. This fact need not be proven by an assessment.

The issuance of an assessment must be distinguished from the filing of a complaint. Before an assessment is issued, there is, by practice, a pre-assessment notice sent to the taxpayer. The taxpayer is then given a chance to submit position papers and documents to prove that the assessment is unwarranted. If the commissioner is unsatisfied, an assessment signed by him or her is then sent to the taxpayer informing the latter specifically and clearly that an assessment has been made against him or her. In contrast, the criminal charge need not go through all these. The criminal charge is filed directly with the DOJ. Thereafter, the taxpayer is notified that a criminal case had been filed against him, not that the commissioner has issued an assessment. It must be stressed that a criminal complaint is instituted not to demand payment, but to penalize the taxpayer for violation of the Tax Code.

COMMISSIONER OF INTERNAL REVENUE*, Petitioner*, -versus –
HANTEX TRADING CO., INC., *Respondent.*
G.R. No. 136975, SCOND DIVISION, March 31, 2005, CALLEJO SR., *J.*

Section 16 of the NIRC of 1977, as amended, which provides that the Commissioner of Internal Revenue has the power to make assessments and prescribe additional requirements for tax administration and enforcement.

However, the best evidence obtainable under Section 16 of the 1977 NIRC, as amended, does not include mere photocopies of records/documents. In this case, petitioner anchored the assessment on mere machine copies of records/documents. Mere photocopies of the Consumption Entries have no probative weight if offered as proof of the contents thereof. The reason for this is that such copies are mere scraps of paper and are of no probative value as basis for any deficiency income or business taxes against a taxpayer

FACTS

The respondent is a corporation duly organized and existing under the laws of the Philippines. Being engaged in the sale of plastic products, it imports synthetic resin and other chemicals for the manufacture of its products. For this purpose, it is required to file an Import Entry and Internal Revenue Declaration (Consumption Entry) with the Bureau of Customs under Section 1301 of the Tariff and Customs Code.

Sometime in 1989, Hantex was subjected to an audit and investigation after the Intelligence and Investigation Bureau (EIIB)received a confidential information that the respondent had imported synthetic resin amounting to P115,599,018.00 but only declared P45,538,694.57. According to the informer, based on photocopies of 77 Consumption Entries furnished by another informer, the 1987 importations of the respondent were understated in its accounting records. Subpoena duces tecum and ad testificandum were also issued for the president and general manager of the respondent to appear in a hearing and bring the records of the company.

However, the respondent's president and general manager refused to comply with the subpoena, contending that its books of accounts and records of importation of synthetic resin and calcium bicarbonate had been investigated repeatedly by the Bureau of Internal Revenue (BIR) on prior occasions.

Meanwhile, the Bureau of Customs could not authenticate the machine copies of the import entries as well, since the original copies of the said entries filed with the Bureau of Customs had apparently been eaten by termites. However, he issued a certification that the following enumerated entries were filed by the respondent which were processed and released from the Port of Manila after payment of duties and taxes. The IEIIB then conducted an investigation and relied on the certified copies of the respondent's Profit and Loss Statement for 1987 and 1988 on file with the SEC, the machine copies of the Consumption Entries, Series of 1987, submitted by the informer, as well as excerpts from the entries certified by the Bureau of Customs.

EIIB Commissioner Almonte transmitted the entire docket of the case to the BIR and recommended the collection of the total tax assessment from the respondent.

Thereafter, the petitioner, CIR, sent a Letter dated to the respondent demanding payment of its deficiency income tax of P13,414,226.40 and deficiency sales tax of P14,752,903.25, inclusive of surcharge and interest. However, respondent wrote to the CIR protesting the assessment.

The respondent questioned the assessment on the ground that the EIIB representative failed to present the original, or authenticated, or duly certified copies of the Consumption and Import Entry Accounts, or excerpts thereof if the original copies were not readily available; or, if the originals were in the official custody of a public officer, certified copies thereof. The respondent requested anew that the income tax deficiency assessment and the sales tax deficiency assessment be set aside for lack of factual and legal basis.

The CIR denied the letter-request for the dismissal of the assessments. The respondent forthwith filed a Petition for Review in the CTA of the Commissioner's Final Assessment Letter to which the CTA ruled deniying the petition and ordered Hantex to pay its deficiency income and sales taxes for the year 1987.

On appeal, the CA granted the petition and reversed the decision of the CTA. The CA held that the income and sales tax deficiency assessments issued by the petitioner were unlawful and baseless since the copies of the import entries relied upon in computing the deficiency tax of the respondent were not duly authenticated by the public officer charged with their custody, nor verified under oath by the EIIB and the BIR investigators.

ISSUE

Whether the December 10, 1991 final assessment of the petitioner against the respondent for deficiency income tax and sales tax for the latter's 1987 importation of resins and calcium bicarbonate is based on competent evidence and the law. (NO)

RULING

Section 16 of the NIRC of 1977, as amended, which provides that the Commissioner of Internal Revenue has the power to make assessments and prescribe additional requirements for tax administration and enforcement. Among such powers are those provided in paragraph (b) thereof, which states:

(b) Failure to submit required returns, statements, reports and other documents. 'When a report required by law as a basis for the assessment of any national internal revenue tax shall not be forthcoming within the time fixed by law or regulation or when there is reason to believe that any such report is false, incomplete or erroneous, the Commissioner shall assess the proper tax on the best evidence obtainable.

However, the best evidence obtainable under Section 16 of the 1977 NIRC, as amended, does not include mere photocopies of records/documents. The petitioner, in making a preliminary and final tax deficiency assessment against a taxpayer, cannot anchor the said assessment on mere machine copies of records/documents. Mere photocopies of the Consumption Entries have no probative weight if offered as proof of the contents thereof. The reason for this is that such copies are mere scraps of paper and are of no probative value as basis for any deficiency income or business taxes against a taxpayer. Indeed, in United States v. Davey, the U.S. Court of Appeals (2nd Circuit) ruled that where the accuracy of a taxpayer's return is being checked, the government is entitled to use the original records rather than be forced to accept purported copies which present the risk of error or tampering.

In *Collector of Internal Revenue v. Benipayo*, the Court ruled that the assessment must be based on actual facts. The rule assumes more importance in this case since the xerox copies of the

Consumption Entries furnished by the informer of the EIIB were furnished by yet another informer. While the EIIB tried to secure certified copies of the said entries from the Bureau of Customs, it was unable to do so because the said entries were allegedly eaten by termites. The Court can only surmise why the EIIB or the BIR, for that matter, failed to secure certified copies of the said entries from the Tariff and Customs Commission or from the National Statistics Office which also had copies thereof. It bears stressing that under Section 1306 of the Tariff and Customs Code, the Consumption Entries shall be the required number of copies as prescribed by regulations.76 The Consumption Entry is accomplished in sextuplicate copies and quadruplicate copies in other places. In Manila, the six copies are distributed to the Bureau of Customs, the Tariff and Customs Commission, the Declarant (Importer), the Terminal Operator, and the Bureau of Internal Revenue. Inexplicably, the Commissioner and the BIR personnel ignored the copy of the Consumption Entries filed with the BIR and relied on the photocopies supplied by the informer of the EIIB who secured the same from another informer. The BIR, in preparing and issuing its preliminary and final assessments against the respondent, even ignored the records on the investigation made by the District Revenue officers on the respondent's importations for 1987.

The original copies of the Consumption Entries were of prime importance to the BIR. This is so because such entries are under oath and are presumed to be true and correct under penalty of falsification or perjury. Admissions in the said entries of the importers' documents are admissions against interest and presumptively correct.

In fine, then, the petitioner acted arbitrarily and capriciously in relying on and giving weight to the machine copies of the Consumption Entries in fixing the tax deficiency assessments against the respondent.

The rule is that in the absence of the accounting records of a taxpayer, his tax liability may be determined by estimation. The petitioner is not required to compute such tax liabilities with mathematical exactness. Approximation in the calculation of the taxes due is justified. To hold otherwise would be tantamount to holding that skillful concealment is an invincible barrier to proof. However, the rule does not apply where the estimation is arrived at arbitrarily and capriciously.

As a general rule, tax assessments by tax examiners are presumed correct and made in good faith. All presumptions are in favor of the correctness of a tax assessment. It is to be presumed, however, that such assessment was based on sufficient evidence. Upon the introduction of the assessment in evidence, a prima facie case of liability on the part of the taxpayer is made. If a taxpayer files a Petition for Review in the CTA and assails the assessment, the prima facie presumption is that the assessment made by the BIR is correct, and that in preparing the same, the BIR personnel regularly performed their duties. This rule for tax initiated suits is premised on several factors other than the normal evidentiary rule imposing proof obligation on the petitioner-taxpayer: the presumption of administrative regularity; the likelihood that the taxpayer will have access to the relevant information; and the desirability of bolstering the record-keeping requirements of the NIRC.

However, the prima facie correctness of a tax assessment does not apply upon proof that an assessment is utterly without foundation, meaning it is arbitrary and capricious. Where the BIR has come out with a "naked assessment," i.e., without any foundation character, the determination of the tax due is without rational basis. In such a situation, the U.S. Court of Appeals ruled that the determination of the Commissioner contained in a deficiency notice disappears. Hence, the determination by the CTA must rest on all the evidence introduced and its ultimate determination must find support in credible evidence.

COMMISSIONER OF INTERNAL REVENUE, *Petitioner*, -versus –
BANK OF THE PHILIPPINE ISLANDS, *Respondent.*
G.R. No. 134062, FIRST DIVISION, April 17, 2007, CORONA, *J.*

Sec. 228. Protesting of Assessment. — When the [CIR] or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: Provided, however, That a preassessment notice shall not be required in the following cases:

xxx xxx xxx

The taxpayer shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

In this case, as both found by the CTA and CA, BPI was indeed aware of the nature and basis of the assessments, and was given all the opportunity to contest the same but ignored it despite the notice conspicuously written on the assessments which states that "this ASSESSMENT becomes final and unappealable if not protested within 30 days after receipt".

FACTS

In two notices dated October 28, 1988, petitioner Commissioner of Internal Revenue (CIR) assessed respondent Bank of the Philippine Islands' (BPI's) deficiency percentage and documentary stamp taxes for the year 1986 in the total amount of ₱129,488,656.63.

On July 6, 1991, BPI requested a reconsideration of the assessments stated in the CIR's letter but was denied.

On February 18, 1992, BPI filed a petition for review in the CTA. In a decision, the CTA dismissed the case for lack of jurisdiction since the subject assessments had become final and unappealable. The CTA ruled that BPI failed to protest on time under Section 270 of the National Internal Revenue Code (NIRC) of 1986 and Section 7 in relation to Section 11 of RA 1125. It also denied reconsideration.

On appeal, the CA reversed the tax court's decision and resolution and remanded the case to the CTA for a decision on the merits. It ruled that the notices were not valid assessments because they did not inform the taxpayer of the legal and factual bases therefor. It declared that the proper assessments were those contained in the May 8, 1991 letter which provided the reasons for the claimed deficiencies. Thus, it held that BPI filed the petition for review in the CTA on time. The CIR elevated the case to this Court.

ISSUE

Whether or not the assessments issued to BPI for deficiency percentage and documentary stamp taxes for 1986 had already become final and unappealable. (YES)

RULING

The present Section 228 of the NIRC provides:

Sec. 228. Protesting of Assessment. — When the [CIR] or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: Provided, however, That a preassessment notice shall not be required in the following cases:

xxx xxx xxx

The taxpayer shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

xxx xxx xxx (emphasis supplied)

The sentence

"[t]he taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void"

was not in the old Section 270 but was only later on inserted in the renumbered Section 228 in 1997. Evidently, the legislature saw the need to modify the former Section 270 by inserting the aforequoted sentence. The fact that the amendment was necessary showed that, prior to the introduction of the amendment, the statute had an entirely different meaning.

Indeed, the underlying reason for the law was the basic constitutional requirement that "no person shall be deprived of his property without due process of law." The Supreme Court however, noted what the CTA had to say:

xxx xxx xxx

From the foregoing testimony, it can be safely adduced that not only was [BPI] given the opportunity to discuss with the [CIR] when the latter issued the former a Pre-Assessment Notice (which [BPI] ignored) but that the examiners themselves went to [BPI] and "we talk to them and we try to [thresh] out the issues, present evidences as to what they need." Now, how can [BPI] and/or its counsel honestly tell this Court that they did not know anything about the assessments?

Not only that. To further buttress the fact that [BPI] indeed knew beforehand the assessments[,] contrary to the allegations of its counsel[,] was the testimony of Mr. Jerry Lazaro, Assistant Manager of the Accounting Department of [BPI]. He testified to the fact that he prepared worksheets which contain his analysis regarding the findings of the [CIR's] examiner, Mr. San Pedro and that the same worksheets were presented to Mr. Carlos Tan, Comptroller of [BPI].

xxx xxx xxx

From all the foregoing discussions, the Court concludeded that [BPI] was indeed aware of the nature and basis of the assessments, and was given all the opportunity to contest the same but ignored it despite the notice conspicuously written on the assessments which states that "this ASSESSMENT becomes final and unappealable if not protested within 30 days after receipt." Counsel resorted to dilatory tactics and dangerously played with time. Unfortunately, such strategy proved fatal to the cause of his client.

The CA never disputed these findings of fact by the CTA:

[T]his Court recognizes that the [CTA], which by the very nature of its function is dedicated exclusively to the consideration of tax problems, has necessarily developed an expertise on the subject, and its conclusions will not be overturned unless there has been an abuse or improvident exercise of authority. Such findings can only be disturbed on appeal if they are not supported by substantial evidence or there is a showing of gross error or abuse on the part of the [CTA].

Under the former Section 270, there were two instances when an assessment became final and unappealable: (1) when it was not protested within 30 days from receipt and (2) when the adverse decision on the protest was not appealed to the CTA within 30 days from receipt of the final decision:

Sec. 270. Protesting of assessment.

xxx xxx xxx

Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation in such form and manner as may be prescribed by the implementing regulations within thirty (30) days from receipt of the assessment; otherwise, the assessment shall become final and unappealable.

If the protest is denied in whole or in part, the individual, association or corporation adversely affected by the decision on the protest may appeal to the [CTA] within thirty (30) days from receipt of the said decision; otherwise, the decision shall become final, executory and demandable.

Implications Of A Valid Assessment

Considering that the October 28, 1988 notices were valid assessments, BPI should have protested the same within 30 days from receipt thereof. The December 10, 1988 reply it sent to the CIR did not qualify as a protest since the letter itself stated that "[a]s soon as this is explained and clarified in a proper letter of assessment, we shall inform you of the taxpayer's decision on whether to pay or protest the assessment." Hence, by its own declaration, BPI did not regard this letter as a protest against the assessments. As a matter of fact, BPI never deemed this a protest since it did not even consider the October 28, 1988 notices as valid or proper assessments.

The inevitable conclusion is that BPI's failure to protest the assessments within the 30-day period provided in the former Section 270 meant that they became final and unappealable. Thus, the CTA correctly dismissed BPI's appeal for lack of jurisdiction. BPI was, from then on, barred from disputing the correctness of the assessments or invoking any defense that would reopen the question of its liability on the merits. Not only that. There arose a presumption of correctness when BPI failed to protest the assessments:

Tax assessments by tax examiners are presumed correct and made in good faith. The taxpayer has the duty to prove otherwise. In the absence of proof of any irregularities in the performance of duties, an assessment duly made by a Bureau of Internal Revenue examiner and approved by his superior officers will not be disturbed. All presumptions are in favor of the correctness of tax assessments.

FIRST LEPANTO TAISHO INSURANCE CORPORATION, *Petitioner,* -versus – COMMISSIONER OF INTERNAL REVENUE,, *Respondent.*
G.R. No. 197117, THIRD DIVISION, April 10, 2013, MENDOZA, *J.*

For taxation purposes, a director is considered an employee under Section 5 of Revenue Regulation No. 12-86,14 to wit:

An individual, performing services for a corporation, whether as an officer and director or merely as a director whose duties are confined to attendance at and participation in the meetings of the Board of Directors, is an employee.

The non-inclusion of the names of some of petitioner's directors in the company's Alpha List does not ipso facto create a presumption that they are not employees of the corporation, because the imposition of withholding tax on compensation hinges upon the nature of work performed by such individuals in the company. Moreover, contrary to petitioner's attestations, Revenue Regulation No. 2-98,15 specifically, Section 2.57.2. A (9) thereof, cannot be applied to this case as the latter is a later regulation while the accounting books examined were for taxable year 1997.

FACTS

Petitioner is a non-life insurance corporation and considered as a "Large Taxpayer under Revenue Regulations No. 6-85, as amended by Revenue Regulations No. 12-94 effective 1994."

On December 29, 1999, CIR issued internal revenue tax assessments for deficiency income, withholding, expanded withholding, final withholding, value-added, and documentary stamp taxes for taxable year 1997.

On February 24, 2000, petitioner protested the said tax assessments.

During the pendency of the case, particularly on February 15, 2008, petitioner filed its Motion for Partial Withdrawal of Petition for Review of Assessment Notice Nos. ST-INC-97-0220-99; ST-VAT-97-0222-99 and ST-DST-97-0217-00, in view of the tax amnesty program it had availed. The CTA Second Division granted the said motion in a Resolution.

Consequently, on May 21, 2009, the CTA Second Division partially granted the petition. It directed petitioner to pay CIR a reduced tax liability of ₱1,994,390.86.

Petitioner's Motion for Partial Reconsideration was likewise denied by the CTA Second Division.

Unsatisfied, petitioner filed a Petition for Review before the CTA En Banc to which the CTA En Banc affirmed the decision of the CTA Second Division.

The CTA rejected the contention of the petitioner that it is not liable to pay withholding tax on compensation to some of its directors since they were not employees and they had already been subjected to expanded withholding tax. As to the petitioner's transportation, subsistence and lodging, and representation allowance, the CTA En Banc ruled that the petitioner failed to prove that those were actual expenses. As to deficiency expanded withholding taxes on compensation, petitioner failed to substantiate that the commissions earned came from reinsurance activities and should not be subject to withholding tax. As to deficiency final withholding taxes, petitioner failed to present proof of remittance to establish that it had remitted the final tax on dividends paid as well as the payments for services rendered by a Malaysian company. As to the imposition of delinquency interest, records reveal that petitioner failed to pay the deficiency taxes within thirty (30) days from receipt of the demand letter, thus, delinquency interest accrued from such non-payment.

ISSUE

Whether the CTA En Banc erred in holding petitioner liable for:

a. deficiency withholding taxes on compensation on directors' bonuses under Assessment No. ST-WC-97-0021-99 (YES)
b. deficiency expanded withholding taxes on transportation, subsistence and lodging, and representation expense; commission expense; direct loss expense; occupancy cost; and service/contractor and purchases under Assessment No. ST-EWT-97-0218-99 (YES)
c. deficiency final withholding taxes on payment of dividends and computerization expenses to foreign entities under Assessment No. ST-FT-97-0219-99 (YES)
d. delinquency interest under Section 249 (c) (3) of the NIRC (YES)

RULING

A. deficiency withholding taxes on compensation on directors' bonuses under Assessment No. ST-WC-97-0021-99;

For taxation purposes, a director is considered an employee under Section 5 of Revenue Regulation No. 12-86,14 to wit:

An individual, performing services for a corporation, whether as an officer and director or merely as a director whose duties are confined to attendance at and participation in the meetings of the Board of Directors, is an employee.

The non-inclusion of the names of some of petitioner's directors in the company's Alpha List does not ipso facto create a presumption that they are not employees of the corporation, because the imposition of withholding tax on compensation hinges upon the nature of work performed by such individuals in the company. Moreover, contrary to petitioner's attestations, Revenue Regulation No. 2-98,15 specifically, Section 2.57.2. A (9) thereof, cannot be applied to this case as the latter is a later regulation while the accounting books examined were for taxable year 1997.

B. deficiency expanded withholding taxes on transportation, subsistence and lodging, and representation expense; commission expense; direct loss expense; occupancy cost; and service/contractor and purchases under Assessment No. ST-EWT-97-0218-99;

the Court finds no cogent reason to deviate from the findings of the CTA En Banc. As correctly observed by the CTA Second Division and the CTA En Banc, petitioner was not able to sufficiently establish that the transportation expenses reflected in their books were reimbursement from actual transportation expenses incurred by its employees in connection with their duties as the only document presented was a Schedule of Transportation.

Expenses without pertinent supporting documents. Without said documents, such as but not limited to, receipts, transportation-related vouchers and/or invoices, there is no way of ascertaining whether the amounts reflected in the schedule of expenses were disbursed for transportation.

With regard to commission expense, no additional documentary evidence, like the reinsurance agreements contracts, was presented to support petitioner's allegation that the expenditure originated from reinsurance activities that gave rise to reinsurance commissions, not subject to withholding tax. As to occupancy costs, records reveal that petitioner failed to compute the correct total occupancy cost that should be subjected to withholding tax, hence, petitioner is liable for the deficiency.

As to service/contractors and purchases, petitioner contends that both parties already stipulated that it correctly withheld the taxes due. Thus, petitioner is of the belief that it is no longer required to present evidence to prove the correct payment of taxes withheld. As correctly ruled by the CTA Second Division and En Bane, however, stipulations cannot defeat the right of the State to collect the correct taxes due on an individual or juridical person because taxes are the lifeblood of our nation so its collection should be actively pursued without unnecessary impediment.

C. deficiency final withholding taxes on payment of dividends and computerization expenses to foreign entities under Assessment No. ST-FT-97-0219-99;

As to the deficiency final withholding tax assessments for payments of dividends and computerization expenses incurred by petitioner to foreign entities, particularly Matsui Marine & Fire Insurance Co. Ltd. (Matsui),the Court agrees with CIR that petitioner failed to present evidence to show the supposed remittance to Matsui.

D. delinquency interest under Section 249 (c) (3) of the NIRC.

The Court likewise holds the imposition of delinquency interest under Section 249 (c) (3) of the 1997 NIRC to be proper, because failure to pay the deficiency tax assessed within the time prescribed for its payment justifies the imposition of interest at the rate of twenty percent (20%) per annum, which interest shall be assessed and collected from the date prescribed for its payment until full payment is made.

It is worthy to note that tax revenue statutes are not generally intended to be liberally construed. Moreover, the CTA being a highly specialized court particularly created for the purpose of reviewing tax and customs cases, it is settled that its findings and conclusions are accorded great respect and are generally upheld by this Court, unless there is a clear showing of a reversible error or an improvident exercise of authority. Absent such errors, the challenged decision should be maintained.

FRANCISCO I. CHAVEZ*, Petitioner,* -versus –
JAIME B. ONGPIN, in his capacity as Minister of Finance and FIDELINA CRUZ, in her capacity as Acting Municipal Treasurer of the Municipality of Las Piñas, Respondents, REALTY OWNERS ASSOCIATION OF THE PHILIPPINES, INC.*, Petitioner-Intrvenor*
G.R. No. 97117, EN BANC, June 6, 1990, MEDIALDEA, *J.*

The Court agreed with the observation of the Office of the Solicitor General that without Executive Order No. 73, the basis for collection of real property taxes will still be the 1978 revision of property values.

Certainly, to continue collecting real property taxes based on valuations arrived at several years ago, in disregard of the increases in the value of real properties that have occurred since then, is not in consonance with a sound tax system. Fiscal adequacy, which is one of the characteristics of a sound tax system, requires that sources of revenues must be adequate to meet government expenditures and their variations.

FACTS

President Corazon Aquino issued Executive Order No. 73 stating that beginning January 1, 1987, the 1984 assessments shall be the basis of real property taxes

The petitioner, Francisco I. Chavez, is a taxpayer and an owner of three parcels of land. He alleges the following: that Executive Order No. 73 accelerated the application of the general revision of assessments to January 1, 1987 thereby mandating an excessive increase in real property taxes by 100% to 400% on improvements, and up to 100% on land; that any increase in the value of real property brought about by the revision of real property values and assessments would necessarily lead to a proportionate increase in real property taxes; that sheer oppression is the result of increasing real property taxes at a period of time when harsh economic conditions prevail; and that the increase in the market values of real property as reflected in the schedule of values was brought about only by inflation and economic recession.

The intervenor Realty Owners Association of the Philippines, Inc. (ROAP), which is the national association of owners-lessors, joins Chavez in his petition to declare unconstitutional Executive Order No. 73. The Office of the Solicitor General argued against the petition.

ISSUE

Whether Executive Order No. 73 is unconstitutional. (NO)

RULING

Executive Order No. 73 does not impose new taxes nor increase taxes.

Indeed, the government recognized the financial burden to the taxpayers that will result from an increase in real property taxes. Hence, Executive Order No. 1019 was issued on April 18, 1985, deferring the implementation of the increase in real property taxes resulting from the revised real property assessments, from January 1, 1985 to January 1, 1988. Section 5 thereof is quoted herein as follows:

"SEC. 5. The increase in real property taxes resulting from the revised real property assessments as provided for under Section 21 of Presidential Decree No. 464, as amended by Presidential Decree No. 1 621, shall be collected beginning January 1, 1988 instead of January 1, 1985 in order to enable the Ministry of Finance and the Ministry of Local Government to establish the new systems of tax collection and assessment provided herein and in order to alleviate the condition of the people, including real property owners, as a result of temporary economic difficulties." (Emphasis supplied)

The issuance of Executive Order No. 73 which changed the date of implementation of the increase in real property taxes from January 1, 1988 to January 1, 1987 and therefore repealed Executive Order No. 1019, also finds ample justification in its "whereas" clauses, as follows:

"WHEREAS, the collection of real property taxes based on the 1984 real property values was deferred to take effect on January 1, 1988 instead of January 1, 1985, thus depriving the local government units of an additional source of revenue;

"WHEREAS, there is an urgent need for local governments to augment their financial resources to meet the rising cost of rendering effective services to the people; (Emphasis supplied)

The Court agreed with the observation of the Office of the Solicitor General that without Executive Order No. 73, the basis for collection of real property taxes will still be the 1978 revision of property values. Certainly, to continue collecting real property taxes based on valuations arrived at several years ago, in disregard of the increases in the value of real properties that have occurred since then, is not in consonance with a sound tax system. Fiscal adequacy, which is one of the characteristics of a sound tax system, requires that sources of revenues must be adequate to meet government expenditures and their variations.

RENATO V. DIAZ and AURORA MA. F. TIMBOL*, Petitioners,* -versus –
THE SECRETARY OF FINANCE and THE COMMISSIONER OF INTERNAL REVENUE, *Respondents.*
G.R. No. 193007, EN BANC, July 19, 2011, ABAD, *J.*

Administrative feasibility is one of the canons of a sound tax system. It simply means that the tax system should be capable of being effectively administered and enforced with the least inconvenience to the taxpayer. Non-observance of the canon, however, will not render a tax imposition invalid "except to the extent that specific constitutional or statutory limitations are impaired." Thus, even if the imposition of VAT on tollway operations may seem burdensome to implement, it is not necessarily invalid unless some aspect of it is shown to violate any law or the Constitution.

Here, it remains to be seen how the taxing authority will actually implement the VAT on tollway operations. Any declaration by the Court that the manner of its implementation is illegal or unconstitutional would be premature. Besides, any concern about how the VAT on tollway operations will be enforced must first be addressed to the BIR on whom the task of implementing tax laws *primarily and exclusively rests. The Court cannot preempt the BIR's discretion on the matter, absent any clear violation of law or the Constitution.*

FACTS

Petitioners Renato V. Diaz and Aurora Ma. F. Timbol filed this petition for declaratory relief assailing the validity of the impending imposition of value-added tax (VAT) by the Bureau of Internal Revenue (BIR) on the collections of tollway operators. However, the Court treated the case as one of prohibition.

Petitioners hold the view that Congress did not, when it enacted the NIRC, intend to include toll fees within the meaning of "sale of services" that are subject to VAT; that a toll fee is a "user's tax," not a sale of services; that to impose VAT on toll fees would amount to a tax on public service; and that, since VAT was never factored into the formula for computing toll fees, its imposition would violate the non-impairment clause of the constitution.

On August 23, 2010 the Office of the Solicitor General filed the government's comment. The government avers that the NIRC imposes VAT on all kinds of services of franchise grantees, including tollway operations, except where the law provides otherwise; that the Court should seek the meaning and intent of the law from the words used in the statute; and that the imposition of VAT on tollway operations has been the subject as early as 2003 of several BIR rulings and circulars.

Finally, the government contends that the non-inclusion of VAT in the parametric formula for computing toll rates cannot exempt tollway operators from VAT. In any event, it cannot be claimed that the rights of tollway operators to a reasonable rate of return will be impaired by the VAT since this is imposed on top of the toll rate. Further, the imposition of VAT on toll fees would have very minimal effect on motorists using the tollways.

ISSUE

1. Whether the government is unlawfully expanding VAT coverage by including tollway operators and tollway operations in the terms "franchise grantees" and "sale of services" under Section 108 of the Code. (NO)

2. Whether the imposition of VAT on tollway operators is not administratively feasible and cannot be implemented. (NO)

RULING

1.

Section 108 of the NIRC imposes VAT on "all kinds of services" rendered in the Philippines for a fee, including those specified in the list. The enumeration of affected services is not exclusive. By qualifying "services" with the words "all kinds," Congress has given the term "services" an all-encompassing meaning. The listing of specific services are intended to illustrate how pervasive and broad is the VAT's reach rather than establish concrete limits to its application. Thus, every activity that can be imagined as a form of "service" rendered for a fee should be deemed included unless some provision of law especially excludes it.

When a tollway operator takes a toll fee from a motorist, the fee is in effect for the latter's use of the tollway facilities over which the operator enjoys private proprietary rights that its contract and the law recognize. In this sense, the tollway operator is no different from the service providers under Section 108 who allow others to use their properties or facilities for a fee.

Tollway operators are franchise grantees and they do not belong to exceptions (the low-income radio and/or television broadcasting companies with gross annual incomes of less than ₱10 million and gas and water utilities) that Section 119 spares from the payment of VAT. The word "franchise" broadly covers government grants of a special right to do an act or series of acts of public concern.

Tollway operators are, owing to the nature and object of their business, "franchise grantees." The construction, operation, and maintenance of toll facilities on public improvements are activities of public consequence that necessarily require a special grant of authority from the state. Indeed, Congress granted special franchise for the operation of tollways to the Philippine National

Construction Company, the former tollway concessionaire for the North and South Luzon Expressways. Apart from Congress, tollway franchises may also be granted by the TRB, pursuant to the exercise of its delegated powers under P.D. 1112. The franchise in this case is evidenced by a "Toll Operation Certificate."

2.

Administrative feasibility is one of the canons of a sound tax system. It simply means that the tax system should be capable of being effectively administered and enforced with the least inconvenience to the taxpayer. Non-observance of the canon, however, will not render a tax imposition invalid "except to the extent that specific constitutional or statutory limitations are impaired." Thus, even if the imposition of VAT on tollway operations may seem burdensome to implement, it is not necessarily invalid unless some aspect of it is shown to violate any law or the Constitution.

Here, it remains to be seen how the taxing authority will actually implement the VAT on tollway operations. Any declaration by the Court that the manner of its implementation is illegal or unconstitutional would be premature. Although the transcript of the August 12, 2010 Senate hearing provides some clue as to how the BIR intends to go about it,35 the facts pertaining to the matter are not sufficiently established for the Court to pass judgment on. Besides, any concern about how the VAT on tollway operations will be enforced must first be addressed to the BIR on whom the task of implementing tax laws primarily and exclusively rests. The Court cannot preempt the BIR's discretion on the matter, absent any clear violation of law or the Constitution.

For the same reason, the Court cannot prematurely declare as illegal, BIR RMC 63-2010 which directs toll companies to record an accumulated input VAT of zero balance in their books as of August 16, 2010, the date when the VAT imposition was supposed to take effect. The issuance allegedly violates Section 111(A) of the Code which grants first time VAT payers a transitional input VAT of 2% on beginning inventory.

In this connection, the BIR explained that BIR RMC 63-2010 is actually the product of negotiations with tollway operators who have been assessed VAT as early as 2005, but failed to charge VAT-inclusive toll fees which by now can no longer be collected. The tollway operators agreed to waive the 2% transitional input VAT, in exchange for cancellation of their past due VAT liabilities. Notably, the right to claim the 2% transitional input VAT belongs to the tollway operators who have not questioned the circular's validity. They are thus the ones who have a right to challenge the circular in a direct and proper action brought for the purpose.

COMMISSIONER OF INTERNAL REVENUE, *Petitioner*, -versus –
ROSEMARIE ACOSTA, as represented by Virgilio A. Abogado *Respondent.*
G.R. No. 154068, SECOND DIVISION, August 3, 2007, QUISUMBING, *J.*

Revenue statutes are substantive laws and in no sense must their application be equated with that of remedial laws. As well said in a prior case, revenue laws are not intended to be liberally construed.

In this case, as the CTA stressed, even the date of filing of the Final Adjustment Return was omitted, inadvertently or otherwise, by respondent in her petition for review. This omission was fatal to respondent's claim, for it deprived the CTA of its jurisdiction over the subject matter of the case.

FACTS

Respondent is an employee of Intel Manufacturing Phils., Inc. (Intel). For the period January 1, 1996 to December 31, 1996, respondent was assigned in a foreign country. During that period, Intel withheld the taxes due on respondent's compensation income and remitted to the Bureau of Internal Revenue (BIR).

Claiming that the income taxes withheld and paid by Intel and respondent resulted in an overpayment of P340,918.92,4 respondent a petition for review with the Court of Tax Appeals (CTA). The Commissioner of Internal Revenue (CIR) moved to dismiss the petition for failure of respondent to file the mandatory written claim for refund before the CIR.

In its Resolution, the CTA dismissed respondent's petition. For one, the CTA ruled that respondent failed to file a written claim for refund with the CIR, a condition precedent to the filing of a petition for review before the CTA. Second, the CTA noted that respondent's omission, inadvertently or otherwise, to allege in her petition the date of filing the final adjustment return, deprived the court of its jurisdiction over the subject matter of the case.

Upon review, the Court of Appeals reversed the CTA and directed the latter to resolve respondent's petition for review. Applying Section 204(c)8 of the 1997 National Internal Revenue Code (NIRC), the Court of Appeals ruled that respondent's filing of an amended return indicating an overpayment was sufficient compliance with the requirement of a written claim for refund.

Petitioner sought reconsideration, but it was denied.

ISSUE

Whether the 1997 Tax Reform Act can be applied retroactively. (NO)

RULING

The issue on the retroactivity of Section 204(c) of the 1997 NIRC arose because the last paragraph of Section 204(c) was not found in Section 230 of the old Code. After a thorough consideration of this matter, we find that we cannot give retroactive application to Section 204(c) abovecited. We have to stress that tax laws are prospective in operation, unless the language of the statute clearly provides otherwise.

Moreover, it should be emphasized that a party seeking an administrative remedy must not merely initiate the prescribed administrative procedure to obtain relief, but also pursue it to its appropriate conclusion before seeking judicial intervention in order to give the administrative agency an opportunity to decide the matter itself correctly and prevent unnecessary and premature resort to court action. This the respondent did not follow through. Additionally, it could not escape notice that at the time respondent filed her amended return, the 1997 NIRC was not yet in effect. Hence, respondent had no reason at that time to think that the filing of an amended return would constitute the written claim for refund required by applicable law.

Furthermore, as the CTA stressed, even the date of filing of the Final Adjustment Return was omitted, inadvertently or otherwise, by respondent in her petition for review. This omission was fatal to respondent's claim, for it deprived the CTA of its jurisdiction over the subject matter of the case.

Finally, we cannot agree with the Court of Appeals' finding that the nature of the instant case calls for the application of remedial laws. Revenue statutes are substantive laws and in no sense must their application be equated with that of remedial laws. As well said in a prior case, revenue laws are not intended to be liberally construed. Considering that taxes are the lifeblood of the government and in Holmes's memorable metaphor, the price we pay for civilization, tax laws must be faithfully and strictly implemented.

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,* -versus – COURT OF APPEALS, COURT OF TAX APPEALS and ALHAMBRA INDUSTRIES, INC., *Respondent.*

G.R. No. 117982, FIRST DIVISION, February 6, 1997, BELLOSILLO, *J.*

The applicable law is Sec. 246 of the Tax Code which provides —

Sec. 246. Non-retroactivity of rulings. — Any revocation, modification, or reversal of any rules and regulations promulgated in accordance with the preceding section or any of the rulings or circulars promulgated by the Commissioner of Internal Revenue shall not be given retroactive application if the revocation, modification, or reversal will be prejudicial to the taxpayers except in the following cases: a) where the taxpayer deliberately misstates or omits material facts from his return or in any document required of him by the Bureau of Internal Revenue; b) where the facts subsequently gathered by the Bureau of Internal Revenue are materially different from the facts on which the ruling is based; or c) where the taxpayer acted in bad faith.

Without doubt, private respondent would be prejudiced by the retroactive application of the revocation as it would be assessed deficiency excise tax.

FACTS

ALHAMBRA INDUSTRIES, INC., is a domestic corporation engaged in the manufacture and sale of cigar and cigarette products. On 7 May 1991 private respondent received a letter from the Commissioner of Internal Revenue assessing it deficiency Ad Valorem Tax (AVT) in the total amount of Four Hundred Eighty-Eight Thousand Three Hundred Ninety-Six Pesos and Sixty-Two Centavos (P488,396.62), inclusive of increments, on the removals of cigarette products from their place of production during the period 2 November 1990 to 22 January 1991.

Private respondent filed a protest against the proposed assessment with a request that the same be withdrawn and cancelled but was denied. Thereafter, private respondent requested for the reconsideration of petitioner's denial of its protest. Without waiting for petitioner's reply to its request for reconsideration, private respondent filed on 19 June 1991 a petition for review with the Court of Tax Appeals. On 25 June 1991 private respondent received from petitioner a letter dated 21 June 1991 denying its request for reconsideration declaring again that its decision was final. On 8 July 1991 private respondent paid under protest the disputed ad valorem tax in the sum of P520,835.29.2

The Court of Tax Appeals ordered petitioner to refund to private respondent the amount of Five Hundred Twenty Thousand Eight Hundred Thirty-Five Pesos and Twenty-Nine Centavos (P520,835.29) representing erroneously paid ad valorem tax for the period 2 November 1990 to 22 January 1991.

The Court of Tax Appeals explained that the subject deficiency excise tax assessment resulted from private respondent's use of the computation mandated by BIR Ruling 473-88 dated 4 October 1988 as basis for computing the fifteen percent (15%) ad valorem tax due on its removals of cigarettes from 2 November 1990 to 22 January 1991.

On appeal, the Court of Appeals affirmed the Court of Tax Appeals holding that the retroactive application of BIR Ruling 017-91 cannot be allowed since private respondent did not act in bad faith; private respondent's computation under BIR Ruling 473-88 was not shown to be motivated by ill will or dishonesty partaking the nature of fraud; hence, this petition.

ISSUE

Whether private respondent's reliance on a void BIR ruling conferred upon the latter a vested right to apply the same in the computation of its ad valorem tax and claim for tax refund. (YES)

RULING

It is to be noted that Section 127 (b) of the Tax Code as amended applies in general to domestic products and excludes the value-added tax in the determination of the gross selling price, which is the tax base for purposes of the imposition of ad valorem tax. On the other hand, the last paragraph of Section 142 of the same Code which includes the value-added tax in the computation of the ad valorem tax, refers specifically to cigar and cigarettes only. It does not include/apply to any other articles or goods subject to the ad valorem tax. Accordingly, Section 142 must perforce prevail over Section 127 (b) which is a general provision of law insofar as the imposition of the ad valorem tax on cigar and cigarettes is concerned.

Moreover, the phrase unless otherwise provided in Section 127 (b) purports of exceptions to the general rule contained therein, such as that of Section 142, last paragraph thereof which explicitly provides that in the case of cigarettes, the tax base for purposes of the ad valorem tax shall include, among others, the value-added tax.

Private respondent did not question the correctness of the above BIR ruling. In fact, upon knowledge of the effectivity of BIR Ruling No. 017-91, private respondent immediately implemented the method of computation mandated therein by restoring the VAT in computing the tax base for purposes of the 15% ad valorem tax.

However, well-entrenched is the rule that rulings and circulars, rules and regulations promulgated by the Commissioner of Internal Revenue would have no retroactive application if to so apply them would be prejudicial to the taxpayers.

The applicable law is Sec. 246 of the Tax Code which provides —

Sec. 246. Non-retroactivity of rulings. — Any revocation, modification, or reversal of any rules and regulations promulgated in accordance with the preceding section or any of the rulings or circulars promulgated by the Commissioner of Internal Revenue shall not be given retroactive application if the revocation, modification, or reversal will be prejudicial to the taxpayers except in the following cases: a) where the taxpayer deliberately misstates or omits material facts from his return or in any document required of him by the Bureau of Internal Revenue; b) where the facts subsequently gathered by the Bureau of Internal Revenue are materially different from the facts on which the ruling is based; or c) where the taxpayer acted in bad faith.

Without doubt, private respondent would be prejudiced by the retroactive application of the revocation as it would be assessed deficiency excise tax.

What is left to be resolved is petitioner's claim that private respondent falls under the third exception in Sec. 246, i.e., that the taxpayer has acted in bad faith.

Bad faith imports a dishonest purpose or some moral obliquity and conscious doing of wrong. It partakes of the nature of fraud; a breach of a known duty through some motive of interest or ill will. 11 We find no convincing evidence that private respondent's implementation of the computation mandated by BIR Ruling 473-88 was ill-motivated or attended with a dishonest purpose. To the contrary, as a sign of good faith, private respondent immediately reverted to the computation mandated by BIR Ruling 017-91 upon knowledge of its issuance on 11 February 1991.

As regards petitioner's argument that private respondent should have made consultations with it before private respondent used the computation mandated by BIR Ruling 473-88, suffice it to state that the aforesaid BIR Ruling was clear and categorical thus leaving no room for interpretation. The failure of private respondent to consult petitioner does not imply bad faith on the part of the former.

Admittedly the government is not estopped from collecting taxes legally due because of mistakes or errors of its agents. But like other principles of law, this admits of exceptions in the interest of justice and fair play, as where injustice will result to the taxpayer.

COMMISSIONER OF INTERNAL REVENUE, *Petitioner*, -versus –
FILINVEST DEVELOPMENT CORPORATION, *Respondent.*
G.R. No. 163653, EN BANC, July 19, 2011, PEREZ, *J.*

In cases where no formal agreements or promissory notes have been executed to cover credit facilities, the documentary stamp tax shall be based on the amount of drawings or availment of the facilities, which may be evidenced by credit/debit memo, advice or drawings by any form of check or withdrawal slip, under Section 180 of the Tax Code.

Applying the aforesaid provisions to the case at bench, we find that the instructional letters as well as the journal and cash vouchers evidencing the advances FDC extended to its affiliates in 1996 and 1997 qualified as loan agreements upon which documentary stamp taxes may be imposed. In keeping with the caveat attendant to every BIR Ruling to the effect that it is valid only if the facts claimed by the taxpayer are correct, we find that the CA reversibly erred in utilizing BIR Ruling No. 116-98, dated 30 July 1998 which, strictly speaking, could be invoked only by ASB Development Corporation, the taxpayer who sought the same.

FACTS

The owner of 80% of the outstanding shares of respondent Filinvest Alabang, Inc. (FAI), respondent Filinvest Development Corporation (FDC) is a holding company which also owned outstanding shares of Filinvest Land, Inc. (FLI). Both transferred in favor of the latter parcels of land intended to facilitate development of medium-rise residential and commercial buildings, and in exchange, shares of stock of FLI were issued to FDC and FAI. As a result of the exchange, FLI's ownership structure was changed.

FLI requested a ruling from the Bureau of Internal Revenue (BIR) to the effect that no gain or loss should be recognized in the aforesaid transfer of real properties. Acting on the request, the BIR issued Ruling No. S-34-046-97 dated 3 February 1997, finding that the exchange is among those contemplated under Section 34 (c) (2) of the old National Internal Revenue Code (NIRC)4 which provides that "(n)o gain or loss shall be recognized if property is transferred to a corporation by a person in exchange for a stock in such corporation of which as a result of such exchange said person, alone or together with others, not exceeding four (4) persons, gains control of said corporation." With the BIR's reiteration of the foregoing ruling upon the 10 February 1997 request for clarification filed by FLI, the latter, together with FDC and FAI, complied with all the requirements imposed in the ruling.

On 3 January 2000, FDC received from the BIR a Formal Notice of Demand to pay deficiency income and documentary stamp taxes, plus interests and compromise penalties. The deficiency taxes were assessed on the taxable gain supposedly realized by FDC from the Deed of Exchange it executed with FAI and FLI, on the dilution resulting from the Shareholders' Agreement FDC executed with RHPL as well as the "arm's-length" interest rate and documentary stamp taxes imposable on the advances FDC extended to its affiliates.

On 3 January 2000, FAI similarly received from the BIR a Formal Letter of Demand for deficiency income taxes. The deficiency tax was also assessed on the taxable gain purportedly realized by FAI from the Deed of Exchange it executed with FDC and FLI. Within the reglementary period of thirty (30) days from notice of the assessment, both FDC and FAI filed their respective requests for reconsideration/protest, on the ground that the deficiency income and documentary stamp taxes assessed by the BIR were bereft of factual and legal basis.

In view of the failure of petitioner Commissioner of Internal Revenue (CIR) to resolve their request for reconsideration/protest within the aforesaid period, FDC and FAI filed a petition for review with the Court of Tax Appeals (CTA).

The CTA went on to render the Decision which, with the exception of the deficiency income tax on the interest income FDC supposedly realized from the advances it extended in favor of its affiliates, cancelled the rest of deficiency income and documentary stamp taxes assessed against FDC and FAI for the years 1996 and 1997.

Dissatisfied with the foregoing decision, FDC filed the petition for review before the CA. Upholding FDC's position, the CA's then Special Fifth Division granted the petition.

With the denial of its partial motion for reconsideration of the same, the CIR also filed the petition for review docketed before the CA. The foregoing petition was, however, denied due course and dismissed for lack of merit.

ISSUE

Whether the letters of instruction or cash vouchers extended by FDC to its affiliates are not deemed loan agreements subject to DST under Section 180 of the NIRC. (YES)

RULING

In cases where no formal agreements or promissory notes have been executed to cover credit facilities, the documentary stamp tax shall be based on the amount of drawings or availment of the facilities, which may be evidenced by credit/debit memo, advice or drawings by any form of check or withdrawal slip, under Section 180 of the Tax Code.

Applying the aforesaid provisions to the case at bench, we find that the instructional letters as well as the journal and cash vouchers evidencing the advances FDC extended to its affiliates in 1996 and 1997 qualified as loan agreements upon which documentary stamp taxes may be imposed. In keeping with the caveat attendant to every BIR Ruling to the effect that it is valid only if the facts claimed by the taxpayer are correct, we find that the CA reversibly erred in utilizing BIR Ruling No. 116-98, dated 30 July 1998 which, strictly speaking, could be invoked only by ASB Development Corporation, the taxpayer who sought the same. In said ruling, the CIR opined that documents like those evidencing the advances FDC extended to its affiliates are not subject to documentary stamp tax, to wit:

On the matter of whether or not the inter-office memo covering the advances granted by an affiliate company is subject to documentary stamp tax, it is informed that nothing in Regulations No. 26 (Documentary Stamp Tax Regulations) and Revenue Regulations No. 9-94 states that the same is subject to documentary stamp tax. Such being the case, said inter-office memo evidencing the lendings or borrowings which is neither a form of promissory note nor a certificate of indebtedness issued by the corporation-affiliate or a certificate of obligation, which are, more or less, categorized as 'securities', is not subject to documentary stamp tax imposed under Section 180, 174 and 175 of the Tax Code of 1997, respectively. Rather, the inter-office memo is being prepared for accounting purposes only in order to avoid the co-mingling of funds of the corporate affiliates.1avvphi1

In its appeal before the CA, the CIR argued that the foregoing ruling was later modified in BIR Ruling No. 108-99 dated 15 July 1999, which opined that inter-office memos evidencing lendings or borrowings extended by a corporation to its affiliates are akin to promissory notes, hence, subject to documentary stamp taxes. In brushing aside the foregoing argument, however, the CA applied Section 246 of the 1993 NIRC65 from which proceeds the settled principle that rulings, circulars, rules and regulations promulgated by the BIR have no retroactive application if to so apply them would be prejudicial to the taxpayers. Admittedly, this rule does not apply: (a) where the taxpayer deliberately misstates or omits material facts from his return or in any document required of him by the Bureau of Internal Revenue; (b) where the facts subsequently gathered by the Bureau of Internal Revenue are materially different from the facts on which the ruling is based; or (c) where the taxpayer acted in bad faith. Not being the taxpayer who, in the first instance, sought a ruling from the CIR, however, FDC cannot invoke the foregoing principle on non-retroactivity of BIR rulings.

The Court found both the CTA and the CA erred in invalidating the assessments issued by the CIR for the deficiency documentary stamp taxes due on the instructional letters as well as the journal and cash vouchers evidencing the advances FDC extended to its affiliates in 1996 and 1997.

Accordingly, Assessment Notices Nos. SP-DST-96-00020-2000 and SP-DST-97-00021-2000 issued for deficiency documentary stamp taxes due on the instructional letters as well as journal and cash vouchers evidencing the advances FDC extended to its affiliates are declared valid.

SUPREME TRANSLINER, INC., MOISES C. ALVAREZ and PAULITA S. ALVAREZ, *Petitioners,* -versus – BPI FAMILY SAVINGS BANK, INC., *Respondent.*
G.R. No. 165617, THIRD DIVISION, February 25, 2011, VILLARAMA, JR., *J.*

It is therefore clear that in foreclosure sale, there is no actual transfer of the mortgaged real property until after the expiration of the one-year redemption period as provided in Act No. 3135 and title thereto is consolidated in the name of the mortgagee in case of non-redemption. In the interim, the mortgagor is given the option whether or not to redeem the real property. The issuance of the Certificate of Sale does not by itself transfer ownership.

Considering that herein petitioners-mortgagors exercised their right of redemption before the expiration of the statutory one-year period, petitioner bank is not liable to pay the capital gains tax due on the extrajudicial foreclosure sale. There was no actual transfer of title from the owners-mortgagors to the foreclosing bank. Hence, the inclusion of the said charge in the total redemption price was unwarranted and the corresponding amount paid by the petitioners-mortgagors should be returned to them.

FACTS

On April 24, 1995, Supreme Transliner, Inc. represented by its Managing Director, Moises C. Alvarez, and Paulita S. Alvarez, obtained a loan in the amount of ₱9,853,000.00 from BPI Family Savings Bank with a 714-square meter lot in the name of Moises C. Alvarez and Paulita S. Alvarez, as collateral.

For non-payment of the loan, the mortgage was extrajudicially foreclosed and the property was sold to the bank as the highest bidder in the public auction conducted by the Office of the Provincial

Sheriff of Lucena City. A Certificate of Sale was issued in favor of the bank and the same was registered.

Before the expiration of the one-year redemption period, the mortgagors notified the bank of their intention to redeem the property. Accordingly, a Statement of Account was prepared by the bank indicating the total amount due under the mortgage loan agreement.

The mortgagors requested for the elimination of liquidated damages and reduction of attorney's fees and interest (1% per month) but the bank refused. Eventually, the mortgagors redeemed the property. Thereafter, the mortgagors filed a complaint against the bank to recover the allegedly unlawful and excessive charges before the RTC.

In its Answer with Special and Affirmative Defenses and Counterclaim, the bank asserted that the redemption price reflecting the stipulated interest, charges and/or expenses, is valid, legal and in accordance with documents duly signed by the mortgagors. The bank further contended that the claims are deemed waived and the mortgagors are already estopped from questioning the terms and conditions of their contract.

The RTC dismissed the complaint and the bank's counterclaims. The trial court held that plaintiffs-mortgagors are bound by the terms of the mortgage loan documents which clearly provided for the payment of the interest, charges and expenses. According to the trial court, plaintiffs-mortgagors are estopped from questioning the correctness of the redemption price as they had freely and voluntarily signed the letter-agreement prepared by the defendant bank, and along with Orient Bank expressed their conformity to the terms and conditions therein.

The mortgagors appealed to the CA which, by reversed the trial court.

ISSUE

Whether the foreclosing mortgagee should pay capital gains tax upon execution of the certificate of sale, and if paid by the mortgagee, whether the same should be shouldered by the redemptioner.

RULING

Under Revenue Regulations (RR) No. 13-85 (December 12, 1985), every sale or exchange or other disposition of real property classified as capital asset under Section 34(a) of the Tax Code shall be subject to the final capital gains tax. The term sale includes pacto de retro and other forms of conditional sale. Section 2.2 of Revenue Memorandum Order (RMO) No. 29-86 (as amended by RMO No. 16-88 and as further amended by RMO Nos. 27-89 and 6-92) states that these conditional sales "necessarily include mortgage foreclosure sales (judicial and extrajudicial foreclosure sales)." Further, for real property foreclosed by a bank on or after September 3, 1986, the capital gains tax and documentary stamp tax must be paid before title to the property can be consolidated in favor of the bank.

Under Section 63 of Presidential Decree No. 1529 otherwise known as the Property Registration Decree, if no right of redemption exists, the certificate of title of the mortgagor shall be cancelled, and a new certificate issued in the name of the purchaser. But where the right of redemption exists, the certificate of title of the mortgagor shall not be cancelled, but the certificate of sale and the order confirming the sale shall be registered by brief memorandum thereof made by the Register of Deeds upon the certificate of title. In the event the property is redeemed, the certificate or deed of redemption shall be filed with the Register of Deeds, and a brief memorandum thereof shall be made by the Register of Deeds on the certificate of title.

It is therefore clear that in foreclosure sale, there is no actual transfer of the mortgaged real property until after the expiration of the one-year redemption period as provided in Act No. 3135 and title thereto is consolidated in the name of the mortgagee in case of non-redemption. In the interim, the mortgagor is given the option whether or not to redeem the real property. The issuance of the Certificate of Sale does not by itself transfer ownership.

RR No. 4-99 issued on March 16, 1999, further amends RMO No. 6-92 relative to the payment of Capital Gains Tax and Documentary Stamp Tax on extrajudicial foreclosure sale of capital assets initiated by banks, finance and insurance companies.

SEC. 3. CAPITAL GAINS TAX. –

(1) In case the mortgagor exercises his right of redemption within one year from the issuance of the certificate of sale, no capital gains tax shall be imposed because no capital gains has been derived by the mortgagor and no sale or transfer of real property was realized. x x x

(2) In case of non-redemption, the capital gains [tax] on the foreclosure sale imposed under Secs. 24(D)(1) and 27(D)(5) of the Tax Code of 1997 shall become due based on the bid price of the highest bidder but only upon the expiration of the one-year period of redemption provided for under Sec. 6 of Act No. 3135, as amended by Act No. 4118, and shall be paid within thirty (30) days from the expiration of the said one-year redemption period.

SEC. 4. DOCUMENTARY STAMP TAX. –

(1) In case the mortgagor exercises his right of redemption, the transaction shall only be subject to the P15.00 documentary stamp tax imposed under Sec. 188 of the Tax Code of 1997 because no land or realty was sold or transferred for a consideration.

(2) In case of non-redemption, the corresponding documentary stamp tax shall be levied, collected and paid by the person making, signing, issuing, accepting, or transferring the real property wherever the document is made, signed, issued, accepted or transferred where the property is situated in the Philippines. x x x (Emphasis supplied.)

Although the subject foreclosure sale and redemption took place before the effectivity of RR No. 4-99, its provisions may be given retroactive effect in this case.

Section 246 of the NIRC of 1997 states:

SEC. 246. Non-Retroactivity of Rulings. – Any revocation, modification, or reversal of any of the rules and regulations promulgated in accordance with the preceding Sections or any of the rulings or circulars promulgated by the Commissioner shall not be given retroactive application if the revocation, modification, or reversal will be prejudicial to the taxpayers, except in the following cases:

(a) where the taxpayer deliberately misstates or omits material facts from his return or in any document required of him by the Bureau of Internal Revenue;

(b) where the facts subsequently gathered by the Bureau of Internal Revenue are materially different from the facts on which the ruling is based; or

(c) where the taxpayer acted in bad faith.

In this case, the retroactive application of RR No. 4-99 is more consistent with the policy of aiding the exercise of the right of redemption. As the Court of Tax Appeals concluded in one case, RR No. 4-99 "has curbed the inequity of imposing a capital gains tax even before the expiration of the redemption period [since] there is yet no transfer of title and no profit or gain is realized by the mortgagor at the time of foreclosure sale but only upon expiration of the redemption period." In his commentaries, De Leon expressed the view that while revenue regulations as a general rule have no retroactive effect, if the revocation is due to the fact that the regulation is erroneous or contrary to law, such revocation shall have retroactive operation as to affect past transactions, because a wrong construction of the law cannot give rise to a vested right that can be invoked by a taxpayer.

Considering that herein petitioners-mortgagors exercised their right of redemption before the expiration of the statutory one-year period, petitioner bank is not liable to pay the capital gains tax due on the extrajudicial foreclosure sale. There was no actual transfer of title from the owners-mortgagors to the foreclosing bank. Hence, the inclusion of the said charge in the total redemption price was unwarranted and the corresponding amount paid by the petitioners-mortgagors should be returned to them.

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,* -versus – COURT OF APPEALS, COURT OF TAX APPEALS and ALHAMBRA INDUSTRIES, INC., *Respondent.*
G.R. No. 117982, FIRST DIVISION, February 6, 1997, BELLOSILLO, *J.*

The applicable law is Sec. 246 of the Tax Code which provides —

Sec. 246. Non-retroactivity of rulings. — Any revocation, modification, or reversal of any rules and regulations promulgated in accordance with the preceding section or any of the rulings or circulars promulgated by the Commissioner of Internal Revenue shall not be given retroactive application if the revocation, modification, or reversal will be prejudicial to the taxpayers except in the following cases: a) where the taxpayer deliberately misstates or omits material facts from his return or in any document required of him by the Bureau of Internal Revenue; b) where the facts subsequently gathered by the Bureau of Internal Revenue are materially different from the facts on which the ruling is based; or c) where the taxpayer acted in bad faith.

Without doubt, private respondent would be prejudiced by the retroactive application of the revocation as it would be assessed deficiency excise tax.

FACTS

ALHAMBRA INDUSTRIES, INC., is a domestic corporation engaged in the manufacture and sale of cigar and cigarette products. On 7 May 1991 private respondent received a letter from the Commissioner of Internal Revenue assessing it deficiency Ad Valorem Tax (AVT) in the total amount of Four Hundred Eighty-Eight Thousand Three Hundred Ninety-Six Pesos and Sixty-Two Centavos (P488,396.62), inclusive of increments, on the removals of cigarette products from their place of production during the period 2 November 1990 to 22 January 1991.

Private respondent filed a protest against the proposed assessment with a request that the same be withdrawn and cancelled but was denied. Thereafter, private respondent requested for the reconsideration of petitioner's denial of its protest. Without waiting for petitioner's reply to its request for reconsideration, private respondent filed on 19 June 1991 a petition for review with the Court of Tax Appeals. On 25 June 1991 private respondent received from petitioner a letter dated 21 June 1991 denying its request for reconsideration declaring again that its decision was final. On 8 July 1991 private respondent paid under protest the disputed ad valorem tax in the sum of P520,835.29.2

The Court of Tax Appeals ordered petitioner to refund to private respondent the amount of Five Hundred Twenty Thousand Eight Hundred Thirty-Five Pesos and Twenty-Nine Centavos (P520,835.29) representing erroneously paid ad valorem tax for the period 2 November 1990 to 22 January 1991.

The Court of Tax Appeals explained that the subject deficiency excise tax assessment resulted from private respondent's use of the computation mandated by BIR Ruling 473-88 dated 4 October 1988 as basis for computing the fifteen percent (15%) ad valorem tax due on its removals of cigarettes from 2 November 1990 to 22 January 1991.

On appeal, the Court of Appeals affirmed the Court of Tax Appeals holding that the retroactive application of BIR Ruling 017-91 cannot be allowed since private respondent did not act in bad faith; private respondent's computation under BIR Ruling 473-88 was not shown to be motivated by ill will or dishonesty partaking the nature of fraud; hence, this petition.

ISSUE

Whether private respondent's reliance on a void BIR ruling conferred upon the latter a vested right to apply the same in the computation of its ad valorem tax and claim for tax refund. (YES)

RULING

It is to be noted that Section 127 (b) of the Tax Code as amended applies in general to domestic products and excludes the value-added tax in the determination of the gross selling price, which is the tax base for purposes of the imposition of ad valorem tax. On the other hand, the last paragraph of Section 142 of the same Code which includes the value-added tax in the computation of the ad valorem tax, refers specifically to cigar and cigarettes only. It does not include/apply to any other articles or goods subject to the ad valorem tax. Accordingly, Section 142 must perforce prevail over Section 127 (b) which is a general provision of law insofar as the imposition of the ad valorem tax on cigar and cigarettes is concerned.

Moreover, the phrase unless otherwise provided in Section 127 (b) purports of exceptions to the general rule contained therein, such as that of Section 142, last paragraph thereof which explicitly provides that in the case of cigarettes, the tax base for purposes of the ad valorem tax shall include, among others, the value-added tax.

Private respondent did not question the correctness of the above BIR ruling. In fact, upon knowledge of the effectivity of BIR Ruling No. 017-91, private respondent immediately implemented the method of computation mandated therein by restoring the VAT in computing the tax base for purposes of the 15% ad valorem tax.

However, well-entrenched is the rule that rulings and circulars, rules and regulations promulgated by the Commissioner of Internal Revenue would have no retroactive application if to so apply them would be prejudicial to the taxpayers.

The applicable law is Sec. 246 of the Tax Code which provides —

Sec. 246. Non-retroactivity of rulings. — Any revocation, modification, or reversal of any rules and regulations promulgated in accordance with the preceding section or any of the rulings or circulars promulgated by the Commissioner of Internal Revenue shall not be given retroactive application if the revocation, modification, or reversal will be prejudicial to the taxpayers except in the following cases: a) where the taxpayer deliberately misstates or omits material facts from his return or in any document required of him by the Bureau of Internal Revenue; b) where the facts subsequently gathered by the Bureau of Internal Revenue are materially different from the facts on which the ruling is based; or c) where the taxpayer acted in bad faith.

Without doubt, private respondent would be prejudiced by the retroactive application of the revocation as it would be assessed deficiency excise tax.

What is left to be resolved is petitioner's claim that private respondent falls under the third exception in Sec. 246, i.e., that the taxpayer has acted in bad faith.

Bad faith imports a dishonest purpose or some moral obliquity and conscious doing of wrong. It partakes of the nature of fraud; a breach of a known duty through some motive of interest or ill will. 11 We find no convincing evidence that private respondent's implementation of the computation mandated by BIR Ruling 473-88 was ill-motivated or attended with a dishonest purpose. To the contrary, as a sign of good faith, private respondent immediately reverted to the computation mandated by BIR Ruling 017-91 upon knowledge of its issuance on 11 February 1991.

As regards petitioner's argument that private respondent should have made consultations with it before private respondent used the computation mandated by BIR Ruling 473-88, suffice it to state that the aforesaid BIR Ruling was clear and categorical thus leaving no room for interpretation. The failure of private respondent to consult petitioner does not imply bad faith on the part of the former.

Admittedly the government is not estopped from collecting taxes legally due because of mistakes or errors of its agents. But like other principles of law, this admits of exceptions in the interest of justice and fair play, as where injustice will result to the taxpayer.

COMMISSIONER OF INTERNAL REVENUE, *Petitioner*, -versus – BURROUGHS LIMITED AND THE COURT OF TAX APPEALS, *Respondents.*

G.R. No. L-66653, SECOND DIVISION, June 19, 1986, PARAS, *J.:*

Petitioner contends that respondent is no longer entitled to a refund because Memorandum Circular No. 8-82 dated March 17, 1982 had revoked and/or repealed the BIR ruling of January 21, 1980. The said memorandum circular states—

Considering that the 15% branch profit remittance tax is imposed and collected at source, necessarily the tax base should be the amount actually applied for by the branch with the Central Bank of the Philippines as profit to be remitted abroad.

The prejudice that would result to private respondent Burroughs Limited by a retroactive application of Memorandum Circular No. 8-82 is beyond question for it would be deprived of the substantial amount of P172,058.90. And, insofar as the enumerated exceptions are concerned, admittedly, Burroughs Limited does not fall under any of them.

FACTS

Burroughs Limited is a foreign corporation authorized to engage in trade or business in the Philippines through a branch office located at De la Rosa corner Esteban Streets, Legaspi Village, Makati, Metro Manila.

Sometime in March 1979, said branch office applied with the Central Bank for authority to remit to its parent company abroad, branch profit amounting to P7,647,058.00. Thus, on March 14, 1979, it paid the 15% branch profit remittance tax, pursuant to Sec. 24 (b) (2) (ii) and remitted to its head office the amount of P6,499,999.30

Claiming that the 15% profit remittance tax should have been computed on the basis of the amount actually remitted (P6,499,999.30) and not on the amount before profit remittance tax (P7,647,058.00), private respondent filed on December 24, 1980, a written claim for the refund or tax credit of the amount of P172,058.90 representing alleged overpaid branch profit remittance tax.

On February 24, 1981, private respondent filed with respondent court, a petition for review, docketed for the recovery of the overpayment to which the CTA granted and ordered CIR to grant a tax credit in favor of petitioner Burroughs Limited.

Unable to obtain a reconsideration from the aforesaid decision, petitioner filed the instant petition before this Court with the prayers as herein earlier stated upon the sole issue of

ISSUE

Whether private respondent Burroughs Limited legally entitled to a refund of the aforementioned amount of P172,058.90. (YES)

RULING

Sec. 24. Rates of tax on corporations....

(b) Tax on foreign corporations. ...

(2) (ii) Tax on branch profits remittances. Any profit remitted abroad by a branch to its head office shall be subject to a tax of fifteen per cent (15 %) ...

In a Bureau of Internal Revenue ruling dated January 21, 1980 by then Acting Commissioner of Internal Revenue Hon. Efren I. Plana the aforequoted provision had been interpreted to mean that "the tax base upon which the 15% branch profit remittance tax ... shall be imposed...(is) the profit actually remitted abroad and not on the total branch profits out of which the remittance is to be made. "

Applying, therefore, the aforequoted ruling, the claim of private respondent that it made an overpayment in the amount of P172,058.90 which is the difference between the remittance tax actually paid of Pl,147,058.70 and the remittance tax that should have been paid of P974,999,89.

As correctly held by respondent Court in its assailed decision-

Respondent concedes at least that in his ruling dated January 21, 1980 he held that under Section 24 (b) (2) of the Tax Code the 15% branch profit remittance tax shall be imposed on the profit actually remitted abroad and not on the total branch profit out of which the remittance is to be made. Based on such ruling petitioner should have paid only the amount of P974,999.89 in remittance tax computed by taking the 15% of the profits of P6,499,999.89 in remittance tax actually remitted to its head office *in the United States, instead of Pl,147,058.70, on its net profits of P7,647,058.00. Undoubtedly, petitioner has overpaid its branch profit remittance tax in the amount of P172,058.90.*

Petitioner contends that respondent is no longer entitled to a refund because Memorandum Circular No. 8-82 dated March 17, 1982 had revoked and/or repealed the BIR ruling of January 21, 1980. The said memorandum circular states—

Considering that the 15% branch profit remittance tax is imposed and collected at source, necessarily the tax base should be the amount actually applied for by the branch with the Central Bank of the Philippines as profit to be remitted abroad.

Petitioner's aforesaid contention is without merit. What is applicable in the case at bar is still the Revenue Ruling of January 21, 1980 because private respondent Burroughs Limited paid the branch profit remittance tax in question on March 14, 1979. Memorandum Circular No. 8-82 dated March 17, 1982 cannot be given retroactive effect in the light of Section 327 of the National Internal Revenue Code which provides-

Sec. 327. Non-retroactivity of rulings. Any revocation, modification, or reversal of any of the rules and regulations promulgated in accordance with the preceding section or any of the rulings or circulars promulgated by the Commissioner shag not be given retroactive application if the revocation, modification, or reversal will be prejudicial to the taxpayer except in the following cases (a) where the taxpayer deliberately misstates or omits material facts from his return or in any document required of him by the Bureau of Internal Revenue; (b) where the facts subsequently gathered by the Bureau of Internal Revenue are materially different from the facts on which the ruling is based, or (c) where the taxpayer acted in bad faith. (ABS-CBN Broadcasting Corp. v. CTA, 108 SCRA 151-152)

The prejudice that would result to private respondent Burroughs Limited by a retroactive application of Memorandum Circular No. 8-82 is beyond question for it would be deprived of the substantial amount of P172,058.90. And, insofar as the enumerated exceptions are concerned, admittedly, Burroughs Limited does not fall under any of them.

BRITISH AMERICAN TOBACCO*, Petitioner,* -versus – JOSE ISIDRO N. CAMACHO, in his capacity as Secretary of the Department of Finance and GUILLERMO L. PARAYNO, JR., in his capacity as Commissioner of the Bureau of Internal Revenue, *Respondent.*

PHILIP MORRIS PHILIPPINES MANUFACTURING, INC., FORTUNE TOBACCO, CORP., MIGHTY CORPORATION, AND JT INTERNATIONAL, S.A., *Respondents-in-Intervention*
G.R. No. 163583, EN BANC, August 20, 2008, YNARES-SANTIAGO, *J.:*

A legislative classification that is reasonable does not offend the constitutional guaranty of the equal protection of the laws. The classification is considered valid and reasonable provided that: (1) it rests on substantial distinctions; (2) it is germane to the purpose of the law; (3) it applies, all things being equal, to both present and future conditions; and (4) it applies equally to all those belonging to the same class.

The first, third and fourth requisites are satisfied. The classification freeze provision was inserted in the law for reasons of practicality and expediency. That is, since a new brand was not yet in existence at the time of the passage of RA 8240, then Congress needed a uniform mechanism to fix the tax bracket of a new brand. The current net retail price, similar to what was used to classify the brands under Annex "D" as of October 1, 1996, was thus the logical and practical choice.

FACTS

RA 8240, entitled "An Act Amending Sections 138, 139, 140, and 142 of the NIRC, as Amended and For Other Purposes," took effect on January 1, 1997. In the same year, Congress passed RA 8424 or The Tax Reform Act of 1997, re-codifying the NIRC. Section 142 was renumbered as Section 145 of the NIRC.

Paragraph (c) of Section 145 provides for four tiers of tax rates based on the net retail price per pack of cigarettes. To determine the applicable tax rates of existing cigarette brands, a survey of the net retail prices per pack of cigarettes was conducted as of October 1, 1996, the results of which were embodied in Annex "D" of the NIRC as the duly registered, existing or active brands of cigarettes.

To implement RA 8240, the Bureau of Internal Revenue (BIR) issued Revenue Regulations No. 1-97,2 which classified the existing brands of cigarettes as those duly registered or active brands prior to January 1, 1997. New brands, or those registered after January 1, 1997, shall be initially assessed at their suggested retail price until such time that the appropriate survey to determine their current net retail price is conducted.

In June 2001, petitioner British American Tobacco introduced into the market Lucky Strike Filter, Lucky Strike Lights and Lucky Strike Menthol Lights cigarettes, with a suggested retail price of P9.90 per pack.3 Pursuant to Sec. 145 (c) quoted above, the Lucky Strike brands were initially assessed the excise tax at P8.96 per pack.

On February 17, 2003, Revenue Regulations No. 9-2003,4 amended Revenue Regulations No. 1-97 by providing, among others, a periodic review every two years or earlier of the current net retail price of new brands and variants thereof for the purpose of establishing and updating their tax classification.

Pursuant thereto, Revenue Memorandum Order No. 6-20035 was issued on March 11, 2003, prescribing the guidelines and procedures in establishing current net retail prices of new brands of cigarettes and alcohol products.

Subsequently, Revenue Regulations No. 22-20036 was issued on August 8, 2003 to implement the revised tax classification of certain new brands introduced in the market after January 1, 1997, based on the survey of their current net retail price. The survey revealed that Lucky Strike Filter, Lucky Strike Lights, and Lucky Strike Menthol Lights, are sold at the current net retail price of P22.54, P22.61 and P21.23, per pack, respectively. Respondent Commissioner of the Bureau of Internal Revenue thus recommended the applicable tax rate of P13.44 per pack inasmuch as Lucky Strike's average net retail price is above P10.00 per pack.

Thus, on September 1, 2003, petitioner filed before the Regional Trial Court (RTC) of Makati, Branch 61, a petition for injunction with prayer for the issuance of a temporary restraining order (TRO) and/or writ of preliminary injunction, docketed as Civil Case No. 03-1032. Said petition sought to enjoin the implementation of Section 145 of the NIRC, Revenue Regulations Nos. 1-97, 9-2003, 22-2003 and Revenue Memorandum Order No. 6-2003 on the ground that they discriminate against new brands of cigarettes, in violation of the equal protection and uniformity provisions of the Constitution.

Respondent Commissioner of Internal Revenue filed an Opposition to the application for the issuance of a TRO. The trial court denied the application for TRO, holding that the courts have no authority to restrain the collection of taxes.

Meanwhile, respondent Secretary of Finance filed a Motion to Dismiss, contending that the petition is premature for lack of an actual controversy or urgent necessity to justify judicial intervention. The trial court denied the motion to dismiss and issued a writ of preliminary injunction to enjoin the implementation of Revenue Regulations Nos. 1-97, 9-2003, 22-2003 and Revenue Memorandum Order No. 6-2003.11 Respondents filed a Motion for Reconsideration. The trial court rendered a decision upholding the constitutionality of Section 145 of the NIRC, Revenue Regulations Nos. 1-97, 9-2003, 22-2003 and Revenue Memorandum Order No. 6-2003.

ISSUE

1. Whether Section 145 of the NIRC violates equal protection and uniformity clauses, thus unconstitutional. (NO)

2. Whether Revenue Regulations Nos. 1-97, 9-2003, 22-2003 and Revenue Memorandum Order No. 6-2003 are valid (NO)

RULING

1.

A legislative classification that is reasonable does not offend the constitutional guaranty of the equal protection of the laws. The classification is considered valid and reasonable provided that: (1) it rests on substantial distinctions; (2) it is germane to the purpose of the law; (3) it applies, all things being equal, to both present and future conditions; and (4) it applies equally to all those belonging to the same class.

The first, third and fourth requisites are satisfied. The classification freeze provision was inserted in the law for reasons of practicality and expediency. That is, since a new brand was not yet in existence at the time of the passage of RA 8240, then Congress needed a uniform mechanism to fix the tax bracket of a new brand. The current net retail price, similar to what was used to classify the brands under Annex "D" as of October 1, 1996, was thus the logical and practical choice. Further, with the amendments introduced by RA 9334, the freezing of the tax classifications now expressly applies not just to Annex "D" brands but to newer brands introduced after the effectivity of RA 8240 on January 1, 1997 and any new brand that will be introduced in the future.53 (However, as will be discussed later, the intent to apply the freezing mechanism to newer brands was already in place even prior to the amendments introduced by RA 9334 to RA 8240.) This does not explain, however, why the classification is "frozen" after its determination based on current net retail price and how this is germane to the purpose of the assailed law. An examination of the legislative history of RA 8240 provides interesting answers to this question.

RA 8240 was the first of three parts in the Comprehensive Tax Reform Package then being pushed by the Ramos Administration. It was enacted with the following objectives stated in the Sponsorship Speech of Senator Juan Ponce Enrile (Senator Enrile), viz:

First, to evolve a tax structure which will promote fair competition among the players in the industries concerned and generate buoyant and stable revenue for the government.

Second, to ensure that the tax burden is equitably distributed not only amongst the industries affected but equally amongst the various levels of our society that are involved in various markets that are going to be affected by the excise tax on distilled spirits, fermented liquor, cigars and cigarettes.

In the case of firms engaged in the industries producing the products that we are about to tax, this means relating the tax burden to their market share, not only in terms of quantity, Mr. President, but in terms of value.

In case of consumers, this will mean evolving a multi-tiered rate structure so that low-priced products are subject to lower tax rates and higher-priced products are subject to higher tax rates.

Third, to simplify the tax administration and compliance with the tax laws that are about to unfold in order to minimize losses arising from inefficiencies and tax avoidance scheme, if not outright tax evasion.

From the foregoing, it is quite evident that the classification freeze provision could hardly be considered arbitrary, or motivated by a hostile or oppressive attitude to unduly favor older brands over newer brands.

Whether Congress acted improvidently in derogating, to a limited extent, the state's interest in promoting fair competition among the players in the industry, while pursuing other state interests regarding the simplification of tax administration of sin products, elimination of potential areas for abuse and corruption in tax collection, buoyant and stable revenue generation, and ease of projection of revenues through the classification freeze provision, and whether the questioned provision is the best means to achieve these state interests, necessarily go into the wisdom of the assailed law which we cannot inquire into, much less overrule. The classification freeze provision has not been shown to be precipitated by a veiled attempt, or hostile attitude on the part of Congress to unduly favor older brands over newer brands. On the contrary, we must reasonably assume, owing to the respect due a co-equal branch of government and as revealed by the Congressional deliberations, that the enactment of the questioned provision was impelled by an earnest desire to improve the efficiency and effectivity of the tax administration of sin products. For as long as the legislative classification is rationally related to furthering some legitimate state interest, as here, the rational-basis test is satisfied and the constitutional challenge is perfunctorily defeated.

In fine, petitioner may have valid reasons to disagree with the policy decision of Congress and the method by which the latter sought to achieve the same. But its remedy is with Congress and not this Court. As succinctly articulated in *Vance v. Bradley*:

The Constitution presumes that, absent some reason to infer antipathy, even improvident decisions will eventually be rectified by the democratic process, and that judicial intervention is generally unwarranted no matter how unwisely we may think a political branch has acted. Thus, we will not overturn such a statute unless the varying treatment of different groups or persons is so unrelated to the achievement of any combination of legitimate purposes that we can only conclude that the legislature's actions were irrational.

2.

In order to implement RA 8240 following its effectivity on January 1, 1997, the BIR issued Revenue Regulations No. 1-97, dated December 13, 1996, which mandates a one-time classification only.79 Upon their launch, new brands shall be initially taxed based on their suggested net retail price. Thereafter, a survey shall be conducted within three (3) months to determine their current net retail prices and, thus, fix their official tax classifications. However, the BIR made a turnaround by issuing Revenue Regulations No. 9-2003, dated February 17, 2003, which partly amended Revenue Regulations No. 1-97, by authorizing the BIR to periodically reclassify new brands (i.e., every two years or earlier) based on their current net retail prices. Thereafter, the BIR issued Revenue Memorandum Order No. 6-2003, dated March 11, 2003, prescribing the guidelines on the implementation of Revenue Regulations No. 9-2003. This was patent error on the part of the BIR for being contrary to the plain text and legislative intent of RA 8240.

It is clear that the afore-quoted portions of Revenue Regulations No. 1-97, as amended by Section 2 of Revenue Regulations 9-2003, and Revenue Memorandum Order No. 6-2003 unjustifiably emasculate the operation of Section 145 of the NIRC because they authorize the Commissioner of Internal Revenue to update the tax classification of new brands every two years or earlier subject only to its issuance of the appropriate Revenue Regulations, when nowhere in Section 145 is such authority granted to the Bureau. Unless expressly granted to the BIR, the power to reclassify cigarette brands remains a prerogative of the legislature which cannot be usurped by the former.

For these reasons, the amendments introduced by RA 9334 to RA 8240, insofar as the freezing mechanism is concerned, must be seen merely as underscoring the legislative intent already in place then, i.e. new brands as being covered by the freezing mechanism after their classification based on their current net retail prices.

It should be noted though that on August 8, 2003, the BIR issued Revenue Regulations No. 22-2003 which implemented the revised tax classifications of new brands based on their current net retail prices through the market survey conducted pursuant to Revenue Regulations No. 9-2003. Annex "A" of Revenue Regulations No. 22-2003 lists the result of the market survey and the corresponding recommended tax classification of the new brands therein aside from Lucky Strike. However, whether these other brands were illegally reclassified based on their actual current net retail prices by the BIR must be determined on a case-to-case basis because it is possible that these brands were classified based on their actual current net retail price for the first time in the year 2003 just like Lucky Strike. Thus, we shall not make any pronouncement as to the validity of the tax classifications of the other brands listed therein.

Thus, Revenue Regulations No. 9-2003 and Revenue Memorandum Order No. 6-2003 should be deemed modified by the above provisions from the date of effectivity of RA 9334 on January 1, 2005.

In sum, Section 4(B)(e)(c), 2nd paragraph of Revenue Regulations No. 1-97, as amended by Section 2 of Revenue Regulations 9-2003, and Sections II(1)(b), II(4)(b), II(6), II(7), III (Large Tax Payers Assistance Division II) II(b) of Revenue Memorandum Order No. 6-2003, as pertinent to cigarettes packed by machine, are invalid insofar as they grant the BIR the power to reclassify or update the classification of new brands every two years or earlier. Further, these provisions are deemed modified upon the effectivity of RA 9334 on January 1, 2005 insofar as the manner of determining the permanent classification of new brands is concerned.

PHILIPPINE BANK OF COMMUNICATIONS, *Petitioner,* -versus – COMMISSIONER OF INTERNAL REVENUE, COURT OF TAX APPEALS and COURT OF APPEALS, *Respondents.*
G.R. No. 112024, SECOND DIVISION, January 28, 1999, QUISUMBING, *J.:*

The rule states that the taxpayer may file a claim for refund or credit with the Commissioner of Internal Revenue, within two (2) years after payment of tax, before any suit in CTA is commenced. The two-year prescriptive period provided, should be computed from the time of filing the Adjustment Return and final payment of the tax for the year.

When the Acting Commissioner of Internal Revenue issued RMC 7-85, changing the prescriptive period of two years to ten years on claims of excess quarterly income tax payments, such circular created a clear inconsistency with the provision of Sec. 230 of 1977 NIRC. In so doing, the BIR did not simply interpret the law; rather it legislated guidelines contrary to the statute passed by Congress.

FACTS

Petitioner, Philippine Bank of Communications (PBCom), a commercial banking corporation duly organized under Philippine laws, filed its quarterly income tax returns for the first and second quarters of 1985, reported profits, and paid the total income tax of P5,016,954.00.

Subsequently, however, PBCom suffered losses so that when it filed its Annual Income Tax Returns for the year-ended December 31, 1985, it declared a net loss of P25,317,228.00, thereby showing no income tax liability. For the succeeding year, ending December 31, 1986, the petitioner likewise reported a net loss of P14,129,602.00, and thus declared no tax payable for the year.

But during these two years, PBCom earned rental income from leased properties. The lessees withheld and remitted to the BIR withholding creditable taxes of P282,795.50 in 1985 and P234,077.69 in 1986.

On August 7, 1987, petitioner requested the Commissioner of Internal Revenue, among others, for a tax credit of P5,016,954.00 representing the overpayment of taxes in the first and second quarters of 1985.

Thereafter, on July 25, 1988, petitioner filed a claim for refund of creditable taxes withheld by their lessees from property rentals in 1985 for P282,795.50 and in 1986 for P234,077.69.

Pending the investigation of the respondent Commissioner of Internal Revenue, petitioner instituted a Petition for Review on November 18, 1988 before the Court of Tax Appeals (CTA).

On May 20, 1993, the CTA rendered a decision which, as stated on the outset, denied the request of petitioner for a tax refund or credit on the ground that it was filed beyond the two-year reglementary period provided for by law. The petitioner's claim for refund in 1986 was likewise denied on the assumption that it was automatically credited by PBCom against its tax payment in the succeeding year.

Petitioner then filed a Motion for Reconsideration of the CTA's decision but the same was denied due course for lack of merit.

Upon appeal, the Court of Appeals affirmed in toto the CTA's resolution.

ISSUE

Whether the Court of Appeals erred in denying the plea for tax refund or tax credits on the ground of prescription, despite petitioner's reliance on RMC No. 7-85, changing the prescriptive period of two years to ten years. (NO)

RULING

Section 230 of the National Internal Revenue Code (NIRC) of 1977 (now Sec. 229, NIRC of 1997) provides for the prescriptive period for filing a court proceeding for the recovery of tax erroneously or illegally collected, viz.:

"SECTION 230. Recovery of tax erroneously or illegally collected. — No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

In any case, no such suit or proceeding shall be begun after the expiration of two years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment; Provided however, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid." (Emphasis supplied)

The rule states that the taxpayer may file a claim for refund or credit with the Commissioner of Internal Revenue, within two (2) years after payment of tax, before any suit in CTA is commenced. The two-year prescriptive period provided, should be computed from the time of filing the Adjustment Return and final payment of the tax for the year.

In *Commissioner of Internal Revenue v. Philippine American Life Insurance Co*., this Court explained the application of Sec. 230 of 1977 NIRC, as follows:

"Clearly, the prescriptive period of two years should commence to run only from the time that the refund is ascertained, which can only be determined after a final adjustment return is accomplished. In the present case, this date is April 16, 1984, and two years from this date would be April 16, 1986. . . . As we have earlier said in the TMX Sales case, Sections 68, 16 69, 17 and 70 18 on Quarterly Corporate Income Tax Payment and Section 321 should be considered in conjunction with it."

When the Acting Commissioner of Internal Revenue issued RMC 7-85, changing the prescriptive period of two years to ten years on claims of excess quarterly income tax payments, such circular created a clear inconsistency with the provision of Sec. 230 of 1977 NIRC. In so doing, the BIR did not simply interpret the law; rather it legislated guidelines contrary to the statute passed by Congress.

It bears repeating that Revenue memorandum-circulars are considered administrative rulings (in the sense of more specific and less general interpretations of tax laws) which are issued from time to time by the Commissioner of Internal Revenue. It is widely accepted that the interpretation placed upon a statute by the executive officers, whose duty is to enforce it, is entitled to great respect by the courts. Nevertheless, such interpretation is not conclusive and will be ignored if judicially found to be erroneous. Thus, courts will not countenance administrative issuances that override, instead of remaining consistent and in harmony with, the law they seek to apply and implement.

In the case of *People v. Lim*, it was held that rules and regulations issued by administrative officials to implement a law cannot go beyond the terms and provisions of the latter.

"Appellant contends that Section 2 of FAO No. 37-1 is void because it is not only inconsistent with but is contrary to the provisions and spirit of Act No. 4003 as amended, because whereas the prohibition prescribed in said Fisheries Act was for any single period of time not exceeding five years duration, FAO No. 37-1 fixed no period, that is to say, it establishes an absolute ban for all time. This discrepancy between Act No. 4003 and FAO No. 37-1 was probably due to an oversight on the part of Secretary of Agriculture and Natural Resources. Of course, in case of discrepancy, the basic Act prevails, for the reason that the regulation or rule issued to implement a law cannot go beyond the terms and provisions of the latter. . . In this connection, the attention of the technical men in the offices of Department Heads who draft rules and regulation is called to the importance and necessity of closely following the terms and provisions of the law which they intended to implement, this to avoid any possible misunderstanding or confusion as in the present case."

Further, fundamental is the rule that the State cannot be put in estoppel by the mistakes or errors of its officials or agents. As pointed out by the respondent courts, the nullification of RMC No. 7-85 issued by the Acting Commissioner of Internal Revenue is an administrative interpretation which is not in harmony with Sec. 230 of 1977 NIRC, for being contrary to the express provision of a statute. Hence, his interpretation could not be given weight for to do so would, in effect, amend the statute.

TEAM ENERGY CORPORATION (FORMERLY: MIRANT PAGBILAO CORPORATION AND SOUTHERN ENERGY QUEZON, INC.), *Petitioner,* -versus - COMMISSIONER OF INTERNAL REVENUE, *Respondent.*
G.R. No. 197663, THIRD DIVISION, March 14, 2018, LEONEN, *J.*

REPUBLIC OF THE PHILIPPINES REP. BY THE BUREAU OF INTERNAL REVENUE, *Petitioner,* -versus - TEAM ENERGY CORPORATION, *Respondent.*
G.R. No. 197770, THIRD DIVISION, March 14, 2018, LEONEN, *J.*

The prescriptive period regarding judicial claims for refunds or tax credits of input VAT are explicitly set forth in Section 112(D) of the 1997 NIRC which provides that the taxpayer affected may, within 30 days from the receipt of the decision denying the claim or after the expiration of the 120 day-period, appeal the decision or the unacted claim with the CTA. In Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc. as well as in Commissioner of Internal Revenue v. San Roque Power Corporation, it was pronounced that the observance of the 120+30-day periods is crucial in filing an appeal with the CTA. Compliance with the said periods are both mandatory and jurisdictional. Exempted from this are VAT refund cases that are prematurely filed or filed before the lapse of the 120-day period between December 10, 2003, when the BIR issued Ruling No. DA-489-03, and October 6, 2010, when this Court promulgated the Aichi case. In the case at bar, Team Energy's administrative claim for refund was filed on December 17, 2004. The BIR had 120 days to act on the claim or until April 16, 2005. Team Energy, in turn, had until May 16, 2005 to file a petition with the CTA. However, it filed its appeal only on July 22, 2005 or 67 days late. Thus, the CTA En Banc correctly denied Team Energy's claim for refund due to prescription. The judicial claim for second to fourth quarters was filed beyond the 30-day period.

Under Section 110(A)(1) of the NIRC, creditable input tax must be evidenced by a VAT invoice or official receipt which must in turn reflect the information required in Sections 113 and 237 of the Code. Although it appears under Section 113 that there is no clear distinction on the evidentiary value of an invoice or official receipt, it is worthy to note that the said provision is a general provision which covers all sales of a VAT-registered person, whether sale of goods or services. It does not necessarily follow that the legislature intended to use the same interchangeably. As previously held in the case of AT&T Communications Services Phils., Inc. v. Commissioner of Internal Revenue, Section 113 must be read in conjunction with Sections 106 and 108 which specifically delineates sales invoices for sales of goods and official receipts for sales of services. Thus, to claim a refund of unutilized or excess input VAT, purchase of goods or properties must be supported by VAT invoices while purchase of services must be supported by VAT official receipts. Noncompliance will result to the disallowance of the claim for input tax. Accordingly, this does not support Team Energy's claim that at the time when the unutilized input VAT was incurred in 2003, the applicable NIRC provisions did not create a distinction between an official receipt and an invoice in substantiating a claim for refund. The CTA First Division properly disallowed ₱78,134.65 input VAT claimed on local purchase of goods supported by documents other than VAT invoices and ₱180,739.90 input VAT claimed on local purchase of services supported by documents other than VAT official receipts.

Team Energy's claim for unutilized or excess input VAT was anchored not on the Electrical Power Industry Reform Act (EPIRA Law) but on Section 108(B)(3) of the NIRC, in relation to NPC's charter. The requirements of the EPIRA Law would apply only to claims for refund filed under the EPIRA. Accordingly, the Commisioner cannot question Team Energy's claim for refund of input VAT on the basis of the latter's failure to submit the Registration and Certificate of Compliance issued by the ERC. Such certificate is only relevant on claims for refund filed under the EPIRA. It must be noted that to be entitled to a refund or credit of unutilized input VAT attributable to the sale of electricity under the EPIRA Law, the taxpayer must establish that it is a generation company and that it derived sales from power generation.

FACTS:

Team Energy is a VAT-registered entity. It is engaged in power generation and sale to National Power Corporation (NPC) under a Build, Operate, and Transfer scheme. It then filed an Application for Effective Zero-Rate of its supply of electricity to the NPC, which was subsequently approved.

On December 17, 2004, Team Energy filed a claim for refund of unutilized input VAT in the amount of ₱83,465,353.50 for the first to fourth quarters of taxable year 2003. On April 22, 2005, it appealed before the Court of Tax Appeals (CTA) its 2003 first quarter VAT claim of ₱15,085,320.31 while on July 22, 2005, it appealed its second to fourth quarters VAT claim of ₱68,380,033.19.

In opposing the appeal before the CTA, the Commissioner claimed that it was imperative upon Team Energy to prove its compliance with the registration requirements of a VAT taxpayer as well as the the invoicing and accounting requirements for VAT-registered persons. Furthermore, it contended that Team Energy must prove that the claims were filed within the prescriptive periods and that the input taxes being claimed had not been applied against any output tax liability or were not carried over in the succeeding quarters.

The CTA First Division partially granted Team Energy's petition. NPC's exemption from direct and indirect taxes had long been resolved by the Court. Consequently, NPC's electricity purchases from Team Energy were subject to 0% VAT pursuant to Section 108(B)(3) of the 1997 NIRC. However, the CTA disallowed certain claims for failure to submit the corresponding official receipts as well as for failure to meet the substantiation requirements under Sections 110(A) and 113(A) of the 1997 NIRC. In particular, ₱78,134.65 input VAT claimed on local purchase of goods supported by documents other than VAT invoices and ₱180,739.90 input VAT claimed on local purchase of services supported by documents other than VAT official receipts were disallowed. As to the issue of prescription, the CTA First Division held that the reckoning of the two-year prescriptive period for the filing of a claim for input VAT refund starts from the date of filing of the corresponding quarterly VAT return. The ruling in Commissioner of Internal Revenue v. Mirant Pagbilao Corporation to the effect that the two-year prescriptive period starts from the close of the taxable quarter when the relevant sales were made must be applied to cases filed after the promulgation of Mirant. Accordingly, Team Energy's administrative and judicial claims were well within the two-year prescriptive period.

Before the CTA En Banc, the Commissioner argued that the CTA First Division erred in allowing the tax refund/credit as Team Energy's administrative and judicial claims for the first and second quarters were filed beyond the two-year period. Additionally, it was averred that Team Energy's judicial claims from the second to fourth quarters of 2003 were filed beyond the 30-day period to appeal.

On April 8, 2011, the CTA En Banc promulgated its Decision, granting Team Energy's petition with respect to the first quarter excess input VAT. As for the second to fourth quarters, it held that the judicial claim was filed beyond the 30-day period. Consequently, the claim for these quarters must be denied for lack of jurisdiction.

ISSUES:

1. Whether Team Energy is entitled for tax refund of its unutilized input VAT for the second to fourth quarters of 2003. (NO)

2. Whether VAT invoice and VAT official receipt can be interchanged to comply with the substantiation requirements for refund of excess or unutilized input tax. (NO)

3. Whether Team Energy's failure to submit the Registration and Certificate of Compliance issued by the Energy Regulatory Commission (ERC) disqualifies it from claiming a tax refund/credit from its sale of electricity to NPC. (NO)

RULING:

1. The prescriptive period regarding judicial claims for refunds or tax credits of input VAT are explicitly set forth in Section 112(D) of the 1997 NIRC which provides that the taxpayer affected

may, within 30 days from the receipt of the decision denying the claim or after the expiration of the 120 day-period, appeal the decision or the unacted claim with the CTA. In Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc. as well as in Commissioner of Internal Revenue v. San Roque Power Corporation, it was pronounced that the observance of the 120+30-day periods is crucial in filing an appeal with the CTA. Compliance with the said periods are both mandatory and jurisdictional. Exempted from this are VAT refund cases that are prematurely filed or filed before the lapse of the 120-day period between December 10, 2003, when the BIR issued Ruling No. DA-489-03, and October 6, 2010, when this Court promulgated the Aichi case.

In the case at bar, Team Energy's administrative claim for refund was filed on December 17, 2004. The BIR had 120 days to act on the claim or until April 16, 2005. Team Energy, in turn, had until May 16, 2005 to file a petition with the CTA. However, it filed its appeal only on July 22, 2005 or 67 days late. Thus, the CTA En Banc correctly denied Team Energy's claim for refund due to prescription. The judicial claim for second to fourth quarters was filed beyond the 30-day period.

Team Energy's argument that the application of the Aichi doctrine would violate the rule on non-retroactivity of judicial decisions is without merit. Although Revenue Regulations No. 7-95 did not require a specific number of days within which the BIR must decide on the claim, when Team Energy filed its refund claim in 2004, the 1997 NIRC was already in effect which clearly provided for the 120+30-day period. It must be noted that the NIRC itself provides that rules and regulations or parts of them which are contrary to or inconsistent with it are amended or modified accordingly. In any case, it must be noted that the Aichi doctrine deals with prematurity while the present case deals with late filing. Moreover, in another case where the corporate taxpayer filed its administrative and judicial claims prior to the promulgation of the Aichi case, the Court already ruled for the denial of refund claim for failure to file the judicial claim within the 30-day period.

Also, Team Energy's contention that the denial of its duly proven refund claim would constitute unjust enrichment on the part of the government is misplaced. Excess input tax is not an excessively, erroneously, or illegally collected tax. The term "excess" simply means that the input VAT available as refund or credit exceeds the output VAT. It is in the nature of a tax exemption. Accordingly, there must be strict compliance with the prescriptive periods and substantive requirements set by law before a claim may prosper. The mere fact that Team Energy has proved its excess input VAT does not entitle it as a matter of right to a tax refund or credit.

2. Claimants of tax refund have the burden to prove their entitlement to the claim under substantive law and the factual basis of their claim. Moreover, applicants must satisfy the substantiation and invoicing requirements under the NIRC and other implementing rules and regulations.

Under Section 110(A)(1) of the NIRC, creditable input tax must be evidenced by a VAT invoice or official receipt which must in turn reflect the information required in Sections 113 and 237 of the Code. Although it appears under Section 113 that there is no clear distinction on the evidentiary value of an invoice or official receipt, it is worthy to note that the said provision is a general provision which covers all sales of a VAT-registered person, whether sale of goods or services. It does not necessarily follow that the legislature intended to use the same interchangeably. As previously held in the case of AT&T Communications Services Phils., Inc. v. Commissioner of Internal Revenue, Section 113 must be read in conjunction with Sections 106 and 108 which specifically delineates sales invoices for sales of goods and official receipts for sales of services. Thus, to claim a refund of unutilized or excess input VAT, purchase of goods or properties must be supported by VAT invoices while purchase of services must be supported by VAT official receipts. Noncompliance will result to the disallowance of the claim for input tax. Accordingly, this does not support Team Energy's claim that at the time when the unutilized input VAT was incurred in 2003, the applicable NIRC provisions did not create a distinction between an official receipt and an invoice in substantiating a claim for refund.

It is important to observe strict compliance with substantiation and invoicing requirements considering VAT's nature and VAT system's tax credit method where tax payments are based on output and input taxes and where the seller's output tax becomes the buyer's input tax that is available as tax credit or refund in the same transaction. It ensures the proper collection of taxes at all stages of distribution, facilitates computation of tax credits, and provides accurate audit trail or evidence for BIR monitoring purposes. The non-interchangeability between VAT official receipts and VAT invoices further avoids having the government refund a tax that was not even paid. It should be noted that the seller will only become liable to pay the output VAT upon receipt of payment from the purchaser in case of sale of services. If we are to use sales invoice in the sale of services, an absurd situation will arise when the purchaser of the service can claim tax credit representing input VAT even before there is payment of the output VAT by the seller on the sale pertaining to the same transaction. Worse, if the seller is not paid on the transaction, the seller of service would legally not have to pay output tax while the purchaser may legally claim input tax credit thereon. The government ends up refunding a tax which has not been paid at all.

3. Team Energy's claim for unutilized or excess input VAT was anchored not on the Electrical Power Industry Reform Act (EPIRA Law) but on Section 108(B)(3) of the NIRC, in relation to NPC's charter. The requirements of the EPIRA Law would apply only to claims for refund filed under the EPIRA. It must be noted that to be entitled to a refund or credit of unutilized input VAT attributable to the sale of electricity under the EPIRA Law, the taxpayer must establish that it is a generation company and that it derived sales from power generation.

In the case of Commissioner of Internal Revenue v. Toledo Power Company (TPC), the CTA granted TPC's claim for refund of unutilized input VAT attributable to sales of electricity to NPC but denied refund of input VAT related to sales of electricity to other entities. This is because of the failure of TPC to prove that it was a generation company by submitting the ERC Certificate of Compliance.

In the case at bar, considering that Team Energy's refund claim is premised on Section 108(B)(3) of the NIRC in relation to NPC's charter, the requirements under the EPIRA are inapplicable. To qualify its electricity sale to NPC as zero-rated, Team Energy needs only to show that it is a VAT-registered entity and that it has complied with the invoicing requirements.

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,* -versus – BURROUGHS LIMITED AND THE COURT OF TAX APPEALS, *Respondents.*

G.R. No. L-66653, SECOND DIVISION, June 19, 1986, PARAS, *J.:*

Petitioner contends that respondent is no longer entitled to a refund because Memorandum Circular No. 8-82 dated March 17, 1982 had revoked and/or repealed the BIR ruling of January 21, 1980. The said memorandum circular states—

Considering that the 15% branch profit remittance tax is imposed and collected at source, necessarily the tax base should be the amount actually applied for by the branch with the Central Bank of the Philippines as profit to be remitted abroad.

The prejudice that would result to private respondent Burroughs Limited by a retroactive application of Memorandum Circular No. 8-82 is beyond question for it would be deprived of the substantial amount of P172,058.90. And, insofar as the enumerated exceptions are concerned, admittedly, Burroughs Limited does not fall under any of them.

FACTS

Burroughs Limited is a foreign corporation authorized to engage in trade or business in the Philippines through a branch office located at De la Rosa corner Esteban Streets, Legaspi Village, Makati, Metro Manila.

Sometime in March 1979, said branch office applied with the Central Bank for authority to remit to its parent company abroad, branch profit amounting to P7,647,058.00. Thus, on March 14, 1979, it paid the 15% branch profit remittance tax, pursuant to Sec. 24 (b) (2) (ii) and remitted to its head office the amount of P6,499,999.30

Claiming that the 15% profit remittance tax should have been computed on the basis of the amount actually remitted (P6,499,999.30) and not on the amount before profit remittance tax (P7,647,058.00), private respondent filed on December 24, 1980, a written claim for the refund or tax credit of the amount of P172,058.90 representing alleged overpaid branch profit remittance tax.

On February 24, 1981, private respondent filed with respondent court, a petition for review, docketed for the recovery of the overpayment to which the CTA granted and ordered CIR to grant a tax credit in favor of petitioner Burroughs Limited.

Unable to obtain a reconsideration from the aforesaid decision, petitioner filed the instant petition before this Court with the prayers as herein earlier stated upon the sole issue of

ISSUE

Whether private respondent Burroughs Limited legally entitled to a refund of the aforementioned amount of P172,058.90. (YES)

RULING

Sec. 24. Rates of tax on corporations....

(b) Tax on foreign corporations. ...

(2) (ii) Tax on branch profits remittances. Any profit remitted abroad by a branch to its head office shall be subject to a tax of fifteen per cent (15 %) ...

In a Bureau of Internal Revenue ruling dated January 21, 1980 by then Acting Commissioner of Internal Revenue Hon. Efren I. Plana the aforequoted provision had been interpreted to mean that "the tax base upon which the 15% branch profit remittance tax ... shall be imposed...(is) the profit actually remitted abroad and not on the total branch profits out of which the remittance is to be made. "

Applying, therefore, the aforequoted ruling, the claim of private respondent that it made an overpayment in the amount of P172,058.90 which is the difference between the remittance tax actually paid of Pl,147,058.70 and the remittance tax that should have been paid of P974,999,89.

As correctly held by respondent Court in its assailed decision-

Respondent concedes at least that in his ruling dated January 21, 1980 he held that under Section 24 (b) (2) of the Tax Code the 15% branch profit remittance tax shall be imposed on the profit actually remitted abroad and not on the total branch profit out of which the remittance is to be made. Based on such ruling petitioner should have paid only the amount of P974,999.89 in remittance tax computed by taking the 15% of the profits of P6,499,999.89 in remittance tax actually remitted to its head office in the United States, instead of Pl,147,058.70, on its net profits of P7,647,058.00. Undoubtedly, petitioner has overpaid its branch profit remittance tax in the amount of P172,058.90.

Petitioner contends that respondent is no longer entitled to a refund because Memorandum Circular No. 8-82 dated March 17, 1982 had revoked and/or repealed the BIR ruling of January 21, 1980. The said memorandum circular states—

Considering that the 15% branch profit remittance tax is imposed and collected at source, necessarily the tax base should be the amount actually applied for by the branch with the Central Bank of the Philippines as profit to be remitted abroad.

Petitioner's aforesaid contention is without merit. What is applicable in the case at bar is still the Revenue Ruling of January 21, 1980 because private respondent Burroughs Limited paid the branch profit remittance tax in question on March 14, 1979. Memorandum Circular No. 8-82 dated March 17, 1982 cannot be given retroactive effect in the light of Section 327 of the National Internal Revenue Code which provides-

Sec. 327. Non-retroactivity of rulings. Any revocation, modification, or reversal of any of the rules and regulations promulgated in accordance with the preceding section or any of the rulings or circulars promulgated by the Commissioner shag not be given retroactive application if the revocation, modification, or reversal will be prejudicial to the taxpayer except in the following cases

(a) where the taxpayer deliberately misstates or omits material facts from his return or in any document required of him by the Bureau of Internal Revenue; (b) where the facts subsequently gathered by the Bureau of Internal Revenue are materially different from the facts on which the ruling is based, or (c) where the taxpayer acted in bad faith. (ABS-CBN Broadcasting Corp. v. CTA, 108 SCRA 151-152)

The prejudice that would result to private respondent Burroughs Limited by a retroactive application of Memorandum Circular No. 8-82 is beyond question for it would be deprived of the substantial amount of P172,058.90. And, insofar as the enumerated exceptions are concerned, admittedly, Burroughs Limited does not fall under any of them.

COMMISSIONER OF INTERNAL REVENUE, *Petitioner*, -versus – AICHI FORGING COMPANY OF ASIA, INC., *Respondent.*

G.R. No. 184823, FIRST DIVISION, October 6, 2010, DEL CASTILLO, *J.:*

Section 112(D) of the NIRC clearly provides that the CIR has "120 days, from the date of the submission of the complete documents in support of the application [for tax refund/credit]," within which to grant or deny the claim. In case of full or partial denial by the CIR, the taxpayer's recourse is to file an appeal before the CTA within 30 days from receipt of the decision of the CIR. However, if after the 120-day period the CIR fails to act on the application for tax refund/credit, the remedy of the taxpayer is to appeal the inaction of the CIR to CTA within 30 days.

In this case, the administrative and the judicial claims were simultaneously filed on September 30, 2004. Obviously, respondent did not wait for the decision of the CIR or the lapse of the 120-day period. For this reason, we find the filing of the judicial claim with the CTA premature.

FACTS

Respondent Aichi Forging Company of Asia, Inc., a corporation duly organized and existing under the laws of the Republic of the Philippines, is engaged in the manufacturing, producing, and processing of steel and its by-products.

On September 30, 2004, respondent filed a claim for refund/credit of input VAT for the period July 1, 2002 to September 30, 2002 in the total amount of ₱3,891,123.82 with the petitioner Commissioner of Internal Revenue (CIR), through the Department of Finance (DOF) One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center.

On even date, respondent filed a Petition for Review with the CTA for the refund/credit of the same input VAT.

The Second Division of the CTA rendered a Decision partially granting respondent's claim for refund/credit.

Dissatisfied with the Decision, petitioner filed a Motion for Partial Reconsideration, insisting that the administrative and the judicial claims were filed beyond the two-year period to claim a tax refund/credit provided for under Sections 112(A) and 229 of the NIRC. He reasoned that since the year 2004 was a leap year, the filing of the claim for tax refund/credit on September 30, 2004 was beyond the two-year period, which expired on September 29, 2004.16 He cited as basis Article 13 of the Civil Code, which provides that when the law speaks of a year, it is equivalent to 365 days. In addition, petitioner argued that the simultaneous filing of the administrative and the judicial claims contravenes Sections 112 and 229 of the NIRC.18 According to the petitioner, a prior filing of an administrative claim is a "condition precedent"1 before a judicial claim can be filed. He explained that the rationale of such requirement rests not only on the doctrine of exhaustion of administrative remedies but also on the fact that the CTA is an appellate body which exercises the power of judicial review over administrative actions of the BIR.

The Second Division of the CTA, however, denied petitioner's Motion for Partial Reconsideration for lack of merit. Petitioner thus elevated the matter to the CTA En Banc via a Petition for Review to which the CTA En Banc affirmed the Second Division's Decision allowing the partial tax refund/credit in favor of respondent. Petitioner sought reconsideration but the CTA En Banc denied his Motion for Reconsideration.

ISSUE

Whether respondent's judicial and administrative claims for tax refund/credit were filed within the two-year prescriptive period provided in Sections 112(A) and 229 of the NIRC. (YES)

RULING

Unutilized input VAT must be claimed within two years after the close of the taxable quarter when the sales were made

In computing the two-year prescriptive period for claiming a refund/credit of unutilized input VAT, the Second Division of the CTA applied Section 112(A) of the NIRC, which states:

SEC. 112. Refunds or Tax Credits of Input Tax. –

(A) Zero-rated or Effectively Zero-rated Sales – Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: Provided, however, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (B) and Section 108 (B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): Provided, further, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales. (Emphasis supplied.)

The pivotal question of when to reckon the running of the two-year prescriptive period, however, has already been resolved in *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation*, where we ruled that Section 112(A) of the NIRC is the applicable provision in determining the start of the two-year period for claiming a refund/credit of unutilized input VAT, and that Sections 204(C) and 229 of the NIRC are inapplicable as "both provisions apply only to instances of erroneous payment or illegal collection of internal revenue taxes."

In view of the foregoing, we find that the CTA En Banc erroneously applied Sections 114(A) and 229 of the NIRC in computing the two-year prescriptive period for claiming refund/credit of unutilized input VAT. To be clear, Section 112 of the NIRC is the pertinent provision for the refund/credit of input VAT. Thus, the two-year period should be reckoned from the close of the taxable quarter when the sales were made.

The administrative claim was timely filed

In *Commissioner of Internal Revenue v. Primetown Property Group, Inc.,* we said that as between the Civil Code, which provides that a year is equivalent to 365 days, and the Administrative Code of 1987, which states that a year is composed of 12 calendar months, it is the latter that must prevail following the legal maxim, Lex posteriori derogat priori. Thus:

Both Article 13 of the Civil Code and Section 31, Chapter VIII, Book I of the Administrative Code of 1987 deal with the same subject matter – the computation of legal periods. Under the Civil Code, a year is equivalent to 365 days whether it be a regular year or a leap year. Under the Administrative Code of 1987, however, a year is composed of 12 calendar months. Needless to state, under the Administrative Code of 1987, the number of days is irrelevant.

There obviously exists a manifest incompatibility in the manner of computing legal periods under the Civil Code and the Administrative Code of 1987. For this reason, we hold that Section 31, Chapter VIII, Book I of the Administrative Code of 1987, being the more recent law, governs the computation of legal periods. Lex posteriori derogat priori.

Applying Section 31, Chapter VIII, Book I of the Administrative Code of 1987 to this case, the two-year prescriptive period (reckoned from the time respondent filed its final adjusted return on April 14, 1998) consisted of 24 calendar months.

We therefore hold that respondent's petition (filed on April 14, 2000) was filed on the last day of the 24th calendar month from the day respondent filed its final adjusted return. Hence, it was filed within the reglementary period.

Applying this to the present case, the two-year period to file a claim for tax refund/credit for the period July 1, 2002 to September 30, 2002 expired on September 30, 2004. Hence, respondent's administrative claim was timely filed.

The filing of the judicial claim was premature

However, notwithstanding the timely filing of the administrative claim, we are constrained to deny respondent's claim for tax refund/credit for having been filed in violation of Section 112(D) of the NIRC, which provides that:

SEC. 112. Refunds or Tax Credits of Input Tax. –

x x x x

(D) Period within which Refund or Tax Credit of Input Taxes shall be Made. – In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsections (A) and (B) hereof.

In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals. (Emphasis supplied.)

Section 112(D) of the NIRC clearly provides that the CIR has "120 days, from the date of the submission of the complete documents in support of the application [for tax refund/credit]," within which to grant or deny the claim. In case of full or partial denial by the CIR, the taxpayer's recourse is to file an appeal before the CTA within 30 days from receipt of the decision of the CIR. However, if after the 120-day period the CIR fails to act on the application for tax refund/credit, the remedy of the taxpayer is to appeal the inaction of the CIR to CTA within 30 days.

In this case, the administrative and the judicial claims were simultaneously filed on September 30, 2004. Obviously, respondent did not wait for the decision of the CIR or the lapse of the 120-day period. For this reason, we find the filing of the judicial claim with the CTA premature.

Respondent's assertion that the non-observance of the 120-day period is not fatal to the filing of a judicial claim as long as both the administrative and the judicial claims are filed within the two-year prescriptive period has no legal basis.

There is nothing in Section 112 of the NIRC to support respondent's view. Subsection (A) of the said provision states that "any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales." The phrase "within two (2) years x x x apply for the issuance of a tax credit certificate or refund" refers to applications for refund/credit filed with the CIR and not to appeals made to the CTA. This is apparent in the first paragraph of subsection (D) of the same provision, which states that the CIR has "120 days from the submission of complete documents in support of the application filed in accordance with Subsections (A) and (B)" within which to decide on the claim.

In fact, applying the two-year period to judicial claims would render nugatory Section 112(D) of the NIRC, which already provides for a specific period within which a taxpayer should appeal the decision or inaction of the CIR. The second paragraph of Section 112(D) of the NIRC envisions two scenarios: (1) when a decision is issued by the CIR before the lapse of the 120-day period; and (2) when no decision is made after the 120-day period. In both instances, the taxpayer has 30 days within which to file an appeal with the CTA. As we see it then, the 120-day period is crucial in filing an appeal with the CTA.

SILICON PHILIPPINES, INC. (FORMERLY INTEL PHILIPPINES MANUFACTURING, INC.), *Petitioner,* -versus – AICHI SILICON PHILIPPINES, INC. (FORMERLY INTEL PHILIPPINES MANUFACTURING, INC.), *Respondent.*
G.R. No. 182737, FIRST DIVISION, March 02, 2016, SERENO, *J.:*

Under Section 112 of the NIRC, the administrative claim of a VAT-registered person for the issuance by respondent of tax credit certificates or the refund of input taxes paid on zero-rated sales or capital goods imported may be made within two years after the close of the taxable quarter when the sale or importation/purchase was made.

In the case of petitioner, its administrative claim for the 2nd quarter of the year 2001 was filed on 16 October 2001, well within the two-year period provided by law. The same is true with regard to the administrative claims for the 3rd and the 4th quarters of 2001, both of which were filed on 4 September 2002.

Considering that there is no evidence in this case showing that petitioner made later submissions of documents in support of its administrative claims, the 120-day period within which respondent is allowed to act on the claims shall be reckoned from 16 October 2001 and 4 September 2002.

FACTS

Petitioner is a corporation engaged in the business of designing, developing, manufacturing and exporting integrated circuit components.

Petitioner sought to recover the VAT it paid on imported capital goods for the 2nd quarter of 2001. On 16 October 2001, it filed with the One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center, Department of Finance, an application for a tax credit/refund in the amount of P9,038,279.56.

On 4 September 2002, petitioner also filed for a tax credit/refund of the VAT it had paid on imported capital goods for the 3rd and 4th quarters of 2001 in the amounts of P1,420,813.0415 and P14,582,023.62,16 respectively.

Because of the continuous inaction by respondent on the administrative claims of petitioner for a tax credit/refund in the total amount of P25,041,116.22, the latter filed separate petitions for review before the CTA.

The three cases were consolidated by the CTA Second Division to which the CTA dismissed the petitions for lack of merit. However,

Petitioner filed a Motion for Reconsideration, which was denied. It then filed before the CTA En Banc a petition for review challenging the CTA Second Division Decision and Resolution. The CTA En Banc dismissed the petition for lack of merit.

It affirmed the finding of the CTA Second Division that petitioner had failed to prove its capital goods purchases for the 2nd quarter of the year 2001.39 The CTA En Banc emphasized the evidentiary nature of a claim that a VAT-registered person made capital goods purchases. It is necessary to ascertain the treatment of the purported capital goods as depreciable assets, which can only be determined through the examination of the detailed general ledgers and audited financial statements, including the person's income tax return.41 In view of petitioner's lack of evidence on this point, the claim for the refund or the issuance of tax credit certificates must be denied.

Petitioner's Motion for Reconsideration was denied.

ISSUE

Whether the Court of Tax Appeals has acquired jurisdiction over the case. (NO)

RULING

Under Section 112 (E) of the NIRC, the administrative claim of a VAT-registered person for the issuance by respondent of tax credit certificates or the refund of input taxes paid on zero-rated sales or capital goods imported may be made within two years after the close of the taxable quarter when the sale or importation/purchase was made.

In the case of petitioner, its administrative claim for the 2nd quarter of the year 2001 was filed on 16 October 2001, well within the two-year period provided by law. The same is true with regard to the administrative claims for the 3rd and the 4th quarters of 2001, both of which were filed on 4 September 2002.

Upon the filing of an administrative claim, respondent is given a period of 120 days within which to (1) grant a refund or issue the tax credit certificate for creditable input taxes; or (2) make a full or partial denial of the claim for a tax refund or tax credit. Failure on the part of respondent to act on the application within the 120-day period shall be deemed a denial.

Note that the 120-day period begins to run from the date of submission of complete documents supporting the administrative claim. If there is no evidence showing that the taxpayer was required to submit - or actually submitted - additional documents after the filing of the administrative claim, it is presumed that the complete documents accompanied the claim when it was filed.

Considering that there is no evidence in this case showing that petitioner made later submissions of documents in support of its administrative claims, the 120-day period within which respondent is allowed to act on the claims shall be reckoned from 16 October 2001 and 4 September 2002.

Whether respondent rules in favor of or against the taxpayer - or does not act at all on the administrative claim - within the period of 120 days from the submission of complete documents, the taxpayer may resort to a judicial claim before the CTA.

The judicial claim shall be filed within a period of 30 days after the receipt of respondent's decision or ruling or after the expiration of the 120-day period, whichever is sooner.

Aside from a specific exception to the mandatory and jurisdictional nature of the periods provided by the law, any claim filed in a period less than or beyond the 120+30 days provided by the NIRC is outside the jurisdiction of the CTA.

The judicial claim for the 4th quarter of 2001, while filed within the period 10 December 2003 up to 6 October 2010, cannot find solace in BIR Ruling No. DA-489-03. The general interpretative rule allowed the premature filing of judicial claims by providing that the "taxpayer-claimant need not wait for the lapse of the 120-day period before it could seek judicial relief with the CTA by way of Petition for Review." The rule certainly did not allow the filing of a judicial claim long after the expiration of the 120+30 day period.

As things stood, the CTA had no jurisdiction to act upon, take cognizance of, and render judgment upon the petitions for review filed by petitioner. For having been rendered without jurisdiction, the decision of the CTA Second Division in this case - and consequently, the decision of the CTA En Banc - is a total nullity that creates no rights and produces no effect.

Section 19 of R.A. 1125 provides that parties adversely affected by a decision or ruling of the CTA En Banc may file before us a verified petition for review on certiorari pursuant to Rule 45 of the 1997 Rules of Civil Procedure. In this case, the assailed CTA rulings are not decisions in contemplation of law that can serve as the subject of this Court's exercise of its power of review.

Given the foregoing, there is no reason for this Court to rule upon the issues raised by petitioner in the instant petition.

The judicial claims filed by petitioner with the Court of Tax Appeals for the refund of the input value-added tax paid on imported capital goods for the 2nd, 3rd and 4th quarters of 2001 are DISMISSED for lack of jurisdiction.

CITY OF LAPU-LAPU *Petitioner,* -versus – PHILIPPINE ECONOMIC ZONE AUTHORITY, *Respondent.*

G.R. No. 184203, SECOND DIVISION, November 26, 2014, LEONEN, *J.:*

SEC. 133. Common Limitations on the Taxing Powers of Local Government Units. – Unless otherwise provided herein, the exercise of taxing powers of provinces, cities, municipalities, and barangays shall not extend to the levy of the following:

(o) Taxes, fees or charges of any kind on the National Government, its agencies and instrumentalities and local government units.

All told, the PEZA is an instrumentality of the national government. Furthermore, the lands owned by the PEZA are real properties owned by the Republic of the Philippines. The City of Lapu-Lapu and the Province of Bataan cannot collect real property taxes from the PEZA.

FACTS

In 1995, the PEZA was created by virtue of Republic Act No. 7916 or "the Special Economic Zone Act of 1995" to operate, administer, manage, and develop economic zones in the country. The PEZA was granted the power to register, regulate, and supervise the enterprises located in the economic zones. By virtue of the law, the export processing zone in Mariveles, Bataan became the Bataan Economic Zone and the Mactan Export Processing Zone the Mactan Economic Zone.

As for the EPZA, the law required it to "evolve into the PEZA in accordance with the guidelines and regulations set forth in an executive order issued for [the] purpose."18chanRoblesvirtualLawlibrary

The City of Lapu-Lapu, through the Office of the Treasurer, demanded from the PEZA 32,912,350.08 in real property taxes for the period from 1992 to 1998 on the PEZA's properties located in the Mactan Economic Zone. It cited Sections 193 and 234 of the Local Government Code of 1991 that withdrew the real property tax exemptions previously granted to or presently enjoyed by all persons. The City pointed out that no provision in the Special Economic Zone Act of 1995 specifically exempted the PEZA from payment of real property taxes, unlike Section 21 of Presidential Decree No. 66 that explicitly provided for EPZA's exemption. Since no legal provision explicitly exempted the PEZA from payment of real property taxes, the City argued that it can tax the PEZA.

On the merits, the PEZA argues that it is an agency and instrumentality of the National Government. It is therefore exempt from payment of real property taxes under Sections 133(o) and 234(a) of the Local Government Code. It adds that the tax privileges under Sections 24 and 51 of the Special Economic Zone Act of 1995 applied to it.

Considering that the site of the Mactan Economic Zone is a reserved land under Proclamation No. 1811, the PEZA claims that the properties sought to be taxed are lands of public dominion exempt from real property taxes.

After the City of Lapu-Lapu had demanded payment of real property taxes from the PEZA, the Province of Bataan followed suit. The Province, through the Office of the Provincial Treasurer, informed the PEZA that it would be sending a real property tax billing to the PEZA. Arguing that the PEZA is a developer of economic zones, the Province claimed that the PEZA is liable for real property taxes under Section 24 of the Special Economic Zone Act of 1995.

ISSUE

Whether PEZA is exempt from the payment of real property tax. (YES)

RULING

Real property taxes are annual taxes levied on real property such as lands, buildings, machinery, and other improvements not otherwise specifically exempted under the Local Government Code.

Real property taxes are ad valorem, with the amount charged based on a fixed proportion of the value of the property. Under the law, provinces, cities, and municipalities within the Metropolitan Manila Area have the power to levy real property taxes within their respective territories.

The general rule is that real properties are subject to real property taxes. This is true especially since the Local Government Code has withdrawn exemptions from real property taxes of all persons, whether natural or juridical.

SEC. 234. Exemptions from Real Property Tax. – The following are exempted from payment of real property tax:

(a) Real property owned by the Republic of the Philippines or any of its political subdivisions except when the beneficial use thereof has been granted, for consideration or otherwise, to a taxable person;

(b) Charitable institutions, churches, parsonages or convents appurtenant thereto, mosques, nonprofit or religious cemeteries and all lands, buildings, and improvements actually, directly, and exclusively used for religious, charitable or educational purposes;

(c) All machineries and equipment that are actually, directly and exclusively used by local water districts and government-owned or –controlled corporations engaged in the supply and distribution of water and/or generation and transmission of electric power;

(d) All real property owned by duly registered cooperatives as provided under R.A. No. 6938; and

(e) Machinery and equipment used for pollution control and environmental protection.

Except as provided herein, any exemption from payment of real property taxes previously granted to, or presently enjoyed by, all persons, whether natural or juridical, including government-owned or -controlled corporations are hereby withdrawn upon the effectivity of this Code. (Emphasis supplied)

The person liable for real property taxes is the "taxable person who had actual or beneficial use and possession [of the real property for the taxable period,] whether or not [the person owned the property for the period he or she is being taxed]."

The exceptions to the rule are provided in the Local Government Code. Under Section 133(o), local government units have no power to levy taxes of any kind on the national government, its agencies and instrumentalities and local government units.

SEC. 133. Common Limitations on the Taxing Powers of Local Government Units. – Unless otherwise provided herein, the exercise of taxing powers of provinces, cities, municipalities, and barangays shall not extend to the levy of the following:

. . . .

(o) Taxes, fees or charges of any kind on the National Government, its agencies and instrumentalities and local government units.

Specifically on real property taxes, Section 234 enumerates the persons and real property exempt from real property taxes.

SEC. 234. Exemptions from Real Property Tax. – The following are exempted from payment of real property tax:

(a) Real property owned by the Republic of the Philippines or any of its political subdivisions except when the beneficial use thereof has been granted, for consideration or otherwise, to a taxable person;

(b) Charitable institutions, churches, parsonages or convents appurtenant thereto, mosques, nonprofit or religious cemeteries and all lands, buildings, and improvements actually, directly, and exclusively used for religious, charitable or educational purposes;

(c) All machineries and equipment that are actually, directly and exclusively used by local water districts and government-owned or –controlled corporations engaged in the supply and distribution of water and/or generation and transmission of electric power;

(d) All real property owned by duly registered cooperatives as provided under R.A. No. 6938; and

(e) Machinery and equipment used for pollution control and environmental protection.

Except as provided herein, any exemption from payment of real property tax previously granted to, or presently enjoyed by, all persons, whether natural or juridical, including all government-owned or -controlled corporations are hereby withdrawn upon the effectivity of this Code. (Emphasis supplied)

For persons granted tax exemptions or incentives before the effectivity of the Local Government Code, Section 193 withdrew these tax exemption privileges. These persons consist of both natural and juridical persons, including government-owned or controlled corporations.

SEC. 193. Withdrawal of Tax Exemption Privileges. – Unless otherwise provided in this code, tax exemptions or incentives granted to or presently enjoyed by all persons, whether natural or juridical, including government-owned or controlled corporations, except local water districts, cooperatives duly registered under R.A. 6938, non stock and non profit hospitals and educational institutions, are hereby withdrawn upon effectivity of this Code.

As discussed, Section 234 withdrew all tax privileges with respect to real property taxes.

Nevertheless, local government units may grant tax exemptions under such terms and conditions as they may deem necessary.

SEC. 192. Authority to Grant Tax Exemption Privileges. – Local government units may, through ordinances duly approved, grant tax exemptions, incentives or reliefs under such terms and conditions as they may deem necessary.

In *Mactan Cebu International Airport Authority v. Hon. Marcos*, this court classified the exemptions from real property taxes into ownership, character, and usage exemptions.

Ownership exemptions are exemptions based on the ownership of the real property. The exemptions of real property owned by the Republic of the Philippines, provinces, cities, municipalities, barangays, and registered cooperatives fall under this classification.

Character exemptions are exemptions based on the character of the real property. Thus, no real property taxes may be levied on charitable institutions, houses and temples of prayer like churches, parsonages, or convents appurtenant thereto, mosques, and non profit or religious cemeteries.

Usage exemptions are exemptions based on the use of the real property. Thus, no real property taxes may be levied on real property such as: (1) lands and buildings actually, directly, and exclusively used for religious, charitable or educational purpose; (2) machineries and equipment actually, directly and exclusively used by local water districts or by government-owned or controlled corporations engaged in the supply and distribution of water and/or generation and transmission of electric power; and (3) machinery and equipment used for pollution control and environmental protection.243chanRoblesvirtualLawlibrary

Persons may likewise be exempt from payment of real properties if their charters, which were enacted or reenacted after the effectivity of the Local Government Code, exempt them payment of real property taxes.

All told, the PEZA is an instrumentality of the national government. Furthermore, the lands owned by the PEZA are real properties owned by the Republic of the Philippines. The City of Lapu-Lapu and the Province of Bataan cannot collect real property taxes from the PEZA.

COMMISSIONER OF CUSTOMS, *Petitioner*, -versus – OILINK INTERNATIONAL CORPORATION, *Respondent.*

G.R. No. 161759, FIRST DIVISION, July 2, 2014, BERSAMIN, *J.:*

The principle of non-exhaustion of administrative remedies was not an iron-clad rule because there were instances in which the immediate resort to judicial action was proper. This was one such exceptional instance when the principle did not apply.

As the records indicate, the Commissioner of Customs already decided to deny the protest by Oilink on July 12, 1999, and stressed then that the demand to pay was final. In that instance, the exhaustion of administrative remedies would have been an exercise in futility because it was already the Commissioner of Customs demanding the payment of the deficiency taxes and duties.

FACTS

In 1966, Union Refinery Corporation (URC) was established under the Corporation Code of the Philippines. In the course of its business undertakings, particularly in the period from 1991 to 1994, URC imported oil products into the country.

On January 11, 1996, Oilink was incorporated for the primary purpose of manufacturing, importing, exporting, buying, selling or dealing in oil and gas, and their refinements and by-products at wholesale and retail of petroleum. URC and Oilink had interlocking directors when Oilink started its business.

In applying for and in expediting the transfer of the operator's name for the Customs Bonded Warehouse then operated by URC, Esther Magleo, the Vice-President and General Manager of URC, sent a letter dated January 15, 1996 to manifest that URC and Oilink had the same Board of Directors and that Oilink was 100% owned by URC.

On March 4, 1998, Oscar Brillo, the District Collector of the Port of Manila, formally demanded that URC pay the taxes and duties on its oil imports that had arrived between January 6, 1991 and November 7, 1995 at the Port of Lucanin in Mariveles, Bataan. However, despite repeated demands, URC failed to pay and instead, responded to the demands by seeking the landed computations of the assessments, and challenged the inconsistencies of the demands.

Then, Oilink formally protested the assessment on the ground that it was not the party liable for the assessed deficiency taxes.

With this, the Bureau of Customs (BoC) informed Oilink that it would not issue any clearance to Oilink unless the amount of ₱138,060,200.49 demanded as Oilink's tax liability be first paid, and a performance bond be posted by URC/Oilink to secure the payment of any adjustments that would result from the BIR's review of the liabilities for VAT, excise tax, special duties, penalties, etc.

Oilink appealed to the CTA, seeking the nullification of the assessment for having been issued without authority and with grave abuse of discretion tantamount to lack of jurisdiction because the Government was thereby shifting the imposition from URC to Oilink. The CTA rendered its decision declaring as null and void the assessment of the Commissioner of Customs.

The Commissioner of Customs seasonably filed a motion for reconsideration, but the CTA denied the motion for lack of merit. Upon appeal, the Court of Appeals, affirmed the ruling of the CTA.

ISSUE

1. Whether the CTA has jurisdiction. (YES)
2. Whether Oilink has no cause of action for non-exhaustion of administrative remedy. (NO)

RULING

1.

Republic Act No. 1125, the law creating the CTA, defined the appellate jurisdiction of the CTA as follows:

Section 7. Jurisdiction. - The Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal, as herein provided:

x x x x

2. Decisions of the Commissioner of Customs in cases involving liability for Customs duties, fees or other money charges; seizure, detention or release of property affected; fines, forfeitures or other penalties imposed in relation thereto;or other matters arising under the Customs Law or other law or part of law administered by the Bureau of Customs;

x x x x

Nonetheless, the Commissioner of Customs contends that the CTA should not take cognizance of the case because of the lapse of the 30-day period within which to appeal, arguing that on November 25, 1998 URC had already received the BoC's final assessment demanding payment of the amount due within 10 days, but filed the petition only on July 30, 1999.

We rule against the Commissioner of Customs. The CTA correctly ruled that the reckoning date for Oilink's appeal was July 12, 1999, not July 2, 1999, because it was on the former date that the Commissioner of Customs denied the protest of Oilink.Clearly, the filing of the petition on July 30, 1999 by Oilink was well within its reglementary period to appeal. The insistence by the Commissioner of Customs on reckoning the reglementary period to appeal from November 25, 1998, the date when URC received the final demand letter, is unwarranted. We note that the November 25, 1998 final demand letter of the BoC was addressed to URC, not to Oilink. As such, the final demand sentto URC did not bind Oilink unless the separate identities of the corporations were disregarded in order to consider them as one.

2.

The CA correctly held that the principle of non-exhaustion of administrative remedies was not an iron-clad rule because there were instances in which the immediate resort to judicial action was proper. This was one such exceptional instance when the principle did not apply. As the records indicate, the Commissioner of Customs already decided to deny the protest by Oilink on July 12, 1999, and stressed then that the demand to pay was final. In that instance, the exhaustion of administrative remedies would have been an exercise in futility because it was already the Commissioner of Customs demanding the payment of the deficiency taxes and duties.

THE MANUFACTURERS LIFE INSURANCE CO.*, Petitioner,* -versus – BIBIANO L. MEER, in the capacity as Collector of Internal Revenue, *Defendant-Appellee.*
G.R. No. L-2910, EN BANC, June 29, 1951, BENGSON, *J.:*

FACTS

The plaintiff, the Manufacturer Life Insurance Company in a corporation duly organized in Canada with head office at Toronto. It is duly registered and licensed to engage in life insurance business in the Philippines, and maintains a branch office in Manila. It was engaged in such business in the Philippines for more than five years before and including the year 1941. But due to the exigencies of the war it closed the branch office at Manila during 1942 up to September 1945.

In the course of its operations before the war, plaintiff issued a number of life insurance policies in the Philippines containing stipulations referred to as non-forfeiture clauses.

From January 1, 1942 to December 31, 1946 for failure of the insured under the above policies to pay the corresponding premiums for one or more years, the plaintiff's head office of Toronto, applied the provision of the automatic premium loan clauses; and the net amount of premiums so advanced or loaned totalled P1,069,254.98. On this sum the defendant Collector of Internal Revenue assessed P17,917.12 — which plaintiff paid supra protest —. The assessment was made pursuant to section 255 of the National Internal Revenue Code as amended. which partly provides:

SEC. 255. Taxes on insurance premiums. — There shall be collected from every person, company, or corporation (except purely cooperative companies or associations) doing business of any sort in the Philippines a tax of one per centum of the total premiums collected .. whether such premiums are paid in money, notes credits, or any substitute for money but premiums refunded within six months after payment on account of rejection of risk or returned for other reason to person insured shall not be included in the taxable receipts . . ..

It is the plaintiff's contention that when it made premium loans or premium advances, as above stated, by virtue of the non-forfeiture clauses, it did not collect premiums within the meaning of the above sections of the law, and therefore it is not amendable to the tax therein provided.

ISSUE

Whether or not the collection of the alleged deficiency premium taxes constitutes double taxation. (NO)

RULING

In any event there is no constitutional prohibition against double taxation.

The appellant takes the position that as advances of premiums were made in Toronto, such premiums are deemed to have been paid there — not in the Philippines — and therefore those payments are not subject to local taxation. The thesis overlooks the actual fact that the loans are made to policyholders in the Philippines, who in turn pay therewith the premium to the insurer thru the Manila branch. Approval of appellants position will enable foreign insurers to evade the tax by contriving to require that premium payments shall be made at their head offices. What is important, the law does not contemplate premiums collected in the Philippines. It is enough that the insurer is doing insurance business in the Philippines, irrespective of the place of its organization or establishment.

COMMISSIONER OF INTERNAL REVENUE, *Petitioner*, -versus – S.C. JOHNSON AND SON, INC., and COURT OF APPEALS, *Respondents.*
G.R. No. 127105, THIRD DIVISION, June 25, 1999, GONZAGA-REYES, *J.:*

In negotiating tax treaties, the underlying rationale for reducing the tax rate is that the Philippines will give up a part of the tax in the expectation that the tax given up for this particular investment is not taxed by the other country. Thus the petitioner correctly opined that the phrase "royalties paid under similar circumstances" in the most favored nation clause of the US-RP Tax Treaty necessarily contemplated "circumstances that are tax-related".

In the case at bar, the state of source is the Philippines because the royalties are paid for the right to use property or rights, i.e. trademarks, patents and technology, located within the Philippines. The United States is the state of residence since the taxpayer, S. C. Johnson and Son, U. S. A., is based there. Under the RP-US Tax Treaty, the state of residence and the state of source are both permitted to tax the royalties, with a restraint on the tax that may be collected by the state of source.

FACTS

Respondent a domestic corporation organized and operating under the Philippine laws, entered into a license agreement with SC Johnson and Son, United States of America (USA), a non-resident foreign corporation based in the U.S.A. pursuant to which the [respondent] was granted the right to use the trademark, patents and technology owned by the latter including the right to manufacture, package and distribute the products covered by the Agreement and secure assistance in management, marketing and production from SC Johnson and Son, U. S. A.

For the use of the trademark or technology, [respondent] was obliged to pay SC Johnson and Son, USA royalties based on a percentage of net sales and subjected the same to 25% withholding tax on royalty payments which [respondent] paid for the period covering July 1992 to May 1993 in the total amount of P1,603,443.00

On October 29, 1993, [respondent] filed with the International Tax Affairs Division (ITAD) of the BIR a claim for refund of overpaid withholding tax on royalties arguing that, "the antecedent facts attending [respondent's] case fall squarely within the same circumstances under which said MacGeorge and Gillete rulings were issued.

The Commissioner did not act on said claim for refund. Private respondent S.C. Johnson & Son, Inc. (S.C. Johnson) then filed a petition for review before the Court of Tax Appeals (CTA to claim a refund of the overpaid withholding tax on royalty payments from July 1992 to May 1993.

The Court of Tax Appeals rendered its decision in favor of S.C. Johnson and ordered the Commissioner of Internal Revenue.

The Commissioner of Internal Revenue thus filed a petition for review with the Court of Appeals which rendered the decision finding no merit in the petition and affirming in toto the CTA ruling.

ISSUE

Whether SC Johnson and Son, USA is entitled to the "Most Favored Nation" tax rate of 10% as provided in the RP-US Tax Treaty in relation to the RP-West Germany Tax Treaty. (NO)

RULING

Unlike the RP-US Tax Treaty, the RP-Germany Tax Treaty allows a tax credit of 20 percent of the gross amount of such royalties against German income and corporation tax for the taxes payable in the Philippines on such royalties where the tax rate is reduced to 10 or 15 percent under such treaty.

The RP-US Tax Treaty contains no similar "matching credit" as that provided under the RP-West Germany Tax Treaty. Hence, the tax on royalties under the RP-US Tax Treaty is not paid under similar circumstances as those obtaining in the RP-West Germany Tax Treaty. Therefore, the "most favored nation" clause in the RP-West Germany Tax Treaty cannot be availed of in interpreting the provisions of the RP-US Tax Treaty.

We are unable to sustain the position of the Court of Tax Appeals, which was upheld by the Court of Appeals, that the phrase "paid under similar circumstances in Article 13 (2) (b), (iii) of the RP-US Tax Treaty should be interpreted to refer to payment of royalty, and not to the payment of the tax, for the reason that the phrase "paid under similar circumstances" is followed by the phrase "to a resident of a third state". The respondent court held that "Words are to be understood in the context in which they are used", and since what is paid to a resident of a third state is not a tax but a royalty "logic instructs" that the treaty provision in question should refer to royalties of the same kind paid under similar circumstances.

The above construction is based principally on syntax or sentence structure but fails to take into account the purpose animating the treaty provisions in point. To begin with, we are not aware of any law or rule pertinent to the payment of royalties, and none has been brought to our attention, which provides for the payment of royalties under dissimilar circumstances. The tax rates on royalties and the circumstances of payment thereof are the same for all the recipients of such royalties and there is no disparity based on nationality in the circumstances of such payment.6 On the other hand, a cursory reading of the various tax treaties will show that there is no similarity in the provisions on relief from or avoidance of double taxation as this is a matter of negotiation between the contracting parties. As will be shown later, this dissimilarity is true particularly in the treaties between the Philippines and the United States and between the Philippines and West Germany.

In negotiating tax treaties, the underlying rationale for reducing the tax rate is that the Philippines will give up a part of the tax in the expectation that the tax given up for this particular investment is not taxed by the other country. Thus the petitioner correctly opined that the phrase "royalties paid under similar circumstances" in the most favored nation clause of the US-RP Tax Treaty necessarily contemplated "circumstances that are tax-related".

In the case at bar, the state of source is the Philippines because the royalties are paid for the right to use property or rights, i.e. trademarks, patents and technology, located within the Philippines. The United States is the state of residence since the taxpayer, S. C. Johnson and Son, U. S. A., is based there. Under the RP-US Tax Treaty, the state of residence and the state of source are both permitted to tax the royalties, with a restraint on the tax that may be collected by the state of source. Furthermore, the method employed to give relief from double taxation is the allowance of a tax credit to citizens or residents of the United States (in an appropriate amount based upon the taxes paid or accrued to the Philippines) against the United States tax, but such amount shall not exceed the limitations provided by United States law for the taxable year. Under Article 13 thereof, the Philippines may impose one of three rates — 25 percent of the gross amount of the royalties; 15 percent when the royalties are paid by a corporation registered with the Philippine Board of Investments and engaged in preferred areas of activities; or the lowest rate of Philippine tax that may be imposed on royalties of the same kind paid under similar circumstances to a resident of a third state.

Given the purpose underlying tax treaties and the rationale for the most favored nation clause, the concessional tax rate of 10 percent provided for in the RP-Germany Tax Treaty should apply only if the taxes imposed upon royalties in the RP-US Tax Treaty and in the RP-Germany Tax Treaty are paid under similar circumstances. This would mean that private respondent must prove that the RP-US Tax Treaty grants similar tax reliefs to residents of the United States in respect of the taxes imposable upon royalties earned from sources within the Philippines as those allowed to their German counterparts under the RP-Germany Tax Treaty.

The RP-US and the RP-West Germany Tax Treaties do not contain similar provisions on tax crediting. Article 24 of the RP-Germany Tax Treaty, supra, expressly allows crediting against German income and corporation tax of 20% of the gross amount of royalties paid under the law of the Philippines. On the other hand, Article 23 of the RP-US Tax Treaty, which is the counterpart provision with respect to relief for double taxation, does not provide for similar crediting of 20% of the gross amount of royalties paid.

The purpose of a most favored nation clause is to grant to the contracting party treatment not less favorable than that which has been or may be granted to the "most favored" among other countries. 25 The most favored nation clause is intended to establish the principle of equality of international treatment by providing that the citizens or subjects of the contracting nations may enjoy the privileges accorded by either party to those of the most favored nation. 26 The essence of the principle is to allow the taxpayer in one state to avail of more liberal provisions granted in another tax treaty to which the country of residence of such taxpayer is also a party provided that the subject matter of taxation, in this case royalty income, is the same as that in the tax treaty under which the taxpayer is liable. Both Article 13 of the RP-US Tax Treaty and Article 12 (2) (b) of the RP-West Germany Tax Treaty, above-quoted, speaks of tax on royalties for the use of trademark, patent, and technology. The entitlement of the 10% rate by U.S. firms despite the absence of a matching credit (20% for royalties) would derogate from the design behind the most grant equality of international treatment since the tax burden laid upon the income of the investor is not the same in the two countries. The similarity in the circumstances of payment of taxes is a condition for the enjoyment of most favored nation treatment precisely to underscore the need for equality of treatment.

ERICSSON TELECOMMUNICATIONS, INC., *Petitioner*, -versus – . CITY OF PASIG, represented by its City Mayor, Hon. Vicente P. Eusebio, et al., *Respondents.*
G.R. No. 176667, THIRD DIVISION, November 22, 2007, AUSTRIA-MARTINEZ, *J.:*

The imposition of local business tax based on petitioner's gross revenue will inevitably result in the constitutionally proscribed double taxation - taxing of the same person twice by the same jurisdiction for the same thing - inasmuch as petitioner's revenue or income for a taxable year will definitely include its gross receipts already reported during the previous year and for which local business tax has already been paid.

Thus, respondent committed a palpable error when it assessed petitioner's local business tax based on its gross revenue as reported in its audited financial statements, as Section 143 of the Local Government Code and Section 22(e) of the Pasig Revenue Code clearly provide that the tax should be computed based on gross receipts.

FACTS

Ericsson Telecommunications, Inc. (petitioner), a corporation with principal office in Pasig City, is engaged in the design, engineering, and marketing of telecommunication facilities/system. In an Assessment Notice dated October 25, 2000 issued by the City Treasurer of Pasig City, petitioner was assessed a business tax deficiency for the years 1998 and 1999 amounting to P9,466,885.00 and P4,993,682.00, respectively, based on its gross revenues as reported in its audited financial statements for the years 1997 and 1998. Petitioner filed a Protest dated December 21, 2000, claiming that the computation of the local business tax should be based on gross receipts and not on gross revenue.

The City of Pasig (respondent) issued another Notice of Assessment to petitioner on November 19, 2001, this time based on business tax deficiencies for the years 2000 and 2001, amounting to P4,665,775.51 and P4,710,242.93, respectively, based on its gross revenues for the years 1999 and 2000. Again, petitioner filed a Protest on January 21, 2002, reiterating its position that the local business tax should be based on gross receipts and not gross revenue.

Respondent denied petitioner's protest and gave the latter 30 days within which to appeal the denial. This prompted petitioner to file a Petition for Review with the Regional Trial Court (RTC) of Pasig, Branch 168, praying for the annulment and cancellation of petitioner's deficiency local business taxes totaling P17,262,205.66.

Respondent and its City Treasurer filed a motion to dismiss on the grounds that the court had no jurisdiction over the subject matter and that petitioner had no legal capacity to sue. The RTC denied the motion in an Order dated December 3, 2002 due to respondents' failure to include a notice of hearing. Thereafter, the RTC declared respondents in default and allowed petitioner to present evidence ex - parte.

The RTC canceled and set aside the assessments made by respondent and its City Treasurer. On appeal, the Court of Appeals (CA) sustained respondent's claim that the petition filed with the RTC should have been dismissed due to petitioner's failure to show that Atty. Maria Theresa B. Ramos (Atty. Ramos), petitioner's Manager for Tax and Legal Affairs and the person who signed the Verification and Certification of Non-Forum Shopping, was duly authorized by the Board of Directors.

Its motion for reconsideration having been denied, petitioner now comes before the Court via a Petition for Review on Certiorari under Rule 45 of the Rules of Court.

ISSUE

Whether the local business tax on contractors should be based on gross receipts.(YES)

RULING

Respondent assessed deficiency local business taxes on petitioner based on the latter's gross revenue as reported in its financial statements, arguing that gross receipts is synonymous with gross earnings/revenue, which, in turn, includes uncollected earnings. Petitioner, however, contends that only the portion of the revenues which were actually and constructively received should be considered in determining its tax base.

Respondent is authorized to levy business taxes under Section 143 in relation to Section 151 of the Local Government Code.

The law is clear. Gross receipts include money or its equivalent actually or constructively received in consideration of services rendered or articles sold, exchanged or leased, whether actual or constructive.

In *Commissioner of Internal Revenue v. Bank of Commerce*, the Court interpreted gross receipts as including those which were actually or constructively received, viz.:

Actual receipt of interest income is not limited to physical receipt. Actual receipt may either be physical receipt or constructive receipt. When the depository bank withholds the final tax to pay the tax liability of the lending bank, there is prior to the withholding a constructive receipt by the lending bank of the amount withheld. From the amount constructively received by the lending bank, the depository bank deducts the final withholding tax and remits it to the government for the account of the lending bank. Thus, the interest income actually received by the lending bank, both physically and constructively, is the net interest plus the amount withheld as final tax.

The concept of a withholding tax on income obviously and necessarily implies that the amount of the tax withheld comes from the income earned by the taxpayer. Since the amount of the tax withheld constitutes income earned by the taxpayer, then that amount manifestly forms part of the taxpayer's gross receipts. Because the amount withheld belongs to the taxpayer, he can transfer its ownership to the government in payment of his tax liability. The amount withheld indubitably comes from income of the taxpayer, and thus forms part of his gross receipts.

Further elaboration was made by the Court in *Commissioner of Internal Revenue v. Bank of the Philippine Islands*, in this wise:

Revenue Regulations No. 16-2005 dated September 1, 2005 defined and gave examples of "constructive receipt", to wit:

SEC. 4. 108-4. Definition of Gross Receipts. - - x x x

"Constructive receipt" occurs when the money consideration or its equivalent is placed at the control of the person who rendered the service without restrictions by the payor. The following are examples of constructive receipts:

(1) deposit in banks which are made available to the seller of services without restrictions;

(2) issuance by the debtor of a notice to offset any debt or obligation and acceptance thereof by the seller as payment for services rendered; and

(3) transfer of the amounts retained by the payor to the account of the contractor.

There is, therefore, constructive receipt, when the consideration for the articles sold, exchanged or leased, or the services rendered has already been placed under the control of the person who sold the goods or rendered the services without any restriction by the payor.

In contrast, gross revenue covers money or its equivalent actually or constructively received, including the value of services rendered or articles sold, exchanged or leased, the payment of which is yet to be received. This is in consonance with the International Financial Reporting Standards,21 which defines revenue as the gross inflow of economic benefits (cash, receivables, and other assets) arising from the ordinary operating activities of an enterprise (such as sales of goods, sales of services, interest, royalties, and dividends), which is measured at the fair value of the consideration received or receivable.

As aptly stated by the RTC:

"[R]evenue from services rendered is recognized when services have been performed and are billable." It is "recorded at the amount received or expected to be received." (Section E [17] of the Statements of Financial Accounting Standards No. 1).

In petitioner's case, its audited financial statements reflect income or revenue which accrued to it during the taxable period although not yet actually or constructively received or paid. This is because petitioner uses the accrual method of accounting, where income is reportable when all the events have occurred that fix the taxpayer's right to receive the income, and the amount can be determined with reasonable accuracy; the right to receive income, and not the actual receipt, determines when to include the amount in gross income.

The imposition of local business tax based on petitioner's gross revenue will inevitably result in the constitutionally proscribed double taxation - taxing of the same person twice by the same jurisdiction for the same thing - inasmuch as petitioner's revenue or income for a taxable year will definitely include its gross receipts already reported during the previous year and for which local business tax has already been paid.

Thus, respondent committed a palpable error when it assessed petitioner's local business tax based on its gross revenue as reported in its audited financial statements, as Section 143 of the Local Government Code and Section 22(e) of the Pasig Revenue Code clearly provide that the tax should be computed based on gross receipts.

NURSERY CARE CORPORATION; SHOEMART, INC.; STAR APPLIANCE CENTER, INC.; H&B, INC.; SUPPLIES STATION, INC.; and HARDWARE WORKSHOP, INC., *Petitioners,* -versus – ANTHONY ACEVEDO, in his capacity as THE TREASURER OF MANILA; and THE CITY OF MANILA, *Respondents.*

G.R. No. 180651, FIRST DIVISION, July 30, 2014, BERSAMIN, *J.:*

Double taxation means taxing the same property twice when it should be taxed only once; that is, "taxing the same person twice by the same jurisdiction for the same thing." It is obnoxious when the taxpayer is taxed twice, when it should be but once. Otherwise described as "direct duplicate taxation," the two taxes must be imposed on the same subject matter, for the same purpose, by the same taxing authority, within the same jurisdiction, during the same taxing period; and the taxes must be of the same kind or character.

Using the aforementioned test, the Court finds that there is indeed double taxation if respondent is subjected to the taxes under both Sections 14 and 21 of Tax Ordinance No. 7794, since these are being imposed: (1) on the same subject matter – the privilege of doing business in the City of Manila; (2) for the same purpose – to make persons conducting business within the City of Manila contribute tocity revenues; (3) by the same taxing authority – petitioner Cityof Manila; (4) within the same taxing jurisdiction – within the territorial jurisdiction of the City of Manila; (5) for the same taxing periods – per calendar year; and (6) of the same kind or character – a local business tax imposed on gross sales or receipts of the business.

FACTS

The City of Manila assessed and collected taxes from the individual petitioners pursuant to Section 15 (Tax on Wholesalers, Distributors, or Dealers) and Section 17 (Tax on Retailers) of the Revenue Code of Manila. At the same time, the City of Manila imposed additional taxes upon the petitioners pursuant to Section 21 of the Revenue Code of Manila, as amended, as a condition for the renewal of their respective business licenses for the year 1999. Section 21 of the Revenue Code of Manila stated:

Section 21. Tax on Business Subject to the Excise, Value-Added or Percentage Taxes under the NIRC - On any of the following businesses and articles of commerce subject to the excise, value-added or percentage taxes under the National Internal Revenue Code, hereinafter referred to as NIRC, as amended, a tax of FIFTY PERCENT (50%) OF ONE PERCENT (1%) per annum on the gross sales or receipts of the preceding calendar year is hereby imposed:

A) On person who sells goods and services in the course of trade or businesses; x x x PROVIDED, that all registered businesses in the City of Manila already paying the aforementioned tax shall be exempted from payment thereof.

To comply with the City of Manila's assessmentof taxes under Section 21, supra, the petitioners paid under protest the following amounts corresponding to the first quarter of 1999.

By letter, the petitioners formally requested the Office of the City Treasurer for the tax credit or refund of the local business taxes paid under protest. However, then City Treasurer Anthony Acevedo (Acevedo) denied the request as well as the reconsideration.

Thereafter, petitioners filed their respective petitions for certiorari in the Regional Trial Court (RTC) in Manila which dismissed the petitions. Upon appeal, the Court of Appeals dismissed the instant petition for lack of jurisdiction. The petitioners moved for reconsideration, but the CA denied their motion.

ISSUE

Whether the additional business tax under Section 21 of Ordinance No. 7794 is constitutive of double taxation. (YES)

RULING

Double taxation means taxing the same property twice when it should be taxed only once; that is, "taxing the same person twice by the same jurisdiction for the same thing." It is obnoxious when the taxpayer is taxed twice, when it should be but once. Otherwise described as "direct duplicate taxation," the two taxes must be imposed on the same subject matter, for the same purpose, by the same taxing authority, within the same jurisdiction, during the same taxing period; and the taxes must be of the same kind or character.

Using the aforementioned test, the Court finds that there is indeed double taxation if respondent is subjected to the taxes under both Sections 14 and 21 of Tax Ordinance No. 7794, since these are being imposed: (1) on the same subject matter – the privilege of doing business in the City of Manila; (2) for the same purpose – to make persons conducting business within the City of Manila contribute tocity revenues; (3) by the same taxing authority – petitioner Cityof Manila; (4) within the same taxing jurisdiction – within the territorial jurisdiction of the City of Manila; (5) for the same taxing periods – per calendar year; and (6) of the same kind or character – a local business tax imposed on gross sales or receipts of the business.

The distinction petitioners attempt to make between the taxes under Sections 14 and 21 of Tax Ordinance No. 7794 is specious. The Court revisits Section 143 of the LGC, the very source of the power of municipalities and cities to impose a local business tax, and to which any local business tax imposed by petitioner City of Manila must conform. It is apparent from a perusal thereof that when a municipality or city has already imposed a business tax on manufacturers, etc.of liquors, distilled spirits, wines, and any other article of commerce, pursuant to Section 143(a) of the LGC, said municipality or city may no longer subject the same manufacturers, etc.to a business tax under Section 143(h) of the same Code. Section 143(h) may be imposed only on businesses that are subject to excise tax, VAT, or percentagetax under the NIRC, and that are "not otherwise specified in preceding paragraphs." In the same way, businesses such as respondent's, already subject to a local business tax under Section 14 of Tax Ordinance No. 7794 [which is based on Section 143(a) of the LGC], can no longer be made liable for local business tax under Section 21 of the same Tax Ordinance [which is based on Section 143(h) of the LGC].

Based on the foregoing reasons, petitioner should not have been subjected to taxes under Section 21 of the ManilaRevenue Code for the fourth quarter of 2001, considering thatit had already been paying local business tax under Section 14 of the same ordinance.

x x x x

Accordingly, respondent's assessment under both Sections 14 and 21 had no basis. Petitioner is indeed liable to pay business taxes to the City of Manila; nevertheless, considering that the former has already paid these taxes under Section 14 of the Manila Revenue Code, it is exempt from the same payments under Section 21 of the same code. Hence, payments made under Section 21 must be refunded in favor of petitioner.

On the basis of the rulings in *Coca-Cola Bottlers Philippines, Inc*. and *Swedish Match Philippines, Inc*., the Court now holds that all the elements of double taxation concurred upon the City of Manila's assessment on and collection from the petitioners of taxes for the first quarter of 1999 pursuant to Section 21 of the Revenue Code of Manila.

Firstly, because Section 21 of the Revenue Code of Manila imposed the tax on a person who sold goods and services in the course of trade or business based on a certain percentage ofhis gross sales or receipts in the preceding calendar year, while Section 15 and Section 17 likewise imposed the tax on a person who sold goods and services in the course of trade or business but only identified such person with particularity, namely, the wholesaler, distributor or dealer (Section 15), and the retailer (Section 17), all the taxes – being imposed on the privilege of doing business in the City of Manila in order to make the taxpayers contribute to the city's revenues – were imposed on the same subject matter and for the same purpose.

Secondly, the taxes were imposed by the same taxing authority (the City of Manila) and within the same jurisdiction in the same taxing period (i.e., per calendar year).

Thirdly, the taxes were all in the nature of local business taxes.

We note that although *Coca-Cola Bottlers Philippines, Inc*. and *Swedish Match Philippines, Inc.* involved Section 21 vis-à-vis Section 14 (Tax on Manufacturers, Assemblers and Other Processors)39 of the Revenue Code of Manila, the legal principles enunciated therein should similarly apply because Section 15 (Tax on Wholesalers, Distributors, or Dealers)and Section 17 (Tax on Retailers) of the Revenue Code of Manila imposed the same nature of tax as that imposed under Section 14, i.e., local business tax, albeit on a different subject matter or group of taxpayers.

In fine, the imposition of the tax under Section 21 of the Revenue Code of Manila constituted double taxation, and the taxes collected pursuant thereto must be refunded.

COMMISSIONER OF INTERNAL REVENUE, *petitioner* -versus- S.C. JOHNSON AND SON, INC., and COURT OF APPEALS, *respondents.*

G.R. No. 127105, THIRD DIVISION, June 25, 1999, GONZAGA-REYES, *J.*

In the case at bar, the state of source is the Philippines because the royalties are paid for the right to use property or rights, i.e. trademarks, patents and technology, located within the Philippines. The United States is the state of residence since the taxpayer, S. C. Johnson and Son, U. S. A., is based there. Under the RP-US Tax Treaty, the state of residence and the state of source are both permitted to tax the royalties, with a restraint on the tax that may be collected by the state of source. Furthermore, the method employed to give relief from double taxation is the allowance of a tax credit to citizens or residents of the United States (in an appropriate amount based upon the taxes paid or accrued to the Philippines) against the United States tax, but such amount shall not exceed the limitations provided by United States law for the taxable year.

FACTS:

Respondent is a domestic corporation organized and operating under the Philippine Laws, entered into a licensed agreement with the SC Johnson and Son, USA, a non-resident foreign corporation based in the USA pursuant to which the respondent was granted the right to use the trademark, patents and technology owned by the latter including the right to manufacture, package and distribute the products covered by the Agreement and secure assistance in management, marketing and production from SC Johnson and Son USA.

For the use of trademark or technology, respondent was obliged to paySC Johnson and Son, USA royalties based on a percentage of net sales and subjected the same to 25% withholding tax on royalty payments which respondent paid for the period covering July 1992 to May 1993 in the total amount of P1,603,443.00.

On October 29, 1993, respondent filed with the International Tax Affairs Division (ITAD) of the BIR a claim for refund of overpaid withholding tax on royalties arguing that, the antecedent facts attending respondents case fall squarely within the same circumstances under which said MacGeorge and Gillette rulings were issued. Since the agreement was approved by the Technology Transfer Board, the preferential tax rate of 10% should apply to the respondent. So, royalties paid by the respondent to SC Johnson and Son, USA is only subject to 10% withholding tax. The Commissioner did not act on said claim for refund. Private respondent SC Johnson & Son, Inc. then filed a petition for review before the CTA, to claim a refund of the overpaid withholding tax on royalty payments from July 1992 to May 1993. On May 7, 1996, the CTA rendered its decision in favor of SC Johnsonand ordered the CIR to issue a tax credit certificate in the amount of P163,266.00 representing overpaid withholding tax on royalty payments beginning July 1992 to May 1993.

The CIR thus filed a petition for review with the CA which rendered the decision subject of this appeal on November 7, 1996 finding no merit in the petition and affirming in toto the CTA ruling.

With respect to the merits of this petition, the main point of contention in this appeal is the interpretation of Article 13 (2) (b) (iii) of the RP-US Tax Treaty regarding the rate of tax to be imposed by the Philippines upon royalties received by a nonresident foreign corporation. Respondent S. C. Johnson and Son, Inc. claims that it is entitled to the concessional tax rate of 10 percent on royalties based on Article 12 (2) (b) of the RP-Germany Tax Treaty. For as long as the transfer of technology, under Philippine law, is subject to approval, the limitation of the tax rate mentioned under b) shall, in the case of royalties arising in the Republic of the Philippines, only apply if the contract giving rise to such royalties has been approved by the Philippine competent authorities. Unlike the RP-US Tax Treaty, the RP-Germany Tax Treaty allows a tax credit of 20 percent of the gross amount of such royalties against German income and corporation tax for the taxes payable in the Philippines on such royalties where the tax rate is reduced to 10 or 15 percent under such treaty. According to petitioner, the taxes upon royalties under the RP-US Tax Treaty are not paid under circumstances similar to those in the RP-West Germany Tax Treaty since there is no provision for a 20 percent matching credit in the former convention and private respondent cannot invoke the concessional tax rate on the strength of the most favored nation clause in the RP-US Tax Treaty. Therefore, the "most favored nation" clause in the RP-West Germany Tax Treaty cannot be availed of in interpreting the provisions of the RP-US Tax Treaty's

ISSUE:

Respondent S. C. Johnson and Son, Inc. claims that it is entitled to the concessional tax rate of 10 percent on royalties based on Article 12 (2) (b) of the RP-Germany Tax Treaty. (NO)

RULING:

We are unable to sustain the position of the Court of Tax Appeals, which was upheld by the Court of Appeals, that the phrase "paid under similar circumstances in Article 13 (2) (b), (iii) of the RP-US Tax Treaty should be interpreted to refer to payment of royalty, and not to tile payment of the tax, for the reason that the phrase "paid under similar circumstances" is followed by the phrase "to a resident of a third state". The respondent court held that ''Words are to be understood in the context in which they are used", and since what is paid to a resident of a third state is not a tax but a royalty "logic instructs" that the treaty provision in question should refer to royalties of the same kind paid under similar circumstances.

The above construction is based principally on syntax or sentence structure but fails to take into account the purpose animating the treaty provisions in point. To begin with, we are not aware of any law or rule pertinent to the payment of royalties, and none has been brought to our attention, which provides for the payment of royalties under dissimilar circumstances. The tax rates on royalties and the circumstances of payment thereof are the same for all the recipients of such royalties and there is no disparity based on nationality in the circumstances of such payment. On the other hand, a cursory reading of the various tax treaties will show that there is no similarity in the provisions on relief from or avoidance of double taxation as this is a matter of negotiation between the contracting parties. *As* will be shown later, this dissimilarity is true particularly in the treaties between the Philippines and the United States and between the Philippines and West Germany.

The RP-US Tax Treaty is just one of a number of bilateral treaties which the Philippines has entered into for the avoidance of double taxation. The purpose of these international agreements is to reconcile the national fiscal legislations of the contracting parties in order to help the taxpayer avoid simultaneous taxation in two different jurisdictions. More precisely, the tax conventions are drafted with a view towards the elimination of international juridical double taxation, which is defined as the imposition of comparable taxes in two or more states on the same taxpayer in respect of the same subject matter and for identical periods. The apparent rationale for doing away with double taxation is of encourage the free flow of goods and services and the movement of capital, technology and persons between countries, conditions deemed vital in creating robust and dynamic economies. Foreign investments will only thrive in a fairly predictable and reasonable international investment climate and the protection against double taxation is crucial in creating such a climate.

Double taxation usually takes place when a person is resident of a contracting state and derives income from, or owns capital in, the other contracting state and both states impose tax on that income or capital. In order to eliminate double taxation, a tax treaty resorts to several methods. First, it sets out the respective rights to tax of the state of source or situs and of the state of residence with regard to certain classes of income or capital. In some cases, an exclusive right to tax is conferred on one of the contracting states; however, for other items of income or capital, both states are given the right to tax, although the amount of tax that may be imposed by the state of source is limited.

The second method for the elimination of double taxation applies whenever the state of source is given a full or limited right to tax together with the state of residence. In this case, the treaties make it incumbent upon the state of residence to allow relief in order to avoid double taxation. There are two methods of relief - the exemption method and the credit method. In the exemption method, the income or capital which is taxable in the state of source or situs is exempted in the state of residence, although in some instances it may be taken into account in determining the rate of tax applicable to the taxpayer's remaining income or capital. On the other hand, in the credit method, although the income or capital which is taxed in the state of source is still taxable in the state of residence, the tax paid in the former is credited against the tax levied in the latter. The basic difference between the two methods is that in the exemption method,the focus is on the income or capital itself, whereas the credit method focuses upon the tax.

In negotiating tax treaties, the underlying rationale for reducing the tax rate is that the Philippines will give up a part of the tax in the expectation that the tax given up for this particular investment is not taxed by the other country. Thus the petitioner correctly opined that the phrase "royalties paid under similar circumstances" in the most favored nation clause of the US-RP Tax Treaty necessarily contemplated "circumstances that are tax-related".

In the case at bar, the state of source is the Philippines because the royalties are paid for the right to use property or rights, i.e. trademarks, patents and technology, located within the Philippines. The United States is the state of residence since the taxpayer, S. C. Johnson and Son, U. S. A., is based there. Under the RP-US Tax Treaty, the state of residence and the state of source are both permitted to tax the royalties, with a restraint on the tax that may be collected by the state of source. Furthermore, the method employed to give relief from double taxation is the allowance of a tax credit to citizens or residents of the United States (in an appropriate amount based upon the taxes paid or accrued to the Philippines) against the United States tax, but such amount shall not exceed the limitations provided by United States law for the taxable year. Under Article 13 thereof, the Philippines may impose one of three rates - 25 percent of the gross amount of the royalties; 15 percent when the royalties are paid by a corporation registered with the Philippine Board of Investments and engaged in preferred areas of activities; or the lowest rate of Philippine tax that may be imposed on royalties of the same kind paid under similar circumstances to a resident of a third state.

Given the purpose underlying tax treaties and the rationale for the most favored nation clause, the concessional tax rate of 10 percent provided for in the RP-Germany Tax Treaty should apply only if the taxes imposed upon royalties in the RPUS Tax Treaty and in the RP-Germany Tax Treaty are paid under similar circumstances. This would mean that private respondent must prove that the RP-US Tax Treaty grants similar tax reliefs to residents of the United States in respect of the taxes imposable upon royalties earned from sources within the Philippines as those allowed to their German counterparts under the RPGermany Tax Treaty.

The RP-US and the RP-West Germany Tax Treaties do not contain similar provisions on tax crediting. Article 24 of the RPGermany Tax Treaty, *supra,* expressly allows crediting against German income and corporation tax of 20% of the gross amount of royalties paid under the law of the Philippines. On the other hand, Article 23 of the RP-US Tax Treaty, which is the counterpart provision with respect to relief for double taxation, does not provide for similar crediting of 20% of the gross amount of royalties paid.

The reason for construing the phrase "paid under similar circumstances" as used in Article 13 (2) (b) (iii) of the RP-US Tax Treaty as referring to taxes is anchored upon a logical reading of the text in the light of the fundamental purpose of such treaty which is to grant an incentive to the foreign investor by lowering the tax and at the same time crediting against the domestic tax abroad a figure higher than what was collected in the Philippines.

As stated earlier, the ultimate reason for avoiding double taxation is to encourage foreign investors to invest in the Philippines - a crucial economic goal for developing countries. The goal of double taxation conventions would be thwarted if such treaties did not provide for effective measures to minimize, if not completely eliminate, the tax burden laid upon the income or capital of the investor.

The purpose of a most favored nation clause is to grant to the contracting party treatment not less favorable than that which has been or may be granted to the "most favored" among other countries. The most favored nation clause is intended to establish the principle of equality of international treatment by providing that the citizens or subjects of the contracting nations may enjoy the privileges accorded by either party to those of the most favored nation. The essence of the principle is to allow the taxpayer in one state to avail of more liberal provisions granted in another tax treaty to which the country of residence of such taxpayer is also a party provided that the subject matter of taxation, in this case royalty income, is the same as that in the tax treaty under which the taxpayer is liable. Both Article 13 of the RP-US Tax Treaty and Article 12 (2) (b) of the RP-West Germany Tax Treaty, above-quoted, speaks of tax on royalties for the use of trademark, patent, and technology. The entitlement of the 10% rate by U.S. firms despite the absence of a matching credit (20% for royalties) would derogate from the design behind the most grant equality of international treatment since the tax burden laid upon the income of the investor is not the same in the two countries. The similarity in the circumstances of payment of taxes is a condition for the enjoyment of most favored nation treatment precisely to underscore the need for equality of treatment.

We accordingly agree with petitioner that since the RP-US Tax Treaty does not give a matching tax credit of 20 percent for the taxes paid to the Philippines on royalties as allowed under the RP-West Germany Tax Treaty, private respondent cannot be deemed entitled to the 10 percent rate granted under the latter treaty for the reason that there is no payment of taxes on royalties under similar circumstances. It bears stress that tax refunds are in the nature of tax exemptions. As such they are regarded as in derogation of sovereign authority and to be construed *strictissimi* juris against the person or entity claiming the exemption. The burden of proof is upon him who claims the exemption in his favor and he must be able to justify his claim by the clearest grant of organic or statute law. Private respondent is claiming for a refund of the alleged overpayment of tax on royalties; however, there is nothing on record to support a claim that the tax on royalties under the RP-US Tax Treaty is paid under similar circumstances as the tax on royalties under the RP-West Germany Tax Treaty.

LA SUERTE CIGAR & CIGARETTE FACTORY, *Petitioner* -versus- COURT OF APPEALS and COMMISSIONER OF INTERNAL REVENUE, *Respondents.*

G.R. No. 125346, EN BANC, November 11, 2014, LEONEN, J.

Stemmed leaf tobacco is subject to the specific tax under Section 141(b). It is a partially prepared tobacco. The removal of the stem or midrib from the leaf tobacco makes the resulting stemmed leaf tobacco a prepared or partially prepared tobacco. Since the Tax Code contained no definition of "partially prepared tobacco," then the term should be construed in its general, ordinary, and comprehensive sense. However, importation of stemmed leaf tobacco is not included in the exemption under Section 137. The transaction contemplated in Section 137 does not include importation of stemmed leaf tobacco for the reason that the law uses the word "sold" to describe the transaction of transferring the raw materials from one manufacturer to another. Finally, excise taxes are essentially taxes on property because they are levied on certain specified goods or articles manufactured or produced in the Philippines for domestic sale or consumption or for any other disposition, and on goods imported. In this case, there is no double taxation in the prohibited sense despite the fact that they are paying the specific tax on the raw material and on the finished product in which the raw material was a part, because the specific tax is imposed by explicit provisions of the Tax Code on two different articles or products: (1) on the stemmed leaf tobacco; and (2) on cigar or cigarette.

Facts:

In G.R. No. 125346, La Suerte received on January 3, 1990 a letter from then Commissioner Jose U. Ong demanding the payment of P34,934,827.67 as deficiency excise tax on La Suerte's entire importation and local purchase of stemmed leaf tobacco for the period covering January 1, 1986 to June 30, 1989.

On January 12, 1990, La Suerte protested the excise tax deficiency assessment but was denied by the Commissioner. The Court of Appeals Sixth Division ruled against La Suerte. This prompted La Suerte to file a motion for reconsideration, which was denied by the Court of Appeals.

In G.R. No. 136328–29, a letter dated November 24, 1989 was received by Fortune demanding the payment of deficiency excise tax in the amount of P28,938,446.25 for its importation of tobacco strips from January 1, 1986 to June 30, 1989. Fortune requested for reconsideration, which was denied by the Commissioner. Undaunted, Fortune appealed to the Court of Tax Appeals which ruled in its favor.

In G.R. No. 144942, La Suerte imported on April 1995, stemmed leaf tobacco from various sellers abroad. The Commissioner assessed specific taxes on the stemmed leaf tobacco in the amount of P175,909.50, which La Suerte paid under protest. Consequently, La Suerte filed a claim for refund with the Commissioner, who failed to act on the same. Undeterred, La Suerte appealed to the Court of Tax Appeals, which in its March 9, 1999 decision, ruled in its favor.

The Commissioner appealed to the Court of Appeals Third Division, which affirmed the decision of the Court of Tax Appeals. The Commissioner then filed the instant petition for review.
In G.R. No. 148605, Sterling received on January 12, 1990 a pre-assessment notice for alleged deficiency excise tax on its importation and local purchase of stemmed-leaf tobacco for P5,187,432.00 covering the period from November 1986 to January 1989." Sterling filed its protest. The Commissioner denied the protest with finality.

The Court of Tax Appeals rendered its decision ordering the cancellation of the assessment for deficiency excise tax. The CA Ninth Division, rendered a decision reversing the Court of Tax Appeals.
In G.R. No. 158197, the Commissioner sent a pre-assessment notice to La Suerte demanding payment of P11,757,275.25 as deficiency specific tax on its local purchases and importations and on the sale of stemmed leaf tobacco during the period from September 14, 1989 to November 20, 1990. On February 8, 1991, La Suerte received the formal assessment letter of the Commissioner. La Suerte filed its protest which was denied by the Commisioner with finality. The Court of Appeals reversed the decision of the Court of Tax Appeals.

Finally, in G.R. No. 165499, the Commissioner of Internal Revenue on various dates in March 1995, collected from La Suerte the aggregate amount of P325,410.00 for specific taxes on La Suerte's bulk purchases of stemmed-leaf tobacco from foreign tobacco manufacturers. La Suerte paid the said amount under protest. On September 27, 1996 and October 2, 1996, La Suerte instituted with the Commissioner of Internal Revenue and with Revenue District No. 52, a claim for refund of specific taxes said to have been erroneously paid on its importations of stemmed-leaf tobacco for the period of November 1994 up to May 1995.

Inasmuch as its claim for refund was not acted upon by Lasuerte and in order to toll the running of the two-year reglementary period within which to file a judicial claim for such refund as provided under Section 229 of the 1997 National Internal Revenue Code, as amended, La Suerte filed on February 8, 1997 a petition for review with the CTA which granted its petition. On appeal, the Court of Appeals Fourth Division reversed the Court of Tax Appeals' ruling. It also denied La Suerte's motion for reconsideration. Hence, this petition was filed.

The cigarette manufacturers argues that since Section 137 of the 1986 Tax Code and Section 20(a) of RR No. V-39 do not distinguish "as to the type of manufacturer that may sell stemmed-leaf tobacco without the prepayment of specific tax[,] [t]he logical conclusion is that any kind of tobacco manufacturer is entitled to this treatment. The authority of the Secretary of Finance to prescribe the "conditions" refers only to procedural matters and should not curtail or modify the substantive right granted by the law.

Moreover, the cigarette manufacturers contend that Section 132 does not operate as a tax exemption because prepayment means payment of obligation in advance or before it is due. Consequently, the rules of construction on tax exemption do not apply.

On the other hand, PAL argues that under Section 141(b), partially prepared or manufactured tobacco is subject to specific tax." The definition of "partially manufactured tobacco" in Section 2(m) of RR No. 17-67 includes stemmed leaf tobacco; hence, stemmed leaf tobacco is subject to specific tax.. Imported stemmed leaf tobacco is also subject to specific tax under Section 141(b) in relation to Section 128 of the 1977 Tax Code. Also, PAL posits that there is no double taxation in the prohibited sense even if specific tax is also imposed on the finished product of which stemmed leaf tobacco is a raw material..

Finally, PAL contends that under Section 127, if domestic products are removed from the place of production without payment of the excise taxes due thereon, it is not required that the tax be collected first from the manufacturer or producer before the possessor thereof shall be liable.

Issues:

1. Whether stemmed leaf tobacco is subject to excise (specific) tax under Section 141 of the 1986 Tax Code. (YES)
2. Whether stemmed leaf tobacco imported by La Suerte, Fortune, and Sterling is exempt from specific tax under Section 137 of the 1986 Tax Code. (YES)
3. Whether the imposition of excise tax on stemmed leaf tobacco under Section 141 of the 1986 Tax Code constitutes double taxation. (NO)
4. Whether or not La Suerte are doubly taxed? (NO)

Ruling:

1. Yes, Section 141 subjects partially prepared tobacco, such as stemmed leaf tobacco, to excise tax.
It is evident that when tobacco is harvested and processed either by hand or by machine, all its products become subject to specific tax. Section 141 reveals the legislative policy to tax all forms of manufactured tobacco — in contrast to raw tobacco leaves — including tobacco refuse or all other tobacco which has been cut, split, twisted, or pressed and is capable of being smoked without further industrial processing.

Stemmed leaf tobacco is subject to the specific tax under Section 141(b). It is a partially prepared tobacco. The removal of the stem or midrib from the leaf tobacco makes the resulting stemmed leaf tobacco a prepared or partially prepared tobacco.

Since the Tax Code contained no definition of "partially prepared tobacco," then the term should be construed in its general, ordinary, and comprehensive sense. RR No. 17-67, as amended, supplements the law by delineating what products of tobacco are "prepared or manufactured" and "partially prepared or partially manufactured."

We do not agree with the argument of petitioner that while RR No. 17-67 defines stemmed leaf tobacco as handstripped tobacco of clean, good, partially broken leaf only, free from mold and dust, Section 137 defines it as leaf tobacco which has had the stem or midrib removed; that the term does not include broken leaf tobacco.

Different definitions of the term "stemmed leaf" are unavoidable, especially considering that Section 2(m)(1) is an implementing regulation of Act No. 2613, which was enacted in 1916 for purposes of improving the quality of Philippine tobacco products, while Section 137 defines the tobacco product only for the purpose of exempting it from the specific tax. Whichever definition is adopted, there is no doubt that stemmed leaf tobacco is a partially prepared tobacco.

The onus of proving that stemmed leaf tobacco is not subject to the specific tax lies with the cigarette manufacturers. Taxation is the rule, exemption is the exception. Accordingly, statutes granting tax exemptions must be construed in strictissimi juris against the taxpayer and liberally in favor of the taxing authority. The cigarette manufacturers must justify their claim by a clear and categorical provision in the law. Otherwise, they are liable for the specific tax on stemmed leaf tobacco found in their possession pursuant to Section 127163 of the 1986 Tax Code, as amended.

2. Yes, stemmed leaf tobacco transferred in bulk between cigarette manufacturers are exempt from excise tax.

In the instant case, an exemption on the taxability of stemmed leaf tobacco is found in
Section 137, which provides the following SEC. 137. Removal of tobacco products without prepayment of tax. – Products of tobacco entirely unfit for chewing or smoking may be removed free of tax for agricultural or industrial use, under such conditions as may be prescribed in the regulations of the Ministry of Finance. Stemmed leaf tobacco, fine-cut shorts, the refuse of fine-cut chewing tobacco, scraps, cuttings, clippings, stems or midribs, and sweepings of tobacco may be sold in bulk as raw material by one manufacturer directly to another, without payment of the tax under such conditions as may be prescribed in the regulations of the Ministry of Finance.

'Stemmed leaf tobacco,' as herein used, means leaf tobacco which has had the stem or midrib removed. The term does not include broken leaf tobacco.

Section 137 authorizes a tax exemption subject to the following: (1) that the stemmed leaf tobacco is sold in bulk as raw material by one manufacturer directly to another; and (2) that the sale or transfer has complied with the conditions prescribed by the Department of Finance.

Moreover, under Section 3(h) of RR No. 17-67, entities that were issued by the Bureau of Internal Revenue with an L-7 permit refer to "manufacturers of tobacco products." Hence, the transferor and transferee of the stemmed leaf tobacco must be an L-7 tobacco manufacturer.

Such construction is consistent with the rule that tax exemptions, deemed to be in derogation of the state's sovereign right of taxation, are strictly applied and may be granted only under clear and unmistakable terms of the law and not merely upon a vague implication or inference.

3. No, importation of stemmed leaf tobacco is not included in the exemption under Section 137.

The transaction contemplated in Section 137 does not include importation of stemmed leaf tobacco for the reason that the law uses the word "sold" to describe the transaction of transferring the raw materials from one manufacturer to another.

The Tax Code treats an importer and a manufacturer differently. Section 123 clearly distinguishes between goods manufactured or produced in the Philippines and things imported. Whenever the Tax Code refers to importers and manufacturers, they are separately mentioned as two distinct persons or entities.

Moreover, foreign manufacturers of tobacco products not engaged in trade or business in the Philippines cannot be designated as L-7 since these are beyond the pale of Philippine law and regulations. The factories contemplated are those located or operating only in the Philippines.

4. No, Petitioners are not doubly taxed.

Contrary to the contention of the manufacturers, the fact that they are paying the specific tax on the raw material and on the finished product in which the raw material was a part does not mean that they are doubly taxed.

For double taxation in the objectionable or prohibited sense to exist, the same property must be taxed twice, when it should be taxed but once. Both taxes must be imposed on the same property or subject- matter, for the same purpose, by the same . . . taxing authority, within the same jurisdiction or taxing district, during the same taxing period, and they must be the same kind or character of tax.

At all events, there is no constitutional prohibition against double taxation in the Philippines. In the case at hand, excise taxes are essentially taxes on property because they are levied on certain specified goods or articles manufactured or produced in the Philippines for domestic sale or consumption or for any other disposition, and on goods imported. In this case, there is no double taxation in the prohibited sense because the specific tax is imposed by explicit provisions of the Tax Code on two different articles or products: (1) on the stemmed leaf tobacco; and (2) on cigar or cigarette.

EUSEBIO VILLANUEVA, ET AL., *plaintiff-appellee* -versus- CITY OF ILOILO, defendants-*appellants.*
G.R. No. L-26521, EN BANC, December 28, 1968, CASTRO, *J.*

The contention that the plaintiffs-appellees are doubly taxed because they are paying the real estate taxes and the tenement tax imposed by the ordinance in question, is also devoid of merit. It is a well-settled rule that a license tax may be levied upon a business or occupation although the land or property used in connection therewith is subject to property tax. The State may collect an ad valorem tax on property used in a calling, and at the same time impose a license tax on that calling, the imposition of the latter kind of tax being in no sense a double tax.

FACTS:

On September 30, 1946 the municipal board of Iloilo City enacted Ordinance 86, imposing license tax fees as follows: (1) tenement house (casa de vecindad), P25.00 annually; (2) tenement house, partly or wholly engaged in or dedicated to business in the streets of J.M. Basa, Iznart and Aldeguer, P24.00 per apartment; (3) tenement house, partly or wholly engaged in business in any other streets, P12.00 per apartment. The validity and constitutionality of this ordinance were challenged by the spouses Eusebio Villanueva and Remedies Sian Villanueva, owners of four tenement houses containing 34 apartments. This Court, in *City of Iloilo vs. Remedios Sian Villanueva and Eusebio Villanueva*, L-12695, March 23, 1959, declared the ordinance *ultra vires*, "it not appearing that the power to tax owners of tenement houses is one among those clearly and expressly granted to the City of Iloilo by its Charter."

On January 15, 1960 the municipal board of Iloilo City, believing, obviously, that with the passage of Republic Act 2264, otherwise known as the Local Autonomy Act, it had acquired the authority or power to enact an ordinance similar to that previously declared by this Court as *ultra vires*, enacted Ordinance 11, series of 1960.

In Iloilo City, the appellees Eusebio Villanueva and Remedios S. Villanueva are owners of five tenement houses, aggregately containing 43 apartments, while the other appellees and the same Remedios S. Villanueva are owners of ten apartments. Each of the appellees' apartments has a door leading to a street and is rented by either a Filipino or Chinese merchant. The first floor is utilized as a store, while the second floor is used as a dwelling of the owner of the store. Eusebio Villanueva owns, likewise, apartment buildings for rent in Bacolod, Dumaguete City, Baguio City and Quezon City, which cities, according to him, do not impose tenement or apartment taxes.

By virtue of the ordinance in question, the appellant City collected from spouses Eusebio Villanueva and Remedios S. Villanueva, for the years 1960-1964, the sum of P5,824.30, and from the appellees Pio Sian Melliza, Teresita S. Topacio, and Remedios S. Villanueva, for the years 1960-1964, the sum of P1,317.00. Eusebio Villanueva has likewise been paying real estate taxes on his property.

On July 11, 1962 and April 24, 1964, the plaintiffs-appellees filed a complaint, and an amended complaint, respectively, against the City of Iloilo, in the aforementioned court, praying that Ordinance 11, series of 1960, be declared "invalid for being beyond the powers of the Municipal Council of the City of Iloilo to enact, and unconstitutional for being violative of the rule as to uniformity of taxation and for depriving said plaintiffs of the equal protection clause of the Constitution," and that the City be ordered to refund the amounts collected from them under the said ordinance.

The trial court condemned the ordinance as constituting "not only double taxation but treble at that," because "buildings pay real estate taxes and also income taxes as provided for in Sec. 182 (A) (3) (s) of the National Internal Revenue Code, besides the tenement tax under the said ordinance."

ISSUE:

Is Ordinance 11, series of 1960, of the City of Iloilo, illegal because it imposes double taxation? (NO)

RULING:

Obviously, what the trial court refers to as "income taxes" are the fixed taxes on business and occupation provided for in section 182, Title V, of the National Internal Revenue Code, by virtue of which persons engaged in "leasing or renting property, whether on their account as principals or as owners of rental property or properties," are considered "real estate dealers" and are taxed according to the amount of their annual income.

While it is true that the plaintiffs-appellees are taxable under the aforesaid provisions of the National Internal Revenue Code as real estate dealers, and still taxable under the ordinance in question, the argument against double taxation may not be invoked. The same tax may be imposed by the national government as well as by the local government. There is nothing inherently obnoxious in the exaction of license fees or taxes with respect to the same occupation, calling or activity by both the State and a political subdivision thereof.

The contention that the plaintiffs-appellees are doubly taxed because they are paying the real estate taxes and the tenement tax imposed by the ordinance in question, is also devoid of merit. It is a well-settled rule that a license tax may be levied upon a business or occupation although the land or property used in connection therewith is subject to property tax. The State may collect an ad valorem tax on property used in a calling, and at the same time impose a license tax on that calling, the imposition of the latter kind of tax being in no sensea double tax.

"In order to constitute double taxation in the objectionable or prohibited sense the same property must be taxed twice when it should be taxed but once; both taxes must be imposed on the same property or subject-matter, for the same purpose, by the same State, Government, or taxing authority, within the same jurisdiction or taxing district, during the same taxing period, and they must be the same kind or character of tax." It has been shown that a real estate tax and the tenement tax imposed by the ordinance, although imposed by the sametaxing authority, are not of the same kind or character.

At all events, there is no constitutional prohibition against double taxation in the Philippines. It is something not favored, but is permissible, provided some other constitutional requirement is not thereby violated, such as the requirement that taxes must be uniform.

COMPAÑIA GENERAL DE TABACOS DE FILIPINAS, *plaintiff-appellee* -versus- CITY OF MANILA, ET AL., *defendants-appellants.*
G.R. No. L-16619, EN BANC, June 29, 1963, DIZON, *J.*

That Tabacalera is being subjected to double taxation is more apparent than real. As already stated what is collected under Ordinance No. 3358 is a license fee for the privilege of engaging in the sale of liquor, a calling in which — it is obvious — not anyone or anybody may freely engage, considering that the sale of liquor indiscriminately may endanger public health and morals. On the other hand, what the three ordinances mentioned heretofore impose is a tax for revenue purposes based on the sales made of the same article or merchandise. It is already settled in this connection that both a license fee and a tax may be imposed on the same business or occupation, or for selling the same article, this not being in violation of the rule against double taxation

FACTS:

Appellee Compania General de Tabacos de Filipinas — hereinafter referred to simply as Tabacalera — filed this action in the Court of First Instance of Manila to recover from appellants, City of Manila and its Treasurer, Marcelino Sarmiento — also hereinafter referred to as the City — the sum of P15,280.00 allegedly overpaid by it as taxes on its wholesale and retail sales of liquor for the period from the third quarter of 1954 to the second quarter of 1957, inclusive, under Ordinances Nos. 3634, 3301, and 3816.

Tabacalera, as a duly licensed first class wholesale and retail liquor dealer paid the City the fixed *license fees* prescribed by Ordinance No. 3358 for the years 1954 to 1957, inclusive, and, as a wholesale and retail dealer of general merchandise, it also paid the *sales taxes* required by Ordinances Nos. 3634, 3301, and 3816.*1äwphï1.ñët*

In its sworn statements of wholesale, retail, and grocery sales of *general merchandise* from the third quarter of 1954 to the second quarter of 1957, inclusive, Tabacalera included its *liquor sales* of the same period, and it is not denied that of the taxes it paid on all its *sales of general merchandise*, the sum of P15,280.00 subject to the action represents the tax corresponding to the *liquor* sales aforesaid.

Tabacalera's action for refund is based on the theory that, in connection with its *liquor sales*, it should pay the license fees prescribed by Ordinance No. 3358 but not the municipal sales taxes imposed by Ordinances Nos. 3634, 3301, and 3816; and since it already paid the license fees aforesaid, the sales taxes paid by it — amounting to the sum of P15,208.00 — under the three ordinances mentioned heretofore is an overpayment made by mistake, and therefore refundable.

The City, on the other hand, contends that, for the permit issued to it granting proper authority to "conduct or engage in the sale of alcoholic beverages, or liquors" Tabacalera is subject to pay the *license fees* prescribed by Ordinance No. 3358, aside from the *sales taxes* imposed by Ordinances Nos. 3634, 3301, and 3816; that, even assuming that Tabacalera is not subject to the payment of the sales taxes prescribed by the said three ordinances as regards its*liquor* sales, it is not entitled to the refund demanded for the following reasons:. (a) The said amount was paid by the plaintiff voluntarily and without protest; (b) If at all the alleged overpayment was made by mistake, such mistake was one of law and arose from the plaintiff's neglect of duty; (c) The said amount had been added by the plaintiff to the selling price of the liquor sold by it and passed to the consumers; and (d) The said amount had been already expended by the defendant City for public improvements and essential services of the City government, the benefits of which are enjoyed, and being enjoyed by the plaintiff.

It appears that in the year 1954, the City, through its treasurer, addressed a letter to Messrs. Sycip, Gorres, Velayo and Co., an accounting firm, expressing the view that liquor dealers paying the annual wholesale and retail fixed tax under City Ordinance No. 3358 are not subject to the wholesale and retail dealers' taxes prescribed by City Ordinances Nos. 3634, 3301, and 3816. Upon learning of said opinion, appellee stopped including its sales of liquor in its quarterly sworn declarations submitted in accordance with the aforesaid City Ordinances Nos. 3634, 3301, and 3816, and on December 3, 1957, it addressed a letter to the City Treasurer demanding refund of the alleged overpayment. The claim was disallowed.

ISSUE:

WON there is double taxation. (NO)

RULING:

The term "tax" applies — generally speaking — to all kinds of exactions which become public funds. The term is often loosely used to include levies for revenue as well as levies for regulatory purposes. Thus license fees are commonly called taxes. Legally speaking, however, *license fee* is a legal concept quite distinct from tax; the former is imposed in the exercise of police power for purposes of regulation, while the latter is imposed under the taxing power for the purpose of raising revenues (MacQuillin, Municipal Corporations, Vol. 9, 3rd Edition, p. 26).

Ordinance No. 3358 is clearly one that prescribes municipal license fees for the privilege to engage in the business of selling liquor or alcoholic beverages, having been enacted by the Municipal Board of Manila pursuant to its charter power to fix license fees on, and regulate, the sale of intoxicating liquors, whether imported or locally manufactured. (Section 18 [p], Republic Act 409, as amended). The license fees imposed by it are essentially for purposes of regulation, and are justified, considering that the sale of intoxicating liquor is, potentially at least, harmful to public health and morals, and must be subject to supervision or regulation by the state and by cities and municipalities authorized to act in the premises. (MacQuillin, *supra*, p. 445.)

On the other hand, it is clear that Ordinances Nos. 3634, 3301, and 3816 impose taxes on the sales of general merchandise, wholesale or retail, and are revenue measures enacted by the Municipal

Board of Manila by virtue of its power to tax dealers for the sale of such merchandise. (Section 10 [o], Republic Act No. 409, as amended.).

Under Ordinance No. 3634 the word "merchandise" as employed therein clearly includes liquor. Aside from this, we have held in City of Manila vs. Inter-Island Gas Service, Inc., G.R. No. L-8799, August 31, 1956, that the word "merchandise" refers to all subjects of commerce and traffic; whatever is usually bought and sold in trade or market; goods or wares bought and sold for gain; commodities or goods to trade; and commercial commodities in general.

That Tabacalera is being subjected to double taxation is more apparent than real. As already stated what is collected under Ordinance No. 3358 is a license fee for the privilege of engaging in the sale of liquor, a calling in which — it is obvious — not anyone or anybody may freely engage, considering that the sale of liquor indiscriminately may endanger public health and morals. On the other hand, what the three ordinances mentioned heretofore impose is a tax for revenue purposes based on the sales made of the same article or merchandise. It is already settled in this connection that both a license fee and a tax may be imposed on the same business or occupation, or for selling the same article, this not being in violation of the rule against double taxation This is precisely the case with the ordinances involved in the case at bar.

COMMISSIONER OF INTERNAL REVENUE, *petitioner* -versus- SOLIDBANK CORPORATION, *respondent.*

G.R. No. 148191, FIRST DIVISION, November 25, 2003, PANGANIBAN, *J.*

The taxes herein are imposed on two different subject matters. The subject matter of the FWT is the passive income generated in the form of interest on deposits and yield on deposit substitutes, while the subject matter of the GRT is the privilege of engaging in the business of banking.

A tax based on receipts is a tax on business rather than on the property; hence, it is an excise rather than a property tax. It is not an income tax, unlike the FWT. In fact, we have already held that one can be taxed for engaging in business and further taxed differently for the income derived therefrom.

Thus, there is no double taxation.

FACTS:

Solid Bank declared gross receipts included the amount from passive income which was already subjected to 20% final withholding tax (FWT). CTA affirmed that the 20% FWT should not form part of its taxable gross receipts for purpose of computing the gross receipts tax on such basis; Solid Bank filed a request for refund. CTA ordered the refund while CA held that indeed, the 20% FWT on a bank's interest income does not form part of the taxable gross receipts in computing the 5% Gross Receipt tax (GRT) because the FWT was not actually received by the bank, but was directly remitted to the government.

ISSUE:

1.Whether or not the 20% FWT on a bank's interest income forms part of the taxable gross receipts in computing the 5% gross receipts tax (YES)

2. whether there is a double taxation? (NO)

RULING:

1**.** The amount of interest income, withheld in payment of the 20% Final Withholding Tax (FWT), forms part of gross receipts in computing for the GRT on banks.

Although the 20% FWT on respondent's interest income was not actually received by respondent because it was remitted directly to the government the fact that the amount redounded to the bank's benefit makes it part of the taxable gross receipts in computing the 5% GRT.

2. The two taxes, subject of this litigation, are different from each other. The basis of their imposition may be the same, but their natures are different.

Double taxation means taxing the same property twice when it should be taxed only once; that is, "x x x taxing the same person twice by the same jurisdiction for the same thing." It is obnoxious when the taxpayer is taxed twice, when it should be but once.Otherwise described as "direct duplicate taxation,"the two taxes must be imposed on the same subject matter, for the same purpose, by the same taxing authority, within the same jurisdiction, during the same taxing period; and they must be of the same kind or character.

First, the taxes herein are imposed on two different subject matters. The subject matter of the FWT is the passive income generated in the form of interest on deposits and yield on deposit substitutes, while the subject matter of the GRT is the privilege of engaging in the business of banking.

A tax based on receipts is a tax on business rather than on the property; hence, it is an excise rather than a property tax. It is not an income tax, unlike the FWT. In fact, we have already held that one can be taxed for engaging in business and further taxed differently for the income derived therefrom. Akin to our ruling in Velilla v. Posadas, these two taxes are entirely distinct and are assessed under different provisions.

Second, although both taxes are national in scope because they are imposed by the same taxing authority -- the national government under the Tax Code -- and operate within the same Philippine jurisdiction for the same purpose of raising revenues, the taxing periods they affect are different. The FWT is deducted and withheld as soon as the income is earned, and is paid after every calendar quarter in which it is earned. On the other hand, the GRT is neither deducted nor withheld, but is paid only after every taxable quarter in which it is earned.

Third, these two taxes are of different kinds or characters. The FWT is an income tax subject to withholding, while the GRT is a percentage tax not subject to withholding.

In short, there is no double taxation, because there is no taxing twice, by the same taxing authority, within the same jurisdiction, for the same purpose, in different taxing periods, some of the property in the territory. Subjecting interest income to a 20% FWT and including it in the computation of the 5% GRT is clearly not double taxation.

PEOPLE OF THE PHILIPPINES, Petitioners -versus- SANDIGANBAYAN (Fourth Division) and BIENVENIDO A. TAN JR., Respondent.
G.R. No. 152532, THIRD DIVISION, August 16, 2005, PANGANIBAN, *J.*

Tax pyramiding has since 1922 been rejected by this Court, the legislature, and our tax authorities. The intent behind the law is clearly to obviate a tax imposed upon another tax. Having shown the appropriateness of deducting the ad valorem tax from the tax base upon which it is computed, private respondent has shown prudence in exercising his power under Section 204(2) of the NIRC of 1977 to abate an unjust, excessively assessed, and unreasonable tax; and to accept the offer of ₱10 million,if only to avoid protracted and costly litigation

FACTS:

Pursuant to Letter of Authority No. ATD-035-STO dated January 2, 1986 and Memorandum of Authority dated March 3, 1986, an investigation was conducted by [Bureau of Internal Revenue (BIR)] examiners on the ad valorem and specific tax liabilities of [San Miguel Corp. (SMC)] covering the period from January 1, 1985 to March 31, 1986. The result of the investigation showed that [SMC] has a deficiency on specific and ad valorem taxes totaling ₱342,616,217.88

On the basis of these findings, the BIR sent a letter dated July 13, 1987 to SMC demanding the payment of its deficiency tax in the amount of ₱342,616,217.88. Apparently, the letter was received by the SMC, as it protested the assessment in its letter dated August 10, 1987 with the information: 1) that the alleged specific tax deficiency was already paid when the BIR approved SMC's request that its excess ad valorem payments be applied to its specific tax balance; 2) that the computation of the ad valorem tax deficiency was erroneous since the BIR examiners disallowed the deduction of the price differential (cost of freight from brewery to warehouse) and ad valorem tax.

The protest was denied by the BIR thru a letter dated October [8], 1987 signed by accused Commissioner Bienvenido Tan, Jr., but the original assessment of ₱342,616,217.88 was reduced to ₱302,[0]51,048.93 due to the crediting of the taxpayer's excess ad valorem tax deposit of ₱21,805,409.10 with a reiteration of the payment of the x x x assessed specific and ad valorem tax as reduced.

On October 27, 1987, herein accused referred the matter to Jaime M. Maza, Assistant BIR Commissioner, Legal Service Division and thereafter different BIR officials also reviewed the case of SMC and rendered varying legal opinions on the issue x x x

"On the part of Alicia P. Clemeno, Chief, Legislative Ruling and Research Division, she recommended the reduction of SMC's tax liability, first to ₱21,856,985.29, and later to ₱22,000,000.00. Balbino E. Gatdula, Jr., Assistant Revenue Service Chief, Legal Service, supported the demand for ad valorem tax deficiency from SMC. In a letter dated August 31, 1988, SMC, thru a certain Avendano offered the amount of ₱10,000,000.00 for the settlement of the assessment. This was concurred in by Juanito Urbi, Chief, Prosecutor Division, BIR in a Memorandum dated December 20, 1988. Jaime Maza, Assistant Commissioner, Legal Service, BIR, also gave his concurrence to the recommendation that the offer of SMC for ₱10,000,000.00 in compromise settlement be accepted. The recommendation was approved by accused Bienvenido Tan; and accordingly, in a letter dated December 20, 1988, SMC was informed that its offer to compromise was accepted.

Former BIR Commissioner Bienvenido A. Tan Jr. was charged with "having willfully, unlawfully and criminally cause[d] undue injury to the government by effecting a compromise of the tax liabilities" of SMC amounting to ₱302,051,048.93 for only ₱10,000,000, a "compromise [that] is grossly disadvantageous to the government

The Sandiganbayan acquitted herein private respondent ruling among others that: 1) the abatement of SMC's ad valorem taxes is proper. The tax base for computing them should not include the ad valorem tax itself and the price differential. Reliance upon Executive Order (EO) No. 273 is not misplaced, because that law simply affirms general principles of taxation as well as BIR's long-standing practice and policy not to impose a tax on a tax. Moreover, nothing precludes private respondent from applying EO 273 on an assessment made prior to its effectivity, because that law was merely intended to formalize such long-standing practice and policy; and 2) after inquiring into the discretionary prerogative of private respondent to compromise, the SB found no reason to conclude that he had acted contrary to law or been impelled by any motive other than honest good faith. The compromise he had entered into regarding SMC's tax did not result in any injury to the government. No genuine compromise is impeccable, since the parties to it must perforce give up something in exchange for something else. No basis existed to hold him liable for violation of Section 3(e) of RA 3019.

ISSUE:

WON the respondent court acted with grave abuse of discretion amounting to lack or excess of jurisdiction when, in upholding private respondent's act in accepting SMC's offer of compromise of ₱10,000,000.00 for its tax liability of ₱302,051,048.93, it disregarded Sections 124 and 228 of the NIRC. (NO)

RULING:

The SB did not gravely abuse its discretion when it upheld private respondent's acceptance of SMC's compromise offer of ₱10 million.

In computing its ad valorem tax liabilities for the taxable period involved in the present case, SMC deducted from its brewer's gross selling price the specific tax, price differential, and ad valorem tax. The BIR allowed the deduction of the specific tax, but not the deduction of the price differential and ad valorem tax, thus increasing the tax base and consequently the ad valorem tax liabilities of SMC for the said period.

Prior to and during the taxable period involved in the present case, several changes were made in the NIRC of 1977, particularly its provisions pertaining to fermented liquor. We must therefore trace the NIRC's pertinent history to be able to rule properly on the validity of SMC's deduction of both the price differential and the ad valorem taxfrom the brewer's gross selling price.

Section 147(A) of the NIRC, as amended by PD 1959 in 1984, provides for the collection of a specific tax on each liter of the volume capacity of fermented liquor. In addition to the provision on the specific tax, the first paragraph of its Section 147(B) provides for the levying, assessment and collection of an ad valorem tax. The latter tax is equivalent to a certain percentage of the brewer's gross selling price, net of the specific tax, of the product to be removed from the brewery or other place of manufacture. The ad valorem tax shall be paid by the brewer at the same time as the specific tax.

Added in 1984 were provisions of Section 186-A governing the determination of the gross selling price of cigarettes, as well as the administrative requirements and penalties imposable. Such provisions shall apply to the determination of the gross selling price of fermented liquor. Basically, this means that the amount of tax due on the fermented liquor shall be determined by the price at which it is sold either wholesale in the factory of SMC or directly to the public through its sales agents. If the fermented liquor is sold or allowed to be sold wholesale by SMC in another establishment which it owns, the wholesale price in that establishment shall determine the tax applicable to the fermented liquor sold there. When the price is less than the cost of manufacture plus all expenses incurred, until the fermented liquor is finally sold by SMC, such cost plus expenses shall be the basis for determining the amount of tax to be collected.

In 1986, PD 1994 amended the NIRC of 1977 by renumbering, among others, Section 147 as Section 124. In the new Section 124, the provisions on the specific and ad valorem taxes imposed on fermented liquors remained substantially the same, except for the tax rates.

On July 1, 1986, Section 4 of EO 22 amended said Section 124 by essentially providing that an ad valorem taxequivalent to a certain percentage of the brewer's wholesale selling price -- this time excluding the ad valorem tax -- shall be levied, assessed and collected on fermented liquors. It was only in 1988 that EO 273 renumbered Section 124 as Section 140, and thereby amended it further to exclude also from such wholesale price the value-added tax already imposed at the time upon the same articles.

Price Differential Deduction

Section 110 of the NIRC of 1977, as amended in 1986 by PD 1994, explicitly provides that the excise taxes on domestic products shall be paid by the manufacturer or producer before the removal of those products from the place of production. "It does not matter to what use the article[s] subject to tax is put"; the excise taxes are still due, even though the articles are removed merely for storage in some other place and are not actually sold or consumed.The intent of the law is reiterated in several implementing regulations.This means, therefore, that the price that should be used as the tax base for computing the ad valorem tax on fermented liquor is the price at the brewery. After all, excise taxes are taxes on property, not on the sale of the property.

Verily, the price differential cannot be ascertained at the time the fermented liquor is removed from the brewery, because such ascertainment will involve amounts that cannot be determined with certainty in advance, and that vary from one commercial outlet to another. The price differential, according to SMC, represents the cost of discounts, promotions, rebates, and transportation. To require the inclusion of the price differential in, not its deduction from, the tax base for purposes of computing the ad valorem tax would certainly lead to the impossible situation of computing for such tax, because the price differential itself cannot be determined unless the fermented liquor is actually sold.

Hence, no ad valorem tax can ever be paid before the removal of the fermented liquor from the place of production. This outcome cannot be countenanced, for it would be contrary to what the law mandates -- payment before removal. It follows that the tax base to be used should be net of the price differential. In other words, the gross selling price should be that which is charged at the brewery prior to the removal of the fermented liquor.

Ad Valorem Tax Deduction

The taxable period covered in this case is January 1, 1985 to March 31, 1986. Prior to the amendment of the NIRC of 1977 by EO 22 on July 1, 1986, the ad valorem tax was not excluded from the brewer's wholesale price. Does this mean that such tax cannot be deducted? The answer is no.

A tax should not be imposed upon another tax. This is tax pyramiding, which has no basis either in fact or in law.

Private respondent has shown by mathematical analysis that the inclusion of the ad valorem tax in the tax base would only yield a circuitous manner of computation that will never end in just one ad valorem tax figure properly chargeable against a taxpayer.

Equally important, tax pyramiding has since 1922 been rejected by this Court, the legislature, and our tax authorities. The intent behind the law is clearly to obviate a tax imposed upon another tax. *Ratio legis est anima legis*. The reason for the law is its spirit.

For instance, Regulations No. 27, promulgated March 1, 1923, already excludes the specific tax on cigars and cigarettes from the tax base upon which such tax is computed.This is reiterated in the more recent amendments to our tax law, among which are EOs 22 and 273,and their implementing rules. In fact, *Commissioner of Internal Revenue v. American Rubber Co.* held that a taxpayer cannot be "compelled to pay a x x x tax on the tax itself."

Having shown the appropriateness of deducting the ad valorem tax from the tax base upon which it is computed, private respondent has shown prudence in exercising his power under Section 204(2) of the NIRC of 1977 to abate an unjust, excessively assessed, and unreasonable tax; and to accept the offer of ₱10 million,if only to avoid protracted and costly litigation.

COMMISSIONER OF INTERNAL REVENUE, *petitioner* -versus- AMERICAN RUBBER COMPANY and COURT OF TAX APPEALS, *respondents*.
G.R. No. L-19667, EN BANC, November 29, 1966, REYES, J.B.L, J.

The sales tax is by law imposed directly, not on the thing sold, but on the act (sale) of the manufacturer, producer or importer, who is exclusively made liable for its timely payment. There is no proof that the tax paid by plaintiff is the very money paid by its customers. Where the tax money paid by the plaintiff came from is really no concern of the Government, but solely a matter between the plaintiff and its customers. Anyway, once recovered, the plaintiff must hold the refund taxes in trust for the individual purchasers who advanced payment thereof, and whose names must appear in plaintiff's records.

FACTS:

Petitioner, American Rubber Company, a domestic corporation, from January 1, 1955 to December 1, 1958, was engaged in producing rubber from its approximately 900 hectare rubber tree plantation, which it owned and operated in Latuan, Isabela, City of Basilan. Its products, known in the market as Preserved Latex, Pale Crepe No. 1, Pale Crepe No. 2, Ribbed Smoked Sheets Nos. 1 and 2, Flat Bark Rubber, 2X Brown Crepe and 3X Brown Crepe.

Petitioner during the said period sold its foregoing rubber products locally and as prescribed by the respondent's regulations declared same for tax purposes which respondent accordingly assessed. Petitioner paid, under protest, the corresponding sales taxes thereon claiming exemption therefrom under Section 188 (b) of the National Internal Revenue Code.

It is further stipulated that the sales tax collected from petitioner American Rubber Company on the local sales of its rubber products, following Internal Revenue General Circulars Nos. 431 and 440, had been separately itemized and billed by petitioner Company in the invoices issued to the customers, that paid both the value of the rubber articles and the separately itemized sales tax, from January 1, 1955 to August 2, 1957.

After paying under protest, the petitioner claimed refund of the sales taxes paid by it on the ground that under section 188, paragraph b, of the Internal Revenue Code, as amended, its rubber products were agricultural products exempt from sales tax, and upon refusal of the Commissioner of Internal Revenue, brought the case on appeal to the Court of Tax Appeals.

The respondent Commissioner interposed defenses, denying that petitioner's products were agricultural ones within the exemption and argued that the sales tax having been passed to the buyers during the period that elapsed from January 1, 1955 to August 2, 1957, the petitioner did not have personality to demand, sue for and recover the aforesaid sales taxes, plus interest.

In its decision, now under appeal, the Tax Court held Preserved Latex, Flat Bark Rubber, and 3X Brown Crepe to be agricultural products, "because the labor employed in the processing thereof is agricultural labor", and hence, the sales of such products were exempt from sales tax, but declared Pale Crepe No. 1, Ribbed Smoked Sheets Nos. 1 and 3, as well as 2X Brown Crepe (which is obtained from rolling excess pieces of Smoked Sheets) to be manufactured products, sales of which were subject to the tax. It upheld the Revenue Commissioner's stand that petitioner Company was not entitled to recover the sales tax that had been separately billed to its customers, and paid by the latter.

ISSUE:

Whether plaintiff is or is not entitled to recover the sales tax paid by it, but passed on to and paid by the buyers of its products.

RULING:

The Court of Tax Appeals held that the plaintiff Company is not entitled to recover the sales tax paid by it from January, 1955 to August 2, 1957, because during that period the plaintiff had separately invoiced and billed the corresponding sales tax to the buyers of its products. In so holding, the Tax Court relied on our decisions in Medina vs. City of Baguio, 91 Phil. 854; Mendoza, Santos & Co. vs. Municipality of Meycawayan, L-6069-6070, April 30, 1954 (94 Phil. 1047); and Zosimo Rojas & Bros. vs. City of Cavite, L-10730, May 27, 1958.

The basic ruling is that of *Medina vs. City of Baguio, supra*, where this Court affirmed the ruling of the court of First Instance to the effect that —

"The amount collected from the theatergoers as additional price of admission tickets is not the property of plaintiffs or any of them. It is paid by the public. If anybody has the right to claim it, it is those who paid it. Only owners of property has the right to claim said property. The cine owner acted as mere agents of the city in collecting additional price charged in the sale of admission tickets." (Medina vs. City of Baguio, 91 Phil. 854) (Emphasis supplied)

We agree with the plaintiff-appellant that the Medina ruling is not applicable to the present case, since the municipal taxes therein imposed were taxes on the admission tickets sold, so that, in effect, they were levies upon the theatergoers who bought them; so much so that (as the decision expressly ruled) the tax was collected by the theater owners as agents of the respective municipal treasurers. This does not obtain in the case at bar. The Medina ruling was merely followed in *Rojas & Bros. vs. Cavite, supra*; and in *Mendoza, Santos & Co. vs. Municipality of Meycawayan*, 94 Phil. 1047.

By contrast with the municipal taxes involved in the preceding cases, the sales tax is by law imposed directly, not on the thing sold, but on the act (sale) of the manufacturer, producer or importer (Op. of the Secretary of Justice, June 15, 1946; 47 C.J.S., p. 1141), who is exclusively made liable for its timely payment. There is no proof that the tax paid by plaintiff is the very money paid by its customers. Where the tax money paid by the plaintiff came from is really no concern of the Government, but solely a matter between the plaintiff and its customers. Anyway, once recovered, the plaintiff must hold the refund taxes in trust for the individual purchasers who advanced payment thereof, and whose names must appear in plaintiff's records.

Moreover, the separate billing of the sales tax in appellant's invoices was a direct result of the respondent Commissioner's General Circular No. 440, providing that —

if a manufacturer, producer, or importer, in fixing the gross selling price of an article sold by him, has included an amount intended to cover the sales tax in the gross selling price of the article, the sales tax shall be based on the gross selling price less the amount intended to cover the tax, *if the same is billed to the purchaser as a separate item in the invoice*. . . . (Emphasis supplied)

In other words, the separate itemization of the sales tax in the invoices was permitted to avoid the taxpayer being compelled to pay a sales tax on the tax itself. It does not seem either just or proper that a step suggested by the Internal Revenue authorities themselves to protect the taxpayer from paying a double tax should now be used to block his action to recover taxes collected without legal sanction.

Finally, a more important reason that militates against extensive and indiscriminate application of the Medina vs. City of Baguio ruling is that it would tend to perpetuate illegal taxation; for the individual customers to whom the tax is ultimately shifted will ordinarily not care to sue for its recovery, in view of the small amount paid by each and the high cost of litigation for the reclaiming of an illegal tax. In so far, therefore, as it favors the imposition, collection and retention of illegal taxes, and encourages a multiplicity of suits, the Tax Court's ruling under appeal violates morals and public policy.

COMMISSIONER OF INTERNAL REVENUE, Petitioner -versus- PILIPINAS SHELL PETROLEUM CORPORATION, Respondent.
G.R. No. 188497, FIRST DIVISION, February 19, 2014, VILLARAMA, JR., *J.:*

The statutory taxpayer who is directly liable to pay the excise tax on its petroleum products, is entitled to a refund or credit of the excise taxes it paid for petroleum products sold to international carriers, the latter having been granted exemption from the payment of said excise tax under Sec. 135 (a) of the NIRC.

Facts:

For resolution is the Motion for Reconsideration filed by respondent Petroleum Corporation against the Decision of the SC ruling that the CTA erred in granting Petroleum Corporation's claim for tax refund because the IT failed to establish a tax exemption in its favor under Section 135(a) of the NIRC.

Respondent's arguments are as follows: First, Section 135 intended the tax exemption to apply to petroleum products at the point of production; Second, the cases of *Philippine Acetylene Co., Inc. v. CIR* and *Maceda v. Macaraig, Jr.* are inapplicable in the light of previous rulings of the BIR and the CTA that excise tax on petroleum products sold to international carriers for the use or consumption outside the Philippines attaches to the article when sold to said international carriers, as it is the article which is exempt from the tax and not the international carrier; and Third, the Decision of the Court will not only have adverse impact of the domestic oil industry but also in violation of international agreements on aviation.

In his Comment, the Solicitor General cited *Exxonmobil Petroleum & Chemical Holdings, Inc. v. CIR,* which held that the excise tax, when passed on to the purchaser, becomes part of the purchase price, and claimed that this refutes the respondent's theory that the exemption attaches to the petroleum product itself and not to the purchaser.

Issue:

Whether Petroleum Corporation is entitled to its claim for tax refund.

Ruling:

Motion Granted.

Under Section 129 of the NIRC, excise taxes are those applied to goods manufactured or produced in the Philippines for domestic sale or consumption or for any other disposition and to things imported. Excise taxes as used in our Tax Code fall under two types – (1) *specific tax* which is based on weight or volume capacity and other physical unit of measurement, and (2) *ad valorem tax* which is based on selling price or other specified value of the goods. Aviation fuel is subject to specific tax under Section 148 (g) which attaches to said product as soon as they are in existence as such.

That excise tax as presently understood is a tax on property has no bearing at all on the issue of respondent's entitlement to refund. Nor does the nature of excise tax as an indirect tax supports respondent's postulation that the *tax exemption* provided in Sec. 135 attaches to the petroleum products themselves and consequently the domestic petroleum manufacturer is not liable for the payment of excise *tax at the point of production*. As already discussed in our Decision, the accrual and payment of the excise tax on the goods enumerated under Title VI of the NIRC prior to their removal at the place of production are absolute and admit of no exception. This also underscores the fact that the exemption from payment of excise tax is conferred on international carriers who purchased the petroleum products of respondent.

On the basis of *Philippine Acetylene*, we held that a tax exemption being enjoyed by the buyer cannot be the basis of a claim for tax exemption by the manufacturer or seller of the goods for any tax due to it as the manufacturer or seller. The excise tax imposed on petroleum products under Section 148 is the direct liability of the manufacturer who cannot thus invoke the excise tax exemption granted to its buyers who are international carriers. And following our pronouncement in *Maceda v. Macarig, Jr.*we further ruled that Section 135(a) should be construed as prohibiting the shifting of the burden of the excise tax to the international carriers who buy petroleum products from the local manufacturers. Said international carriers are thus allowed to purchase the petroleum products without the excise tax component which otherwise would have been added to the cost or price fixed by the local manufacturers or distributors/sellers.

Excise tax on aviation fuel used for international flights is practically nil as most countries are signatories to the 1944 Chicago Convention on International Aviation (Chicago Convention). Article 24 of the Convention has been interpreted to prohibit taxation of aircraft fuel consumed for international transport. Taxation of international air travel is presently at such low level that there has been an intensified debate on whether these should be increased to "finance development rather than simply to augment national tax revenue" considering the "cross–border environmental damage" caused by aircraft emissions that contribute to global warming, not to mention noise pollution and congestion at airports. Mutual exemptions given under bilateral air service agreements are seen as main legal obstacles to the imposition of indirect taxes on aviation fuel. In response to present realities, the International Civil Aviation Organization (ICAO) has adopted policies on charges and emission–related taxes and charges.

Section 135(a) of the NIRC and earlier amendments to the Tax Code represent our Governments' compliance with the Chicago Convention, its subsequent resolutions/annexes, and the air transport agreements entered into by the Philippine Government with various countries.

Indeed, the avowed purpose of a tax exemption is always "some public benefit or interest, which the law–making body considers sufficient to offset the monetary loss entailed in the grant of the exemption." The exemption from excise tax of aviation fuel purchased by international carriers for consumption outside the Philippines fulfills a treaty obligation pursuant to which our Government supports the promotion and expansion of international travel through avoidance of multiple taxation and ensuring the viability and safety of international air travel.

Under the basic international law principle of *pacta sunt servanda*, we have the duty to fulfill our treaty obligations in good faith. This entails harmonization of national legislation with treaty provisions. In this case, Sec. 135(a) of the NIRC embodies our compliance with our undertakings under the Chicago Convention and various bilateral air service agreements not to impose excise tax on aviation fuel purchased by international carriers from domestic manufacturers or suppliers. In our Decision in this case, we interpreted Section 135 (a) as prohibiting domestic manufacturer or producer to pass on to international carriers the excise tax it had paid on petroleum products upon their removal from the place of production, pursuant to Article 148 and pertinent BIR regulations. Ruling on respondent's claim for tax refund of such paid excise taxes on petroleum products sold to tax–exempt international carriers, we found no basis in the Tax Code and jurisprudence to grant the refund of an "erroneously or illegally paid" tax.

Section 135 (a), in fulfillment of international agreement and practice to exempt aviation fuel from excise tax and other impositions, prohibits the passing of the excise tax to international carriers who buys petroleum products from local manufacturers/sellers such as respondent. However, we agree that there is a need to reexamine the *effect* of denying the domestic manufacturers/sellers' claim for refund of the excise taxes they already paid on petroleum products sold to international carriers, and its serious implications on our Government's commitment to the goals and objectives of the Chicago Convention.

The Chicago Convention, which established the legal framework for international civil aviation, did not deal comprehensively with tax matters. Article 24 (a) of the Convention simply provides that fuel and lubricating oils on board an aircraft of a Contracting State, on arrival in the territory of another Contracting State and retained on board on leaving the territory of that State, shall be exempt from customs duty, inspection fees or similar national or local duties and charges. Subsequently, the exemption of airlines from national taxes and customs duties on spare parts and fuel has become a standard element of bilateral air service agreements (ASAs) between individual countries.

In view of the foregoing reasons, we find merit in respondent's motion for reconsideration. We therefore hold that respondent, as the statutory taxpayer who is directly liable to pay the excise tax on its petroleum products, is entitled to a refund or credit of the excise taxes it paid for petroleum products sold to international carriers, the latter having been granted exemption from the payment of said excise tax under Sec. 135 (a) of the NIRC.

PHILIPPINE ACETYLENE CO., INC., *petitioner* -versus- COMMISSIONER OF INTERNAL REVENUE and COURT OF TAX APPEALS, *respondents.*

G.R. No. L-19707, EN BANC, August 17, 1967, CASTRO, *J.*

It may indeed be that the economic burden of the tax finally falls on the purchaser; when it does the tax becomes a part of the price which the purchaser must pay. It does not matter that an additional amount is billed as tax to the purchaser. The method of listing the price and the tax separately and defining taxable gross receipts as the amount received less the amount of the tax added, merely avoids payment by the seller of a tax on the amount of the tax. The effect is still the same, namely, that the purchaser does not pay the tax. He pays or may pay the seller more for the goods because of the seller's obligation, but that is all and the amount added because of the tax is paid to get the goods and for nothing else.

But the tax burden may not even be shifted to the purchaser at all. A decision to absorb the burden of the tax is largely a matter of economics. Then it can no longer be contended that a sales tax is a tax on the purchaser.

We therefore hold that the tax imposed by section 186 of the National Internal Revenue Code is a tax on the manufacturer or producer and not a tax on the purchaser except probably in a very remote and inconsequential sense. Accordingly its levy on the sales made to tax-exempt entities like the NPC is permissible.

FACTS:

The petitioner is a corporation engaged in the manufacture and sale of oxygen and acetylene gases. During the period from June 2, 1953 to June 30, 1958, it made various sales of its products to the National Power Corporation, an agency of the Philippine Government, and to the Voice of America an agency of the United States Government. The sales to the NPC amounted to P145,866.70, while those to the VOA amounted to P1,683, on account of which the respondent Commission of Internal

Revenue assessed against, and demanded from, the petitioner the payment of P12,910.60 as deficiency sales tax and surcharge, pursuant to the provisions of the National Internal Revenue Code.

The petitioner denied liability for the payment of the tax on the ground that both the NPC and the VOA are exempt from taxation. It asked for a reconsideration of the assessment and, failing to secure one, appealed to the Court of Tax Appeals.

The court ruled that the tax on the sale of articles or goods in section 186 of the Code is a tax on the manufacturer and not on the buyer with the result that the "petitioner Philippine Acetylene Company, the manufacturer or producer of oxygen and acetylene gases sold to the National Power Corporation, cannot claim exemption from the payment of sales tax simply because its buyer — the National Power Corporation — is exempt from the payment of all taxes." With respect to the sales made to the VOA, the court held that goods purchased by the American Government or its agencies from manufacturers or producers are exempt from the payment of the sales tax under the agreement between the Government of the Philippines and that of the United States, provided the purchases are supported by certificates of exemption, and since purchases amounting to only P558, out of a total of P1,683, were not covered by certificates of exemption, only the sales in the sum of P558 were subject to the payment of tax. Accordingly, the assessment was revised and the petitioner's liability was reduced from P12,910.60, as assessed by the respondent commission, to P12,812.16.

The petitioner appealed to this Court. Its position is that it is not liable for the payment of tax on the sales it made to the NPC and the VOA because both entities are exempt from taxation.

The NPC enjoys tax exemption by virtue of an act of Congress. It is contended that the immunity thus given to the NPC would be impaired by the imposition of a tax on sales made to it because while the tax is paid by the manufacturer or producer, the tax is ultimately shifted by the latter to the former. The petitioner invokes in support of its position a 1954 opinion of the Secretary of Justice which ruled that the NPC is exempt from the payment of all taxes "whether direct or indirect."

ISSUE:

WON petitioner is not liable for the payment of tax on the sales it made to the NPC and the VOA because both entities are exempt from taxation. (NO)

RULING:

We begin with an analysis of the nature of the percentage (sales) tax imposed by section 186 of the Code. Is it a tax on the producer or on the purchaser? Statutes of the type under consideration, which impose a tax on sales, have been described as "act[s] with schizophrenic symptoms," as they apparently have two faces — one that of a vendor tax, the other, a vendee tax. Fortunately for us the provisions of the Code throw some light on the problem. The Code states that the sales tax "shall be paid by the manufacturer or producer,"who must "make a true and complete return of the amount of his, her or its gross monthly sales, receipts or earnings or gross value of output actually removed from the factory or mill warehouse and within twenty days after the end of each month, pay the tax due thereon."

But it is argued that a sales tax is ultimately passed on to the purchaser, and that, so far as the purchaser is an entity like the NPC which is exempt from the payment of "all taxes, except real property tax," the tax cannot be collected from sales.

A claim of exemption from sales tax resting on statutory grant cannot command assent.

It may indeed be that the economic burden of the tax finally falls on the purchaser; when it does the tax becomes a part of the price which the purchaser must pay. It does not matter that an additional amount is billed as tax to the purchaser. The method of listing the price and the tax separately and defining taxable gross receipts as the amount received less the amount of the tax added, merely avoids payment by the seller of a tax on the amount of the tax. The effect is still the same, namely, that the purchaser does not pay the tax. He pays or may pay the seller more for the goods because of the seller's obligation, but that is all and the amount added because of the tax is paid to get the goods and for nothing else.

But the tax burden may not even be shifted to the purchaser at all. A decision to absorb the burden of the tax is largely a matter of economics. Then it can no longer be contended that a sales tax is a tax on the purchaser.

We therefore hold that the tax imposed by section 186 of the National Internal Revenue Code is a tax on the manufacturer or producer and not a tax on the purchaser except probably in a very remote and inconsequential sense. Accordingly its levy on the sales made to tax-exempt entities like the NPC is permissible.

This conclusion should dispose of the same issue with respect to sales made to the VOA, except that a claim is here made that the exemption of such sales from taxation rests on stronger grounds. Even the Court of Tax Appeals appears to share this view as is evident from the following portion of its decision:

With regard to petitioner's sales to the Voice of America, it appears that the petitioner and the respondent are in agreement that the Voice of America is an agency of the United States Government and as such, all goods purchased locally by it directly from manufacturers or producers are exempt from the payment of the sales tax under the provisions of the agreement between the Government of the Philippines and the Government of the United States,

The circular referred to reads:

Goods purchased locally by U.S. civilian agencies directly from manufacturers, producers or importers shall be exempt from the sales tax.

It was issued purportedly to implement the Agreement between the Republic of the Philippines and the United States of America Concerning Military Bases, but we find nothing in the language of the Agreement to warrant the general exemption granted by that circular.

Only sales made "for exclusive use in the construction, maintenance, operation or defense of the bases," in a word, only sales to the quartermaster, are exempt under article V from taxation. Sales of goods to any other party even if it be an agency of the United States, such as the VOA, or even to the quartermaster but for a different purpose, are not free from the payment of the tax.

On the other hand, article XVIII exempts from the payment of the tax sales made within the base *by* (not sales *to*) commissaries and the like in recognition of the principle that a sales tax is a tax on the seller and not on the purchaser.

It is a familiar learning in the American law of taxation that tax exemption must be strictly construed and that the exemption will not be held to be conferred unless the terms under which it is granted clearly and distinctly show that such was the intention of the parties. Hence, in so far as the circular of the Bureau of Internal Revenue would give the tax exemptions in the Agreement an expansive construction it is void.

We hold, therefore, that sales to the VOA are subject to the payment of percentage taxes under section 186 of the Code.

ALICIA E. GALA, GUIA G. DOMINGO and RITA G. BENSON, *petitioners* -versus- ELLICE AGRO-INDUSTRIAL CORPORATION, MARGO MANAGEMENT AND DEVELOPMENT CORPORATION, RAUL E. GALA, VITALIANO N. AGUIRRE II, ADNAN V. ALONTO, ELIAS N. CRESENCIO, MOISES S. MANIEGO, RODOLFO B. REYNO, RENATO S. GONZALES, VICENTE C. NOLAN, NESTOR N. BATICULON,*respondents.*

G.R. No. 156819, FIRST DIVISION, December 11, 2003, YNARES-SANTIAGO, *J.*

The legal right of a taxpayer to reduce the amount of what otherwise, could be his taxes or altogether to avoid them, by means which the law permits, cannot be doubted

FACTS:

The spouses Manuel and Alicia Gala and their children Guia Domingo, Ofelia Gala, Raul Gala and Rita Benson, and their encargados (rough translation; representatives) VirgilioGaleon and Julian Jader, formed and organized Ellice Agro Industrial Corporation (Ellice). As payment for their subscriptions the Spouses Gala transferred several parcles of land to Ellice. Subsequently, the children and the encargados formed and organized another corporation, Margo Management and Development Corporation (Margo). The father, Manuel Gala, sold his shares in Ellice to Margo. Subsequently, Alicia transferred her shares to Margo.

In 1990, a special stockholder's meeting of Margo was held where a new board of directors was elected. Raul Gala was elected as chairman, president, and general manager. During the meeting, the board approved the commencement of proceeding to annul the dispositions of Margos's property made by Alicia Gala. Similarity, a special stockholder's meeting was held in Ellice. A new board was elected and Raul Gala also became chairman, president and GM of Ellice, Raul Gala along with the respondents filed a case against the petitiones in the SEC for accounting and restitution for alleged mismanagement of funds of Ellice.

In turn the petitioners filed in the SEC a petition for the nullification of the election of directors of officers of both Margo and Ellice. Essentially, petitioners sought to disregard the separate juridical personalities of two corporations, namely, Ellice Agro-Industrial Corporation and Margo Management and Development Corporation, for the purpose of treating all property purportedly owned by said corporations as properly solely owned by the Gala Spouses. Among their arguments were: (1) said corporations were organized for purpose of exempting the property the property of the Gala Spouses from the coverage of land reform laws, and (2) the two corporations were meant to be used as mere tools for the avoidance of estate taxes.

ISSUE:

Whether the separate juridical personalities of Ellice and Margo could be disregard on the grounds that they were meant to be tools to avoid land reform laws and estate taxes. (NO)

RULING:

A perusal of the Articles of Incorporation of Ellice and Margo shows no sign of the allegedly illegal purposes that petitioners are complaining of. And even assuming that the petitioner's allegations were true, the legality of the purposes for which the two corporations were formed should be first threshed out in an administrative case before the Securities and Exchange Commission.

We cannot address here their concerns regarding circumvention of land reform laws, for the doctrine of primary jurisdiction precludes a court from arrogating unto itself the authority to resolve a controversy the jurisdiction over which is initially lodged with an administrative body of special competence. Since primary jurisdiction over any violation of Section 13 of Republic Act No. 3844 that may have been committed is vested in the Department of Agrarian Reform Adjudication Board (DARAB), then it is with said administrative agency that the petitioners must first plead their case.

Moreover, on the contention that Ellice and Margo were meant to be tools for the avoidance of estate taxes, the court said that "…the legal right of a taxpayer to reduce the amount of what otherwise could be his taxes or altogether avoid them, by means which the law permits, cannot be doubted.

HENG TONG TEXTILES CO., INC. (before), PHILIP MANUFACTURING CORPORATION (now), petitioner -versus- COMMISSIONER OF INTERNAL REVENUE and THE COURT OF TAX APPEALS, respondents.

G.R. No. L-19737, EN BANC, August 26, 1968, MAKALINTAL, *J.*

An attempt to minimize one's tax does not necessarily constitute fraud. It is a settled principle that a taxpayer may diminish his liability by any means which the law permits. "The intention to minimize taxes, when used in the context of fraud, must be proved to exist by clear and convincing evidence amounting to more than mere preponderance, and cannot, be justified by mere speculation. This is because fraud is never lightly to be presumed." No such evidence is shown by the record in the case of the herein petitioner. Its actuation is not incompatible with good faith on its part, that is, with a genuine belief that by indorsing the goods to Pan-Asiatic Commercial so that the latter could, as it did, take delivery thereof, Pan-Asiatic Commercial would in law be considered the importer.

FACTS:

In 1952 the then Collector of Internal Revenue assessed against the petitioner deficiency sales taxes and surcharges for the year 1949 and the first four months of 1950 in the aggregate sum of P89,123.58.

The deficiency taxes in question were assessed on importations of textiles from abroad. The goods were withdrawn from Customs by Pan-Asiatic Commercial Co., Inc., which paid, in the name of the petitioner, the corresponding advance sales tax under section 183(b) of the Internal Revenue Code. The assessment for the deficiency, however, was made against the petitioner, Heng Tong Textiles Co., Inc. (now Philip Manufacturing Corporation) on the ground that it was the real importer of the goods and did not pay the taxes due on the basis of the gross selling prices thereof.

The Court of Tax Appeals based its decision of affirmance, finding the petitioner the importer of the goods, on a number of evidentiary circumstances. First, Heng Tong Textiles Co., Inc. and Pan-Asiatic Commercial were sister corporations. Second, the commercial documents covering the importations (shipping documents, insurance papers, and records of payment of the advance sales tax in the Bureau of Customs) were all in the name of the petitioner. Third, in connection with advance sales tax aforesaid, Pan-Asiatic Asiatic Commercial wrote the petitioner the following letter:

In compliance with your request regarding the 5% Sales Tax that we paid for you for the year 1949 and the first quarter of 1950 against the goods that you ordered from various United States suppliers, through us, we attach hereto a list giving a breakdown of this 5% Sales Tax, together with the corresponding Official Receipt Numbers and other details relative to the orders covered by these payments.

Petitioner excepts to the conclusion of the Court of Tax Appeals and avers that the importation papers were placed in the name of the petitioner only for purposes of accommodation, that is, to introduce the petitioner to textile suppliers abroad; and that the petitioner was not in a financial position to make the importations in question, valued at over a million pesos, since its paid-up capital was only P30,000.00. These circumstances show nothing but a private arrangement between the petitioner and Pan-Asiatic Commercial, which in no way affected the role of the petitioner as the importer as far as the Government and its right to collect the taxes were concerned. Pan-Asiatic Commercial might have furnished the necessary financing for the importations in question, but that did not militate against the petitioner's being the importer; nor did the idea of building up its reputation among textile suppliers abroad render it necessary for the withdrawal of the goods from customs and the payment of the advance sales tax to be made in the petitioner's name, these being purely local operations, or for Pan-Asiatic Commercial to affirm, in the private communication sent by it to the petitioner, that the latter was the one that ordered the goods from the United States.

ISSUE:

Whether or not petitioner was guilty of fraud so as to warrant the imposition of a penalty of 50% on the deficiency. (NO)

RULING:

We perceive in the entire set-up an arrangement through which the sales taxes due could be minimized, by having Pan-Asiatic Commercial, as indorsee of the goods, withdraw the same from Customs upon payment of the advance sales tax and then execute a sale thereof to Heng Tong Textiles at cost, or at a negligible profit. As it turned out, according to the Court of Tax Appeals, "the goods were made to appear as having (thus) been sold ... so that no sales tax was paid by petitioner upon the sales of such goods ... (and) neither, was any sales tax paid on the supposed sales of said goods by the Pan-Asiatic Commercial to the petitioner as the sales were made apparently at cost." This is so because "during the period in question," the Court of Tax Appeals added, "the sales tax on sales of imported articles was based on the gross selling price thereof, the advance sales tax paid upon removal of the goods from the customhouse being credited against the tax on the actual gross selling price paid by the importer.

In our opinion, however, the arrangement resorted to does not by itself alone justify the penalty imposed. Section 183 (a), paragraph 3, of the Internal Revenue Code, as amended by Republic Act No. 253, speaks of willful neglect to file the return or willful making of a false or fraudulent return. An attempt to minimize one's tax does not necessarily constitute fraud. It is a settled principle that a taxpayer may diminish his liability by any means which the law permits. "The intention to minimize taxes, when used in the context of fraud, must be proved to exist by clear and convincing evidence amounting to more than mere preponderance, and cannot, be justified by mere speculation. This is because fraud is never lightly to be presumed." (Yutivo Sons Hardware Co. vs. CTA, G.R. No. L-13203, and cases cited). No such evidence is shown by the record in the case of the herein petitioner. Its actuation is not incompatible with good faith on its part, that is, with a genuine belief that by indorsing the goods to Pan-Asiatic Commercial so that the latter could, as it did, take delivery thereof, Pan-Asiatic Commercial would in law be considered the importer. It may even be true, as the petitioner insists, that it was Pan-Asiatic Commercial that financed the importations but placed them in the name of the petitioner as a matter of accommodation, in which case the element of fraud would be ruled out, although from the legal viewpoint and as far as the right of the Government to collect the taxes was concerned the petitioner was the real importer and hence must shoulder the tax burden.

DELPHER TRADES CORPORATION, and DELPHIN PACHECO, *petitioners* -versus-
INTERMEDIATE APPELLATE COURT and HYDRO PIPES PHILIPPINES, INC., *respondents.*
G.R. No. L-69259, THIRD DIVISION, January 26, 1988, GUTIERREZ, JR., *J.*

In effect, the Delpher Trades Corporation is a business conduit of the Pachecos. What they really did was to invest their properties and change the nature of their ownership from unincorporated to incorporated form by organizing Delpher Trades Corporation to take control of their properties and at the same time save on inheritance taxes.

The records do not point to anything wrong or objectionable about this "estate planning" scheme resorted to by the Pachecos. "The legal right of a taxpayer to decrease the amount of what otherwise could be his taxes or altogether avoid them, by means which the law permits, cannot be doubted

FACTS:

In 1974, Delfin Pacheco and his sister, Pelagia Pacheco, were the owners of 27,169 square meters of real estate Identified as Lot. No. 1095, Malinta Estate, in the Municipality of Polo (now Valenzuela), Province of Bulacan (now Metro Manila) which is covered by Transfer Certificate of Title No. T-4240 of the Bulacan land registry.

On April 3, 1974, the said co-owners leased to Construction Components International Inc. the same property and providing that during the existence or after the term of this lease the lessor should he decide to sell the property leased shall first offer the same to the lessee and the letter has the priority to buy under similar conditions.

On August 3, 1974, lessee Construction Components International, Inc. assigned its rights and obligations under the contract of lease in favor of Hydro Pipes Philippines, Inc. with the signed conformity and consent of lessors Delfin Pacheco and Pelagia Pacheco.

The contract of lease, as well as the assignment of lease were annotated at he back of the title, as per stipulation of the parties

On January 3, 1976, a deed of exchange was executed between lessors Delfin and Pelagia Pacheco and defendant Delpher Trades Corporation whereby the former conveyed to the latter the leased property (TCT No.T-4240) together with another parcel of land also located in Malinta Estate, Valenzuela, Metro Manila (TCT No. 4273) for 2,500 shares of stock of defendant corporation with a total value of P1,500,000.00.

On the ground that it was not given the first option to buy the leased property pursuant to the proviso in the lease agreement, respondent Hydro Pipes Philippines, Inc., filed an amended complaint for reconveyance of Lot. No. 1095 in its favor under conditions similar to those whereby Delpher Trades Corporation acquired the property from Pelagia Pacheco and Delphin Pacheco.

After trial, the Court of First Instance of Bulacan ruled in favor of the plaintiff.

The lower court's decision was affirmed on appeal by the Intermediate Appellate Court.

Eduardo Neria, a certified public accountant and son-in-law of the late Pelagia Pacheco testified that Delpher Trades Corporation is a family corporation; that the corporation was organized by the children of the two spouses (spouses Pelagia Pacheco and Benjamin Hernandez and spouses Delfin Pacheco and Pilar Angeles) who owned in common the parcel of land leased to Hydro Pipes Philippines in order to perpetuate their control over the property through the corporation and to avoid taxes; that in order to accomplish this end, two pieces of real estate, including Lot No. 1095 which had been leased to Hydro Pipes Philippines, were transferred to the corporation; that the leased property was transferred to the corporation by virtue of a deed of exchange of property; that in exchange for these properties, Pelagia and Delfin acquired 2,500 unissued no par value shares of stock which are equivalent to a 55% majority in the corporation because the other owners only owned 2,000 shares; and that at the time of incorporation, he knew all about the contract of lease of Lot. No. 1095 to Hydro Pipes Philippines. In the petitioners' motion for reconsideration, they refer to this scheme as "estate planning."

Under this factual backdrop, the petitioners contend that there was actually no transfer of ownership of the subject parcel of land since the Pachecos remained in control of the property. Thus, the petitioners allege: "Considering that the beneficial ownership and control of petitioner corporation remained in the hands of the original co-owners, there was no transfer of actual ownership interests over the land when the same was transferred to petitioner corporation in exchange for the latter's shares of stock. The transfer of ownership, if anything, was merely in form but not in substance. In reality, petitioner corporation is a mere alter ego or conduit of the Pacheco co-owners; hence the corporation and the co-owners should be deemed to be the same, there being in substance and in effect an Identity of interest.

The petitioners maintain that the Pachecos did not sell the property. They argue that there was no sale and that they exchanged the land for shares of stocks in their own corporation. "Hence, such transfer is not within the letter, or even spirit of the contract. There is a sale when ownership is transferred for a price certain in money or its equivalent (Art. 1468, Civil Code) while there is a barter or exchange when one thing is given in consideration of another thing (Art. 1638, Civil Code

On the other hand, the private respondent argues that Delpher Trades Corporation is a corporate entity separate and distinct from the Pachecos. Thus, it contends that it cannot be said that Delpher Trades Corporation is the Pacheco's same alter ego or conduit; that petitioner Delfin Pacheco, having treated Delpher Trades Corporation as such a separate and distinct corporate entity, is not a party who may allege that this separate corporate existence should be disregarded. It maintains that there was actual transfer of ownership interests over the leased property when the same was transferred to Delpher Trades Corporation in exchange for the latter's shares of stock.

ISSUE:

whether or not the "Deed of Exchange" of the properties executed by the Pachecos on the one hand and the Delpher Trades Corporation on the other was meant to be a contract of sale which, in effect, prejudiced the private respondent's right of first refusal over the leased property included in the "deed of exchange." (NO)

RULING:

After incorporation, one becomes a stockholder of a corporation by subscription or by purchasing stock directly from the corporation or from individual owners thereof (Salmon, Dexter & Co. v. Unson, 47 Phil, 649, citing Bole v. Fulton [1912], 233 Pa., 609). In the case at bar, in exchange for their properties, the Pachecos acquired 2,500 original unissued no par value shares of stocks of the Delpher Trades Corporation. Consequently, the Pachecos became stockholders of the corporation by subscription "The essence of the stock subscription is an agreement to take and pay for original unissued shares of a corporation, formed or to be formed." (Rohrlich 243, cited in Agbayani, Commentaries and Jurisprudence on the Commercial Laws of the Philippines, Vol. III, 1980 Edition, p. 430) It is significant that the Pachecos took no par value shares in exchange for their properties.

Moreover, there was no attempt to state the true or current market value of the real estate. Land valued at P300.00 a square meter was turned over to the family's corporation for only P14.00 a square meter.

It is to be stressed that by their ownership of the 2,500 no par shares of stock, the Pachecos have control of the corporation. Their equity capital is 55% as against 45% of the other stockholders, who also belong to the same family group.

In effect, the Delpher Trades Corporation is a business conduit of the Pachecos. What they really did was to invest their properties and change the nature of their ownership from unincorporated to incorporated form by organizing Delpher Trades Corporation to take control of their properties and at the same time save on inheritance taxes.

The records do not point to anything wrong or objectionable about this "estate planning" scheme resorted to by the Pachecos. "The legal right of a taxpayer to decrease the amount of what otherwise could be his taxes or altogether avoid them, by means which the law permits, cannot be doubted."

The "Deed of Exchange" of property between the Pachecos and Delpher Trades Corporation cannot be considered a contract of sale. There was no transfer of actual ownership interests by the Pachecos to a third party. The Pacheco family merely changed their ownership from one form to another. The ownership remained in the same hands. Hence, the private respondent has no basis for its claim of a light of first refusal under the lease contract.

COMMISSIONER OF INTERNAL REVENUE, *petitioner* -versus- THE ESTATE OF BENIGNO P. TODA, JR., Represented by Special Co-administrators Lorna Kapunan and Mario Luza Bautista, *respondents.*

G.R. No. 147188, FIRST DIVISION, September 14, 2004, DAVIDE, JR., *C.J.*

The scheme resorted to by CIC in making it appear that there were two sales of the subject properties, i.e. from CIC to Altonaga, and then from Altonaga to RMI cannot be considered a legitimate tax planning. Such scheme is tainted with fraud. Altonaga's sole purpose of acquiring and transferring title of the subject properties on the same day was to create a tax shelter. The sale to him was merely a tax ploy, a sham, and without business purpose and economic substance. Doubtless, the execution of the two sales was calculated to mislead the BIR with the end in view of reducing the consequent income tax liability. This is a case of tax evasion.

F A C T S:

On 2 March 1989, CIC authorized Benigno P. Toda, Jr., President and owner of 99.991% of its outstanding capital stock, to sell the Cibeles Building. On 30 August 1989, Toda purportedly sold the property for P100 million to Rafael A. Altonaga, who, in turn, sold the same property on the same day to Royal Match Inc. (RMI) for P200 million. Three and a half years later Toda died. On 29 March

1994, the BIR sent an assessment notice and demand letter to the CIC for deficiency income tax for the year 1989. On 27 January 1995, the Estate of Benigno P. Toda, Jr., represented by special co-administrators Lorna Kapunan and Mario Luza Bautista, received a Notice of Assessment from the CIR for deficiency income tax for the year 1989. The Estate thereafter filed a letter of protest. The Commissioner dismissed the protest. On 15 February 1996, the Estate filed a petition for review with the CTA. In its decision the CTA held that the Commissioner failed to prove that CIC committed fraud to deprive the government of the taxes due it. It ruled that even assuming that a pre-conceived scheme was adopted by CIC, the same constituted mere tax avoidance, and not tax evasion. Hence, the CTA declared that the Estate is not liable for deficiency of income tax. The Commissioner filed a petition for review with the Court of Appeals. The Court of Appeals affirmed the decision of the CTA, hence, this recourse.

I S S U E:

Whether or not this is a case of tax evasion or tax avoidance.

H E L D:

CIC committed tax evasion.

Tax avoidance and Tax evasion are the two most common ways used by taxpayers in escaping from taxation. Tax avoidance is the tax saving device within the means sanctioned by law. This method should be used by the taxpayer in good faith and at arm's length. Tax evasion, on the other hand, is a scheme used outside of those lawful means and when availed of, it usually subjects the taxpayer to further or additional civil of criminal liabilities.

Tax evasion connotes the integration of three factors: (1) the end to be achieved, i.e. the payment of less than that known by the taxpayer to be legally due, or the non-payment of tax when it is shown that a tax is due; (2) an accompanying state of mind which is described as being "evil," in "bad faith," "willfull," or "deliberate and not accidental"; and (3) a course of action or failure of action which is unlawful.

All these factors are present in the instant case. The scheme resorted to by CIC in making it appear that there were two sales of the subject properties, i.e. from CIC to Altonaga, and then from Altonaga to RMI cannot be considered a legitimate tax planning. Such scheme is tainted with fraud. Altonaga's sole purpose of acquiring and transferring title of the subject properties on the same day was to create a tax shelter. The sale to him was merely a tax ploy, a sham, and without business purpose and economic substance. Doubtless, the execution of the two sales was calculated to mislead the BIR with the end in view of reducing the consequent income tax liability.

JOHN HAY PEOPLES ALTERNATIVE COALITION, MATEO CARIÑO FOUNDATION INC., CENTER FOR ALTERNATIVE SYSTEMS FOUNDATION INC., REGINA VICTORIA A. BENAFIN REPRESENTED AND JOINED BY HER MOTHER MRS. ELISA BENAFIN, IZABEL M. LUYK REPRESENTED AND JOINED BY HER MOTHER MRS. REBECCA MOLINA LUYK, KATHERINE PE REPRESENTED AND JOINED BY HER MOTHER ROSEMARIE G. PE, SOLEDAD S. CAMILO, ALICIA C. PACALSO ALIAS "KEVAB," BETTY I. STRASSER, RUBY C. GIRON, URSULA C. PEREZ ALIAS "BA-YAY," EDILBERTO T. CLARAVALL, CARMEN CAROMINA, LILIA G. YARANON, DIANE MONDOC, *Petitioners* -versus- VICTOR LIM, PRESIDENT, BASES CONVERSION DEVELOPMENT AUTHORITY; JOHN HAY PORO POINT DEVELOPMENT CORPORATION, CITY OF BAGUIO, TUNTEX (B.V.I.) CO. LTD., ASIAWORLD INTERNATIONALE GROUP, INC., DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES,*Respondents.*

G. R. No. 119775, THIRD DIVISION, October 24, 2003, CARPIO MORALES, *J.*

While the grant of economic incentives may be essential to the creation and success of SEZs, free trade zones and the like, the grant thereof to the John Hay SEZ cannot be sustained. The incentives under R.A. No. 7227 are ***exclusive*** *only to the Subic SEZ.*

The claimed statutory exemption of the John Hay SEZ from taxation should be manifest and unmistakable from the language of the law on which it is based; it must be expressly granted in a statute stated in a language too clear to be mistaken. Tax exemption cannot be implied as it must be categorically and unmistakably expressed.

If it were the intent of the legislature to grant to the John Hay SEZ the same tax exemption and incentives given to the Subic SEZ, it would have so expressly provided in the R.A. No. 7227.

FACTS:

Then President Ramos issued Proclamation No. 420 which created the John Hay Special Economic Zone pursuant to Republic Act No. 7227 entitled Bases and Development Act of 1992. Republic Act No. 7227 created the Subic Special Economic Zone and granted it exemptions from local and national taxes. Proclamation No. 420 also grants tax exemptions similar to that which is granted to the Subic SEZ by RA 7227.

ISSUE:

Is this constitutional? (NO)

RULING:

While the grant of economic incentives may be essential to the creation and success of SEZs, free trade zones and the like, the grant thereof to the John Hay SEZ cannot be sustained. The incentives under R.A. No. 7227 are **exclusive** only to the Subic SEZ, hence, the extension of the same to the John Hay SEZ finds no support therein. Neither does the same grant of privileges to the John Hay SEZ find support in the other laws specified under Section 3 of Proclamation No. 420, which laws were already extant before the issuance of the proclamation or the enactment of R.A. No. 7227.

More importantly, the nature of most of the assailed privileges is one of tax exemption. It is the legislature, unless limited by a provision of the state constitution, that has full power to exempt any person or corporation or class of property from taxation, its power to exempt being as broad as its power to tax. Other than Congress, the Constitution may itself provide for specific tax exemptions,or local governments may pass ordinances on exemption only from local taxes.

The challenged grant of tax exemption would circumvent the Constitution's imposition that a law granting any tax exemption must have the concurrence of a majority of all the members of Congress. In the same vein, the other kinds of privileges extended to the John Hay SEZ are by tradition and usage for Congress to legislate upon.

Contrary to public respondents' suggestions, the claimed statutory exemption of the John Hay SEZ from taxation should be manifest and unmistakable from the language of the law on which it is based; it must be expressly granted in a statute stated in a language too clear to be mistaken. Tax exemption cannot be implied as it must be categorically and unmistakably expressed.

If it were the intent of the legislature to grant to the John Hay SEZ the same tax exemption and incentives given to the Subic SEZ, it would have so expressly provided in the R.A. No. 7227.

This Court no doubt can void an act or policy of the political departments of the government on either of two grounds-infringement of the Constitution or grave abuse of discretion.

This Court then declares that the grant by Proclamation No. 420 of tax exemption and other privileges to the John Hay SEZ is void for being violative of the Constitution.

COMMISSIONER OF INTERNAL REVENUE, ***Petitioner*****, -*versus*- PHILIPPINE ASSOCIATED SMELTING AND REFINING CORPORATION**, ***Respondent.***
G.R. No. 186223, THIRD DIVISION**,** October 01, 2014**,** REYES, ***J.***

"If the law confers an exemption from both direct or indirect taxes, a claimant is entitled to a tax refund even if it only bears the economic burden of the applicable tax. On the other hand, if the exemption conferred only applies to direct taxes, then the statutory taxpayer is regarded as the proper party to file the refund claim. In PASAR's case, Section 17 of P.D. No. 66, as affirmed in Commissioner of Customs, specifically declared that supplies, including petroleum products, whether used directly or indirectly, shall not be subject to internal revenue laws and regulations. Such exemption includes the payment of excise taxes, which was passed on to PASAR by Petron. PASAR, therefore, is the proper party to file a claim for refund

FACTS:

The respondent Philippine Associated Smelting and Refining Corporation (PASAR) is a domestic corporation engaged in the business of processing, smelting, refining and exporting refined copper cathodes and other copper products, and a registered Zone Export Enterprise with the Export Processing Zone Authority (EPZA). PASAR uses petroleum products for its manufacturing and other processes, and purchases it from local distributors, which import the same and pay the corresponding excise taxes. The excise taxes paid are then passed on by the local distributors to its purchasers. In this particular case, Petron passed on to PASAR the excise taxes it paid on the petroleum products bought by the latter during the period of January 2005 to October 2005, totalling eleven million six hundred eighty-seven thousand four hundred sixty-seven 62/100 (P11,687,467.62).

In December 2006, PASAR filed a claim for refund and/or tax credit with the Office of the Regional Director of Region XIV, which denied the same in a letter dated January 3, 2007.

PASAR then filed a petition for review which was contested by the petitioner. The petitioner also filed a motion to preliminarily resolve whether PASAR is the proper party to ask for a refund. Thereafter, the parties agreed to the following stipulation of issues: 1. Whether or not petroleum products purchased from Petron and delivered to PASAR to be used in its operation in LIDE are exempt from excise taxes under Section 17 of P.D. No. 66 and thus entitled to a refund or issuance of a tax credit certificate; and 2. Whether or not PASAR is the proper party to claim for refund or issuance of tax credit certificate for excise taxes paid.

In granting PASAR's petition for review, the CTA *En Banc* ruled that it is the proper party to claim the refund/credit. According to the CTA, since PASAR is a PEZA-registered entity enjoying tax exemption privilege under Presidential Decree (P.D.) No. 66 and subsequently, Republic Act (R.A.) No. 7916, it is exempt from payment of excise taxes on petroleum products. And following the Court's ruling in the Philippine Phosphate Fertilizer Corporation, PASAR, therefore, may seek refund.

ISSUE:

Whether PASAR has the legal personality to file the claim for the refund of the excise taxes passed on by Petron. (YES)

RULING:

PASAR is a business enterprise registered with the EPZA pursuant to P.D. No. 66. There is no dispute as regards its use of fuel and petroleum products for the processing, smelting and refining of its export copper products, and that Petron, from which PASAR purchased its fuel and petroleum, products, passed on the excise taxes paid to the latter. In ruling that PASAR is the proper party to file the claim for the refund/credit, the CTA En Bane chiefly relied on the Court's rulings in *Commissioner of Customs v. Philippine Phosphate Fertilizer Corp.* and *Philippine Phosphate Fertilizer Corporation v. Commissioner of Internal Revenue*.

Commissioner of Customs involved a claim for refund by Philippine Phosphate Fertilizer Corporation (Philphos) of the customs duties it indirectly paid on fuel and petroleum products purchased from Petron Corporation for the period of October 1991 until June 1992. This was opposed by the Commissioner of Customs. One of the issues raised in the case was the legal basis for Philphos' exemption from duties and taxes, it being an EPZA-registered company. While it may be true that *Commissioner of Customs* involved the refund of customs duties paid on petroleum products, it was nevertheless correctly applied by the CTA *En Banc*.

Notably, in *Commissioner of Customs,* the Court squarely interpreted the exemption granted under Section 17 of P.D. No. 66 as applicable to both customs duties and internal revenue taxes,

The incentives offered to enterprises duly registered with the PEZA consist, among others, of tax exemptions, x x x

Section 17 of the EPZA Law particularizes the tax benefits accorded to duly registered enterprises. It states:

SEC. 17. *Tax Treatment of Merchandize in the Zone.* - (1) Except as otherwise provided in this Decree, foreign and domestic merchandise, raw materials, *supplies, articles, equipment, machineries, spare parts and wares of every description*, except those prohibited by law, brought into the Zone to be sold, stored, broken up, repacked, assembled, installed, sorted, cleaned, graded, or otherwise processed, manipulated, manufactured, mixed with foreign or domestic merchandise or *used whether directly or indirectly in such activity, shall not be subject to customs and internal revenue laws and regulations nor to local tax ordinances, the following provisions of law to the contrary notwithstanding.*

The cited provision certainly covers petroleum supplies used, directly or indirectly, by Philphos to facilitate its production of fertilizers, subject to the minimal requirement that these supplies are brought into the zone. <u>The supplies are not subject to customs and internal revenue laws and regulations, nor to local tax ordinances. It is clear that Section 17(1) considers such supplies exempt even if they are used indirectly, as they had been in this case.</u>

Thus, the Court affirmed the refund of customs duties granted by the CTA and in closing, stated that "[t]he grant of exemption under Section 17(1) is clear and unambiguous, x x x."

Philphos, meanwhile, involved Philphos' claim for refund of excise taxes passed on by Petron. One of the issues identified by the Court in the case was whether the CTA should have granted the claim for refund. In resolving said issue, the Court ruled that the CTA erred when it disallowed the petitioner's claim due to its failure to present invoices as there is nothing in CTA Circular No. 1-95 that requires its presentation. The issue of whether the petitioner was entitled to exemption from payment of excise taxes was not lengthily discussed by the Court because it was already undisputed. Thus, the Court stated:

In this case, there is no dispute that petitioner is entitled to exemption from the payment of excise taxes by virtue of its being an EPZA registered enterprise. As stated by the CTA, the only thing left to be determined is whether or not petitioner is entitled to the amount claimed for refund.

xxxx

Since it is not disputed that petitioner is entitled to tax exemption, it should not be precluded from presenting evidence to substantiate the amount of refund it is claiming on mere technicality especially in this case, where the failure to present invoices at the first instance was adequately explained by petitioner.

Applying the foregoing rulings in this case, it is therefore undeniable that PASAR is exempted from payment of excise taxes.

The next pivotal question then that must be resolved is whether PASAR has the legal personality to file the claim for the refund of the excise taxes passed on by Petron. The petitioner insists that PASAR is not the proper party to seek a refund of an indirect tax, such as an excise tax or Value Added Tax, because it is not the statutory taxpayer. The petitioner's argument, however, has no merit.

The rule that it is the statutory taxpayer which has the legal personality to file a claim for refund finds no applicability in this case. In *Philippine Airlines, Inc. v. Commissioner of Internal Revenue,* the Court distinguished between the kinds of exemption enjoyed by a claimant in order to determine the propriety of a tax refund claim. "If the law confers an exemption from both direct or <u>indirect taxes</u>, a claimant is entitled to a tax refund even if it only bears the economic burden of the applicable tax. On the other hand, if the exemption conferred only applies to direct taxes, then the statutory taxpayer is regarded as the proper party to file the refund claim. In PASAR's case, Section 17 of P.D. No. 66, as affirmed in *Commissioner of Customs,* specifically declared that supplies, including petroleum products, whether used directly or indirectly, shall not be subject to internal revenue laws and regulations. Such exemption includes the payment of excise taxes, which was passed on to PASAR by Petron. PASAR, therefore, is the proper party to file a claim for refund.

BATANGAS POWER CORPORATION, petitioner -versus- BATANGAS CITY and NATIONAL POWER CORPORATION, respondents.
G.R. No. 152675 SECOND DIVISION, April 28, 2004, PUNO, J.

This Court recognized the removal of the blanket exclusion of government instrumentalities from local taxation as one of the most significant provisions of the 1991 LGC. Specifically, we stressed thatSection 193 of the LGC, an express and general repeal of all statutes granting exemptions from local taxes, withdrew the sweeping tax privileges previously enjoyed by the NPC under its Charter.

Consequently, when NPC assumed the tax liabilities of the BPC under their 1992 BOT Agreement, the LGC which removed NPC's tax exemption privileges had already been in effect for six (6) months. Thus, while BPC remains to be the entity doing business in said city, it is the NPC that is ultimately liable to pay said taxes under the provisions of both the 1992 BOT Agreement and the 1991 Local Government Code

FACTS:

The facts show that in the early 1990's, the country suffered from a crippling power crisis. Power outages lasted 8-12 hours daily and power generation was badly needed. Addressing the problem, the government, through the National Power Corporation (NPC), sought to attract investors in power plant operations by providing them with incentives, one of which was through the NPC's assumption of payment of their taxes in the Build Operate and Transfer (BOT) Agreement.

On June 29, 1992, Enron Power Development Corporation (Enron) and petitioner NPC entered into a Fast Track BOT Project. Enron agreed to supply a power station to NPC and transfer its plant to the latter after ten (10) years of operation. Section 11.02 of the BOT Agreement provided that NPC shall be responsible for the payment of all taxes that may be imposed on the power station, except income taxes and permit fees. Subsequently, Enron assigned its obligation under the BOT Agreement to petitioner Batangas Power Corporation (BPC).

On September 13, 1992, BPC registered itself with the Board of Investments (BOI) as a pioneer enterprise. On September 23, 1992, the BOI issued a certificate of registration to BPC as a pioneer enterprise entitled to a tax holiday for a period of six (6) years. The construction of the power station in respondent Batangas City was then completed. BPC operated the station.

On October 12, 1998, Batangas City (the city, for brevity), thru its legal officer Teodulfo A. Deguito, sent a letter to BPC demanding payment of business taxes and penalties, commencing from the year 1994 as provided under Ordinance XI or the 1992 Batangas City Tax Code. BPC refused to pay, citing its tax-exempt status as a pioneer enterprise for six (6) years under Section 133 (g) of the Local Government Code (LGC).

BPC refused to pay the tax. BPC asserted that the city should collect the tax from the NPC as the latter assumed responsibility for its payment under their BOT Agreement.

The matter was not put to rest. The city alleged that it was not privy to NPC's assumption of BPC's tax payment under their BOT Agreement as the only parties thereto were NPC and BPC.

BPC adamantly refused to pay the tax claims and reiterated its position. The city was likewise unyielding on its stand. On August 26, 1999, the NPC intervened. While admitting assumption of BPC's tax obligations under their BOT Agreement, NPC refused to pay BPC's business tax as it allegedly constituted an indirect tax on NPC which is a tax-exempt corporation under its Charter.

In view of the deadlock, BPC filed a petition for declaratory relief with the Makati Regional Trial Court (RTC) against Batangas City and NPC, praying for a ruling that it was not bound to pay the business taxes imposed on it by the city. It alleged that under the BOT Agreement, NPC is responsible for the payment of such taxes but as NPC is exempt from taxes, both the BPC and NPC are not liable for its payment. NPC and Batangas City filed their respective answers.

On February 23, 2000, while the case was still pending, the city refused to issue a permit to BPC for the operation of its business unless it paid the assessed business taxes amounting to close to P29M.

In view of this supervening event, BPC, whose principal office is in Makati City, filed a supplemental petition with the Makati RTC to convert its original petition into an action for injunction to enjoin the city from withholding the issuance of its business permit and closing its power plant.

On February 27, 2002, the Makati RTC dismissed the petition for injunction. It held that: (1) BPC is liable to pay business taxes to the city; (2) NPC's tax exemption was withdrawn with the passage of R.A. No. 7160 (The Local Government Code).

petitioners insist that NPC's exemption from all taxes under its Charter had not been repealed by the LGC. They argue that NPC's Charter is a special law which cannot be impliedly repealed by a general and later legislation like the LGC. They likewise anchor their claim of tax-exemption on Section 133 (o) of the LGC which exempts government instrumentalities, such as the NPC, from taxes imposed by local government units (LGUs), citing in support thereof the case of Basco v. PAGCOR.

ISSUE:

Whether NPC's tax exemption privileges under its Charter were withdrawn by Section 193 of the Local Government Code (LGC). (YES)

RULING:

The effect of the LGC on the tax exemption privileges of the NPC has already been extensively discussed and settled in the recent case of National Power Corporation v. City of Cabanatuan. In said case, this Court recognized the removal of the blanket exclusion of government instrumentalities from local taxation as one of the most significant provisions of the 1991 LGC. Specifically, we stressed thatSection 193 of the LGC, an express and general repeal of all statutes granting exemptions from local taxes, withdrew the sweeping tax privileges previously enjoyed by the NPC under its Charter. We explained the rationale for this provision, thus:

In recent years, the increasing social challenges of the times expanded the scope of state activity, and taxation has become a tool to realize social justice and the equitable distribution of wealth, economic progress and the protection of local industries as well as public welfare and similar objectives. Taxation assumes even greater significance with the ratification of the 1987 Constitution. Thenceforth, the power to tax is no longer vested exclusively on Congress; local legislative bodies are now given direct authority to levy taxes, fees and other charges pursuant to Article X, section 5 of the 1987 Constitution, *viz*:

Section 5.- Each Local Government unit shall have the power to create its own sources of revenue, to levy taxes, fees and charges subject to such guidelines and limitations as the Congress may provide, consistent with the basic policy of local autonomy. Such taxes, fees and charges shall accrue exclusively to the Local Governments.

This paradigm shift results from the realization that genuine development can be achieved only by strengthening local autonomy and promoting decentralization of governance. For a long time, the country's highly centralized government structure has bred a culture of dependence among local government leaders upon the national leadership. It has also "dampened the spirit of initiative, innovation and imaginative resilience in matters of local development on the part of local government leaders. The only way to shatter this culture of dependence is to give the LGUs a wider role in the delivery of basic services, and confer them sufficient powers to generate their own sources for the purpose. To achieve this goal, x x x the 1987 Constitution mandates Congress to enact a local government code that will, consistent with the basic policy of local autonomy, set the guidelines and limitations to this grant of taxing powers x x x."

To recall, prior to the enactment of the x x x Local Government Code x x x, various measures have been enacted to promote local autonomy. x x x Despite these initiatives, however, the shackles of dependence on the national government remained. Local government units were faced with the same problems that hamper their capabilities to participate effectively in the national development efforts, among which are: (a) inadequate tax base, (b) lack of fiscal control over external sources of income, (c) limited authority to prioritize and approve development projects, (d) heavy dependence on external sources of income, and (e) limited supervisory control over personnel of national line agencies.

Considered as the most revolutionary piece of legislation on local autonomy, the LGC effectively deals with the fiscal constraints faced by LGUs. It widens the tax base of LGUs to include taxes which were prohibited by previous laws x x x.

Neither can the NPC successfully rely on the Basco case as this was decided prior to the effectivity of the LGC, when there was still no law empowering local government units to tax instrumentalities of the national government.

Consequently, when NPC assumed the tax liabilities of the BPC under their 1992 BOT Agreement, the LGC which removed NPC's tax exemption privileges had already been in effect for six (6) months. Thus, while BPC remains to be the entity doing business in said city, it is the NPC that is ultimately liable to pay said taxes under the provisions of both the 1992 BOT Agreement and the 1991 Local Government Code.

ARTURO M. TOLENTINO, petitioner -versus- THE SECRETARY OF FINANCE and THE COMMISSIONER OF INTERNAL REVENUE, respondents.
G.R. No. 115455, EN BANC, August 25, 1994, MENDOZA, J.

It would suffice to say that since the law granted the press a privilege, the law could take back the privilege anytime without offense to the Constitution. The reason is simple: by granting exemptions, the State does not forever waive the exercise of its sovereign prerogative. Indeed, in withdrawing the exemption, the law merely subjects the press to the same tax burden to which other businesses have long ago been subject.

FACTS:

The constitutionality of R.A. No. 7716, otherwise known as the Expanded Value-Added Tax Law is being challenged.

The following are the challenges presented in relation to tax exemption:

1. Pursuant to §13 of P.D. No. 1590, PAL pays a franchise tax of 2% on its gross revenue "in lieu of all other taxes, duties, royalties, registration, license and other fees and charges of any kind, nature, or description, imposed, levied, established, assessed or collected by any municipal, city, provincial or national authority or government agency, now or in the future."

PAL was exempted from the payment of the VAT along with other entities by §103 of the National Internal Revenue Code, which provides as follows:

§103. *Exempt transactions*. — The following shall be exempt from the value-added tax: (q) Transactions which are exempt under special laws or international agreements to which the Philippines is a signatory.

R.A. No. 7716 seeks to withdraw certain exemptions, including that granted to PAL, by amending §103, as follows:

§103. *Exempt transactions*. — The following shall be exempt from the value-added tax: (q) Transactions which are exempt under special laws, except those granted under Presidential Decree Nos. 66, 529, 972, 1491, 1590. . . .

The amendment of §103 is expressed in the title of R.A. No. 7716 which reads:

AN ACT RESTRUCTURING THE VALUE-ADDED TAX (VAT) SYSTEM, WIDENING ITS TAX BASE AND ENHANCING ITS ADMINISTRATION, AND FOR THESE PURPOSES AMENDING AND REPEALING THE

RELEVANT PROVISIONS OF THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED, AND FOR OTHER PURPOSES.

By stating that R.A. No. 7716 seeks to "[RESTRUCTURE] THE VALUE-ADDED TAX (VAT) SYSTEM [BY] WIDENING ITS TAX BASE AND ENHANCING ITS ADMINISTRATION, AND FOR THESE PURPOSES AMENDING AND REPEALING THE RELEVANT PROVISIONS OF THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED AND FOR OTHER PURPOSES," Congress thereby clearly expresses its intention to amend any provision of the NIRC which stands in the way of accomplishing the purpose of the law.

PAL asserts that the amendment of its franchise must be reflected in the title of the law by specific reference to P.D. No. 1590.

2. We have held that, as a general proposition, the press is not exempt from the taxing power of the State and that what the constitutional guarantee of free press prohibits are laws which single out the press or target a group belonging to the press for special treatment or which in any way discriminate against the press on the basis of the content of the publication, and R.A. No. 7716 is none of these.

Now it is contended by the PPI that by removing the exemption of the press from the VAT while maintaining those granted to others, the law discriminates against the press. At any rate, it is averred, "even nondiscriminatory taxation of constitutionally guaranteed freedom is unconstitutional."

3. The Cooperative Union of the Philippines (CUP), after briefly surveying the course of legislation, argues that it was to adopt a definite policy of granting tax exemption to cooperatives that the present Constitution embodies provisions on cooperatives. To subject cooperatives to the VAT would therefore be to infringe a constitutional policy. Petitioner claims that in 1973, P.D. No. 175 was promulgated exempting cooperatives from the payment of income taxes and sales taxes but in 1984, because of the crisis which menaced the national economy, this exemption was withdrawn by P.D. No. 1955; that in 1986, P.D. No. 2008 again granted cooperatives exemption from income and sales taxes until December 31, 1991, but, in the same year, E.O. No. 93 revoked the exemption; and that finally in 1987 the framers of the Constitution "repudiated the previous actions of the government adverse to the interests of the cooperatives, *that is*, *the repeated revocation of the tax exemption to cooperatives* and instead upheld the policy of strengthening the cooperatives *by way of the grant of tax exemptions*," by providing the following in Art. XII:

§1. The goals of the national economy are a more equitable distribution of opportunities, income, and wealth; a sustained increase in the amount of goods and services produced by the nation for the benefit of the people; and an expanding productivity as the key to raising the quality of life for all, especially the underprivileged.

The State shall promote industrialization and full employment based on sound agricultural development and agrarian reform, through industries that make full and efficient use of human and natural resources, and which are competitive in both domestic and foreign markets. However, the State shall protect Filipino enterprises against unfair foreign competition and trade practices.

In the pursuit of these goals, all sectors of the economy and all regions of the country shall be given optimum opportunity to develop. Private enterprises, including corporations, cooperatives, and similar collective organizations, shall be encouraged to broaden the base of their ownership.

§15. The Congress shall create an agency to promote the viability and growth of cooperatives as instruments for social justice and economic development.

ISSUES:

1. WON it the withdrawal PAL's vat exemption must be reflected in the title of the law by specific reference to P.D. No. 1590. (NO)

2. WON by removing the exemption of the press from the VAT while maintaining those granted to others, the law discriminates against the press. (NO)

3. WON Cooperatives are vat-exempt. (NO)

RULING:

1. It is unnecessary to do this in order to comply with the constitutional requirement, since it is already stated in the title that the law seeks to amend the pertinent provisions of the NIRC, among which is §103(q), in order to widen the base of the VAT. Actually, it is the bill which becomes a law that is required to express in its title the subject of legislation. The titles of H. No. 11197 and S. No. 1630 in fact specifically referred to §103 of the NIRC as among the provisions sought to be amended. We are satisfied that sufficient notice had been given of the pendency of these bills in Congress before they were enacted into what is now R.A. No. 7716.

In *Philippine Judges Association v. Prado*, *supra*, a similar argument as that now made by PAL was rejected. R.A. No. 7354 is entitled AN ACT CREATING THE PHILIPPINE POSTAL CORPORATION, DEFINING ITS POWERS, FUNCTIONS AND RESPONSIBILITIES, PROVIDING FOR REGULATION OF THE INDUSTRY AND FOR OTHER PURPOSES CONNECTED THEREWITH. It contained a provision repealing all franking privileges. It was contended that the withdrawal of franking privileges was not expressed in the title of the law. In holding that there was sufficient description of the subject of the law in its title, including the repeal of franking privileges, this Court held:

To require every end and means necessary for the accomplishment of the general objectives of the statute to be expressed in its title would not only be unreasonable but would actually render legislation impossible.

The details of a legislative act need not be specifically stated in its title, but matter germane to the subject as expressed in the title, and adopted to the accomplishment of the object in view, may properly be included in the act. Thus, it is proper to create in the same act the machinery by which the act is to be enforced, to prescribe the penalties for its infraction, and to remove obstacles in the way of its execution. If such matters are properly connected with the subject as expressed in the title, it is unnecessary that they should also have special mention in the title.

2. It would suffice to say that since the law granted the press a privilege, the law could take back the privilege anytime without offense to the Constitution. The reason is simple: by granting exemptions, the State does not forever waive the exercise of its sovereign prerogative.

Indeed, in withdrawing the exemption, the law merely subjects the press to the same tax burden to which other businesses have long ago been subject.

Nor is it true that only two exemptions previously granted by E.O. No. 273 are withdrawn "absolutely and unqualifiedly" by R.A. No. 7716. Other exemptions from the VAT, such as those previously granted to PAL, petroleum concessionaires, enterprises registered with the Export Processing Zone Authority, and many more are likewise totally withdrawn, in addition to exemptions which are partially withdrawn, in an effort to broaden the base of the tax.

The PPI says that the discriminatory treatment of the press is highlighted by the fact that transactions, which are profit oriented, continue to enjoy exemption under R.A. No. 7716. An enumeration of some of these transactions will suffice to show that by and large this is not so and that the exemptions are granted for a purpose. As the Solicitor General says, such exemptions are granted, in some cases, to encourage agricultural production and, in other cases, for the personal benefit of the end-user rather than for profit.

The PPI asserts that it does not really matter that the law does not discriminate against the press because "even nondiscriminatory taxation on constitutionally guaranteed freedom is unconstitutional." PPI cites in support of this assertion the following statement in *Murdock v. Pennsylvania*, 319 U.S. 105, 87 L. Ed. 1292 (1943):

The fact that the ordinance is "nondiscriminatory" is immaterial. The protection afforded by the First Amendment is not so restricted. A license tax certainly does not acquire constitutional validity because it classifies the privileges protected by the First Amendment along with the wares and merchandise of hucksters and peddlers and treats them all alike. Such equality in treatment does not save the ordinance. Freedom of press, freedom of speech, freedom of religion are in preferred position.

The Court was speaking in that case of a *license tax*, which, unlike an ordinary tax, is mainly for regulation. Its imposition on the press is unconstitutional because it lays a prior restraint on the exercise of its right. Hence, although its application to others, such those selling goods, is valid, its application to the press or to religious groups, such as the Jehovah's Witnesses, in connection with the latter's sale of religious books and pamphlets, is unconstitutional. As the U.S. Supreme Court put it, "it is one thing to impose a tax on income or property of a preacher. It is quite another thing to exact a tax on him for delivering a sermon."

The VAT is, however, different. It is not a license tax. It is not a tax on the exercise of a privilege, much less a constitutional right. It is imposed on the sale, barter, lease or exchange of goods or properties or the sale or exchange of services and the lease of properties purely for revenue purposes. To subject the press to its payment is not to burden the exercise of its right any more than to make the press pay income tax or subject it to general regulation is not to violate its freedom under the Constitution.

3. It is not true that P.D. No. 1955 singled out cooperatives by withdrawing their exemption from income and sales taxes under P.D. No. 175, §5. What P.D. No. 1955, §1 did was to withdraw *the exemptions and preferential treatments theretofore granted to private business enterprises in general*, in view of the economic crisis which then beset the nation. It is true that after P.D. No. 2008, §2 had restored the tax exemptions of cooperatives in 1986, the exemption was again repealed by E.O. No. 93, §1, but then again cooperatives were not the only ones whose exemptions were withdrawn. *The withdrawal of tax incentives applied to all, including government and private entities*. In the second place, the Constitution does not really require that cooperatives be granted tax exemptions in order to promote their growth and viability. Hence, there is no basis for petitioner's assertion that the government's policy toward cooperatives had been one of vacillation, as far as the grant of tax privileges was concerned, and that it was to put an end to this indecision that the constitutional provisions cited were adopted. Perhaps as a matter of policy cooperatives should be granted tax exemptions, but that is left to the discretion of Congress. If Congress does not grant exemption and there is no discrimination to cooperatives, no violation of any constitutional policy can be charged.

Indeed, petitioner's *theory amounts to saying that under the Constitution cooperatives are exempt from taxation*. Such theory is contrary to the Constitution under which only the following are exempt from taxation: charitable institutions, churches and parsonages, by reason of Art. VI, §28 (3), and non-stock, non-profit educational institutions by reason of Art. XIV, §4 (3).

CUP's further ground for seeking the invalidation of R.A. No. 7716 is that it denies cooperatives the equal protection of the law because electric cooperatives are exempted from the VAT. The classification between electric and other cooperatives (farmers cooperatives, producers cooperatives, marketing cooperatives, etc.) apparently rests on a congressional determination that there is greater need to provide cheaper electric power to as many people as possible, especially those living in the rural areas, than there is to provide them with other necessities in life. We cannot say that such classification is unreasonable.

COMMISSIONER OF INTERNAL REVENUE, *Petitioner* -versus- MANILA ELECTRIC COMPANY (MERALCO), *Respondent.*

G.R. No. 181459 THIRD DIVISION, June 9, 2014, PERALTA, *J.*

Tax refunds are based on the general premise that taxes have either been erroneously or excessively paid. Though the Tax Code recognizes the right of taxpayers to request the return of such excess/erroneous payments from the government, they must do so within a prescribed period. Further, "a taxpayer must prove not only his entitlement to a refund, but also his compliance with the procedural due process as non-observance of the prescriptive periods within which to file the administrative and the judicial claims would result in the denial of his claim." In the case at bar, *MERALCO had ample opportunity to verify on the tax-exempt status of NORD/LB for purposes of claiming tax refund. Nevertheless, it only filed its claim for tax refund ten (10) months from the issuance of the aforesaid Ruling.*

Facts:

On July 6, 1998, respondent Manila Electric Company (MERALCO) obtained a loan from Norddeutsche Landesbank Girozentrale (NORD/LB) Singapore Branch in the amount of USD120,000,000.00 with ING Barings South East Asia Limited (ING Barings) as the Arranger. On September 4, 2000, respondent MERALCO executed another loan agreement with NORD/LB Singapore Branch for a loan facility in the amount of USD100,000,000.00 with Citicorp International Limited as Agent.

Under the foregoing loan agreements, the income received by NORD/LB, by way of MERALCO's interest payments, shall be paid in full without deductions, as MERALCO shall bear the obligation of paying/remitting to the BIR the corresponding ten percent (10%) final withholding tax. Pursuant thereto, MERALCO paid/remitted to the Bureau of Internal Revenue (BIR) the said withholding tax on its interest payments to NORD/LB Singapore Branch, covering the period from January 1999 to September 2003 in the aggregate sum of P264,120,181.44.

However, sometime in 2001, MERALCO discovered that NORD/LB Singapore Branch is a foreign government-owned financing institution of Germany. Thus, on December 20, 2001, MERALCO filed a request for a BIR Ruling with petitioner Commissioner of Internal Revenue (CIR) with regard to the tax exempt status of NORD/LB Singapore Branch, in accordance with Section 32(B)(7)(a) of the 1997 National Internal Revenue Code (Tax Code), as amended.

On October 7, 2003, the BIR issued Ruling No. DA-342-2003 declaring that the interest payments made to NORD/LB Singapore Branch are exempt from the ten percent (10%) final withholding tax, since it is a financing institution owned and controlled by the foreign government of Germany.
Consequently, on July 13, 2004, relying on the aforesaid BIR Ruling, MERALCO filed with CIR a claim for tax refund or issuance of tax credit certificate in the aggregate amount of P264,120,181.44, representing the erroneously paid or overpaid final withholding tax on interest payments made to NORD/LB Singapore Branch.

On November 5, 2004, respondent MERALCO received a letter from petitioner denying its claim for tax refund on the basis that the same had already prescribed under Section 204 of the Tax Code, which gives a taxpayer/claimant a period of two (2) years from the date of payment of tax to file a claim for refund before the BIR.

Aggrieved, MERALCO filed a Petition for Review with the Court of Tax Appeals (CTA) on December 6, 2004. After trial on the merits, the CTA-First Division rendered a Decision partially granting respondent MERALCO's Petition for Review.

On November 2, 2006, CIR filed its Motion for Reconsideration with the CTA-First Division, while on November 7, 2006, MERALCO filed its Partial Motion for Reconsideration. Finding no justifiable reason to overturn its Decision, the CTA-First Division denied both the petitioner's Motion for Reconsideration and MERALCO's Partial Motion for Reconsideration in a Resolution dated January 11, 2007.

Unyielding to the Decision of the CTA, both CIR and MERALCO filed their respective Petitions for Review before the Court of Tax Appeals En Banc (CTA En Banc) docketed as C.T.A. EB Nos. 264 and 262, respectively.

In its Decision dated October 15, 2007, the CTA En Banc denied both petitions and upheld in toto the Decision of the CTA-First Division. In the same vein, the motions for reconsideration filed by the respective parties were also denied in a Resolution dated January 9, 2008. Hence, the instant petition.

Issue:

Whether or not MERALCO is entitled to a tax refund/credit relative to its payment of final withholding taxes on interest payments made to NORD/LB from January 1999 to September 2003. (YES)

Ruling:

We find that MERALCO has discharged the requisite burden of proof in establishing the factual basis for its claim for tax refund. However, we uphold the ruling of the CTA En Banc that the claim for tax refund in the aggregate amount of Thirty-Nine Million Three Hundred Fifty-Nine Thousand Two Hundred Fifty-Four Pesos and Seventy-Nine Centavos (P39,359,254.79) pertaining to the period from January 1999 to July2002 must fail since the same has already prescribed under Section 229 of the Tax Code, to wit:

Section 229. Recovery of Tax Erroneously or Illegally Collected. – No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, of any sum alleged to have been excessively or in any manner wrongfully collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: Provided, however, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.

As can be gleaned from the foregoing, the prescriptive period provided is mandatory regardless of any supervening cause that may arise after payment. It should be pointed out further that while the prescriptive period of two (2) years commences to run from the time that the refund is ascertained, the propriety thereof is determined by law (in this case, from the date of payment of tax), and not upon the discovery by the taxpayer of the erroneous or excessive payment of taxes. The issuance by the BIR of the Ruling declaring the tax-exempt status of NORD/LB, if at all, is merely confirmatory in nature. As aptly held by the CTA-First Division, there is no basis that the subject exemption was provided and ascertained only through BIR Ruling No. DA-342-2003, since said ruling is not the operative act from which an entitlement of refund is determined. In other words, the BIR is tasked only to confirm what is provided under the Tax Code on the matter of tax exemptions as well as the period within which to file a claim for refund.

Tax refunds are based on the general premise that taxes have either been erroneously or excessively paid. Though the Tax Code recognizes the right of taxpayers to request the return of such excess/erroneous payments from the government, they must do so within a prescribed period. Further, "a taxpayer must prove not only his entitlement to a refund, but also his compliance with the procedural due process as non-observance of the prescriptive periods within which to file the administrative and the judicial claims would result in the denial of his claim."

In the case at bar, MERALCO had ample opportunity to verify on the tax-exempt status of NORD/LB for purposes of claiming tax refund. Even assuming that MERALCO could not have emphatically known the status of NORD/LB, its supposition of the same was already confirmed by the BIR Ruling which was issued on October 7, 2003. Nevertheless, it only filed its claim for tax refund on July 13, 2004, or ten (10) months from the issuance of the aforesaid Ruling. We agree with the CTA-First Division, therefore, that respondent MERALCO's claim for refund in the amount of Two Hundred Twenty-Four Million Seven Hundred Sixty Thousand Nine Hundred Twenty-Six Pesos and Sixty-Five Centavos (P224,760,926.65) representing erroneously paid and remitted final income taxes for the period January 1999 to July 2002 should be denied on the ground of prescription.

WESTERN MINOLCO CORPORATION, *petitioner* -versus- COMMISSIONER OF INTERNAL REVENUE and COURT OF TAX APPEALS, *respondents.*

G.R. No. L-61632, EN BANC, August 16, 1983, GUTIERREZ JR., *J.:*

Petitioner Western Minolco Corporation has failed to justify its claimed exemption from the 35,7c, transaction tax. The decision of the Commissioner of Internal Revenue denying the petitioner's claim for refund is affirmed. It bears repeating that the law looks with disfavor on tax exemptions and he who would seek to be thus privileged must justify it by words too plain to be mistaken and too categorical to be misinterpreted.

FACTS:

Petitioner is a domestic corporation engaged in mining, particularly copper concentrates for export mined from mineral lands in Atok and Kibungan, Benguet.

In October 1972, upon application for tax exemption filed with the Bureau of Mines, the petitioner was granted Certificate of Qualification for Tax Exemption No. 34.

On December 24, 1976, the petitioner was also granted by the Securities and Exchange Commission, under Certificate of Renewal No. R-1056, authority to borrow money and issue commercial papers. Pursuant to this authority, the petitioner borrowed funds from several financial institutions from June, 1977 to October 1977 and paid the corresponding 35% transaction tax due thereon in the amount of P1,317,801.03, The tax was paid pursuant to Section 210 (b) of the National Internal Revenue Code of 1977.

On February 16, 1978, the petitioner applied for the refund of the P1,317,801.03 alleging that it was not liable to pay the 35% transaction tax under its Certificate of Qualification for Tax Exemption No. 34 issued by the Secretary of Agriculture and Natural Resources, and pursuant to Section 79-A of Commonwealth Act No. 137, otherwise known as The Mining Act and Presidential Decree No. 463, the Mineral Resources Development Decree of 1974, as implemented by Consolidated Mines Administrative Order of the Secretary of Natural Resources dated May 17, 1974.

On February 19, 1979, the respondent Commissioner of internal Revenue denied the petitioner's claim for refund.

On May 29, 1979, the petitioner filed a petition for review with the respondent Court of Tax Appeals.

After due hearing but before the respondent court could render its decision, the petitioner filed a pleading entitled "Request for Judicial Notice and Request for Admission" alleging that the subject tax was paid in the nature of a business tax, that petitioner's claim for refund is based on its exemption from business taxes, and that its exemption is protected by existing tax exemptions granted it under the mining law.

On January 29, 1982, the respondent court denied the petitioner's "Request for Judicial Notice and Request for Admission.

On May 21, 1982, the respondent court rendered its decision dismissing the petition for review for lack of merit.

ISSUE:

Whether or not the petitioner is exempt from the 35% transaction tax. (NO)

RULING:

The statutory provisions on tax exemptions clearly exclude the 35% transaction tax.

Section 1 of Presidential Decree No. 237 on Compensating Tax, Section I of P.D. No. 238 on Conditionally Free Importations, and Section 53 of P.D. No. 463 all refer to tax exemptions for importations of machineries, tools for production, plants to convert mineral ores into saleable form, spare parts, supplies, materials, accessories, explosives, chemicals and transportation and communication facilities, to be used in mining operations. Section 53 of P.D. No. 463 likewise refers to tax exemptions for mining claims and improvements thereon, and mineral products, except income tax. The petitioner's Certificate of Qualification for Tax Exemption No. 34 exempts "... from payment of all taxes except income tax, payable by him in the conduct of his business and in the importation of machineries, spare parts and or equipment listed in the stamped "Annex I " which are considered to be indispensable in the operation and will be used by said operator lessee exclusively in the mineral land mentioned above.

Clearly, the transaction tax of P1,317,801.03 paid by the petitioner was not actually imposed upon it in the conduct of its mining business or in the importation of machinery, spare parts and or equipment listed in the stamped "ANNEX I" of its certificate of qualification for tax exemption and which are indespensable in the operation and used exclusively on petitioner's mineral land.

Petitioner submits that inasmuch as taxes in general constitute allowable deductions from gross income in the determination of taxable net income, the 35% transaction tax is a business tax and not an income tax because the Revenue Code itself classifies it as "Business Tax" under Title V, and that P. D. No. 1154 expressly states that the transaction tax shall be allowed as a deductible item for purposes of determining the borrower's taxable income.

The petitioner's contentions deserve scant consideration, The 35%, transaction tax is imposed on interest income from commercial papers issued in the primary money market. Being a tax on interest, it is a tax on income.

The 35% transaction tax is an income tax on interest earnings to the lenders or placers The latter are actually the taxpayers. Therefore, the tax cannot be a tax imposed upon petitioner. In other words, the petitioner who borrowed funds from several financial institutions by issuing commercial papers merely withheld the 35% transaction tax before paying to the financial institutions the interests earned by them and later remitted the same to the respondent Commissioner of Internal Revenue. The tax could have been collected by a different procedure but the statute chose this method. Whatever collecting procedure is adopted does not change the nature of the tax.

Furthermore, whether or not certain taxes are on income is not necessarily determined by their deductibility or non-deductibility from gross income. As correctly observed by the Solicitor General, income in the form of dividends, capital gains on real property pursuant to Batas Pambansa Blg, 37, shares of stock pursuant to Presidential Decree 1739, and interests on savings in bank accounts, for instance, are incomes, yet they are not includible in the gross income when income taxes are paid because these are subject to final withholding taxes.

The petitioner also submits that the 35% transaction tax is a business tax because it is imposed under Title V, entitled -,Taxes on Business" and classified specially under Chapter II, entitled "Tax on Business."

The location of the 35%, tax in the Tax Code does not necessarily determine its nature, Again, we agree with the Solicitor General that the legislative body must have realized later that. the subject tax was inappropriately included among the taxes on business because Section 210 of the Tax Code has been repealed by Presidential Decree No. 1739, which now imposes a tax of 20% on interests from deposits and yields from deposit substitutes such as commercial papers issued in the primary market as principal instrument and provides for them in Section 24(cc) under Chapter III, Tax on Corporations, Title II-Income. Tax.

Petitioner Western Minolco Corporation has failed to justify its claimed exemption from the 35,7c, transaction tax. The decision of the Commissioner of Internal Revenue denying the petitioner's claim for refund is affirmed. It bears repeating that the law looks with disfavor on tax exemptions and he who would seek to be thus privileged must justify it by words too plain to be mistaken and too categorical to be misinterpreted.

JOHN HAY PEOPLES ALTERNATIVE COALITION, MATEO CARIÑO FOUNDATION INC., CENTER FOR ALTERNATIVE SYSTEMS FOUNDATION INC., REGINA VICTORIA A. BENAFIN REPRESENTED AND JOINED BY HER MOTHER MRS. ELISA BENAFIN, IZABEL M. LUYK REPRESENTED AND JOINED BY HER MOTHER MRS. REBECCA MOLINA LUYK, KATHERINE PE REPRESENTED AND JOINED BY HER MOTHER ROSEMARIE G. PE, SOLEDAD S. CAMILO, ALICIA C. PACALSO ALIAS "KEVAB," BETTY I. STRASSER, RUBY C. GIRON, URSULA C. PEREZ ALIAS "BA-YAY," EDILBERTO T. CLARAVALL, CARMEN CAROMINA, LILIA G. YARANON, DIANE MONDOC, *Petitioners* -versus- VICTOR LIM, PRESIDENT, BASES CONVERSION DEVELOPMENT AUTHORITY; JOHN HAY PORO POINT DEVELOPMENT CORPORATION, CITY OF BAGUIO, TUNTEX (B.V.I.) CO. LTD., ASIAWORLD INTERNATIONALE GROUP, INC., DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES,*Respondents.*

G. R. No. 119775 THIRD DIVISION, October 24, 2003, CARPIO MORALES, *J.*

While the grant of economic incentives may be essential to the creation and success of SEZs, free trade zones and the like, the grant thereof to the John Hay SEZ cannot be sustained. The incentives under R.A. No. 7227 are ***exclusive*** *only to the Subic SEZ.*

The claimed statutory exemption of the John Hay SEZ from taxation should be manifest and unmistakable from the language of the law on which it is based; it must be expressly granted in a statute stated in a language too clear to be mistaken. Tax exemption cannot be implied as it must be categorically and unmistakably expressed.

If it were the intent of the legislature to grant to the John Hay SEZ the same tax exemption and incentives given to the Subic SEZ, it would have so expressly provided in the R.A. No. 7227.

FACTS:

Then President Ramos issued Proclamation No. 420 which created the John Hay Special Economic Zone pursuant to Republic Act No. 7227 entitled Bases and Development Act of 1992. Republic Act No. 7227 created the Subic Special Economic Zone and granted it exemptions from local and national taxes. Proclamation No. 420 also grants tax exemptions similar to that which is granted to the Subic SEZ by RA 7227.

ISSUE:

Is this constitutional? (NO)

RULING:

While the grant of economic incentives may be essential to the creation and success of SEZs, free trade zones and the like, the grant thereof to the John Hay SEZ cannot be sustained. The incentives under R.A. No. 7227 are **exclusive** only to the Subic SEZ, hence, the extension of the same to the John Hay SEZ finds no support therein. Neither does the same grant of privileges to the John Hay SEZ find support in the other laws specified under Section 3 of Proclamation No. 420, which laws were already extant before the issuance of the proclamation or the enactment of R.A. No. 7227.

More importantly, the nature of most of the assailed privileges is one of tax exemption. It is the legislature, unless limited by a provision of the state constitution, that has full power to exempt any person or corporation or class of property from taxation, its power to exempt being as broad as its power to tax. Other than Congress, the Constitution may itself provide for specific tax exemptions,or local governments may pass ordinances on exemption only from local taxes.

The challenged grant of tax exemption would circumvent the Constitution's imposition that a law granting any tax exemption must have the concurrence of a majority of all the members of Congress. In the same vein, the other kinds of privileges extended to the John Hay SEZ are by tradition and usage for Congress to legislate upon.

Contrary to public respondents' suggestions, the claimed statutory exemption of the John Hay SEZ from taxation should be manifest and unmistakable from the language of the law on which it is based; it must be expressly granted in a statute stated in a language too clear to be mistaken. Tax exemption cannot be implied as it must be categorically and unmistakably expressed.

If it were the intent of the legislature to grant to the John Hay SEZ the same tax exemption and incentives given to the Subic SEZ, it would have so expressly provided in the R.A. No. 7227.

This Court no doubt can void an act or policy of the political departments of the government on either of two grounds-infringement of the Constitution or grave abuse of discretion.

This Court then declares that the grant by Proclamation No. 420 of tax exemption and other privileges to the John Hay SEZ is void for being violative of the Constitution.

MACTAN CEBU INTERNATIONAL AIRPORT AUTHORITY, *petitioner* -versus- HON. FERDINAND J. MARCOS, in his capacity as the Presiding Judge of the Regional Trial Court, Branch 20, Cebu City, THE CITY OF CEBU, represented by its Mayor HON. TOMAS R. OSMEÑA, and EUSTAQUIO B. CESA, *respondents.*

G.R. No. 120082, THIRD DIVISION, September 11, 1996, DAVIDE, JR*., J.*

Taxation is the rule and exemption is the exception. Thus, the exemption may be withdrawn at the pleasure of the taxing authority. The only exception to this rule is where the exemption was granted to private parties based on material consideration of a mutual nature, which then becomes contractual and is thus covered by the non-impairment clause of the Constitution.

FACTS:

Mactan Cebu International Airport Authority was created by virtue of RA 6958 to manage the Mactan International Airport and the Lahug Airport. Since the time of its creation, petitioner MCIAA enjoyed the privilege of exemption from payment of realty taxes. In Section 14 of its Charter provides that "the Authority shall be exempt from realty taxes imposed by the National Government or any of its political subdivisions, agencies and instrumentalities."

In 1994, however, the Office of the Treasurer of the City of Cebu demanded payment for realty taxes on several parcels of land belonging to petitioner. Petitioner objected to such demand, citing Sec. 14. It asserted that it is an instrumentality of the government which performs governmental functions, citing Sec. 133 of the Local Government Code which puts limitations on the taxing powers of local government units. Sec. 133, LGC provides that the exercise of the taxing powers of provinces, cities, municipalities and barangays shall not extend to the levy of... taxes, fees or charges of any kind on the National government, its agencies and instrumentalities and local government units.

The Respondent City refused to cancel and set aside the realty tax account, insisting that the MCIAA is a GOCC whose tax exemption privilege has been withdrawn by virtue of Sections 193 and 234 of the LGC. Sec. 193 provides that tax exemptions or incentives granted to or presently enjoyed by all persons, whether natural or juridical, including GOCCs except local water districts, cooperatives duly registered under RA 6938, non-stock and non-profit hospitals and educational institutions are hereby withdrawn upon the effectivity of this Code. Section 234 meanwhile provides that exemption from payment of real property tax previously granted to or presently enjoyed by all persons, whether natural or juridical, including GOCCs are hereby withdrawn upon the effectivity of the LGC.

Because the City of Cebu was about to issue a warrant of levy against the properties of MCIAA, the latter was compelled to pay its tax account under protest. MCIAA likewise filed a petition for declaratory relief with the RTC of Cebu, contending that the taxing powers of local government units do not extend to the levy of taxes or fees of any kind on an instrumentality of the national government. MCIAA insisted that while it is indeed a GOCC, it nontheless stands on the same footing as an agency or instrumentality of the national government by the very nature of its powers and functions. The City however maintained that MCIAA is not an instrumentality of the government but merely a GOCC performing proprietary functions, and hence, the exemptions granted to it were deemed withdrawn by virtue of Secs. 193 and 234 of the LGC.

The trial court dismissed the petition. MR denied. Hence this petition. Petitioner asserts that although it is a GOCC, it is mandated to perform functions in the same category as an instrumentality of the government. An instrumentality of the Government is one created to perform governmental functions primarily to promote certain aspects of the economic life of the people.

Petitioner further contends that being an instrumentality of the National Government, respondent City of Cebu has no power nor authority to impose realty taxes upon it in accordance with Sec. 133 of the LGC. In Basco v. PAGCOR, the SC said the local governments have no power to tax instrumentalities of the National Gov't like PAGCOR, which has a dual role (its role to regulate gambling casinos is governmental, placing it in the category of an agency or instrumentality of the Government which should be exempt from local taxes. Petitioner thus concludes that there is a distinction in the LGC between a GOCC performing gov't functions as against one performing merely proprietary ones, and it is clear from Secs. 133 and 234, LGC that the legislature meant to exclude instrumentalities of the national government from the taxing powers of LGUs.

ISSUE:

Whether petitioner is exempted from payment of taxes or not. (NO)

RULING:

Taxation is the rule and exemption is the exception. Thus, the exemption may be withdrawn at the pleasure of the taxing authority. The only exception to this rule is where the exemption was granted to private parties based on material consideration of a mutual nature, which then becomes contractual and is thus covered by the non-impairment clause of the Constitution.

The general rule, as laid down in Section 133 of the LGC is that the taxing powers of LGUs cannot extend to the levy of, inter alia, "taxes, fees and charges of any kind on the National Government, its agencies, and instrumentalities, and LGUs." However, pursuant to Section 232, provinces, cities and municipalities in the Metro Manila Area MAY impose real property taxes except on inter alia, real property owned by the Republic of the Philippines or any of its political subdivisions except when the beneficial use thereof has been granted for consideration or otherwise, to a taxable person (Sec. 234a).

As to tax exemptions/incentives granted to or presently enjoyed by natural or juridical persons, including GOCCs,

GENERAL RULE: Tax exemptions or incentives are withdrawn upon the effectivity of the LGC
EXCEPTION: Those granted to local water districts, cooperatives duly registered under RA 6938, non-stock and non-profit hospitals and educ institutions, and unless otherwise provided in the LGC. This latter proviso could refer to Section 234 enumerating the properties exempt from real property tax. The last paragraph of Section 234 further qualifies the retention of the exemption insofar as real property taxes are concerned by limiting the retention only to those enumerated therein; all others not included in the enumeration therefore lost the privilege upon the effectivity of the LGC. Even as to real property owned by the Rep. Of the Philippines or any of its political subdivisions covered by item (a) of the first paragraph of Section 234, the exemption is withdrawn if the beneficial use of such property has been granted to a taxable person for consideration or otherwise.

Since the last paragraph of Section 234 unequivocally withdrew, upon the effectivity of the LGC, exemptions from payment of real property taxes granted to natural or juridical persons, including government-owned or controlled corporations, except as provided in the said section, and the petitioner is, undoubtedly, a government-owned corporation, it necessarily follows that its exemption from such tax granted it by its charter has been withdrawn.

FELS ENERGY, INC., *Petitioner* -versus- THE PROVINCE OF BATANGAS and THE OFFICE OF THE PROVINCIAL ASSESSOR OF BATANGAS, *Respondents.*

G.R. No. 168557 THIRD DIVISION, February 16, 2007, CALLEJO, SR., J.

The owner of the taxable properties is petitioner FELS, which in fine, is the entity being taxed by the local government. It follows then that FELS cannot escape liability from the payment of realty taxes by invoking its exemption in Section 234 (c) of R.A. No. 7160. Indeed, the law states that the machinery must be actually, directly and exclusively used by the government owned or controlled corporation. The mere undertaking of petitioner NPC under Section 10.1 of the Agreement, that it shall be responsible for the payment of all real estate taxes and assessments, does not justify the exemption.

The privilege granted to petitioner NPC cannot be extended to FELS. The covenant is between FELS and NPC and does not bind a third person not privy thereto, in this case, the Province of Batangas.

FACTS:

On January 18, 1993, NPC entered into a lease contract with Polar Energy, Inc. over 3x30 MW diesel engine power barges moored at Balayan Bay in Calaca, Batangas. The contract, denominated as an Energy Conversion Agreement, was for a period of five years. Article 10 states that NPC shall be responsible for the payment of taxes. (other than (i) taxes imposed or calculated on the basis of the net income of POLAR and Personal Income Taxes of its employees and (ii) construction permit fees, environmental permit fees and other similar fees and charges. Polar Energy then assigned its rights under the Agreement to Fels despite NPC's initial opposition.

FELS received an assessment of real property taxes on the power barges from Provincial Assessor Lauro C. Andaya of Batangas City. FELS referred the matter to NPC, reminding it of its obligation under the Agreement to pay all real estate taxes. It then gave NPC the full power and authority to represent it in any conference regarding the real property assessment of the Provincial Assessor. NPC filed a petition with the LBAA. The LBAA ordered Fels to pay the real estate taxes. The LBAA ruled that the power plant facilities, while they may be classified as movable or personal property, are nevertheless considered real property for taxation purposes because they are installed at a specific location with a character of permanency. The LBAA also pointed out that the owner of the barges–FELS, a private corporation–is the one being taxed, not NPC. A mere agreement making NPC responsible for the payment of all real estate taxes and assessments will not justify the exemption of FELS; such a privilege can only be granted to NPC and cannot be extended to FELS. Finally, the LBAA also ruled that the petition was filed out of time.

Fels appealed to the CBAA. The CBAA reversed and ruled that the power barges belong to NPC; since they are actually, directly and exclusively used by it, the power barges are covered by the exemptions under Section 234(c) of R.A. No. 7160. As to the other jurisdictional issue, the CBAA ruled that prescription did not preclude the NPC from pursuing its claim for tax exemption in accordance with Section 206 of R.A. No. 7160. Upon MR, the CBAA reversed itself.

ISSUE:

WON the petitioner may be assessed real property taxes. (YES)

RULING:

The CBAA and LBAA power barges are real property and are thus subject to real property tax. This is also the inevitable conclusion, considering that G.R. No. 165113 was dismissed for failure to sufficiently show any reversible error. Tax assessments by tax examiners are presumed correct and made in good faith, with the taxpayer having the burden of proving otherwise. [48] Besides, factual findings of administrative bodies, which have acquired expertise in their field, are generally binding and conclusive upon the Court; we will not assume to interfere with the sensible exercise of the judgment of men especially trained in appraising property. Where the judicial mind is left in doubt, it is a sound policy to leave the assessment undisturbed. We find no reason to depart from this rule in this case.

In Consolidated Edison Company of New York, Inc., et al. v. The City of New York, et al., a power company brought an action to review property tax assessment. On the city's motion to dismiss, the Supreme Court of New York held that the barges on which were mounted gas turbine power plants designated to generate electrical power, the fuel oil barges which supplied fuel oil to the power plant barges, and the accessory equipment mounted on the barges were subject to real property taxation.

Moreover, Article 415 (9) of the New Civil Code provides that "[d]ocks and structures which, though floating, are intended by their nature and object to remain at a fixed place on a river, lake, or coast" are considered immovable property. Thus, power barges are categorized as immovable property by destination, being in the nature of machinery and other implements intended by the owner for an industry or work which may be carried on in a building or on a piece of land and which tend directly to meet the needs of said industry or work.

Petitioners maintain nevertheless that the power barges are exempt from real estate tax under Section 234 (c) of R.A. No. 7160 because they are actually, directly and exclusively used by petitioner NPC, a government- owned and controlled corporation engaged in the supply, generation, and transmission of electric power.

We affirm the findings of the LBAA and CBAA that the owner of the taxable properties is petitioner FELS, which in fine, is the entity being taxed by the local government. As stipulated under Section 2.11, Article 2 of the Agreement:
OWNERSHIP OF POWER BARGES. POLAR shall own the Power Barges and all the fixtures, fittings, machinery and equipment on the Site used in connection with the Power Barges which have been supplied by it at its own cost. POLAR shall operate, manage and maintain the Power Barges for the purpose of converting Fuel of NAPOCOR into electricity.

It follows then that FELS cannot escape liability from the payment of realty taxes by invoking its exemption in Section 234 (c) of R.A. No. 7160. Indeed, the law states that the machinery must be actually, directly and exclusively used by the government owned or controlled corporation; nevertheless, petitioner FELS still cannot find solace in this provision because Section 5.5, Article 5 of the Agreement provides:
OPERATION. POLAR undertakes that until the end of the Lease Period, subject to the supply of the necessary Fuel pursuant to Article 6 and to the other provisions hereof, it will operate the Power Barges to convert such Fuel into electricity in accordance with Part A of Article 7.

It is a basic rule that obligations arising from a contract have the force of law between the parties. Not being contrary to law, morals, good customs, public order or public policy, the parties to the contract are bound by its terms and conditions.

Time and again, the Supreme Court has stated that taxation is the rule and exemption is the exception. The law does not look with favor on tax exemptions and the entity that would seek to be thus privileged must justify it by words too plain to be mistaken and too categorical to be misinterpreted. Thus, applying the rule of strict construction of laws granting tax exemptions, and the rule that doubts should be resolved in favor of provincial corporations, we hold that FELS is considered a taxable entity.

The mere undertaking of petitioner NPC under Section 10.1 of the Agreement, that it shall be responsible for the payment of all real estate taxes and assessments, does not justify the exemption. The privilege granted to petitioner NPC cannot be extended to FELS. The covenant is between FELS and NPC and does not bind a third person not privy thereto, in this case, the Province of Batangas.

It must be pointed out that the protracted and circuitous litigation has seriously resulted in the local government's deprivation of revenues. The power to tax is an incident of sovereignty and is unlimited in its magnitude, acknowledging in its very nature no perimeter so that security against its abuse is to be found only in the responsibility of the legislature which imposes the tax on the constituency who are to pay for it. The right of local government units to collect taxes due must always be upheld to avoid severe tax erosion. This consideration is consistent with the State policy to guarantee the autonomy of local governments and the objective of the Local Government Code that they enjoy genuine and meaningful local autonomy to empower them to achieve their fullest development as self-reliant communities and make them effective partners in the attainment of national goals.

In conclusion, we reiterate that the power to tax is the most potent instrument to raise the needed revenues to finance and support myriad activities of the local government units for the delivery of basic services essential to the promotion of the general welfare and the enhancement of peace, progress, and prosperity of the people.

ARTURO M. TOLENTINO, *petitioner* -versus- THE SECRETARY OF FINANCE and THE COMMISSIONER OF INTERNAL REVENUE, *respondents.*
G.R. No. 115455, EN BANC, October 30, 1995, MENDOZA, J.

It would suffice to say that since the law granted the press a privilege, the law could take back the privilege anytime without offense to the Constitution. The reason is simple: by granting exemptions, the State does not forever waive the exercise of its sovereign prerogative. Indeed, in withdrawing the exemption, the law merely subjects the press to the same tax burden to which other businesses have long ago been subject.

FACTS:

The constitutionality of R.A. No. 7716, otherwise known as the Expanded Value-Added Tax Law is being challenged.

The following are the challenges presented in relation to tax exemption:

1. Pursuant to §13 of P.D. No. 1590, PAL pays a franchise tax of 2% on its gross revenue "in lieu of all other taxes, duties, royalties, registration, license and other fees and charges of any kind, nature, or description, imposed, levied, established, assessed or collected by any municipal, city, provincial or national authority or government agency, now or in the future."

PAL was exempted from the payment of the VAT along with other entities by §103 of the National Internal Revenue Code, which provides as follows:

§103. *Exempt transactions*. — The following shall be exempt from the value-added tax: (q) Transactions which are exempt under special laws or international agreements to which the Philippines is a signatory.

R.A. No. 7716 seeks to withdraw certain exemptions, including that granted to PAL, by amending §103, as follows:

§103. *Exempt transactions*. — The following shall be exempt from the value-added tax: (q) Transactions which are exempt under special laws, except those granted under Presidential Decree Nos. 66, 529, 972, 1491, 1590. . . .

The amendment of §103 is expressed in the title of R.A. No. 7716 which reads:

AN ACT RESTRUCTURING THE VALUE-ADDED TAX (VAT) SYSTEM, WIDENING ITS TAX BASE AND ENHANCING ITS ADMINISTRATION, AND FOR THESE PURPOSES AMENDING AND REPEALING THE RELEVANT PROVISIONS OF THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED, AND FOR OTHER PURPOSES.

By stating that R.A. No. 7716 seeks to "[RESTRUCTURE] THE VALUE-ADDED TAX (VAT) SYSTEM [BY] WIDENING ITS TAX BASE AND ENHANCING ITS ADMINISTRATION, AND FOR THESE PURPOSES AMENDING AND REPEALING THE RELEVANT PROVISIONS OF THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED AND FOR OTHER PURPOSES," Congress thereby clearly expresses its intention to amend any provision of the NIRC which stands in the way of accomplishing the purpose of the law.

PAL asserts that the amendment of its franchise must be reflected in the title of the law by specific reference to P.D. No. 1590.

2. We have held that, as a general proposition, the press is not exempt from the taxing power of the State and that what the constitutional guarantee of free press prohibits are laws which single out the press or target a group belonging to the press for special treatment or which in any way discriminate against the press on the basis of the content of the publication, and R.A. No. 7716 is none of these.

Now it is contended by the PPI that by removing the exemption of the press from the VAT while maintaining those granted to others, the law discriminates against the press. At any rate, it is averred, "even nondiscriminatory taxation of constitutionally guaranteed freedom is unconstitutional."

3. The Cooperative Union of the Philippines (CUP), after briefly surveying the course of legislation, argues that it was to adopt a definite policy of granting tax exemption to cooperatives that the present Constitution embodies provisions on cooperatives. To subject cooperatives to the VAT would therefore be to infringe a constitutional policy. Petitioner claims that in 1973, P.D. No. 175 was promulgated exempting cooperatives from the payment of income taxes and sales taxes but in 1984, because of the crisis which menaced the national economy, this exemption was withdrawn by P.D. No. 1955; that in 1986, P.D. No. 2008 again granted cooperatives exemption from income and sales taxes until December 31, 1991, but, in the same year, E.O. No. 93 revoked the exemption; and that finally in 1987 the framers of the Constitution "repudiated the previous actions of the government adverse to the interests of the cooperatives, *that is*, *the repeated revocation of the tax exemption to cooperatives* and instead upheld the policy of strengthening the cooperatives *by way of the grant of tax exemptions*," by providing the following in Art. XII:

§1. The goals of the national economy are a more equitable distribution of opportunities, income, and wealth; a sustained increase in the amount of goods and services produced by the nation for the benefit of the people; and an expanding productivity as the key to raising the quality of life for all, especially the underprivileged.

The State shall promote industrialization and full employment based on sound agricultural development and agrarian reform, through industries that make full and efficient use of human and natural resources, and which are competitive in both domestic and foreign markets. However, the State shall protect Filipino enterprises against unfair foreign competition and trade practices.

In the pursuit of these goals, all sectors of the economy and all regions of the country shall be given optimum opportunity to develop. Private enterprises, including corporations, cooperatives, and similar collective organizations, shall be encouraged to broaden the base of their ownership.

§15. The Congress shall create an agency to promote the viability and growth of cooperatives as instruments for social justice and economic development.

ISSUES:

1. WON it the withdrawal PAL's vat exemption must be reflected in the title of the law by specific reference to P.D. No. 1590. (NO)

2. WON by removing the exemption of the press from the VAT while maintaining those granted to others, the law discriminates against the press. (NO)

3. WON Cooperatives are vat-exempt. (NO)

RULING:

1. It is unnecessary to do this in order to comply with the constitutional requirement, since it is already stated in the title that the law seeks to amend the pertinent provisions of the NIRC, among which is §103(q), in order to widen the base of the VAT. Actually, it is the bill which becomes a law that is required to express in its title the subject of legislation. The titles of H. No. 11197 and S. No. 1630 in fact specifically referred to §103 of the NIRC as among the provisions sought to be amended. We are satisfied that sufficient notice had been given of the pendency of these bills in Congress before they were enacted into what is now R.A. No. 7716.

In *Philippine Judges Association v. Prado*, *supra*, a similar argument as that now made by PAL was rejected. R.A. No. 7354 is entitled AN ACT CREATING THE PHILIPPINE POSTAL CORPORATION, DEFINING ITS POWERS, FUNCTIONS AND RESPONSIBILITIES, PROVIDING FOR REGULATION OF THE INDUSTRY AND FOR OTHER PURPOSES CONNECTED THEREWITH. It contained a provision repealing all franking privileges. It was contended that the withdrawal of franking privileges was not expressed in the title of the law. In holding that there was sufficient description of the subject of the law in its title, including the repeal of franking privileges, this Court held:

To require every end and means necessary for the accomplishment of the general objectives of the statute to be expressed in its title would not only be unreasonable but would actually render legislation impossible.

The details of a legislative act need not be specifically stated in its title, but matter germane to the subject as expressed in the title, and adopted to the accomplishment of the object in view, may properly be included in the act. Thus, it is proper to create in the same act the machinery by which the act is to be enforced, to prescribe the penalties for its infraction, and to remove obstacles in the way of its execution. If such matters are properly connected with the subject as expressed in the title, it is unnecessary that they should also have special mention in the title.

2. It would suffice to say that since the law granted the press a privilege, the law could take back the privilege anytime without offense to the Constitution. The reason is simple: by granting exemptions, the State does not forever waive the exercise of its sovereign prerogative.

Indeed, in withdrawing the exemption, the law merely subjects the press to the same tax burden to which other businesses have long ago been subject.

Nor is it true that only two exemptions previously granted by E.O. No. 273 are withdrawn "absolutely and unqualifiedly" by R.A. No. 7716. Other exemptions from the VAT, such as those previously granted to PAL, petroleum concessionaires, enterprises registered with the Export Processing Zone Authority, and many more are likewise totally withdrawn, in addition to exemptions which are partially withdrawn, in an effort to broaden the base of the tax.

The PPI says that the discriminatory treatment of the press is highlighted by the fact that transactions, which are profit oriented, continue to enjoy exemption under R.A. No. 7716. An enumeration of some of these transactions will suffice to show that by and large this is not so and that the exemptions are granted for a purpose. As the Solicitor General says, such exemptions are granted, in some cases, to encourage agricultural production and, in other cases, for the personal benefit of the end-user rather than for profit.

The PPI asserts that it does not really matter that the law does not discriminate against the press because "even nondiscriminatory taxation on constitutionally guaranteed freedom is unconstitutional." PPI cites in support of this assertion the following statement in *Murdock v. Pennsylvania*, 319 U.S. 105, 87 L. Ed. 1292 (1943):

The fact that the ordinance is "nondiscriminatory" is immaterial. The protection afforded by the First Amendment is not so restricted. A license tax certainly does not acquire constitutional validity because it classifies the privileges protected by the First Amendment along with the wares and merchandise of hucksters and peddlers and treats them all alike. Such equality in treatment does not save the ordinance. Freedom of press, freedom of speech, freedom of religion are in preferred position.

The Court was speaking in that case of a *license tax*, which, unlike an ordinary tax, is mainly for regulation. Its imposition on the press is unconstitutional because it lays a prior restraint on the exercise of its right. Hence, although its application to others, such those selling goods, is valid, its application to the press or to religious groups, such as the Jehovah's Witnesses, in connection with the latter's sale of religious books and pamphlets, is unconstitutional. As the U.S. Supreme Court put it, "it is one thing to impose a tax on income or property of a preacher. It is quite another thing to exact a tax on him for delivering a sermon."

The VAT is, however, different. It is not a license tax. It is not a tax on the exercise of a privilege, much less a constitutional right. It is imposed on the sale, barter, lease or exchange of goods or properties or the sale or exchange of services and the lease of properties purely for revenue purposes. To subject the press to its payment is not to burden the exercise of its right any more than to make the press pay income tax or subject it to general regulation is not to violate its freedom under the Constitution.

3. It is not true that P.D. No. 1955 singled out cooperatives by withdrawing their exemption from income and sales taxes under P.D. No. 175, §5. What P.D. No. 1955, §1 did was to withdraw *the exemptions and preferential treatments theretofore granted to private business enterprises in general*, in view of the economic crisis which then beset the nation. It is true that after P.D. No. 2008, §2 had restored the tax exemptions of cooperatives in 1986, the exemption was again repealed by E.O. No. 93, §1, but then again cooperatives were not the only ones whose exemptions were withdrawn. *The withdrawal of tax incentives applied to all, including government and private entities*. In the second place, the Constitution does not really require that cooperatives be granted tax exemptions in order to promote their growth and viability. Hence, there is no basis for petitioner's assertion that the government's policy toward cooperatives had been one of vacillation, as far as the grant of tax privileges was concerned, and that it was to put an end to this indecision that the constitutional provisions cited were adopted. Perhaps as a matter of policy cooperatives should be granted tax exemptions, but that is left to the discretion of Congress. If Congress does not grant exemption and there is no discrimination to cooperatives, no violation of any constitutional policy can be charged.

Indeed, petitioner's *theory amounts to saying that under the Constitution cooperatives are exempt from taxation*. Such theory is contrary to the Constitution under which only the following are exempt from taxation: charitable institutions, churches and parsonages, by reason of Art. VI, §28 (3), and non-stock, non-profit educational institutions by reason of Art. XIV, §4 (3).

CUP's further ground for seeking the invalidation of R.A. No. 7716 is that it denies cooperatives the equal protection of the law because electric cooperatives are exempted from the VAT. The classification between electric and other cooperatives (farmers cooperatives, producers cooperatives, marketing cooperatives, etc.) apparently rests on a congressional determination that there is greater need to provide cheaper electric power to as many people as possible, especially those living in the rural areas, than there is to provide them with other necessities in life. We cannot say that such classification is unreasonable.

THE PROVINCE OF MISAMIS ORIENTAL, represented by its PROVINCIAL TREASURER, petitioner -versus- CAGAYAN ELECTRIC POWER AND LIGHT COMPANY, INC. (CEPALCO), *respondent.*

G.R. No. L-45355 FIRST DIVISION, January 12, 1990, GRIÑO-AQUINO, *J.*

The franchise of respondent CEPALCO expressly exempts it from payment of "all taxes of whatever authority" except the three per centum (3%) tax on its gross earnings.

This Court pointed out that such exemption is part of the inducement for the acceptance of the franchise and the rendition of public service by the grantee. As a charter is in the nature of a private contract, the imposition of another franchise tax on the corporation by the local authority would constitute an impairment of the contract between the government and the corporation.

FACTS:

Cagayan Electric Power and Light Company, Inc. (CEPALCO for short) was granted a franchise on June 17, 1961 under Republic Act No. 3247 to install, operate and maintain an electric light, heat and power system in the City of Cagayan de Oro and its suburbs. Said franchise was amended on June 21, 1963 by R.A. No. 3570 which added the municipalities of Tagoloan and Opol to CEPALCO's sphere of operation, and was further amended on August 4, 1969 by R.A. No. 6020 which extended its field of operation to the municipalities of Villanueva and Jasaan.

The Provincial Treasurer of Misamis Oriental demanded payment of the provincial franchise tax from CEPALCO. The company refused to pay, alleging that it is exempt from all taxes except the franchise tax required by R.A. No. 6020. Nevertheless, in view of the opinion rendered by the Provincial Fiscal, upon CEPALCO's request, upholding the legality of the Revenue Ordinance, CEPALCO paid *under protest* on May 27, 1974 the sum of P 4,276.28 and appealed the fiscal's ruling to the Secretary of Justice who reversed it and ruled in favor of CEPALCO.

On February 16, 1976, the Province filed in the Court of First Instance of Misamis Oriental a complaint for declaratory relief praying, among others, that the Court exercise its power to construe P.D. No. 231 in relation to the franchise of CEPALCO (R.A. No. 6020), and to declare the franchise as having been amended by P.D. No. 231. The Court dismissed the complaint and ordered the Province to return to CEPALCO the sum of P4,276.28 paid under protest.

ISSUE:

Whether or not a corporation whose franchise expressly provides that the payment of the "franchise tax of three *per centum* of the gross earnings shall be in lieu of all taxes and assessments of whatever authority upon privileges, earnings, income, franchise, and poles, wires, transformers, and insulators of the grantee." is exempt from paying a provincial franchise tax. (YES)

RULING:

There is no provision in P.D. No. 231 expressly or impliedly amending or repealing Section 3 of R.A. No. 6020. The perceived repugnancy between the two statutes should be very clear before the Court may hold that the prior one has been repealed by the later, since there is no express provision to that effect (Manila Railroad Co. vs. Rafferty, 40 Phil. 224). The rule is that a special and local statute applicable to a particular case is not repealed by a later statute which is general in its terms, provisions and application even if the terms of the general act are broad enough to include the cases in the special law (*id.*) unless there is manifest intent to repeal or alter the special law.

Republic Acts Nos. 3247, 3570 and 6020 are special laws applicable only to CEPALCO, while P.D. No. 231 is a general tax law. The presumption is that the special statutes are exceptions to the general law (P.D. No. 231) because they pertain to a special charter granted to meet a particular set of conditions and circumstances.

The franchise of respondent CEPALCO expressly exempts it from payment of "all taxes of whatever authority" except the three *per centum* (3%) tax on its gross earnings.

This Court pointed out that such exemption is part of the inducement for the acceptance of the franchise and the rendition of public service by the grantee. As a charter is in the nature of a private contract, the imposition of another franchise tax on the corporation by the local authority would constitute an impairment of the contract between the government and the corporation.

Local Tax Regulation No. 3-75 issued by the Secretary of Finance on June 26, 1976, has made it crystal clear that the franchise tax provided in the Local Tax Code (P.D. No. 231, Sec. 9) may only be imposed on companies with franchises that do not contain the exempting clause. Thus it provides:

The franchise tax imposed under local tax ordinance pursuant to Section 9 of the Local Tax Code, as amended, shall be collected from businesses holding franchise but not from business establishments whose franchise contain the "in-lieu-of-all-taxes-proviso".

Manila Electric Company vs. Vera, 67 SCRA 351, cited by the petitioner, is not applicable here because what the Government sought to impose on Meralco in that case was not a franchise tax but a *compensating tax* on the poles, wires, transformers and insulators which it imported for its use.

BATANGAS POWER CORPORATION, *petitioner* -versus- BATANGAS CITY and NATIONAL POWER CORPORATION, *respondents*.
G.R. No. 152675, SECOND DIVISION, April 28, 2004, PUNO, J.

This Court recognized the removal of the blanket exclusion of government instrumentalities from local taxation as one of the most significant provisions of the 1991 LGC. Specifically, we stressed thatSection 193 of the LGC, an express and general repeal of all statutes granting exemptions from local taxes, withdrew the sweeping tax privileges previously enjoyed by the NPC under its Charter.

Consequently, when NPC assumed the tax liabilities of the BPC under their 1992 BOT Agreement, the LGC which removed NPC's tax exemption privileges had already been in effect for six (6) months. Thus, while BPC remains to be the entity doing business in said city, it is the NPC that is ultimately liable to pay said taxes under the provisions of both the 1992 BOT Agreement and the 1991 Local Government Code

FACTS:

The facts show that in the early 1990's, the country suffered from a crippling power crisis. Power outages lasted 8-12 hours daily and power generation was badly needed. Addressing the problem, the government, through the National Power Corporation (NPC), sought to attract investors in power plant operations by providing them with incentives, one of which was through the NPC's assumption of payment of their taxes in the Build Operate and Transfer (BOT) Agreement.

On June 29, 1992, Enron Power Development Corporation (Enron) and petitioner NPC entered into a Fast Track BOT Project. Enron agreed to supply a power station to NPC and transfer its plant to the latter after ten (10) years of operation. Section 11.02 of the BOT Agreement provided that NPC shall be responsible for the payment of all taxes that may be imposed on the power station, except income taxes and permit fees. Subsequently, Enron assigned its obligation under the BOT Agreement to petitioner Batangas Power Corporation (BPC).

On September 13, 1992, BPC registered itself with the Board of Investments (BOI) as a pioneer enterprise. On September 23, 1992, the BOI issued a certificate of registration to BPC as a pioneer enterprise entitled to a tax holiday for a period of six (6) years. The construction of the power station in respondent Batangas City was then completed. BPC operated the station.

On October 12, 1998, Batangas City (the city, for brevity), thru its legal officer Teodulfo A. Deguito, sent a letter to BPC demanding payment of business taxes and penalties, commencing from the year 1994 as provided under Ordinance XI or the 1992 Batangas City Tax Code. BPC refused to pay, citing its tax-exempt status as a pioneer enterprise for six (6) years under Section 133 (g) of the Local Government Code (LGC).

BPC refused to pay the tax. BPC asserted that the city should collect the tax from the NPC as the latter assumed responsibility for its payment under their BOT Agreement.

The matter was not put to rest. The city alleged that it was not privy to NPC's assumption of BPC's tax payment under their BOT Agreement as the only parties thereto were NPC and BPC.

BPC adamantly refused to pay the tax claims and reiterated its position. The city was likewise unyielding on its stand. On August 26, 1999, the NPC intervened. While admitting assumption of BPC's tax obligations under their BOT Agreement, NPC refused to pay BPC's business tax as it allegedly constituted an indirect tax on NPC which is a tax-exempt corporation under its Charter.

In view of the deadlock, BPC filed a petition for declaratory relief with the Makati Regional Trial Court (RTC) against Batangas City and NPC, praying for a ruling that it was not bound to pay the business taxes imposed on it by the city. It alleged that under the BOT Agreement, NPC is responsible for the payment of such taxes but as NPC is exempt from taxes, both the BPC and NPC are not liable for its payment. NPC and Batangas City filed their respective answers.

On February 23, 2000, while the case was still pending, the city refused to issue a permit to BPC for the operation of its business unless it paid the assessed business taxes amounting to close to P29M.

In view of this supervening event, BPC, whose principal office is in Makati City, filed a supplemental petition with the Makati RTC to convert its original petition into an action for injunction to enjoin the city from withholding the issuance of its business permit and closing its power plant.

On February 27, 2002, the Makati RTC dismissed the petition for injunction. It held that: (1) BPC is liable to pay business taxes to the city; (2) NPC's tax exemption was withdrawn with the passage of R.A. No. 7160 (The Local Government Code).

petitioners insist that NPC's exemption from all taxes under its Charter had not been repealed by the LGC. They argue that NPC's Charter is a special law which cannot be impliedly repealed by a general and later legislation like the LGC. They likewise anchor their claim of tax-exemption on Section 133 (o) of the LGC which exempts government instrumentalities, such as the NPC, from taxes imposed by local government units (LGUs), citing in support thereof the case of Basco v. PAGCOR.

ISSUE:

Whether NPC's tax exemption privileges under its Charter were withdrawn by Section 193 of the Local Government Code (LGC). (YES)

RULING:

The effect of the LGC on the tax exemption privileges of the NPC has already been extensively discussed and settled in the recent case of National Power Corporation v. City of Cabanatuan. In said case, this Court recognized the removal of the blanket exclusion of government instrumentalities from local taxation as one of the most significant provisions of the 1991 LGC. Specifically, we stressed thatSection 193 of the LGC, an express and general repeal of all statutes granting exemptions from local taxes, withdrew the sweeping tax privileges previously enjoyed by the NPC under its Charter. We explained the rationale for this provision, thus:

In recent years, the increasing social challenges of the times expanded the scope of state activity, and taxation has become a tool to realize social justice and the equitable distribution of wealth, economic progress and the protection of local industries as well as public welfare and similar objectives. Taxation assumes even greater significance with the ratification of the 1987 Constitution. Thenceforth, the power to tax is no longer vested exclusively on Congress; local legislative bodies are now given direct authority to levy taxes, fees and other charges pursuant to Article X, section 5 of the 1987 Constitution, *viz*:

Section 5.- Each Local Government unit shall have the power to create its own sources of revenue, to levy taxes, fees and charges subject to such guidelines and limitations as the Congress may provide, consistent with the basic policy of local autonomy. Such taxes, fees and charges shall accrue exclusively to the Local Governments.

This paradigm shift results from the realization that genuine development can be achieved only by strengthening local autonomy and promoting decentralization of governance. For a long time, the country's highly centralized government structure has bred a culture of dependence among local government leaders upon the national leadership. It has also "dampened the spirit of initiative, innovation and imaginative resilience in matters of local development on the part of local government leaders. The only way to shatter this culture of dependence is to give the LGUs a wider role in the delivery of basic services, and confer them sufficient powers to generate their own sources for the purpose. To achieve this goal, x x x the 1987 Constitution mandates Congress to enact a local government code that will, consistent with the basic policy of local autonomy, set the guidelines and limitations to this grant of taxing powers x x x."

To recall, prior to the enactment of the x x x Local Government Code x x x, various measures have been enacted to promote local autonomy. x x x Despite these initiatives, however, the shackles of dependence on the national government remained. Local government units were faced with the same problems that hamper their capabilities to participate effectively in the national development efforts, among which are: (a) inadequate tax base, (b) lack of fiscal control over external sources of income, (c) limited authority to prioritize and approve development projects, (d) heavy dependence on external sources of income, and (e) limited supervisory control over personnel of national line agencies.

Considered as the most revolutionary piece of legislation on local autonomy, the LGC effectively deals with the fiscal constraints faced by LGUs. It widens the tax base of LGUs to include taxes which were prohibited by previous laws x x x.

Neither can the NPC successfully rely on the Basco case as this was decided prior to the effectivity of the LGC, when there was still no law empowering local government units to tax instrumentalities of the national government.

Consequently, when NPC assumed the tax liabilities of the BPC under their 1992 BOT Agreement, the LGC which removed NPC's tax exemption privileges had already been in effect for six (6) months. Thus, while BPC remains to be the entity doing business in said city, it is the NPC that is ultimately liable to pay said taxes under the provisions of both the 1992 BOT Agreement and the 1991 Local Government Code.

PHILIPPINE BASKETBALL ASSOCIATION, petitioner -versus- COURT OF APPEALS, COURT OF TAX APPEALS, AND COMMISSIONER OF INTERNAL REVENUE,*respondents.*
G.R. No. 119122, THIRD DIVISION, August 8, 2000, PURISIMA, *J*.

The province can only impose a tax on admission from the proprietors, lessees, or operators of theaters, cinematographs, concert halls, circuses and other places of amusement. The authority to tax professional basketball games is not therein included, as the same is expressly embraced in PD 1959, which amended PD 1456.

It is clear that the "proprietor, lessee or operator of . . . professional basketball games" is required to pay an amusement tax equivalent to fifteen per centum (15%) of their gross receipts to the Bureau of Internal Revenue, which payment is a national tax. The said payment of amusement tax is in lieu of all other percentage taxes of whatever nature and description

FACTS:

On June 21, 1989, the petitioner received an assessment letter from the Commissioner of Internal Revenue (respondent Commissioner) for the payment of deficiency amusement tax.

Petitioner contested the assessment by filing a protest with respondent Commissioner who denied the same.

Petitioner filed a petition for review with the Court of Tax Appeals (respondent CTA) questioning the denial by respondent Commissioner of its tax protest.

Respondent CTA dismissed petitioner's petition. Petitioner appealed the CTA decision to the Court of Appeals.

The Court of Appeals rendered its questioned Decision, affirming the decision of the CTA and dismissing petitioner's appeal.

Petitioner contends that PD 231, otherwise known as the Local Tax Code of 1973, transferred the power and authority to levy and collect amusement taxes from the sale of admission tickets to places of amusement from the national government to the local governments. Petitioner cited BIR Memorandum Circular No. 49-73 providing that the power to levy and collect amusement tax on admission tickets was transferred to the local governments by virtue of the Local Tax Code; and BIR Ruling No. 231-86 which held that "the jurisdiction to levy amusement tax on gross receipts from admission tickets to places of amusement was transferred to local governments under P.D. No. 231, as amended." Further, petitioner opined that even assuming arguendo that respondent Commissioner revoked BIR Ruling No. 231-86, the reversal, modification or revocation cannot be given retroactive effect since even as late as 1988 (BIR Memorandum Circular No. 8-88), respondent Commissioner still recognized the jurisdiction of local governments to collect amusement taxes.

ISSUE:

1. Is the amusement tax on admission tickets to PBA games a national or local tax? Otherwise put, who between the national government and local government should petitioner pay amusement taxes? (NATIONAL)

RULING:

The laws on the matter are succinct and clear and need no elaborate disquisition. Section 13 of the Local Tax Code provides:

"SECTION 13. *Amusement tax on admission*. — The province shall impose a tax on admission to be collected from the proprietors, lessees, or operators of theaters, cinematographs, concert halls, circuses and other places of amusement . . ."

The foregoing provision of law in point indicates that the province can only impose a tax on admission from the proprietors, lessees, or operators of *theaters, cinematographs, concert halls, circuses* and other places of amusement. The authority to tax professional basketball games is not therein included, as the same is expressly embraced in PD 1959, which amended PD 1456.

It is clear that the "proprietor, lessee or operator of . . . professional basketball games" is required to pay an amusement tax equivalent to fifteen per centum (15%) of their gross receipts to the Bureau of Internal Revenue, which payment is a national tax. The said payment of amusement tax is in lieu of all other percentage taxes of whatever nature and description.

While Section 13 of the Local Tax Code mentions "other places of amusement", professional basketball games are definitely not within its scope. Under the principle of *ejusdem generis*, where general words follow an enumeration of persons or things, by words of a particular and specific meaning, such general words are not to be construed in their widest extent, but are to be held as applying only to persons or things of the same kind or class as those specifically mentioned. Thus, in determining the meaning of the phrase "other places of amusement", one must refer to the prior enumeration of theaters, cinematographs, concert halls and circuses with artistic expression as their common characteristic. Professional basketball games do not fall under the same category as theaters, cinematographs, concert halls and circuses as the latter basically belong to artistic forms of entertainment while the former caters to sports and gaming.

Likewise erroneous is the stance of petitioner that respondent Commissioner's issuance of BIR Ruling No. 231-86 and BIR Revenue Memorandum Circular No. 8-88 — both upholding the authority of the local government to collect amusement taxes — should bind the government or that, if there is any revocation or modification of said rule, the same should operate prospectively.

It bears stressing that the government can never be in estoppel, particularly in matters involving taxes. It is a well-known rule that erroneous application and enforcement of the law by public officers do not preclude subsequent correct application of the statute, and that the Government is never estopped by mistake or error on the part of its agents.

All things studiedly considered, the Court rules that the petitioner is liable to pay amusement tax to the national government, and not to the local government, in accordance with the rates prescribed by PD 1959.

MACTAN CEBU INTERNATIONAL AIRPORT AUTHORITY, *petitioner* -versus- HON. FERDINAND J. MARCOS, in his capacity as the Presiding Judge of the Regional Trial Court, Branch 20, Cebu City, THE CITY OF CEBU, represented by its Mayor HON. TOMAS R. OSMEÑA, and EUSTAQUIO B. CESA, *respondents.*

G.R. No. 120082, THIRD DIVISION, September 11, 1996, DAVIDE, JR.*, J.*

Since the last paragraph of Section 234 unequivocally withdrew, upon the effectivity of the LGC, exemptions from payment of real property taxes granted to natural or juridical persons, including government-owned or controlled corporations, except as provided in the said section, and the petitioner is, undoubtedly, a government-owned corporation, it necessarily follows that its exemption from such tax granted it by its charter has been withdrawn.

FACTS:

Mactan Cebu International Airport Authority was created by virtue of RA 6958 to manage the

Mactan International Airport and the Lahug Airport. Since the time of its creation, petitioner MCIAA enjoyed the privilege of exemption from payment of realty taxes. In Section 14 of its Charter provides that "the Authority shall be exempt from realty taxes imposed by the National Government or any of its political subdivisions, agencies and instrumentalities."

In 1994, however, the Office of the Treasurer of the City of Cebu demanded payment for realty taxes on several parcels of land belonging to petitioner. Petitioner objected to such demand, citing Sec. 14. It asserted that it is an instrumentality of the government which performs governmental functions, citing Sec. 133 of the Local Government Code which puts limitations on the taxing powers of local government units. Sec. 133, LGC provides that the exercise of the taxing powers of provinces, cities, municipalities and barangays shall not extend to the levy of... taxes, fees or charges of any kind on the National government, its agencies and instrumentalities and local government units.

The Respondent City refused to cancel and set aside the realty tax account, insisting that the MCIAA is a GOCC whose tax exemption privilege has been withdrawn by virtue of Sections 193 and 234 of the LGC. Sec. 193 provides that tax exemptions or incentives granted to or presently enjoyed by all persons, whether natural or juridical, including GOCCs except local water districts, cooperatives duly registered under RA 6938, non-stock and non-profit hospitals and educational institutions are hereby withdrawn upon the effectivity of this Code. Section 234 meanwhile provides that exemption from payment of real property tax previously granted to or presently enjoyed by all persons, whether natural or juridical, including GOCCs are hereby withdrawn upon the effectivity of the LGC.

Because the City of Cebu was about to issue a warrant of levy against the properties of MCIAA, the latter was compelled to pay its tax account under protest. MCIAA likewise filed a petition for declaratory relief with the RTC of Cebu, contending that the taxing powers of local government units do not extend to the levy of taxes or fees of any kind on an instrumentality of the national government. MCIAA insisted that while it is indeed a GOCC, it nontheless stands on the same footing as an agency or instrumentality of the national government by the very nature of its powers and functions. The City however maintained that MCIAA is not an instrumentality of the government but merely a GOCC performing proprietary functions, and hence, the exemptions granted to it were deemed withdrawn by virtue of Secs. 193 and 234 of the LGC.

The trial court dismissed the petition. MR denied. Hence this petition. Petitioner asserts that although it is a GOCC, it is mandated to perform functions in the same category as an instrumentality of the government. An instrumentality of the Government is one created to perform governmental functions primarily to promote certain aspects of the economic life of the people. Petitioner further contends that being an instrumentality of the National Government, respondent City of Cebu has no power nor authority to impose realty taxes upon it in accordance with Sec. 133 of the LGC. In Basco v. PAGCOR, the SC said the local governments have no power to tax instrumentalities of the National Gov't like PAGCOR, which has a dual role (its role to regulate gambling casinos is governmental, placing it in the category of an agency or instrumentality of the Government which should be exempt from local taxes. Petitioner thus concludes that there is a distinction in the LGC between a GOCC performing gov't functions as against one performing merely proprietary ones, and it is clear from Secs. 133 and 234, LGC that the legislature meant to exclude instrumentalities of the national government from the taxing powers of LGUs.

ISSUE:

Whether petitioner is exempted from payment of taxes or not. (NO)

RULING:

Taxation is the rule and exemption is the exception. Thus, the exemption may be withdrawn at the pleasure of the taxing authority. The only exception to this rule is where the exemption was granted to private parties based on material consideration of a mutual nature, which then becomes contractual and is thus covered by the non-impairment clause of the Constitution.

The general rule, as laid down in Section 133 of the LGC is that the taxing powers of LGUs cannot extend to the levy of, inter alia, "taxes, fees and charges of any kind on the National Government, its agencies, and instrumentalities, and LGUs." However, pursuant to Section 232, provinces, cities and municipalities in the Metro Manila Area MAY impose real property taxes except on inter alia, real property owned by the Republic of the Philippines or any of its political subdivisions except when the beneficial use thereof has been granted for consideration or otherwise, to a taxable person (Sec. 234a).

As to tax exemptions/incentives granted to or presently enjoyed by natural or juridical persons, including GOCCs,

GENERAL RULE: Tax exemptions or incentives are withdrawn upon the effectivity of the LGC
EXCEPTION: Those granted to local water districts, cooperatives duly registered under RA 6938, non-stock and non-profit hospitals and educ institutions, and unless otherwise provided in the LGC. This latter proviso could refer to Section 234 enumerating the properties exempt from real property tax. The last paragraph of Section 234 further qualifies the retention of the exemption insofar as real property taxes are concerned by limiting the retention only to those enumerated therein; all others not included in the enumeration therefore lost the privilege upon the effectivity of the LGC. Even as to real property owned by the Rep. Of the Philippines or any of its political subdivisions covered by item (a) of the first paragraph of Section 234, the exemption is withdrawn if the beneficial use of such property has been granted to a taxable person for consideration or otherwise.

Since the last paragraph of Section 234 unequivocally withdrew, upon the effectivity of the LGC, exemptions from payment of real property taxes granted to natural or juridical persons, including government-owned or controlled corporations, except as provided in the said section, and the petitioner is, undoubtedly, a government-owned corporation, it necessarily follows that its exemption from such tax granted it by its charter has been withdrawn.

COMMISSIONER OF INTERNAL REVENUE, *Petitioner*, -versus- THE PHILIPPINE AMERICAN ACCIDENT INSURANCE COMPANY, INC., THE PHILIPPINE AMERICAN ASSURANCE COMPANY, INC., and THE PHILIPPINE AMERICAN GENERAL INSURANCE CO., INC., *Respondents.*
G.R. No. 141658, FIRST DIVISION, March 18, 2005, CARPIO, *J.*

The rule that tax exemptions should be construed strictly against the taxpayer presupposes that the taxpayer is clearly subject to the tax being levied against him. Unless a statute imposes a tax clearly, expressly and unambiguously, what applies is the equally well-settled rule that the imposition of a tax cannot be presumed. Where there is doubt, tax laws must be construed strictly against the government and in favor of the taxpayer. This is because taxes are burdens on the taxpayer, and should not be unduly imposed or presumed beyond what the statutes expressly and clearly import.

FACTS:

Respondents are domestic corporations licensed to transact insurance business in the country. They paid the BIR, under protest, the 3% tax imposed on lending investors based on each company's interest income from mortgage and other loans. Respondents also paid the taxes required of insurance companies under CA 466.

Respondents subsequently sent a letter-claim to petitioner seeking a refund of the taxes paid under protest. When respondents did not receive a response, each respondent filed a petition for review with the CTA. These three petitions argued that respondents were not lending investors and as such were not subject to the 3% lending investors tax.

The CTA held that respondents are not taxable as lending investors because the term lending investors does not embrace insurance companies. Dissatisfied, petitioner elevated the matter to the CA which ruled that respondents are not taxable as lending investors.

ISSUE:

Whether the respondents are subject to the 3% percentage tax as lending investors under NIRC. (NO)

RULING:

The rule that tax exemptions should be construed strictly against the taxpayer presupposes that the taxpayer is clearly subject to the tax being levied against him. Unless a statute imposes a tax clearly, expressly and unambiguously, what applies is the equally well-settled rule that the imposition of a tax cannot be presumed. Where there is doubt, tax laws must be construed strictly against the government and in favor of the taxpayer. This is because taxes are burdens on the taxpayer, and should not be unduly imposed or presumed beyond what the statutes expressly and clearly import.

In the case at bar, petitioner does not dispute that respondents are in the insurance business. Petitioner merely alleges that the definition of lending investors under CA 466 is broad enough to encompass insurance companies. The Court does not agree as insurance companies cannot be considered lending investors.

The definition in Section 194(u) of CA 466 is not broad enough to include the business of insurance companies. The Insurance Code of 1978 is very clear on what constitutes an insurance company. It provides that an insurer or insurance company shall include all individuals, partnerships, associations or corporations engaged as principals in the insurance business, excepting mutual benefit associations. Plainly, insurance companies and lending investors are different enterprises in the eyes of the law. Lending investors cannot, for a consideration, hold anyone harmless from loss, damage or liability, nor provide compensation or indemnity for loss.

Moreover, the fact that Sections 195-A and 182(A)(3)(dd) of CA 466 failed to mention insurance companies already implies the latter's exclusion from the coverage of these provisions. When a statute enumerates the things upon which it is to operate, everything else by implication must be excluded from its operation and effects.

NATIONAL POWER CORPORATION, *Petitioner*, -versus- CITY OF CABANATUAN, *Respondent.*
G.R. No. 149110, THIRD DIVISION, April 9, 2003, PUNO, *J.*

As a rule, tax exemptions are construed strongly against the claimant. Exemptions must be shown to exist clearly and categorically, and supported by clear legal provisions.

In the case at bar, the petitioner's sole refuge is Section 13 of RA No. 6395 exempting itself from, among others, all income taxes, franchise taxes and realty taxes to be paid to the National Government, its provinces, cities, municipalities and other government agencies and instrumentalities. It must be noted, however, that Section 193 of the LGC withdrew, subject to limited exceptions, the sweeping tax privileges previously enjoyed by private and public corporations. Contrary to the contention of petitioner, Section 193 of the LGC is an express, albeit general, repeal of all statutes granting tax exemptions from local taxes. Not being a local water district, a cooperative registered under R.A. No. 6938, or a non-stock and non-profit hospital or educational institution, petitioner clearly does not belong to the exception. It is therefore incumbent upon the petitioner to point to some provisions of the LGC that expressly grant it exemption from local taxes. This, however, would be an exercise in futility. Section 137 of the LGC clearly states that the LGUs can impose franchise tax notwithstanding any exemption granted by any law or other special law. The said provision does not admit any exception.

FACTS:

The petitioner, a government-owned and controlled corporation, sells electric power to the residents of Cabanatuan City, posting a gross income of P107,814,187.96 in 1992. Accordingly, pursuant to Section 37 of Ordinance No. 165-92, the respondent assessed the petitioner of franchise tax amounting to P808,606.41, representing 75% of 1% of the latter's gross receipts for the preceding year.

The petitioner refused to pay the tax assessment arguing that the respondent has no authority to impose tax on government entities. It also contended that as a non-profit organization, it is exempted from the payment of all forms of taxes, charges, duties or fees in accordance with Sec. 13 of RA No. 6395, as amended. Consequently, the respondent filed a collection suit in the RTC, demanding that the petitioner pay the assessed tax due plus surcharge. The respondent alleged that the petitioner's exemption from local taxes has been repealed by Section 193 of the LGC, which reads as follows:

Sec. 193. Withdrawal of Tax Exemption Privileges.- Unless otherwise provided in this Code, tax exemptions or incentives granted to, or presently enjoyed by all persons, whether natural or juridical, including government owned or controlled corporations, except local water districts, cooperatives duly registered under R.A. No. 6938, non-stock and non-profit hospitals and educational institutions, are hereby withdrawn upon the effectivity of this Code.

ISSUE:

Whether the petitioner is exempted from payment of local taxes. (NO)

RULING:

As a rule, tax exemptions are construed strongly against the claimant. Exemptions must be shown to exist clearly and categorically, and supported by clear legal provisions.

In the case at bar, the petitioner's sole refuge is Section 13 of RA No. 6395 exempting itself from, among others, all income taxes, franchise taxes and realty taxes to be paid to the National Government, its provinces, cities, municipalities and other government agencies and instrumentalities. It must be noted, however, that Section 193 of the LGC withdrew, subject to limited exceptions, the sweeping tax privileges previously enjoyed by private and public corporations. Contrary to the contention of petitioner, Section 193 of the LGC is an express, albeit general, repeal of all statutes granting tax exemptions from local taxes. Not being a local water district, a cooperative registered under RA No. 6938, or a non-stock and non-profit hospital or educational institution, petitioner clearly does not belong to the exception. It is therefore incumbent upon the petitioner to point to some provisions of the LGC that expressly grant it exemption from local taxes. This, however, would be an exercise in futility. Section 137 of the LGC clearly states that the LGUs can impose franchise tax notwithstanding any exemption granted by any law or other special law. The said provision does not admit any exception.

It is worth mentioning that Section 192 of the LGC empowers the LGUs, through ordinances duly approved, to grant tax exemptions, initiatives or reliefs. In enacting Section 37 of Ordinance No. 165-92 which imposes an annual franchise tax notwithstanding any exemption granted by law or other special law, the respondent clearly did not intend to exempt the petitioner from the coverage thereof.

Doubtless, the power to tax is the most effective instrument to raise needed revenues to finance and support myriad activities of the local government units for the delivery of basic services essential to the promotion of the general welfare and the enhancement of peace, progress, and prosperity of the people. The original reason for the withdrawal of tax exemption privileges granted to government-owned or controlled corporations and all other units of government was that such privilege resulted in serious tax base erosion and distortions in the tax treatment of similarly situated enterprises.

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,* -versus- TOLEDO POWER COMPANY, *Respondent.*
G.R. No. 195175, FIRST DIVISION, August 10, 2015, SERENO, *C.J.*

TOLEDO POWER COMPANY, *Petitioner,* -versus- COMMISSIONER OF INTERNAL REVENUE, *Respondent.*
G.R. No. 199645, FIRST DIVISION, August 10, 2015, SERENO, *C.J.*

As a rule, taxes cannot be subject to compensation because the government and the taxpayer are not creditors and debtors of each other. However, in several cases, The Court have allowed the determination of a taxpayer's liability in a refund case, thereby allowing the offsetting of taxes. It was clarified though that while offsetting may be allowed, the BIR can no longer assess the taxpayer for deficiency taxes in excess of the amount claimed for refund if prescription has already set in.

FACTS:

Toledo Power Corporation (TPC) is a general partnership principally engaged in the business of power generation and sale of electricity to National Power Corporation (NPC), Cebu Electric Cooperative III (CEBECO), Atlas Consolidated Mining and Development Corporation (ACMDC), and Atlas Fertilizer Corporation (AFC).

TPC filed with the BIR an administrative claim for refund or credit of its unutilized input VAT for the taxable year 2002 under EPIRA Law and NIRC.

Since NPC is exempt from the payment of all taxes, including VAT, the CTA Division allowed TPC to claim a refund or credit of its unutilized input VAT attributable to its zero- rated sales of electricity to NPC for the taxable year 2002. The CTA Division, however, denied the claim attributable to TPC's sales of electricity to CEBECO, ACMDC and AFC due to the failure of TPC to prove that it is a generation company under the EPIRA.

Petitioner argues that since TPC failed to present all relevant documents, it failed to prove that it did not apply its unutilized input VAT against output VAT. Moreover, since TPC's sales of electricity to companies other than NPC were denied VAT zero-rating, TPC should be held liable for deficiency VAT in the amount of P4,015,731.63. On the other hand, TPC argues that , it is already agreed that TPC is a generation company under the EPIRA. In addition, it is not liable for deficiency VAT, even if, for the sake of argument, its sales of electricity to CEBECO, ACMDC, and AFC are not zero-rated, as an assessment cannot be issued in a refund case, not to mention that the BIR's period to assess had already prescribed.

ISSUE:

Whether TPC is liable for deficiency VAT. (NO)

RULING:

As a rule, taxes cannot be subject to compensation because the government and the taxpayer are not creditors and debtors of each other. However, in several cases, The Court have allowed the determination of a taxpayer's liability in a refund case, thereby allowing the offsetting of taxes. It was clarified though that while offsetting may be allowed, the BIR can no longer assess the taxpayer for deficiency taxes in excess of the amount claimed for refund if prescription has already set in. The Court allowed offsetting of taxes only because the determination of the taxpayer's liability is intertwined with the resolution of the claim for tax refund of erroneously or illegally collected taxes under Section 229 of the NIRC

In the case at bar, TPC filed a claim for tax refund or credit under Section 112 of the NIRC where the issue to be resolved is whether TPC is entitled to a refund or credit of its unutilized input VAT for the taxable year 2002. Since it is not a claim for refund under Section 229 of the NIRC, the correctness of TPC s VAT returns is not an issue. Thus, there is no need for the court to determine whether TPC is liable for deficiency VAT. It would be unfair to allow the CIR to use a claim for refund under Section 112 of the NIRC as a means to assess a taxpayer for any deficiency VAT, especially if the period to assess had already prescribed.

REPUBLIC OF THE PHILIPPINES, *Petitioner,* -versus- HON. JUDGE VICENTE G. ERICTA and SAMPAGUITA PICTURES, INC., *Respondents.*
G.R. No. L-35238, FIRST DIVISION, April 21, 1989, NARVASA, *J.*

While judgment should be rendered in favor of the Republic against Sampaguita for unpaid taxes in the amount of P10,268.41, judgment ought at the same time to issue for Sampaguita commanding payment to it by the Republic of the same sum, representing the face value of the certificates of indebtedness assigned to it and for recovery of which it had specifically prayed in its counterclaim.

FACTS:

The Philippine Government, in the aftermath of the Pacific War, issued "back pay certificates" to recognize the right of people who at the outbreak of the war were employed in the civil service as well as in government-owned or controlled corporations to salaries not received by them by reason of the war. These certificates of indebtedness were redeemable by the Government within 10 years.

It appears that in relation to its business of producing motion pictures, Sampaguita Pictures, Inc. came to incur an obligation for percentage, withholding and amusement taxes in the amount of P10,268.41 in favor of the Republic. In satisfaction thereof and of another obligation of the same nature due from Vera-Perez Corporation, Sampaguita tendered to the Office of the Municipal Treasurer of Bocaue, Bulacan 16 back pay negotiable certificates of indebtedness in the aggregate sum of P16,763.60.

The Assistant Regional Director of the BIR, however, advised that the acceptance of the negotiable certificates was erroneous and the payment was invalid because said certificates were not acceptable as payments of internal revenue. Request was thus made for the payment of the tax liabilities in cash to which neither corporations responded. As such, after 8 years, the Solicitor General brought suit in behalf of the Republic.

Sampaguita's answer asserted that the certificates, having duly matured, there is already a duty to redeem them and pay for their value. Sampaguita and the Republic became mutual creditors and debtors of each other for the amount of P10,268.41 with the result that their obligations were extinguished by legal compensation.

The trial court hold that while it is well- accepted that legal compensation cannot take place against the Republic with respect to taxes, fees, duties and similar forced contributions due to it, there could be no gainsaying the proposition that, under the facts, Sampaguita was entitled to judgment upon its counterclaim for the payment by the Republic of its indebtedness by virtue of the back pay certificates in question with the ultimate result that the claim and counter-claim of the plaintiff and the defendant will offset each other.

ISSUE:

Whether legal compensation is proper. (YES)

RULING:

At least as of date of judgment of the trial court, more than 10 years has passed. As such, the obligation was unquestionably already due and payable and Sampaguita was entitled to a judgment against the Republic for the payment of the face value of the certificates. Even if as the Solicitor General points out, there is no certainty when the certificates are actually redeemable because the law say that they are redeemable within ten years from the date of issuance, there can be no question that after the lapse of 10 years from the declared date of redeemability, payment of the indebtedness was already exigible.

While judgment should be rendered in favor of the Republic against Sampaguita for unpaid taxes in the amount of P10,268.41, judgment ought at the same time to issue for Sampaguita commanding payment to it by the Republic of the same sum, representing the face value of the certificates of indebtedness assigned to it and for recovery of which it had specifically prayed in its counterclaim.

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,* -versus- ESSO STANDARD EASTERN, INC. and THE COURT OF TAX APPEALS, *Respondents.*

G.R. Nos. L-28502-03, FIRST DIVISION, April 18, 1989, NARVASA, *J.*

The obligation to return money mistakenly paid arises from the moment the payment is made and not from the time that the payee admits the obligation to reimburse. This is because the obligation to reimburse results from the mistake and not from the payee's confession of the mistake or recognition of the obligation to reimburse.

FACTS:

ESSO Standard Eastern, Inc. overpaid its 1959 income tax by P221,033.00. As such, a tax credit was granted. However, its payment of income tax for 1960 was found to be short by P367,994.00. As such, petitioner demanded payment of the deficiency tax together with interest thereon for the period from 1961 to 1964.

ESSO paid under protest the amount alleged to be due, including the interest. It protested the computation of interest, contending that it was more than that properly due. It claimed that it should not have been required to pay interest on the total amount of the deficiency tax but only on the amount of P146,961.00, the difference between the said deficiency and its earlier overpayment for which it had been granted a tax credit. As such, ESSO asked for a refund. This was denied by the petitioner.

Petitioner argued that since the tax credit was approved only on 1964, it could not be availed of in reduction of ESSOs earlier tax deficiency for 1960. As of 1960, there was no tax credit yet to speak of.

ISSUE:

Whether the interest on delinquency should be applied on the full 1960 tax deficiency of P367,994.00 despite the existence of an overpayment of P221,033.00 acknowledged only in 1964. (YES)

RULING:

As early as 1960, the Government already had in its hands the sum of P221,033.00 representing excess payment. Having been paid and received by mistake, that sum unquestionably belonged to ESSO and the Government had the obligation to return it. That acknowledgment of the erroneous payment came some 4 years afterwards in nowise negates or detracts from its actuality. The obligation to return money mistakenly paid arises from the moment the payment is made and not from the time that the payee admits the obligation to reimburse. This is because the obligation to reimburse results from the mistake and not from the payee's confession of the mistake or recognition of the obligation to reimburse.

A literal interpretation is to be rejected if it would be unjust or lead to absurd results. Statutes should receive a sensible construction so as to give effect to the legislative intention and avoid an unjust or absurd conclusion.

REPUBLIC OF THE PHILIPPINES, *Petitioner*, -versus- MAMBULAO LUMBER COMPANY, ET AL., *Respondents.*

G.R. No. L-17725, EN BANC, February 28, 1962, BARRERA, *J.*

A claim for taxes is not such a debt, demand, contract or judgment as is allowed to be set-off under the statutes of set-off which are construed uniformly, in the light of public policy, to exclude the remedy in an action or any indebtedness of the state or municipality to one who is liable to the state or municipality for taxes. Taxes are not in the nature of contracts between the parties but grow out of a duty to and are the positive acts of the government to the making and enforcing of which, the personal consent of individual taxpayers is not required.

FACTS:

Mambulao Lumber Company paid the government a total of P9,127.50 reforestation charges for 1947 to 1956. -Section 1 of RA 115 provides that these reforestation charges shall be collected, in addition to the regular forest charges.

After having been found liable for an aggregate amount of P4,802.37 for forest charges, it contended that since the Republic has not made use of the reforestation charges for reforesting the denuded area of the land covered by its license, the Republic should refund said amount or, if it cannot be refunded, at least the company should be compensated with forest charges it owed.

The Court of First Instance of Manila ordered the company to pay the government P4,802.37 with 6% interest thereon from date of the filing of the complaint until fully paid, plus costs.

ISSUE:

Whether the reforestation charges may be set off or applied to the payment of forest charges owed to the government. (NO)

RULING:

Mambulao and the Republic are not mutually creditors and debtors of each other. The amount paid by Mambulao are in the coffers of the government as taxes collected, and the latter does not owe anything to it. Consequently, the law on compensation is inapplicable. It must be noted that under the New Civil Code, compensation takes place when two persons in their own right are creditors and debtors of each other.

A claim for taxes is not such a debt, demand, contract or judgment as is allowed to be set-off under the statutes of set-off which are construed uniformly, in the light of public policy, to exclude the remedy in an action or any indebtedness of the state or municipality to one who is liable to the state or municipality for taxes. Taxes are not in the nature of contracts between the parties but grow out of a duty to and are the positive acts of the government to the making and enforcing of which, the personal consent of individual taxpayers is not required. If the taxpayer can properly refuse to pay his tax when called upon by the Collector because he has a claim against a governmental body which is not included in the tax levy, it is plain that some legitimate and necessary expenditure must be curtailed. If the taxpayer's claim is disputed, the collection of the tax must await and abide the result of a lawsuit. The financial affairs of the government, meanwhile, will be thrown into great confusion.

MELECIO R. DOMINGO, AS COMMISSIONER OF INTERNAL REVENUE, *Petitioner*, -versus- HON. LORENZO C. GARLITOS, IN HIS CAPACITY AS JUDGE OF THE COURT OF FIRST INSTANCE OF LEYTE, AND SIMEONA K. PRICE, AS ADMINISTRATRIX OF THE INTESTATE ESTATE OF THE LATE WALTER SCOTT PRICE, *Respondents.*

G.R. No. L-18994, EN BANC, June 29, 1963, LABRADOR, *J.*

Both the claim of the Government for inheritance taxes and the claim of the intestate for services rendered have already become overdue and demandable as well as fully liquidated. Compensation, therefore, takes place by operation of law in accordance with the provisions of Articles 1279 and 1290 of the Civil Code, and both debts are extinguished to the concurrent amount

FACTS:

In Melecio R. Domingo vs. Hon. Judge S. C. Moscoso, the Court declared as final and executory the order for the payment by the estate of the late Walter Scott Pine estate and inheritance taxes, charges and penalties, amounting to P40,058.55. In order to enforce the claims against the estate, the fiscal presented a petition for the execution of the judgment. Such petition was, however, denied by the lower court which held that the execution is not justifiable as the Government is indebted to the estate under administration in the amount of P262,200.

ISSUE:

Whether legal compensation is proper. (YES)

RULING:

The court having jurisdiction of the estate had found that the claim of the estate against the Government has been recognized and an amount of P262,200 has already been appropriated for the purpose by a corresponding law (RA No. 2700). Under the above circumstances, both the claim of the Government for inheritance taxes and the claim of the intestate for services rendered have already become overdue and demandable as well as fully liquidated. Compensation, therefore, takes place by operation of law in accordance with the provisions of Articles 1279 and 1290 of the Civil Code, and both debts are extinguished to the concurrent amount.

ENGRACIO FRANCIA, *Petitioner,* -versus- INTERMEDIATE APPELLATE COURT and HO FERNANDEZ, *Respondents.*
G.R. No. L-67649, THIRD DIVISION, June 28, 1988, GUTIERREZ, JR., *J.*

This principal contention of the petitioner has no merit as there can be no off-setting of taxes against the claims that the taxpayer may have against the government. A claim for taxes is not such a debt, demand, contract or judgment as is allowed to be set-off. Taxes are not in the nature of contracts between the parties but grow out of duty to and are the positive acts of the government to the making and enforcing of which, the personal consent of individual taxpayers is not required. Government and taxpayer are not mutually creditors and debtors of each other. As such, a person cannot refuse to pay a tax on the ground that the government owes him an amount equal to or greater than the tax being collected. The collection of a tax cannot await the results of a lawsuit against the government.

FACTS:

Engracio Francia is the registered owner of a residential lot and a two-story house built upon it. A 125-square meter portion of Francia's property was expropriated by the Republic of the Philippines for the sum of P4,116.00. From 1963 up to 1977, Francia failed to pay his real estate taxes. Thus, his property was sold at public auction in order to satisfy a tax delinquency of P2,400.00.

Francia subsequently filed a complaint to annul the auction sale. He averred that his tax delinquency of P2,400.00 has been extinguished by legal compensation since P4, 116.00 was owed to him by the government when a portion of his land was expropriated.

The lower court rendered a decision in favor of the highest bidder in the auction sale. This was affirmed by the Intermediate Appellate Court .

ISSUE:

Whether the tax delinquency of Francia has been extinguished by legal compensation. (NO)

RULING:

By legal compensation, due and demandable obligations of persons, who in their own right are reciprocally debtors and creditors of each other, are extinguished.

This principal contention of the petitioner has no merit as there can be no off-setting of taxes against the claims that the taxpayer may have against the government. A claim for taxes is not such a debt, demand, contract or judgment as is allowed to be set-off. Taxes are not in the nature of contracts between the parties but grow out of duty to and are the positive acts of the government to the making and enforcing of which, the personal consent of individual taxpayers is not required. Government and taxpayer are not mutually creditors and debtors of each other. As such, a person cannot refuse to pay a tax on the ground that the government owes him an amount equal to or greater than the tax being collected. The collection of a tax cannot await the results of a lawsuit against the government.

Furthermore, in the case at bar, it must be noted that the tax was due to the city government while the expropriation was effected by the national government. Moreover, the amount of P4,116.00 for the 125-square meter portion of his lot was deposited with the Philippine National Bank long before the sale at public auction of his remaining property. Considering the foregoing, the petitioner's contention cannot be given due consideration.

PHILEX MINING CORPORATION, *Petitioner,* -versus- COMMISSIONER OF INTERNAL REVENUE, COURT OF APPEALS, and THE COURT OF TAX APPEALS, *Respondents.*
G.R. No. 125704, THIRD DIVISION, August 28, 1988, ROMERO, *J.*

Taxes cannot be subject to compensation against the claims that the taxpayer may have against the government for the simple reason that the government and the taxpayer are not creditors and debtors of each other. There is a material distinction between a tax and debt. Debts are due to the Government in its corporate capacity while taxes are due to the Government in its sovereign capacity.
As such, a person cannot refuse to pay a tax on the ground that the government owes him an amount equal to or greater than the tax being collected. The collection of tax cannot await the results of a lawsuit against the government.

FACTS:

The Bureau of Internal Revenue sent a letter to Philex Mining Corporation, asking it to settle its excise tax liabilities amounting to P124 million.

Philex protested the demand for payment stating that it has pending claims for input VAT credit/refund amounting to P120 million. These claims for tax credit/refund should be applied against the tax liabilities.

In reply, the BIR found no merit in Philex's position. Since the pending claims have not yet been established or determined with certainty, it follows that no legal compensation can take place. Hence, the BIR reiterated its demand that Philex settle the amount plus interest within 30 days from the receipt of the letter.

On appeal, the CTA ruled in favor of the BIR. The motion for reconsideration filed by Philex was also denied.

A few days after the denial of its motion for reconsideration, Philex was able to obtain its VAT input credit/refund. In view of such grant, Philex now contends that the same should, ipso jure, off-set its excise tax liabilities since both had already become due and demandable, as well as fully liquidated. Legal compensation can properly take place.

ISSUE:

Whether legal compensation can properly take place between the VAT input credit/refund and the excise tax liabilities of Philex. (NO)

RULING:

Taxes cannot be subject to compensation against the claims that the taxpayer may have against the government for the simple reason that the government and the taxpayer are not creditors and debtors of each other. There is a material distinction between a tax and debt. Debts are due to the Government in its corporate capacity while taxes are due to the Government in its sovereign capacity.
As such, a person cannot refuse to pay a tax on the ground that the government owes him an amount equal to or greater than the tax being collected. The collection of tax cannot await the results of a lawsuit against the government.

Philex's reliance on the Court's ruling in Commissioner of Internal Revenue v. Itogon-Suyoc Mines, Inc., wherein it was held that a pending refund may be set off against an existing tax liability even though the refund has not yet been approved by the Commissioner, is without merit. The same is no longer without any support in statutory law. When the National Internal Revenue Code of 1977 was enacted, the same provision upon which the Itogon-Suyoc pronouncement was based was omitted.

An otherwise ruling is an outright disregard of the basic principle in tax law that taxes are the lifeblood of the government and so should be collected without unnecessary hindrance. A distinguishing feature of a tax is that it is compulsory rather than a matter of bargain. A tax does not depend upon the consent of the taxpayer.

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,* -versus- CITYTRUST BANKING CORPORATION, *Respondent.*
G.R. No. 150812, SECOND DIVISION, August 22, 2006, CORONA, *J.*

The Court will not set aside lightly the conclusion reached by the CTA which, by the very nature of its function, is dedicated exclusively to the consideration of tax problems and has necessarily developed an expertise on the subject, unless there has been an abuse or improvident exercise of authority.

FACTS:

The CTA ordered the CIR to grant Citytrust a refund in the amount of ₱13,314,506.14 representing Citytrust's overpaid income taxes for 1984 and 1985. In response, the CIR filed an MR on the ground that the Certificate of Tax Withheld was inconclusive evidence of payment and remittance of tax to the BIR. Moreover, it is claimed that Citytrust had outstanding deficiency income and business tax liabilities of ₱4,509,293.71 for 1984. The said MR was denied.

A petition for review on certiorari was then brought before the SC where it was ruled that there was an apparent contradiction between the claim for refund and the deficiency assessments against Citytrust and that the government could not be held in estoppel due to the negligence of its officials or employees especially in cases involving taxes. As such, the case was remanded to the CTA.

In the proceedings before the CTA, it was determined that except for a pending issue in another CTA proceeding, all of Citytrust's deficiency tax liabilities for 1984 is fully settled, hence, the CTA granted the refund. This is despite CIR's objection that Citytrust still had unpaid tax liabilities for 1985. In ruling so, the CTA did not allow a set-off or legal compensation of the taxes involved.

ISSUE:

Whether Citytrust is entitled to refund. (YES)

RULING:

Records show that the SC made no previous direct ruling on Citytrust's alleged failure to substantiate its claim for refund. Instead, the order of the Court addressed the apparent failure of the BIR, by reason of the mistake or negligence of its officials and employees, to present the appropriate evidence to oppose Citytrust's claim. The CTA complied with the Court's order to conduct further proceedings. In the course thereof, Citytrust paid the assessed deficiencies to remove all administrative impediments to its claim for refund.

Because of the CTA's recognized expertise in taxation, its findings are not ordinarily subject to review specially where there is no showing of grave error or abuse on its part. The Court will not set aside lightly the conclusion reached by the CTA which, by the very nature of its function, is dedicated exclusively to the consideration of tax problems and has necessarily developed an expertise on the subject, unless there has been an abuse or improvident exercise of authority.

WONDER MECHANICAL ENGINEERING CORPORATION REPRESENTED BY MR. LUCIO QUIJANO, PRESIDENT & GENERAL MANAGER, *Petitioner,* -versus- THE HON. COURT OF TAX APPEALS and THE BUREAU OF INTERNAL REVENUE BEING REPRESENTED BY THE COMMISSIONER OF INTERNAL REVENUE, *Respondents.*

G.R. Nos. L-22805 & L-27858, FIRST DIVISION, June 30, 1975, ESGUERRA, *J.*

It is a well settled doctrine that compromise penalty cannot be imposed or collected without the agreement or conformity of the tax payer. In the case at bar, it does not appear that the petitioner accepted the imposition of the compromise amounts. As such, no compromise was entered into by the parties.

FACTS:

The petitioner was engaged in the business of manufacturing auto spare parts, lamp shades, rice threshers and other articles. It was also engaged in the business of electroplating and repair of machines and granted tax exemption privilege under Republic Act 35 in respect to the manufacture of machines for making cigarette paper, pails, lead washers, rivets, nails, candies. chairs, etc.

The Commissioner of Internal Revenue caused the investigation of the petitioner for the purpose of ascertaining its tax liability. Revenue Examiner Alfonso B. Camillo found that it did not provide with the proper privilege tax receipts and did not pay the sales tax on its gross sales of articles manufactured by it as well as the percentage tax due on the gross receipts of its electroplating and repair business. Based on the foregoing, the respondent assessed the total amount of P69,699.56, inclusive of the 25% surcharge.

In another case, the Commissioner of Internal Revenue ordered as well Revenue Examiner Pedro Cabigao to conduct an investigation. He reported that the petitioner had manufactured and sold steel chairs without paying the 30% sales tax, accepted job orders without paying the 3% tax in gross receipts, manufactured and sold other articles subject to 7% sales tax but not covered by the tax exemption privilege; failed to register with the BIR books of accounts and sales invoices, failed to indicate in the sales invoices the Residence Certificate number of customers who purchased articles worth P50.00 or over and failed to produce its books of accounts and business records for inspection and examination when required to do so by the revenue examiner. Based on the foregoing, the respondent assessed the payment of P25,080.91 as deficiency percentage taxes and 25% surcharge. He also suggested the payment of P5,020.00 as total compromise penalty in extrajudicial settlement of the enumerated violations.

ISSUE:

A. Whether a compromise was entered into by the parties. (NO)
B. Whether the manufacture and sale of steel chairs and jeep parts, among others, which are not machines for making cigarette paper, pails, lead washers, rivets, nails, candies. chairs, etc. are tax exempt. (NO)

RULING:

(A) It is a well settled doctrine that compromise penalty cannot be imposed or collected without the agreement or conformity of the tax payer. In the case at bar, it does not appear that the petitioner accepted the imposition of the compromise amounts. As such, no compromise was entered into by the parties.

(B) Tax exemptions are highly disfavored in law and those who claim them must be able to justify his claim which must be clearly expressed in the law. Tax exemptions cannot be established by implication.

In the case at bar, the petitioner was granted the tax exemption in the manufacture and sale of machines but not in the manufacture and sale of the articles produced by the machines. Such was the intention of the State for new and necessary industries as an incentive to greater and adequate production of products made scarce by World War II.

PEOPLE OF THE PHILIPPINES, *Petitioner,* -versus- HON. MARIANO CASTAÑEDA JR., JUDGE OF THE COURT OF FIRST INSTANCE OF PAMPANGA, BRANCH III, VICENTE LEE TENG, PRISCILLA CASTILLO VDA. DE CURA AND FRANCISCO VALENCIA, *Respondents.*
G.R. No. L-46881, THIRD DIVISION, September 15, 1988, FELICIANO, *J.*

The fact that the agents of the BIR had already accepted Valencia's application for tax amnesty and his payment of the required 15% special tax cannot be ground for estoppel on the part of the State. The State is not bound by the mistakes of its agents. Still further, a tax amnesty, much like to a tax exemption, is never favored nor presumed in law and if granted by statute, the terms of the amnesty like that of a tax exemption must be construed strictly against the taxpayer and liberally in favor of the taxing authority.

FACTS:

Two informants submitted sworn information under RA 2338 (An Act to Provide for Reward to Informers of Violations of the Internal Revenue and Customs Laws) to the BIR concerning alleged violations of provisions of the Internal Revenue Code committed by the private respondents.

Following an investigation and examination by the BIR, the State Prosecutor filed with the CFI several information against private respondents.

Respondents were charged with various violations of the NIRC including possession of counterfeit internal revenue labels, possession of liquors and spirits whose specific taxes have not been paid, and manufacture of alcoholic products without paying the privilege tax therefor. After arraignment, accused Valencia filed a Motion to Quash upon the ground that the information had been filed without conducting the necessary preliminary investigation and that he was entitled to the benefits of the tax amnesty provided by PD No. 370. The prosecutor argued that Valencia was not entitled to avail himself of the benefits of PD No. 370 since his tax cases were the subject of valid information submitted.

The trial court judge granted the Motion to Quash. The co-accused also filed Motions to Quash on the theory that the dismissal of the action as to Valencia inured to their benefit. Such motions were also granted by the respondent judge.

ISSUE:

Whether private respondents are entitled to the benefits of the tax amnesty. (NO)

RULING:

PD 370 provides for a tax amnesty in broad terms**: "A tax amnesty is hereby granted to any person, natural or juridical, xxx failed to include all that were required to be declared therein if he now voluntarily discloses under this decree all his previously untaxed income and/or wealth** such as earnings, receipts, gifts, bequests or any other acquisitions from any source whatsoever which are or were previously taxable under the National Internal Revenue Code, realized here or abroad by condoning all internal revenue taxes including the increments or penalties on account of non-payment as well as all civil, criminal or administrative liabilities, under the National Internal Revenue Code, the Revised Penal Code, the Anti-Graft and Corrupt Practices Act, the Revised Administrative Code, the Civil Service Laws and Regulations, laws and regulations on Immigration and Deportation, or any other applicable law or proclamation, as it is hereby condoned, provided a tax of fifteen (15%) per centum on such previously untaxed income and/or wealth is imposed subject to the following conditions:

a. Such previously untaxed income and/or wealth must have been earned or realized prior to 1973, except the following:
xxx
e. Tax cases which are the subject of a valid information under Republic Act No. 2338 as of December 31, 1973; and
xxx"

The amnesty provides for the extinction of all liability arising from such acts such as those of the respondents. Thus, the amnesty also eliminates the criminal liabilities attendant to the acts. However, to avail of the benefits of the amnesty, it is required that the claimant must have voluntarily disclosed of his untaxed income or wealth. Where the disclosure of such previously untaxed income or wealth was not voluntary but rather the accompaniment or result of tax cases or tax assessments already pending as of December 31, 1973, the claimant is not entitled to the benefits of PD No. 370.

In the case at bar, the violations of the National Internal Revenue Code with which the respondent accused were charged had already been discovered by the BIR when PD No. 370 took effect on January 9, 1974. Thus, the provisions of the amnesty are not available to the private respondents.

The fact that the agents of the BIR had already accepted Valencia's application for tax amnesty and his payment of the required 15% special tax cannot be ground for estoppel on the part of the State. The State is not bound by the mistakes of its agents. Still further, a tax amnesty, much like to a tax exemption, is never favored nor presumed in law and if granted by statute, the terms of the amnesty like that of a tax exemption must be construed strictly against the taxpayer and liberally in favor of the taxing authority.

ASIA INTERNATIONAL AUCTIONEERS, INC., *Petitioner,* -versus- COMMISSIONER OF INTERNAL REVENUE, *Respondent.*
G.R. No. 179115, SECOND DIVISION, September 26, 2012, PERLAS-BERNABE, *J.*

RA 9399 was passed prior to the passage of RA 9480. RA 9399 does not preclude taxpayers within its coverage from availing of other tax amnesty programs available or enacted in the future like RA 9480. RA 9480, on the other hand, does not exclude from its coverage taxpayers operating within special economic zones. ***As long as it is within the bounds of the law, a taxpayer has the liberty to choose which tax amnesty program it wants to avail.***

FACTS:

Petitioner is a duly organized corporation operating within the Subic Special Economic Zone (SSEZ). It is engaged in the importation of used motor vehicles and heavy equipment which it sells to the public through auction. BIR assessed it with deficiency VAT and excise taxes. During the pendency of the case, petitioner availed of the amnesty program under Republic Act No. 9480.

The BIR argues that petitioner is disqualified under Section 8(a) of RA 9480 from availing the Tax Amnesty Program because it is "deemed" a withholding agent for the deficiency taxes. The BIR likewise argues that petitioner, as an accredited investor/taxpayer situated at the SSEZ, should have availed of the tax amnesty granted under RA 9399 and not under RA 9480.

ISSUE:

Whether petitioner is entitled to the tax amnesty program. (YES)

RULING:

VAT and excise taxes are not withholding taxes.

The CIR did not assess the petitioner as a withholding agent that failed to withhold or remit the deficiency VAT and excise tax to the BIR under the relevant provisions of the Tax Code. Hence, the argument that AIA is "deemed" a withholding agent for the said deficiency taxes is fallacious.

Indirect taxes, like VAT and excise tax, are different from withholding taxes. To distinguish, in indirect taxes, the incidence of taxation falls on one person but the burden thereof can be shifted or passed on to another person such as when the tax is imposed upon goods before reaching the consumer who ultimately pays for it. On the other hand, in case of withholding taxes, the incidence and burden of taxation fall on the same entity, the statutory taxpayer. The burden of taxation is not shifted to the withholding agent who merely collects, by withholding, the tax due from income payments to entities arising from certain transactions and remits the same to the government. Due to this difference, the deficiency VAT and excise tax cannot be "deemed" as withholding taxes merely because they constitute indirect taxes. Moreover, records support the conclusion that AIA was assessed not as a withholding agent but as the one directly liable for the said deficiency taxes.

Petitioner is not prohibited from availing tax amnesty under RA 9399.

RA 9399 was passed prior to the passage of RA 9480. RA 9399 does not preclude taxpayers within its coverage from availing of other tax amnesty programs available or enacted in the future like RA 9480. RA 9480, on the other hand, does not exclude from its coverage taxpayers operating within special economic zones. As long as it is within the bounds of the law, a taxpayer has the liberty to choose which tax amnesty program it wants to avail.

The Court also took judicial notice of the "Certification of Qualification" issued by Eduardo A. Baluyut, BIR Revenue District Officer, stating that AIA has availed and is qualified for Tax Amnesty for the Taxable Year 2005 and Prior Years pursuant to RA 9480. In the absence of sufficient evidence proving that the certification was issued in excess of authority, the presumption that it was issued in the regular performance of the revenue district officer's official duty stands.

ERMITA-MALATE HOTEL AND MOTEL OPERATORS ASSOCIATION, INC., HOTEL DEL MAR INC. and GO CHIU, *Petitioners,* -versus- THE HONORABLE CITY MAYOR OF MANILA, *Respondent.*
G.R. No. L-24693, EN BANC, July 31, 1967, FERNANDO*, J.*

Admittedly, in the case at bar, there was an increase of the annual license fees. However, it must be noted that it has been the settled law that municipal license fees could be classified into those imposed for (a) regulating occupations or regular enterprises; (b) regulating non-useful occupations or enterprises and (c) raising revenue only. Licenses for non-useful occupations are incidental to the police power and the right to exact a fee may be implied from the power to license and regulate. In fixing the amount theretofore, the municipal corporations are allowed a much wider discretion than in the former. The desirability of imposing restraint upon the number of persons who might otherwise engage in non-useful enterprises is, of course, generally an important factor in the determination of the amount of this kind of license fee. Moreover, aside from applying the well-known legal principle that municipal ordinances must not be unreasonable, oppressive, or tyrannical, it must be noted that courts have, as a general rule, declined to interfere with such discretion. Hence, license fees clearly in the nature of privilege taxes for revenue have frequently been upheld.

FACTS:

Ordinance 4760 was issued by the Municipal Board of the City of Manila and was approved by Acting Mayor Herminio Astorga. The ordinance imposed a P6,000.00 fee per annum for first class motels and P4,500.00 for second class motels. It also provided that entertaining or accepting any guest or customer shall be refrained unless it fills out a prescribed form in the lobby in open view and that prohibiting admission of a person less than 18 years old shall be enforced. A penalty of automatic cancellation of the license of the offended party is as well imposed in case of conviction for violation of any of the provisions od the ordinance.

The petitioners subsequently filed a petition for prohibition against the Mayor of the City of Manila in his capacity as such as he is charged with the general power and duty to enforce ordinances of the City of Manila and to give the necessary orders for the faithful execution and enforcement of such ordinances. There was a plea for the issuance of preliminary injunction and for a final judgment declaring the above ordinance null and void and unenforceable. They view that the subject ordinance is violative of the due process clause, contending that said ordinance is not only arbitrary, unreasonable or oppressive but also vague, indefinite and uncertain. It was likewise alleged that it constitutes an invasion of the right to privacy and the guaranty against self-incrimination.

The lower court ruled that Ordinance 4760 unconstitutional and therefore null and void.

ISSUE:

Whether Ordinance 4760 is unconstitutional.

RULING:

The challenged ordinance was precisely enacted to minimize certain practices hurtful to public morals. As observed by the City of Manila, there was an alarming increase in the rate of prostitution, adultery and fornication in Manila traceable in great part to the existence of motels which provide a necessary atmosphere for clandestine entry, presence and exit and thus become the ideal haven for prostitutes and thrill-seekers. The increase in the licensed fees, in particular, was intended to discourage establishments of the kind from operating for purpose other than legal and to increase the income of the city.

Admittedly, in the case at bar, there was an increase of the annual license fees. However, it must be noted that it has been the settled law that municipal license fees could be classified into those imposed for (a) regulating occupations or regular enterprises; (b) regulating non-useful occupations or enterprises and (c) raising revenue only. Licenses for non-useful occupations are incidental to the police power and the right to exact a fee may be implied from the power to license and regulate. In fixing the amount theretofore, the municipal corporations are allowed a much wider discretion than in the former. The desirability of imposing restraint upon the number of persons who might otherwise engage in non-useful enterprises is, of course, generally an important factor in the determination of the amount of this kind of license fee. Moreover, aside from applying the well-known legal principle that municipal ordinances must not be unreasonable, oppressive, or tyrannical, it must be noted that courts have, as a general rule, declined to interfere with such discretion. Hence, license fees clearly in the nature of privilege taxes for revenue have frequently been upheld.

Equally important and applicable in the case is the principle that taxation may be made to implement the state's police power.

EDUARDO M. COJUANGCO, JR., *Petitioner,* -versus- REPUBLIC OF THE PHILIPPINES, *Respondent.*
G.R. No. 180705, EN BANC, November 27, 2012, VELASCO, JR*., J.*

Coconut levy funds partake of the nature of taxes, which, in general, are enforced proportional contributions from persons. Based on its definition, a tax has three elements, namely: a) it is an enforced proportional contribution from persons and properties; b) it is imposed by the State by virtue of its sovereignty; and c) it is levied for the support of the government. The coconut levy funds fall squarely into these elements.

FACTS:

RA 6260 was enacted creating the Coconut Investment Company (CIC) to administer the Coconut Investment Fund (CIF), which, under Section 8 thereof, was to be sourced from a P0.55 levy on the sale of every 100kg of copra. Of the P0.55 levy of which the copra seller was or ought to be issued COCOFUND receipts, P0.02 was placed at the disposition of COCOFED, the national association of coconut producers declared by the Philippine Coconut Administration (PCA) as having the largest membership. Through the years, a part of the coconut levy funds went directly or indirectly to finance various projects and/or was converted into various assets or investments. Relevant to the present petition is the acquisition of the First United Bank which was subsequently renamed as United Coconut Planters Bank (UCPB).

The plan, then, was for PCA to buy all of Pedro Cojuangco's shares in UCPB. However, as later events unfolded, a simple direct sale from the seller to PCA did not ensue as it was made to appear that Cojuangco had the exclusive option to acquire the UCPB's controlling interests. Emerging from this elaborate, circuitous arrangement were two deeds. It was later admitted by the defendants that the PCA used public funds in the total amount of P150 million to purchase the UCPB shares amounting to 72.2% of the authorized capital stock of the UCPB, although the PCA was later reimbursed from the coconut levy funds.

ISSUE:

Whether the coconut levy funds were public funds and, hence, are public property. (YES)

RULING:

Coconut levy funds partake of the nature of taxes, which, in general, are enforced proportional contributions from persons. Based on its definition, a tax has three elements, namely: a) it is an enforced proportional contribution from persons and properties; b) it is imposed by the State by virtue of its sovereignty; and c) it is levied for the support of the government. The coconut levy funds fall squarely into these elements.

Like other tax measures, coconut levy funds were not voluntary payments or donations by the people. They were enforced contributions exacted on pain of penal sanctions and were clearly imposed for a public purpose. There is absolutely no question that they were collected to advance the government's avowed policy of protecting the coconut industry. As such, any property acquired by means of the coconut levy funds, such as the subject UCPB shares, should be treated as public funds or public property, subject to the burdens and restrictions attached by law to such property.

Accordingly, the Sandiganbayan's ruling that the coconut levy funds are special public funds of the Government is to be upheld. It must be noted that the same ruling rendered unconstitutional the provisions of law which allow the use and/or the distribution of properties acquired through the coconut levy funds to private individuals for their own direct benefit and absolute ownership. The properties subject of the decision were declared owned by and ordered reconveyed to the Government, to be used only for the benefit of all coconut farmers and for the development of the coconut industry.

SMART COMMUNICATIONS, INC., *Petitioner*, -versus- MUNICIPALITY OF MALVAR, BATANGAS, *Respondent.*
G.R. No. 204429, EN BANC, February 18, 2014, CARPIO, *J.*

If the generating of revenue is the primary purpose and regulation is merely incidental, the imposition is a tax. If the regulation is the primary purpose, the fact that incidentally revenue is also obtained does not make the imposition a tax. It must be noted that the designation given does not decide whether the imposition is a license tax or a license fee. The determining factors are the purpose and effect of the imposition as may be apparent from the provisions of the ordinance. When no police inspection, supervision, or regulation is provided nor any standard set for the applicant to establish or maintain but any and all persons engaged in the business designated, without qualification or hindrance, may come, the presumption is strong that the power of taxation, and not the police power, is being exercised. In the present case, since the main purpose of Ordinance No. 18 is to regulate certain construction activities of the identified special projects, which included cell sites or telecommunications towers, the fees imposed in Ordinance No. 18 are primarily regulatory in nature. While the fees may contribute to the revenues of the Municipality, this effect is merely incidental. Contrary to Smart's contention, Ordinance No. 18 expressly provides for the standards which Smart must satisfy prior to the issuance of the specified permits, clearly indicating that the fees are regulatory in nature.

FACTS:

Smart Communications, Inc. constructed a telecommunications tower in the Municipality of Malvar, Batangas for the purpose of receiving and transmitting cellular communications within the covered area.

In 2003, the Municipality passed Ordinance No. 18 entitled "An Ordinance Regulating the Establishment of Special Projects." Thereafter, Smart received from the Permit and Licensing Division of the Mayor of the Municipality an assessment letter with a scheduled payment for the total amount of P389,950 corresponding its telecommunications tower. As such, Smart filed a protest claiming lack of due process in the issuance of the assessment. In a letter, the Municipality denied the protest.

Smart then filed with the RTC an appeal/petition assailing the validity of Ordinance No.18 before the RTC which rendered a decision partly granting its petition. Not contented with the decision, Smart filed a petition for review with the CTA Division which was denied. The case was elevated to the CTA En Banc which also dismissed the petition on the ground of lack of jurisdiction. Consequently, Smart filed a petition for review before the SC arguing that the "fees" in Ordinance No. 18 are actually taxes since they are not regulatory but are revenue-raising, hence, the CTA has jurisdiction over the case.

ISSUE:

Whether the "fees" contemplated in the ordinance are revenue-raising so as to warrant CTA's jurisdiction over the case. (NO)

RULING:

Section 5, Article X of the 1987 Constitution provides that "each local government unit shall have the power to create its own sources of revenues and to levy taxes, fees, and charges subject to such guidelines and limitations as the Congress may provide, consistent with the basic policy of local autonomy. Such taxes, fees, and charges shall accrue exclusively to the local government."

Consistent with this constitutional mandate, the LGC grants taxing powers to each local government unit. Specifically, Section 142 of the LGC grants municipalities the power to levy taxes, fees, and charges not otherwise levied by provinces. Section 143, on the other hand, provides for the scale of taxes on business that may be imposed by municipalities while Section 147provides for the fees and charges that may be imposed by municipalities on business and occupation.

The LGC defines the term "charges" as referring to pecuniary liability like rents or fees against persons or property while the term "fee" means a charge fixed by law or ordinance for the regulation or inspection of a business or activity.

In the case at bar, the Municipality issued Ordinance No. 18 to regulate the "placing, stringing, attaching, installing, repair and construction of all gas mains, electric, telegraph and telephone wires, conduits, meters and other apparatus, and provide for the correction, condemnation or removal of the same when found to be dangerous, defective or otherwise hazardous to the welfare of the inhabitants." It was also envisioned to address the foreseen "environmental depredation" to be brought about by these "special projects" to the Municipality. Pursuant to these objectives, the Municipality imposed fees on various structures, which included telecommunications towers. Clearly, the subject ordinance are not impositions on the building or structure itself. Rather, they are imposed on the activity subject of government regulations.

As held in Progressive Development Corporation v. Quezon City, if the generating of revenue is the primary purpose and regulation is merely incidental, the imposition is a tax. If the regulation is the primary purpose, the fact that incidentally revenue is also obtained does not make the imposition a tax. It must be noted that the designation given does not decide whether the imposition is a license tax or a license fee. The determining factors are the purpose and effect of the imposition as may be apparent from the provisions of the ordinance. When no police inspection, supervision, or regulation is provided nor any standard set for the applicant to establish or maintain but any and all persons engaged in the business designated, without qualification or hindrance, may come, the presumption is strong that the power of taxation, and not the police power, is being exercised. In the present case, since the main purpose of Ordinance No. 18 is to regulate certain construction activities of the identified special projects, which included cell sites or telecommunications towers, the fees imposed in Ordinance No. 18 are primarily regulatory in nature. While the fees may contribute to the revenues of the Municipality, this effect is merely incidental. Contrary to Smart's contention, Ordinance No. 18 expressly provides for the standards which Smart must satisfy prior to the issuance of the specified permits, clearly indicating that the fees are regulatory in nature.

Considering that the fees in Ordinance No. 18 are not in the nature of local taxes, and Smart is questioning the constitutionality of the ordinance, the CTA correctly dismissed the petition for lack of jurisdiction.

PROGRESSIVE DEVELOPMENT CORPORATION, *Petitioner,* -versus- QUEZON CITY, *Respondent.*
G.R. No. L-36081, THIRD DIVISION, April 24, 1989, FELICIANO, *J.*

License fee is a legal concept distinguishable from tax: the former is imposed in the exercise of police power primarily for purposes of regulation, while the latter is imposed under the taxing power primarily for purposes of raising revenues. If the generating of revenue is the primary purpose and regulation is merely incidental, the imposition is a tax. If regulation is the primary purpose, the fact that incidentally revenue is also obtained does not make the imposition a tax.

FACTS:

The City Council of Quezon CIty passed an ordinance known as the Market Code of Quezon City, which imposed a 5% supervision fee on gross receipts on rentals or lease of privately-owned market spaces in the City. In case of failure of the owners of the market spaces to pay the tax for 3 consecutive months, the City shall revoke the permit of the privately-owned market to operate.

Progressive Development Corporation, owner and operator of a public market known as the "Farmers Market & Shopping Center", filed a Petition for Prohibition with Preliminary Injunction against respondent on the ground that the supervision fee or license tax imposed by the ordinance the latter imposed is in reality a tax on income which it may not impose, the same being expressly prohibited by RA 2264, as amended. The petitioner insists that the "supervision fee" collected from rentals, being a return from capital invested in the construction of the Farmers Market, practically operates as a tax on income, one of those expressly excepted from respondent's taxing authority, and thus beyond the latter's competence.

ISSUE:

Whether the tax imposed by respondent on gross receipts of stall rentals is properly characterized as partaking of the nature of an income tax. (NO)

RULING:

License fee is a legal concept distinguishable from tax: the former is imposed in the exercise of police power primarily for purposes of regulation, while the latter is imposed under the taxing power primarily for purposes of raising revenues. If the generating of revenue is the primary purpose and regulation is merely incidental, the imposition is a tax. If regulation is the primary purpose, the fact that incidentally revenue is also obtained does not make the imposition a tax.

To be considered a license fee, the imposition questioned must relate to an occupation or activity that so engages the public interest in health, morals, safety and development as to require regulation for the protection and promotion of such public interest. The imposition must also bear a reasonable relation to the probable expenses of inspection, supervision or regulation, taking into account not only the costs of direct regulation but also its incidental consequences. Such cost may be, as provided for by the Legislature, at the expense of the persons engaged in the said occupation or activity. It may also be provided that no one shall engage in the same until a fee or charge sufficient to cover such cost has been paid. Accordingly, a charge of a fixed sum which bears no relation at all to the cost of inspection and regulation may be held to be a tax rather than an exercise of the police power.

In the case at bar, the "Farmers' Market and Shopping Center" being a public market in the sense of a market being open to and inviting the patronage of the general public even though privately owned, It is required that the petitioner's operation thereof be issued a license issued by the respondent in the exercise of the latter's police power. Its operation is equivalent to or quite the same as the operation of a government-owned market as both are established for the rendition of service to the general public which warrants close supervision and control by the City for the protection of the health of the public by insuring the maintenance of sanitary and hygienic conditions in the market and compliance of all food stuffs sold therein with applicable food and drug and related standards, among others. As such, the 5% tax imposed in the ordinance is a license fee for the regulation of the business in which the petitioner is engaged.

While it is true that the amount imposed by the questioned ordinances may be considered in determining whether the exaction is really one for revenue or prohibition, it will be presumed to be reasonable. Local governments are allowed wide discretion in determining the rates of imposable license fees even in cases of purely police power measures in the absence of proof as to particular municipal conditions and the nature of the business being taxed as well as other detailed factors relevant to the issue of arbitrariness or unreasonableness of the questioned rates. The question of reasonableness though is open to judicial inquiry should be left to the discretion of municipal authorities. Courts will go slow in writing off an ordinance as unreasonable unless the amount is so excessive as to be prohibitory, arbitrary, unreasonable, oppressive, or confiscatory.

In the case at bar, petitioner has not shown that the rate of the gross receipts tax is so unreasonably large and excessive and so grossly disproportionate. The use of the gross amount of stall rentals as basis for determining the collectible amount of license tax, does not by itself, convert or render the license tax into a prohibited city tax on income. Moreover, it must be noted that the higher the amount of stall rentals means the higher the aggregate volume of foodstuffs and related items sold in petitioner's privately owned market. As such, greater should be the extent and frequency of inspection and supervision that may be reasonably required in the interest of the buying public.

ERNESTO M. MACEDA, *Petitioner,* -versus- HON. CATALINO MACARAIG, JR., in his capacity as Executive Secretary, Office of the President, HON. VICENTE JAYME, ETC., ET AL., *Respondents.*
G.R. No. 88291, EN BANC, June 8, 1993, NOCON, *J.*

NPC laws show that it has been the lawmaker's intention that the NPC was to be completely tax exempt from all forms of taxes – direct and indirect. One common theme in all the laws above is that the NPC must be able to pay its indebtedness which, as of PD No. 938, was P12 Billion in total domestic indebtedness, at any one time, and US$4 Billion in total foreign loans at any one time. The NPC must be and has to be exempt from all forms of taxes if this goal is to be achieved.

FACTS:

Commonweath Act No. 120 was enacted creating the National Power Corporation (NPC), a public corporation, mainly to develop hydraulic power and the production of power from other sources in the Philippines. To facilitate payment of its indebtedness, the NPC was exempted from all taxes, duties, fees, imposts, charges and restrictions of the Republic of the Philippines, its provinces, cities and municipalities.

The charter of the NPC was subsequently revised to give to it the power to carry out the policy of national electrification. PD No. 380 was issued and specified that NPC's tax exemption includes all taxes imposed directly and indirectly on all petroleum products used by NPC in its operation. Subsequently, PD No. 938 was enacted which integrated the tax exemption privilege of NPC in general terms. After a series of withdrawal and restoration of NPC's tax exemption, the Fiscal Incentives Review Board, possessing the power to restore tax exemptions issued Resolution 10-85 restoring NPC's exemption from June 11, 1984 to June 30, 1985.

Since 1976, oil firms never paid excise or specific and ad valorem taxes for petroleum products sold and delivered to NPC. Such taxes were paid on their sales of oil products to NPC only in 1984. As such, NPC claimed for a refund of P468.58 Million and only a portion was approved and released. NPC moved for reconsideration, stating that all the deliveries of petroleum products to NPC are tax exempt. Petitioner contends that Presidential Decree No. 938 repealed the indirect tax exemption of NPC as Sec 10 thereof does not expressly include "indirect taxes".

ISSUE:

Whether the National Power Corporation still possessed indirect tax exemption after the repeal made in PD 938. (YES)

RULING:

NPC laws show that it has been the lawmaker's intention that the NPC was to be completely tax exempt from all forms of taxes – direct and indirect.

One common theme in all the laws above is that the NPC must be able to pay its indebtedness which, as of PD No. 938, was P12 Billion in total domestic indebtedness, at any one time, and US$4 Billion in total foreign loans at any one time. The NPC must be and has to be exempt from all forms of taxes if this goal is to be achieved. In addition to this, the then President Marcos mandated that P200 million be appropriated annually to NPC which amount to be taken from the general fund of the government. It does not stand to reason that the then President would order the said amount to be taken partially or totally from the tax money to be used to pay the government subscription in the NPC on one hand and order NPC to pay its indirect tax.

It must also be noted that Section 10 of PD 938 was intended to be in its general form. President Marcos must have considered all the NPC statutes. When construing a series of statutes, they shall be taken and construed together as in statutes in pari materia. Moreover, repeal by implication is not favored unless it is manifest that the legislature so intended.

SILKAIR (SINGAPORE) PTE, LTD., *Petitioner,* -versus - COMMISSIONER OF INTERNAL REVENUE, *Respondent.*
G.R. No. 173594, SECOND DIVISION, February 6, 2008, CARPIO MORALES, *J.*

The proper party to question, or seek a refund of, an indirect tax is the statutory taxpayer, the person on whom the tax is imposed by law and who paid the same even if he shifts the burden thereof to another.37 Section 130 (A) (2) of the NIRC provides that unless otherwise specifically allowed, the return shall be filed and the excise tax paid by the manufacturer or producer before removal of domestic products from place of production." Thus, Petron Corporation, not Silkair, is the statutory taxpayer which is entitled to claim a refund based on Section 135 of the NIRC of 1997 and Article 4(2) of the Air Transport Agreement between RP and Singapore.

FACTS:

Petitioner, Silkair (Singapore) Pte. Ltd. (Silkair), a corporation organized under the laws of Singapore which has a Philippine representative office, is an online international air carrier operating the Singapore-Cebu-Davao-Singapore, Singapore-Davao-Cebu-Singapore, and Singapore-Cebu-Singapore routes. On December 19, 2001, Silkair filed with the Bureau of Internal Revenue (BIR) a written application for the refund of P4,567,450.79 excise taxes it claimed to have paid on its purchases of jet fuel from Petron Corporation from January to June 2000.

As the BIR had not yet acted on the application as of December 26, 2001, Silkair filed a Petition for Review before the CTA. Opposing the petition, respondent Commissioner on Internal Revenue (CIR) alleged in his Answer that, among other things the petitioner failed to prove that the sale of the petroleum products was directly made from a domestic oil company to the international carrier.

By Decision of May 27, 2005, the Second Division of the CTA denied Silkair's petition. The CTA discoursed that while it is true that in the case of excise tax imposed on petroleum products, the seller thereof may shift the tax burden to the buyer, the latter is the proper party to claim for the refund in the case of exemption from excise tax. Since the excise tax was imposed upon Petron Corporation as the manufacturer of petroleum products, pursuant to Section 130(A)(2), and that the corresponding excise taxes were indeed, paid by it, . . . any claim for refund of the subject excise taxes should be filed by Petron Corporation as the taxpayer contemplated under the law. Petitioner cannot be considered as the taxpayer because it merely shouldered the burden of the excise tax and not the excise tax itself. Therefore, the right to claim for the refund of excise taxes paid on petroleum products lies with Petron Corporation who paid and remitted the excise tax to the BIR. Respondent, on the other hand, may only claim from Petron Corporation the reimbursement of the tax burden shifted to the former by the latter. The excise tax partaking the nature of an indirect tax, is clearly the liability of the manufacturer or seller who has the option whether or not to shift the burden of the tax to the purchaser. Where the burden of the tax is shifted to the purchaser, the amount passed on to it is no longer a tax but becomes an added cost on the goods purchased which constitutes a part of the purchase price. The incidence of taxation or the person statutorily liable to pay the tax falls on Petron Corporation though the impact of taxation or the burden of taxation falls on another person, which in this case is petitioner Silkair.

ISSUE:

Whether or not Silkair Corporation may claim tax refund or tax credit.

RULING:

The proper party to question, or seek a refund of, an indirect tax is the statutory taxpayer, the person on whom the tax is imposed by law and who paid the same even if he shifts the burden thereof to another.37 Section 130 (A) (2) of the NIRC provides that unless otherwise specifically allowed, the return shall be filed and the excise tax paid by the manufacturer or producer before removal of domestic products from place of production." Thus, Petron Corporation, not Silkair, is the statutory taxpayer which is entitled to claim a refund based on Section 135 of the NIRC of 1997 and Article 4(2) of the Air Transport Agreement between RP and Singapore.

Even if Petron Corporation passed on to Silkair the burden of the tax, the additional amount billed to Silkair for jet fuel is not a tax but part of the price which Silkair had to pay as a purchaser.

Silkair nevertheless argues that it is exempt from indirect taxes because the Air Transport Agreement between RP and Singapore grants exemption "from the same customs duties, inspection fees and other duties or taxes imposed in the territory of the first Contracting Party." It invokes Maceda v. Macaraig, Jr. which upheld the claim for tax credit or refund by the National Power Corporation (NPC) on the ground that the NPC is exempt even from the payment of indirect taxes.

Silkair bases its claim for refund or tax credit on Section 135 (b) of the NIRC of 1997 which reads:

Sec. 135. Petroleum Products sold to International Carriers and Exempt Entities of Agencies. – Petroleum products sold to the following are exempt from excise tax: x x x x

(b) Exempt entities or agencies covered by tax treaties, conventions, and other international agreements for their use and consumption: Provided, however, That the country of said foreign international carrier or exempt entities or agencies exempts from similar taxes petroleum products sold to Philippine carriers, entities or agencies; x x x

x x x x,

and Article 4(2) of the Air Transport Agreement between the Government of the Republic of the Philippines and the Government of the Republic of Singapore (Air Transport Agreement between RP and Singapore) which reads:

Fuel, lubricants, spare parts, regular equipment and aircraft stores introduced into, or taken on board aircraft in the territory of one Contracting party by, or on behalf of, a designated airline of the other Contracting Party and intended solely for use in the operation of the agreed services shall, with the exception of charges corresponding to the service performed, be exempt from the same customs duties, inspection fees and other duties or taxes imposed in the territories of the first Contracting Party , even when these supplies are to be used on the parts of the journey performed over the territory of the Contracting Party in which they are introduced into or taken on board. The materials referred to above may be required to be kept under customs supervision and control.

Silkairs's argument does not persuade. The exemption granted under Section 135 (b) of the NIRC of 1997 and Article 4(2) of the Air Transport Agreement between RP and Singapore cannot, without a clear showing of legislative intent, be construed as including indirect taxes. Statutes granting tax exemptions must be construed in strictissimi juris against the taxpayer and liberally in favor of the taxing authority, and if an exemption is found to exist, it must not be enlarged by construction.

ASIA INTERNATIONAL AUCTIONEERS, INC., *Petitioner*, -versus - COMMISSIONER OF INTERNAL REVENUE, *Respondent.*

G.R. No. 179115, SECOND DIVISION, September 26, 2012, PERLAS-BERNABE, *J.*

To distinguish, in indirect taxes, the incidence of taxation falls on one person but the burden thereof can be shifted or passed on to another person, such as when the tax is imposed upon goods before reaching the consumer who ultimately pays for it. On the other hand, in case of withholding taxes, the incidence and burden of taxation fall on the same entity, the statutory taxpayer. The burden of taxation is not shifted to the withholding agent who merely collects, by withholding the tax due from income payments to entities arising from certain transactions and remits the same to the government. Due to this difference, the deficiency VAT and excise tax cannot be "deemed" as withholding taxes merely because they constitute indirect taxes.

FACTS:

Petitioner is a duly organized corporation operating within the Subic Special Economic Zone ("SSEZ"). It is engaged in the importation of used motor vehicles and heavy equipment which it sells to the public through auction. BIR assessed it with deficiency VAT and excise taxes. However, during the pendency of the instant case, petitioner availed of the amnesty program under Republic Act No. 9480.

The BIR argues that petitioner is disqualified under Section 8(a) of RA9480 from availing itself of the Tax Amnesty Program because it is "deemed" a withholding agent for the deficiency taxes. The BIR likewise argues that petitioner, as an accredited investor/taxpayer situated at the SSEZ, should have availed of the tax amnesty granted under RA 9399 and not under RA 9480.

ISSUE:

Whether or not petitioner is entitled to the tax amnesty program.

RULING: **YES.**

A tax amnesty is a general pardon or the intentional overlooking by the State of its authority to impose penalties on persons otherwise guilty of violating a tax law. It partakes of an absolute waiver by the government of its right to collect what is due it and to give tax evaders who wish to relent a chance to start with a clean slate. A tax amnesty, much like a tax exemption, is never favored or presumed in law. The grant of a tax amnesty, similar to a tax exemption, must be construed strictly against the taxpayer and liberally in favor of the taxing authority.

The Tax Amnesty Program under RA 9480 may be availed of by any person except those who are disqualified under Section 8 thereof, to wit:

Section 8. Exceptions. — The tax amnesty provided in Section 5 hereof shall not extend to the following persons or cases existing as of the effectivity of this Act:

(a) Withholding agents with respect to their withholding tax liabilities;

(b) Those with pending cases falling under the jurisdiction of the Presidential Commission on Good Government;

(c) Those with pending cases involving unexplained or unlawfully acquired wealth or under the Anti-Graft and Corrupt Practices Act;

(d) Those with pending cases filed in court involving violation of the Anti-Money Laundering Law;

(e) Those with pending criminal cases for tax evasion and other criminal offenses under Chapter II of Title X of the National Internal Revenue Code of 1997, as amended, and the felonies of frauds, illegal exactions and transactions, and malversation of public funds and property under Chapters III and IV of Title VII of the Revised Penal Code; and

(f) Tax cases subject of final and executory judgment by the courts.

VAT and Excise Taxes are not withholding taxes. The CIR did not assess AIA as a withholding agent that failed to withhold or remit the deficiency VAT and excise tax to the BIR under relevant provisions of the Tax Code. Hence, the argument that AIA is "deemed" a withholding agent for these deficiency taxes is fallacious.

Indirect taxes, like VAT and excise tax, are different from withholding taxes.1âwphi1 To distinguish, in indirect taxes, the incidence of taxation falls on one person but the burden thereof can be shifted or passed on to another person, such as when the tax is imposed upon goods before reaching the consumer who ultimately pays for it. On the other hand, in case of withholding taxes, the incidence and burden of taxation fall on the same entity, the statutory taxpayer. The burden of taxation is not shifted to the withholding agent who merely collects, by withholding, the tax due from income payments to entities arising from certain transactions and remits the same to the government. Due to this difference, the deficiency VAT and excise tax cannot be "deemed" as withholding taxes merely because they constitute indirect taxes. Moreover, records support the conclusion that AIA was assessed not as a withholding agent but, as the one directly liable for the said deficiency taxes.

AIA is not prohibited from availing tax amnesty under RA 9399. RA 9399 was passed prior to the passage of RA 9480. RA 9399 does not preclude taxpayers within its coverage from availing of other tax amnesty programs available or enacted in futuro like RA 9480. More so, RA 9480 does not exclude from its coverage taxpayers operating within special economic zones. As long as it is within the bounds of the law, a taxpayer has the liberty to choose which tax amnesty program it wants to avail.

Lastly, the Court takes judicial notice of the "Certification of Qualification" issued by Eduardo A. Baluyut, BIR Revenue District Officer, stating that AlA "has availed and is qualified for Tax Amnesty for the Taxable Year 2005 and Prior Years" pursuant to RA 9480. In the absence of sufficient evidence proving that the certification was issued in excess of authority, the presumption that it was issued in the regular performance of the revenue district officer's official duty stands.

THE COMMISIONER OF INTERNAL REVENUE, *Petitioner,* -versus - ACESITE (PHILIPPINES) HOTEL CORPORATION, *Respondent.*
G.R. No. 147295, SECOND DIVISION, February 16, 2007, VELASCO, JR, *J.*

A close scrutiny of the provisions of P.D. 1869clearly gives PAGCOR a blanket exemption to taxes with no distinction on whether the taxes are direct or indirect. by extending the exemption to entities or individuals dealing with PAGCOR, the legislature clearly granted exemption also from indirect taxes. It must be noted that the indirect tax of VAT, as in the instant case, can be shifted or passed to extending the tax exemption to entities or individuals dealing with PAGCOR in casino operations, the buyer, transferee, or lessee of the goods, properties, or services subject to VAT.

There is erroneous payment of taxes when a taxpayer pays under a mistake of fact, as for the instance in a case where he is not aware of an existing exemption in his favor at the time the payment was made. Acesite has clearly shown that it paid the subject taxes under a mistake of fact, that is, when it was not aware that the transactions it had with PAGCOR were zero-rated at the time it made the payments.

FACTS:

Acesite is the owner and operator of the Holiday Inn Manila Pavilion Hotel along United Nations Avenue in Manila. It leases 6,768.53 square meters of the hotel's premises to the Philippine Amusement and Gaming Corporation [hereafter, PAGCOR] for casino operations. It also caters food and beverages to PAGCOR's casino patrons through the hotel's restaurant outlets. For the period January (sic) 96 to April 1997, Acesite incurred VAT amounting to P30,152,892.02 from its rental income and sale of food and beverages to PAGCOR during said period. Acesite tried to shift the said taxes to PAGCOR by incorporating it in the amount assessed to PAGCOR but the latter refused to pay the taxes on account of its tax exempt status.

Thus, PAGCOR paid the amount due to Acesite minus the P30,152,892.02 VAT while the latter paid the VAT to the Commissioner of Internal Revenue [hereafter, CIR] as it feared the legal consequences of non-payment of the tax. However, Acesite belatedly arrived at the conclusion that its transaction with PAGCOR was subject to zero rate as it was rendered to a tax-exempt entity. On 21 May 1998, Acesite filed an administrative claim for refund with the CIR but the latter failed to resolve the same. Thus on 29 May 1998, Acesite filed a petition with the Court of Tax Appeals [hereafter, CTA] which was decided in this wise:

As earlier stated, Petitioner is subject to zero percent tax pursuant to Section 102 (b)(3) [now 106(A)(C)] insofar as its gross income from rentals and sales to PAGCOR, a tax exempt entity by virtue of a special law. Accordingly, the amounts of P21,413,026.78 and P8,739,865.24, representing the 10% EVAT on its sales of food and services and gross rentals, respectively from PAGCOR shall, as a matter of course, be refunded to the petitioner for having been inadvertently remitted to the respondent.

Thus, taking into consideration the prescribed portion of Petitioner's claim for refund of P98,743.40, and considering further the principle of '*solutio indebiti*' which requires the return of what has been delivered through mistake, Respondent must refund to the Petitioner the amount of P30,054,148.64.

Upon appeal by petitioner, the CA affirmed *in toto* the decision of the CTA holding that PAGCOR was not only exempt from direct taxes but was also exempt from indirect taxes like the VAT and consequently, the transactions between respondent Acesite and PAGCOR were "effectively zero-rated" because they involved the rendition of services to an entity exempt from indirect taxes. Thus, the CA affirmed the CTA's determination by ruling that respondent Acesite was entitled to a refund of PhP 30,054,148.64 from petitioner.

ISSUES:

1. Whether or not the tax exemtption of PAGCOR include indirect tax of VAT.

2. Whether or NOT Acesite is entitled to a claim or refund by reason the tax exemption privilege of PAGCOR.

RULING:

1. YES. A close scrutiny of the above provisos clearly gives PAGCOR a blanket exemption to taxes with no distinction on whether the taxes are direct or indirect.

Under Section 13 (2) (b) of P.D. 1869, the term "Corporation" or operator refers to PAGCOR. Although the law does not specifically mention PAGCOR's exemption from indirect taxes, PAGCOR is undoubtedly exempt from such taxes because the law exempts from taxes persons or entities contracting with PAGCOR in casino operations. Although, differently worded, the provision clearly exempts PAGCOR from indirect taxes. In fact, it goes one step further by granting tax exempt status to persons dealing with PAGCOR in casino operations. The unmistakable conclusion is that PAGCOR is not liable for the P30, 152,892.02 VAT and neither is Acesite as the latter is effectively subject to zero percent rate under Sec. 108 B (3), R.A. 8424.

Indeed, by extending the exemption to entities or individuals dealing with PAGCOR, the legislature clearly granted exemption also from indirect taxes. It must be noted that the indirect tax of VAT, as in the instant case, can be shifted or passed to extending the tax exemption to entities or individuals dealing with PAGCOR in casino operations, the buyer, transferee, or lessee of the goods, properties, or services subject to VAT. Thus, it is exempting PAGCOR from being liable to indirect taxes.

The manner of charging VAT does not make PAGCOR liable to said tax. It is true that VAT can either be incorporated in the value of the goods, properties, or services sold or leased, in which case it is computed as 1/11 of such value, or charged as an additional 10% to the value. Verily, the seller or lessor has the option to follow either way in charging its clients and customer. In the instant case, Acesite followed the latter method that is, charging an additional 10% of the gross sales and rentals. Be that as it may, the use of either method, and in particular, the first method, does not denigrate the fact that PAGCOR is exempt from an indirect tax, like VAT.

2. YES. There is erroneous payment of taxes when a taxpayer pays under a mistake of fact, as for the instance in a case where he is not aware of an existing exemption in his favor at the time the payment was made. Considering the foregoing discussion, there are undoubtedly erroneous payments of the VAT pertaining to the effectively zero-rate transactions between Acesite and PAGCOR. Verily, Acesite has clearly shown that it paid the subject taxes under a mistake of fact, that is, when it was not aware that the transactions it had with PAGCOR were zero-rated at the time it made the payments. In UST Cooperative Store v. City of Manila, 15 SCRA 656 (1965), we explained that "there is erroneous payment of taxes when a taxpayer pays under a mistake of fact, as for the instance in a case where he is not aware of an existing exemption in his favor at the time the payment was made." Such payment is held to be not voluntary and, therefore, can be recovered or refunded.

The ground upon which the right of recovery rests is that money paid through misapprehension of facts belongs in equity and in good conscience to the person who paid it. Tax refunds are based on the principle of quasi-contract or solutio indebiti and the pertinent laws governing this principle are found in Arts. 2142 and 2154 of the Civil Code, x x x When money is paid to another under the influence of a mistake of fact, that is to say, on the mistaken supposition of the existence of a specific fact, where it would not have been known that the fact was otherwise, it may be recovered. The ground upon which the right of recovery rests is that money paid through misapprehension of facts belongs in equity and in good conscience to the person who paid it.

RUFINO R. TAN, *Petitioner,* -versus - RAMON R. DEL ROSARIO, JR., as SECRETARY OF FINANCE & JOSE U. ONG, as COMMISSIONER OF INTERNAL REVENUE, *Respondents.*
G.R. No. 109289, EN BANC, October 3, 1994, VITUG, *J.*
CARAG, CABALLES, JAMORA AND SOMERA LAW OFFICES, CARLO A. CARAG, MANUELITO O. CABALLES, ELPIDIO C. JAMORA, JR. and BENJAMIN A. SOMERA, JR., *Petitioners,* -versus - RAMON R. DEL ROSARIO, in his capacity as SECRETARY OF FINANCE and JOSE U. ONG, in his capacity as COMMISSIONER OF INTERNAL REVENUE, *Respondents.*
G.R. No. 109446, EN BANC, October 3, 1994, VITUG, *J.*

Uniformity in taxation does not forfend classification as long as: (1) the standards that are used therefor are substantial and not arbitrary, (2) the categorization is germane to achieve the legislative *purpose, (3) the law applies, all things being equal, to both present and future conditions, and (4) the classification applies equally well to all those belonging to the same class.*

FACTS:

Rufino R. Tan seeks declaration of unconstitutionality of RA 7496 (also known as Simplified Net Income Taxation) due to violation of the following constitutional provision:

1. Article VI, Section 26(1) – Every bill passed by the Congress shall embrace only one subject which shall be expressed in the title thereof.
2. Article VI, Section 28(1) – The rule of taxation shall be uniform and equitable. The Congress shall evolve a progressive system of taxation.
3. Article III, Section 1 – No person shall be deprived of life, liberty or property without due process of law, nor shall any person be denied the equal protection of the laws.

The SNIT contained changes in the tax schedules and different treatment in the professionals which petitioners assail as unconstitutional for being violative of the equal protection clause of the Constitution.

ISSUE:

Whether or not RA 7496 is unconstitutional.

RULING: NO.

Article VI, Section 26(1)

Article VI, Section 26(1), of the Constitution has been envisioned so as:

(a) to prevent log-rolling legislation intended to unite the members of the legislature who favor any one of unrelated subjects in support of the whole act,

(b) to avoid surprises or even fraud upon the legislature, and

(c) to fairly apprise the people, through such publications of its proceedings as are usually made, of the subjects of legislation.

The above objectives of the fundamental law appear to us to have been sufficiently met. Anything else would be to require a virtual compendium of the law which could not have been the intendment of the constitutional mandate. Petitioner intimates that Republic Act No. 7496 desecrates the constitutional requirement that taxation "shall be uniform and equitable" in that the law would now attempt to tax single proprietorships and professionals differently from the manner it imposes the tax on corporations and partnerships. The contention clearly forgets, however, that such a system of income taxation has long been the prevailing rule even prior to Republic Act No. 7496.

Article VI, Section 28(1)

Uniformity of taxation, like the kindred concept of equal protection, merely requires that all subjects or objects of taxation, similarly situated, are to be treated alike both in privileges and liabilities (Juan Luna Subdivision vs. Sarmiento, 91 Phil. 371). Uniformity does not forfend classification as long as: (1) the standards that are used therefor are substantial and not arbitrary, (2) the categorization is germane to achieve the legislative purpose, (3) the law applies, all things being equal, to both present and future conditions, and (4) the classification applies equally well to all those belonging to the same class (Pepsi Cola vs. City of Butuan, 24 SCRA 3; Basco vs. PAGCOR, 197 SCRA 52).

What may instead be perceived to be apparent from the amendatory law is the legislative intent to increasingly shift the income tax system towards the schedular approach in the income taxation of individual taxpayers and to maintain, by and large, the present global treatment on taxable corporations. We certainly do not view this classification to be arbitrary and inappropriate.

Article III, Section 1

Petitioner gives a fairly extensive discussion on the merits of the law, illustrating, in the process, what he believes to be an imbalance between the tax liabilities of those covered by the amendatory law and those who are not. With the legislature primarily lies the discretion to determine the nature (kind), object (purpose), extent (rate), coverage (subjects) and situs (place) of taxation. This court cannot freely delve into those matters which, by constitutional fiat, rightly rest on legislative judgment. Of course, where a tax measure becomes so unconscionable and unjust as to amount to confiscation of property, courts will not hesitate to strike it down, for, despite all its plenitude, the power to tax cannot override constitutional proscriptions. This stage, however, has not been demonstrated to have been reached within any appreciable distance in this controversy before us.

Having arrived at this conclusion, the plea of petitioner to have the law declared unconstitutional for being violative of due process must perforce fail. The due process clause may correctly be invoked only when there is a clear contravention of inherent or constitutional limitations in the exercise of the tax power. No such transgression is so evident to us.

COMMISSIONER OF INTERNAL REVENUE, *Petitioner*, -versus - BRITISH OVERSEAS AIRWAYS CORPORATION and COURT OF TAX APPEALS, *Respondents.*
G.R. No. L-65773-74, EN BANC, April 30, 1987, MELENCIO-HERRERA, *J.*

The source of an income is the property, activity or service that produced the income. For such source to be considered as coming from the Philippines, it is sufficient that the income is derived from activity within the Philippines.

FACTS:

Petitioner Commissioner of Internal Revenue (CIR) seeks a review of the Court of Tax Appeals' decision setting aside petitioner's assessment of deficiency income taxes against respondent British Overseas Airways Corporation (BOAC) for the fiscal years 1959 to 1971.

BOAC is a 100% British Government-owned corporation organized and existing under the laws of the United Kingdom, and is engaged in the international airline business. During the periods covered by the disputed assessments, it is admitted that BOAC had no landing rights for traffic purposes in the Philippines. Consequently, it did not carry passengers and/or cargo to or from the Philippines, although during the period covered by the assessments, it maintained a general sales agent in the Philippines — Wamer Barnes and Company, Ltd., and later Qantas Airways — which was responsible for selling BOAC tickets covering passengers and cargoes.

On 7 October 1970, BOAC filed a claim for refund of the amount of P858,307.79, which claim was denied by the CIR on 16 February 1972. But before said denial, BOAC had already filed a petition for review with the Tax Court on 27 January 1972, assailing the assessment and praying for the refund of the amount paid.

The CTA ruled in favor of BOAC citing that the proceeds of sales of BOAC tickets do not constitute BOAC income from Philippine sources since no service of carriage of passengers or freight was performed by BOAC within the Philippines and, therefore, said income is not subject to Philippine income tax. The CTA position was that income from transportation is income from services so that the place where services are rendered determines the source.

ISSUE:

Whether or not revenues derived by BOAC from sales of ticket for air transportation, while having no landing rights here, constitute income of BOAC from Philippine sources, and accordingly, taxable.

RULING: YES.

The source of an income is the property, activity or service that produced the income. For the source of income to be considered as coming from the Philippines, it is sufficient that the income is derived from activity within the Philippines. In BOAC's case, the sale of tickets in the Philippines is the activity that produces the income. The tickets exchanged hands here and payments for fares were also made here in Philippine currency. The site of the source of payments is the Philippines. The flow of wealth proceeded from, and occurred within, Philippine territory, enjoying the protection accorded by the Philippine government. In consideration of such protection, the flow of wealth should share the burden of supporting the government.

A transportation ticket is not a mere piece of paper. When issued by a common carrier, it constitutes the contract between the ticket-holder and the carrier. It gives rise to the obligation of the purchaser of the ticket to pay the fare and the corresponding obligation of the carrier to transport the passenger upon the terms and conditions set forth thereon. The ordinary ticket issued to members of the traveling public in general embraces within its terms all the elements to constitute it a valid contract, binding upon the parties entering into the relationship.

True, Section 37(a) of the Tax Code, which enumerates items of gross income from sources within the Philippines, namely: (1) interest, (21) dividends, (3) service, (4) rentals and royalties, (5) sale of real property, and (6) sale of personal property, does not mention income from the sale of tickets for international transportation. However, that does not render it less an income from sources within the Philippines. Section 37, by its language, does not intend the enumeration to be exclusive. It merely directs that the types of income listed therein be treated as income from sources within the Philippines. A cursory reading of the section will show that it does not state that it is an all-inclusive enumeration, and that no other kind of income may be so considered.

The absence of flight operations to and from the Philippines is not determinative of the source of income or the site of income taxation. Admittedly, BOAC was an off-line international airline at the time pertinent to this case. The test of taxability is the "source"; and the source of an income is that activity ... which produced the income. Unquestionably, the passage documentations in these cases were sold in the Philippines and the revenue therefrom was derived from a activity regularly pursued within the Philippines. business a And even if the BOAC tickets sold covered the "transport of passengers and cargo to and from foreign cities", it cannot alter the fact that income from the sale of tickets was derived from the Philippines. The word "source" conveys one essential idea, that of origin, and the origin of the income herein is the Philippines.

SOUTH AFRICAN AIRWAYS., *Petitioner*, -versus - COMMISSIONER OF INTERNAL REVENUE, *Respondent.*

G.R. No. 180356, THIRD DIVISION, February 16, 2010, VELASCO, JR., *J.*

If an international air carrier maintains flights to and from the Philippines, it shall be taxed at the rate of 2% of its Gross Philippine Billings, while international air carriers that do not have flights to and from the Philippines but nonetheless earn income from other activities in the country will be taxed at the regular rate of 32% (now 30%) of such income.

FACTS:

This is a petition for review on Certiorari seeking the reversal of CTA EB decision (affirming decision of CTA division) denying its claim for tax refund.

South African Airways is a foreign Corporation organized and existing under and by virtue of the laws of the Republic of South Africa. In the Philippines, it is an internal air carrier having no landing rights in the country. South African Airways, however, has a general sales agent in the Philippines, Aerotel. The latter sells passage documents for compensation or commission for South Africa Airways' off-line flights for the carriage of passengers and cargo between ports or points outside the territorial jurisdiction of the Philippines.

South African Airways is not registered with SEC as a corporation, branch office, or partnership. It is not licensed to do business in the Philippines.

For the taxable year 2000, South African Airways filed separate quarterly and annual income tax returns for its off-line flights.

On February 5, 2003, South African Airways filed with the BIR a claim for the refund of the amount of P1,727,766.38 as erroneously paid tax on Gross Philippine Billings (GPB) for the taxable year 2000. The claim was unheeded which led South African Airways file a petition for review with the CTA for refund of the said amount.

The CTA First Division denied the petition for lack of merit. The CTA ruled that South African Airways is a resident foreign corporation engaged in trade or business in the Philippines. South African Airways was not liable to pay tax on its GPB under Section 28 (A)(3)(a) of NIRC but it is liable to pay a tax of 32% on its income derived from the sales of passage documents in the Philippines. The CTA EnBanc affirmed CTA Divison's decision. The motion for consideration was denied. Hence, this petition.

ISSUES:

1. Whether or not petitioner is engaged in trade or business in the Philippines is subject to 32% income tax.

2. Whether or not petitioner is entitled to refund.

RULING:

1. YES. Since it does not maintain flights to or from the Philippines, it is not taxable under Sec. 28(A)(3)(a) of the 1997 NIRC. This much was also found by the CTA. But petitioner further posits the view that due to the non-applicability of Sec. 28(A)(3)(a) to it, it is precluded from paying any other income tax for its sale of passage documents in the Philippines. But, Sec. 28 (A)(1) of the 1997 NIRC does not exempt all international air carriers from the coverage of Sec. 28 (A) (1) of the 1997 NIRC being a general rule. Petitioner, being an international carrier with no flights originating from the Philippines, does not fall under the exception. As such, petitioner must fall under the general rule. This principle is embodied in the Latin maxim, exception firmat regulam in casibus non exceptis, which means, a thing not being excepted must be regarded as coming within the purview of the general rule.

2. **The issue cannot be determined in the case.** Although offsetting of tax refund with tax deficiency is unavailing under Art. 1279 of the Civil Code, in CIR v. CTA (G.R. No. 106611, July 21, 1994) it granted when deficiency assessment is intimately related and inextricably intertwined with the right to claim for a tax refund. Sec. 72 Chapter XI of 1997 NIRC is not applicable where petitioner's tax refund claim assumes that the tax return that it filed were correct because petitioner is liable under Sec. 28 (A)(1), the correctness is now put in doubt and refund cannot be granted. This Court is unable to affirm the assailed decision and resolution of the CTA En Banc on the outright denial of petitioner's claim for a refund. Even though petitioner is not entitled to a refund due to the question on the propriety of petitioner's tax return subject of the instant controversy, it would not be proper to deny such claim without making a determination of petitioner's liability under Sec. 28(A)(1).

It must be remembered that the tax under Sec. 28(A)(3)(a) is based on GPB, while Sec. 28(A)(1) is based on taxable income, that is, gross income less deductions and exemptions, if any. It cannot be assumed that petitioner's liabilities under the two provisions would be the same. There is a need to make a determination of petitioner's liability under Sec. 28(A)(1) to establish whether a tax refund is forthcoming or that a tax deficiency exists. The assailed decision fails to mention having computed for the tax due under Sec. 28(A)(1) and the records are bereft of any evidence sufficient to establish petitioner's taxable income. *There is a necessity to receive evidence to establish such amount vis-à-vis the claim for refund.* It is only after such amount is established that a tax refund or deficiency may be correctly pronounced.

ALEXANDER HOWDEN & CO., LTD., H. G. CHESTER & OTHERS, ET AL., *Petitioner,* -versus - THE COLLECTOR (NOW COMMISSIONER) Of INTERNAL REVENUE, *Respondent.*
G.R. No. L-19392, EN BANC, April 14, 1965, BENGZON, J.P., *J.*

Appellants should not confuse activity that creates income with business in the course of which an income is realized. An activity may consist of a single act; while business implies continuity of transactions. An income may be earned by a corporation in the Philippines although such corporation conducts all its businesses abroad.

Section 53 subjects to withholding tax various specified income, among them, "premiums", the generic connotation of each and every word or phrase composing the enumeration in Subsection (b) thereof is income. Perforce, the word "premiums", which is neither qualified nor defined by the law itself, should *mean income and should include all premiums constituting income, whether they be insurance or reinsurance premiums.*

FACTS:

In 1950 the Commonwealth Insurance Co., a domestic corporation, entered into reinsurance contracts with British insurance companies not engaged in trade or business in the Philippines, whereby the former agreed to cede to them a portion of the premiums on insurances on fire, marine and other risks it has underwritten in the Philippines. Alexander Howden & Co., Ltd., also a British corporation not engaged in business in this country, represented the aforesaid British insurance companies. The reinsurance contracts were prepared and signed by the foreign reinsurers in England and sent to Manila where Commonwealth Insurance Co. signed them.

Pursuant to the aforesaid contracts, Commonwealth Insurance Co., in 1951, remitted P798,297.47 to Alexander Howden & Co., Ltd., as reinsurance premiums. In behalf of Alexander Howden & Co., Ltd., Commonwealth Insurance Co. filed in April 1952 an income tax return declaring the sum of P798,297.47, with accrued interest thereon in the amount of P4,985.77, as Alexander Howden & Co., Ltd.'s gross income for calendar year 1951. It also paid the Bureau of Internal Revenue P66,112.00 income tax thereon.

On May 12, 1954, within the two-year period provided for by law, Alexander Howden & Co., Ltd. filed with the Bureau of Internal Revenue a claim for refund of the P66,112.00, later reduced to P65,115.00, because Alexander Howden & Co., Ltd. agreed to the payment of P977.00 as income tax on the P4,985.77 accrued interest. A ruling of the Commissioner of Internal Revenue, dated December 8, 1953, was invoked, stating that it exempted from withholding tax reinsurance premiums received from domestic insurance companies by foreign insurance companies not authorized to do business in the Philippines. Subsequently, Alexander Howden & Co., Ltd. instituted an action in the Court of First Instance of Manila for the recovery of the aforesaid amount claimed. Pursuant to Section 22 of Republic Act 1125 the case was certified to the Court of Tax Appeals. On November 24, 1961 the Tax Court denied the claim.

ISSUES:

1. Whether or not portions of premiums earned from insurances locally underwritten by a domestic corporation, ceded to and received by non-resident foreign reinsurance companies thru a non-resident foreign insurance broker, pursuant to reinsurance contracts signed by the reinsurers abroad but signed by the domestic corporation in the Philippines, subject to income tax.

2. Whether or not income derived from such premiums are subject to withholding tax under Section 54 in relation to Section 53 of the Tax Code.

RULING:

1. YES. Under Section 24 of the National Internal Revenue Code subjects to tax a non-resident foreign corporation's income from sources within the Philippines. The source of an income is the property, activity or service that produced the income. The reinsurance premiums remitted to appellants by virtue of the reinsurance contracts, accordingly, had for their source the undertaking to indemnify Commonwealth Insurance Co. against liability. Said undertaking is the activity that produced the reinsurance premiums, and the same took place in the Philippines. In the first place, the reinsured, the liabilities insured and the risks originally underwritten by Commonwealth Insurance Co., upon which the reinsurance premiums and indemnity were based, were all situated in the Philippines. Secondly, contrary to appellants' view, the reinsurance contracts were perfected in the Philippines, for Commonwealth Insurance Co. signed them last in Manila. The American cases cited are inapplicable to this case because in all of them the reinsurance contracts were signed outside the jurisdiction of the taxing State. And, thirdly, the parties to the reinsurance contracts in question evidently intended Philippine law to govern. Article 11 thereof provided for arbitration in Manila, according to the laws of the Philippines, of any dispute arising between the parties in regard to the interpretation of said contracts or rights in respect of any transaction involved. Furthermore, the contracts provided for the use of Philippine currency as the medium of exchange and for the payment of Philippine taxes.

Appellants should not confuse activity that creates income with business in the course of which an income is realized. An activity may consist of a single act; while business implies continuity of transactions. An income may be earned by a corporation in the Philippines although such corporation conducts all its businesses abroad. Precisely, Section 24 of the Tax Code does not require a foreign corporation to be engaged in business in the Philippines in order for its income from sources within the Philippines to be taxable. It subjects foreign corporations not doing business in the Philippines to tax for income from sources within the Philippines. If by source of income is meant the business of the taxpayer, foreign corporations not engaged in business in the Philippines would be exempt from taxation on their income from sources within the Philippines.

Furthermore, as used in our income tax law, "income" refers to the flow of wealth. Such flow, in the instant case, proceeded from the Philippines. Such income enjoyed the protection of the Philippine Government. As wealth flowing from within the taxing jurisdiction of the Philippines and in consideration for protection accorded it by the Philippines, said income should properly share the burden of maintaining the government.

Appellants further contend that reinsurance premiums not being among those mentioned in Section 37 of the Tax Code as income from sources within the Philippines, the same should not be treated as such. Section 37, however, is not an all-inclusive enumeration. It states that "the following items of gross income shall be treated as gross income from sources within the Philippines." It does not state or imply that an income not listed therein is necessarily from sources outside the Philippines.

As to appellants' contention that reinsurance premiums constitute "gross receipts" instead of "gross income", not subject to income tax, suffice it to say that, as correctly observed by the Court of Tax Appeals, "gross receipts" of amounts that do not constitute return of capital, such as reinsurance premiums, are part of the gross income of a taxpayer. At any rate, the tax actually collected in this case was computed not on the basis of gross premium receipts but on the net premium income, that is, after deducting general expenses, payment of policies and taxes.

2. YES. Since Section 53 subjects to withholding tax various specified income, among them, "premiums", the generic connotation of each and every word or phrase composing the enumeration in Subsection (b) thereof is income. Perforce, the word "premiums", which is neither qualified nor defined by the law itself, should mean income and should include all premiums constituting income, whether they be insurance or reinsurance premiums.

Assuming that reinsurance premiums are not within the word "premiums" in Section 53, still they may be classified as determinable and periodical income under the same provision of law. Section 199 of the Income Tax Regulations defines fixed, determinable, annual and periodical income:

Income is fixed when it is to be paid in amounts definitely pre-determined. On the other hand, it is determinable whenever there is a basis of calculation by which the amount to be paid may be ascertained.

The income need not be paid annually if it is paid periodically; that is to say, from time to time, whether or not at regular intervals. That the length of time during which the payments are to be made may be increased or diminished in accordance with someone's will or with the happening of an event does not make the payments any the less determinable or periodical.

Reinsurance premiums, therefore, are determinable and periodical income: determinable, because they can be calculated accurately on the basis of the reinsurance contracts; periodical, inasmuch as they were earned and remitted from time to time.

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,* -versus JULIANE BAIER-NICKEL, as represented by Marina Q. Guzman (Attorney-in-fact), *Respondent.*
G.R. No. 153793, FIRST DIVISION, August 29, 2006, YNARES-SANTIAGO, *J.*

If the income is from the sale of capital assets, the place where the sale is made should be likewise decisive. "Source" is not a place, it is an activity or property. As such, it has a situs or location, and if that situs or location is within the United States the resulting income is taxable to nonresident aliens and foreign corporations.

The source of an income is the property, activity or service that produced the income. For the source of income to be considered as coming from the Philippines, it is sufficient that the income is derived from activity within the Philippines.

FACTS:

The Commissioner of Internal Revenue appeals the Court of Appelas decision, which granted the tax refund of respondent and reversed that of the Court of Tax Appeals . Juliane Baier-Nickel, a non-resident German, is the president of Jubanitex, a domestic corporation engaged in the manufacturing, marketing and selling of embroidered textile products. Through Jubanitex's general manager, Marina Guzman, the company appointed respondent as commission agent with 10% sales commission on all sales actually concluded and collected through her efforts.

In 1995, respondent received P1, 707, 772. 64 as sales commission from w/c Jubanitex deducted the 10% withholding tax of P170, 777.26 and remitted to BIR. Respondent filed her income tax return but then claimed a refund from BIR for the P170K, alleging this was mistakenly withheld by Jubanitex and that her sales commission income was compensation for services rendered in Germany not Philippines and thus not taxable here.

She filed a petition for review with CTA for alleged non-action by BIR. CTA denied her claim but decision was reversed by CA on appeal, holding that the commission was received as sales agent not as President and that the "source" of income arose from marketing activities in Germany.

ISSUE:

Whether or not respondent's sales commission income is taxable in the Philippines.

RULING: YES.

Respondent income is subject to tax hence she cannot claim refund.

Pursuant to Section 25 of NIRC, non-resident aliens, whether or not engaged in trade or business, are subject to the Philippine income taxation on their income received from all sources in the Philippines. In determining the meaning of "source", the Court resorted to origin of Act 2833 (the first Philippine income tax law), the US Revenue Law of 1916, as amended in 1917.

US SC has said that income may be derived from three possible sources only: (1) capital and/or (2) labor; and/or (3) the sale of capital assets. If the income is from labor, the place where the labor is done should be decisive; if it is done in this country, the income should be from "sources within the United States." If the income is from capital, the place where the capital is employed should be decisive; if it is employed in this country, the income should be from "sources within the United States." If the income is from the sale of capital assets, the place where the sale is made should be likewise decisive. "Source" is not a place, it is an activity or property. As such, it has a situs or location, and if that situs or location is within the United States the resulting income is taxable to nonresident aliens and foreign corporations.

The source of an income is the property, activity or service that produced the income. For the source of income to be considered as coming from the Philippines, it is sufficient that the income is derived from activity within the Philippines.

The settled rule is that tax refunds are in the nature of tax exemptions and are to be construed strictissimi juris against the taxpayer. To those therefore, who claim a refund rest the burden of proving that the transaction subjected to tax is actually exempt from taxation.

In the instant case, respondent failed to give substantial evidence to prove that she performed the incoming producing service in Germany, which would have entitled her to a tax exemption for income from sources outside the Philippines. The petition was granted.

EISNER, AS COLLECTOR OF UNITED STATES INTERNAL REVENUEFOR THE THIRD DISTRICT OF THE STATE OF NEW YORK, *Petitioner,* -versus - MACOMBER, *Respondent.*
NO. 318, Argued April 16, 1919; restored to docket for reargument
May 19, 1919; reargued October 17, 20, 1919. Decided March 8, 1920, MR. JUSTICE PITNEY.

A stock dividend, evincing merely a transfer of an accumulated surplus to the capital account of the corporation, takes nothing from the property of the corporation and adds nothing to that of the shareholder; a tax on such dividends is a tax on capital increase, and not on income, and, to be valid under the Constitution, such taxes must be apportioned according to population in the several states.

It is manifest that the stock dividend in question cannot be reached by the Income Tax Act and could not, even though Congress expressly declared it to be taxable as income, unless it is in fact income.

FACTS:

On January 1, 1916, the Standard Oil Company of California, a corporation of that state, out of an authorized capital stock of $100,000, 000, had shares of stock outstanding, par value $100 each, amounting in round figures to $50,000,000. In addition, it had surplus and undivided profits invested in plant, property, and business and required for the purposes of the corporation, amounting to about $45,000,000, of which about $20,000,000 had been earned prior to March 1, 1913, the balance thereafter. In January, 1916, in order to readjust the capitalization, the board of directors decided to issue additional shares sufficient to constitute a stock dividend of 50 per cent. of the outstanding stock, and to transfer from surplus account to capital stock account an amount equivalent to such issue. Appropriate resolutions were adopted, an amount equivalent to the par value of the proposed new stock was transferred accordingly, and the new stock duly issued against it and divided among the stockholders.

Defendant in error, being the owner of 2,200 shares of the old stock, received certificates for 1,100 additional shares, of which 18.07 per cent., or 198.77 shares, par value $19,877, were treated as representing surplus earned between March 1, 1913, and January 1, 1916. She was called upon to pay, and did pay under protest, a tax imposed under the Revenue Act of 1916, based upon a supposed income of $ 19,877 because of the new shares; and an appeal to the Commissioner of Internal Revenue having been disallowed, she brought action against the Collector to recover the tax. In her complaint she alleged the above facts, and contended that in imposing such a tax the Revenue Act of 1916 violated article 1, 2, cl. 3, and article 1, 9, cl. 4, of the Constitution of the United States, requiring direct taxes to be apportioned according to population, and that the stock dividend was not income within the meaning of the Sixteenth Amendment. A general demurrer to the complaint was overruled upon the authority of Towne v. Eisner; and, defendant having failed to plead further, final judgment went against him. To review it, the present writ of error is prosecuted.

ISSUE:

Whether or not by virtue of the Sixteenth Amendment, Congress has the power to tax, as income of the stockholder and without apportionment, a stock dividend made lawfully and in good faith against profits accumulated by the corporation since March 1, 1913.

RULING: NO.

Congress was not empowered by the Sixteenth Amendment to tax, as income of the stockholder, without apportionment, a stock dividend made lawfully and in good faith against profits accumulated by the corporation since March 1, 1913.

The Revenue Act of September 8, 1916 plainly evinces the purpose of Congress to impose such taxes, and is to that extent in conflict with Art. I, § 2, cl. 3, and Art. I, § 9, cl. 4, of the Constitution. These provisions of the Constitution necessarily limit the extension, by construction, of the Sixteenth Amendment.

What is or is not "income" within the meaning of the Amendment must be determined in each case according to truth and substance, without regard to form.

Income may be defined as the gain derived from capital, from labor, or from both combined, including profit gained through sale or conversion of capital. Mere growth or increment of value in a capital investment is not income; income is essentially a gain or profit, in itself, of exchangeable value, proceeding from capital, severed from it, and derived or received by the taxpayer for his separate use, benefit, and disposal.

A stock dividend, evincing merely a transfer of an accumulated surplus to the capital account of the corporation, takes nothing from the property of the corporation and adds nothing to that of the shareholder; a tax on such dividends is a tax on capital increase, and not on income, and, to be valid under the Constitution, such taxes must be apportioned according to population in the several states.

The Court hold that the judgment of the District Court must be affirmed: First, because the question at issue is controlled by Towne v. Eisner, supra; secondly, because a re-examination of the question with the additional light thrown upon it by elaborate arguments, has confirmed the view that the underlying ground of that decision is sound, that it disposes of the question here presented, and that other fundamental considerations lead to the same result.

In Towne v. Eisner, the question was whether a stock dividend made in 1914 against surplus earned prior to January 1, 1913, was taxable against the stockholder under the Act of October 3, 1913 which provided that net income should include 'dividends,' and also 'gains or profits and income derived from any source whatever.' Suit having been brought by a stockholder to recover the tax assessed against him by reason of the dividend, the District Court sustained a demurrer to the complaint. The court treated the construction of the act as inseparable from the interpretation of the Sixteenth Amendment; and, having referred to Pollock v. Farmers' Loan & Trust Co., 158 U.S. 601 , 15 Sup. Ct. 912, and quoted the Amendment, proceeded very properly to say:

'It is manifest that the stock dividend in question cannot be reached by the Income Tax Act and could not, even though Congress expressly declared it to be taxable as income, unless it is in fact income.

Certainly the interest of the stockholder is a capital interest, and his certificates of stock are but the evidence of it. They state the number of shares to which he is entitled and indicate their par value and how the stock may be transferred. They show that he or his assignors, immediate or remote, have contributed capital to the enterprise, that he is entitled to a corresponding interest proportionate to the whole, entitled to have the property and business of the company devoted during the corporate existence to attainment of the common objects, entitled to vote at stockholders' meetings, to receive dividends out of the corporation's profits if and when declared, and, in the event of liquidation, to receive a proportionate share of the net assets, if any, remaining after paying creditors. Short of liquidation, or until dividend declared, he has no right to withdraw any part of either capital or profits from the common enterprise; on the contrary, his interest pertains not to any part, divisible or indivisible, but to the entire assets, business, and affairs of the company. Nor is it the interest of an owner in the assets themselves, since the corporation has full title, legal and equitable, to the whole. The stockholder has the right to have the assets employed in the enterprise, with the incidental rights mentioned; but, as stockholder, he has no right to withdraw, only the right to persist, subject to the risks of the enterprise, and looking only to dividends for his return. If he desires to dissociate himself from the company he can do so only by disposing of his stock.

HERNANDO B. CONWI, JAIME E. DY-LIACCO, VICENTE D. HERRERA, BENJAMIN T. ILDEFONSO, ALEXANDER LACSON, JR., ADRIAN O. MICIANO, EDUARDO A. RIALP, LEANDRO G. SANTILLAN, and JAIME A. SOQUES, *Petitioners,* -versus - THE HONORABLE COURT OF TAX APPEALS and COMMISSIONER OF INTERNAL REVENUE, *Respondents.*

G.R. No. 48532, SECOND DIVISION, August 31, 1992, NOCON, *J.*

ENRIQUE R. ABAD SANTOS, HERNANDO B. CONWI, TEDDY L. DIMAYUGA, JAIME E. DY-LIACCO, MELQUIADES J. GAMBOA, JR., MANUEL L. GUZMAN, VICENTE D. HERRERA, BENJAMIN T. ILDEFONSO, ALEXANDER LACSON, JR., ADRIAN O. MICIANO, EDUARDO A. RIALP and JAIME A. SOQUES, *Petitioners,* -versus - THE HONORABLE COURT OF TAX APPEALS and COMMISSIONER OF INTERNAL REVENUE, *Respondents.*

G.R. No. 48532, SECOND DIVISION, August 31, 1992, NOCON, *J.*

Dollar earnings are not receipts derived from foreign exchange transactions. For a foreign exchange transaction is simply that — a transaction in foreign exchange, foreign exchange being "the conversion of an amount of money or currency of one country into an equivalent amount of money or currency of another." When petitioners were assigned to the foreign subsidiaries of Procter & Gamble, they were earning in their assigned nation's currency and were ALSO spending in said currency. There was no conversion, therefore, from one currency to another.

FACTS:

Petitioners are Filipino citizens and employees of Procter and Gamble, Philippine Manufacturing Corporation, with offices at Sarmiento Building, Ayala Avenue, Makati, Rizal. Said corporation is a subsidiary of Procter & Gamble, a foreign corporation based in Cincinnati, Ohio, U.S.A. During the years 1970 and 1971 petitioners were assigned, for certain periods, to other subsidiaries of Procter & Gamble, outside of the Philippines, during which petitioners were paid U.S. dollars as compensation for services in their foreign assignments. When petitioners in CTA Case No. 2511 filed their income tax returns for the year 1970, they computed the tax due by applying the dollar-to-peso conversion on the basis of the floating rate ordained under B.I.R. Ruling No. 70-027 dated May 14, 1970, as follows:

From January 1 to February 20, 1970 at the conversion rate of P3.90 to U.S. $1.00;

From February 21 to December 31, 1970 at the conversion rate of P6.25 to U.S. $1.00

Petitioners in C.T.A. Case No. 2594 likewise used the above conversion rate in converting their dollar income for 1971 to Philippine peso. However, on February 8, 1973 and October 8, 1973, petitioners in said cases filed with the office of the respondent Commissioner, amended income tax returns for the above-mentioned years, this time using the par value of the peso as prescribed in Section 48 of Republic Act No. 265 in relation to Section 6 of Commonwealth Act No. 265 in relation to Section 6 of Commonwealth Act No. 699 as the basis for converting their respective dollar income into Philippine pesos for purposes of computing and paying the corresponding income tax due from them. The aforesaid computation as shown in the amended income tax returns resulted in the alleged overpayments, refund and/or tax credit. Accordingly, claims for refund of said over-payments were filed with respondent Commissioner. Without awaiting the resolution of the Commissioner of the Internal Revenue on their claims, petitioners filed their petitioner for review in the above-mentioned cases.

Upon joint motion of the parties on the ground that these two cases involve common question of law and facts, that respondent Court of Tax Appeals heard the cases jointly. In its decision dated September 26, 1977, the respondent Court of Tax Appeals held that the proper conversion rate for the purpose of reporting and paying the Philippine income tax on the dollar earnings of petitioners are the rates prescribed under Revenue Memorandum Circulars Nos. 7-71 and 41-71. Accordingly, the claim for refund and/or tax credit of petitioners in the above-entitled cases was denied and the petitions for review dismissed, with costs against petitioners. Hence, this petition for review on certiorari.

ISSUE:

Whether or not petitioners' dollar earnings are receipts derived from foreign exchange transactions.

RULING: NO.

For the proper resolution of income tax cases, income may be defined as an amount of money coming to a person or corporation within a specified time, whether as payment for services, interest or profit from investment. Unless otherwise specified, it means cash or its equivalent. Income can also be thought of as flow of the fruits of one's labor.

Petitioners are correct as to their claim that their dollar earnings are not receipts derived from foreign exchange transactions. For a foreign exchange transaction is simply that — a transaction in foreign exchange, foreign exchange being "the conversion of an amount of money or currency of one country into an equivalent amount of money or currency of another." When petitioners were assigned to the foreign subsidiaries of Procter & Gamble, they were earning in their assigned nation's currency and were ALSO spending in said currency. There was no conversion, therefore, from one currency to another.

The dollar earnings of petitioners are the fruits of their labors in the foreign subsidiaries of Procter & Gamble. It was a definite amount of money which came to them within a specified period of time of two years as payment for their services.

COMMISSIONER OF INTERNAL REVENUES, ***Petitioner,*** **-versus - V.E. LEDNICKY and MARIA VALERO LEDNICKY,** ***Respondents.***

G.R. Nos. L-18169, L-18262 & L-21434, EN BANC, July 31, 1964, REYES, J.B.L., *J.*

An alien resident who derives income wholly from sources within the Philippines may not deduct from gross income the income taxes he paid to his home country for the taxable year. An alien resident is not entitled to tax credit for foreign income taxes paid when his income is derived wholly from sources within the Philippines.

An alien resident's right to deduct from gross income the income taxes he paid to a foreign government is given only as an alternative to his right to claim a tax credit from such foreign income taxes; so that unless he has a right to claim such tax credit if he chooses, he is precluded from said deduction.

Double taxation becomes obnoxious only where the taxpayer is taxed twice for the benefit of the same governmental entity. In the present case, although the taxpayer would have to pay two taxes on the same income but the Philippine government only receives the proceeds of one tax, there is no obnoxious double taxation.

FACTS:

Respondent V.E. Lednicky and Maria Valero Lednicky are husband and wife, both American citizens residing in the Philippines, and have derived all their income from Philippine sources for the taxable years in question.

In GR NO. L-18286, the aforesaid respondents, on 27 March 1957, filed their income tax return for 1956, reporting therein a gross income of P1,017,287. 65 and a net income of P733,809.44 on which the amount of P317,395.4 was assessed after deducting P4,805.59 as withholding tax. Pursuant to the petitioner's assessment notice, the respondents paid the total amount of P326,247.41, inclusive of the withheld taxes, on 15 April 1957. On 17 March 1959, the respondents Lednickys filed an amended income tax return for 1956. The amendment consists in a claimed deduction of P205,939.24 paid in 1956 to the United States government as federal income tax for 1956. Simultaneously with the filing of the amended return, the respondents requested the refund of P112,437.90. When the petitioner Commissioner of Internal Revenue failed to answer the claim for refund, the respondents filed their petition with the Tax Court.

In GR No. L-18169, the case is also a claim for refund in the amount of P150,269.00, as alleged overpaid income tax for 1955. On 28 February 1956, the same respondents-spouses filed their domestic income tax return for 1955, reporting a gross income of P1,771,124.63 and a net income of P1,052,550.67. On 19 April 1956, they filed an amended income tax return, the amendment upon the original being a lesser net income of P1,012,554.51, and, on the basis of this amended return, they paid P570,252.00, inclusive of withholding taxes. After audit, the petitioner determined a deficiency of P16,116.00, which amount, the respondents paid on 5 December 1956.

Back in 1955, however, the Lednickys filed with the U.S. Internal Revenue Agent in Manila their federal income tax return for the years 1947, 1951, 1952, 1953, and 1954 on income from Philippine sources on a cash basis. Payment of these federal income taxes, including penalties and delinquency interest in the amount of P264,588.82, were made in 1955. On 11 August 1958, the said respondents amended their Philippine income tax return for 1955 to include the several deductions and therewith filed a claim for refund of the sum of P166,384.00, which was later reduced to P150,269.00.

In G.R. No. 21434 (CTA Case No. 783), the facts are similar, but refer to respondents Lednickys' income tax return for 1957, filed on 28 February 1958, and for which respondents paid a total sum of P196,799.65. In 1959, they filed an amended return for 1957, claiming deduction of P190,755.80, representing taxes paid to the U.S. Government on income derived wholly from Philippine sources.

On the strength thereof, respondents seek refund of P90 520.75 as overpayment. The Tax Court again decided for respondents.

ISSUE:

Whether or not a citizen of the United States residing in the Philippines, who derives income wholly from sources within the Republic of the Philippines, may deduct from his gross income the income taxes he has paid to the United States government for the taxable year.

RULING: NO.

Much stress is laid on the thesis that if the respondent taxpayers are not allowed to deduct the income taxes they are required to pay to the government of the United States in their return for Philippine income tax, they would be subjected to double taxation. What respondents fail to observe is that double taxation becomes obnoxious only where the taxpayer is taxed twice for the benefit of the same governmental entity. In the present case, while the taxpayers would have to pay two taxes on the same income, the Philippine government only receives the proceeds of one tax. As between the Philippines, where the income was earned and where the taxpayer is domiciled, and the United States, where that income was not earned and where the taxpayer did not reside, it is indisputable that justice and equity demand that the tax on the income should accrue to the benefit of the Philippines. Any relief from the alleged double taxation should come from the United States, and not from the Philippines, since the former's right to burden the taxpayer is solely predicated on his citizenship, without contributing to the production of the wealth that is being taxed.

Aside from not conforming to the fundamental doctrine of income taxation that the right of a government to tax income emanates from its partnership in the production of income, by providing the protection, resources, incentive, and proper climate for such production, the interpretation given by the respondents to the revenue law provision in question operates, in its application, to place a resident alien with only domestic sources of income in an equal, if not in a better, position than one who has both domestic and foreign sources of income, a situation which is manifestly unfair and short of logic.

Finally, to allow an alien resident to deduct from his gross income whatever taxes he pays to his own government amounts to conferring on the latter the power to reduce the tax income of the Philippine government simply by increasing the tax rates on the alien resident. Everytime the rate of taxation imposed upon an alien resident is increased by his own government, his deduction from Philippine taxes would correspondingly increase, and the proceeds for the Philippines diminished, thereby subordinating our own taxes to those levied by a foreign government. Such a result is incompatible with the status of the Philippines as an independent and sovereign state.

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,* -versus - BRITISH OVERSEAS AIRWAYS CORPORATION and COURT OF TAX APPEALS, *Respondents.*
G.R. No. L-65773-74, EN BANC, April 30, 1987, MELENCIO-HERRERA, *J.*

The source of an income is the property, activity or service that produced the income. For such source to be considered as coming from the Philippines, it is sufficient that the income is derived from activity within the Philippines.

FACTS:

Petitioner Commissioner of Internal Revenue (CIR) seeks a review of the Court of Tax Appeals' decision setting aside petitioner's assessment of deficiency income taxes against respondent British Overseas Airways Corporation (BOAC) for the fiscal years 1959 to 1971.

BOAC is a 100% British Government-owned corporation organized and existing under the laws of the United Kingdom, and is engaged in the international airline business. During the periods covered by the disputed assessments, it is admitted that BOAC had no landing rights for traffic purposes in the Philippines. Consequently, it did not carry passengers and/or cargo to or from the Philippines, although during the period covered by the assessments, it maintained a general sales agent in the Philippines — Wamer Barnes and Company, Ltd., and later Qantas Airways — which was responsible for selling BOAC tickets covering passengers and cargoes.

On 7 October 1970, BOAC filed a claim for refund of the amount of P858,307.79, which claim was denied by the CIR on 16 February 1972. But before said denial, BOAC had already filed a petition for review with the Tax Court on 27 January 1972, assailing the assessment and praying for the refund of the amount paid.

The CTA ruled in favor of BOAC citing that the proceeds of sales of BOAC tickets do not constitute BOAC income from Philippine sources since no service of carriage of passengers or freight was performed by BOAC within the Philippines and, therefore, said income is not subject to Philippine income tax. The CTA position was that income from transportation is income from services so that the place where services are rendered determines the source.

ISSUE:

Whether or not revenues derived by BOAC from sales of ticket for air transportation, while having no landing rights here, constitute income of BOAC from Philippine sources, and accordingly, taxable.

RULING: YES.

The source of an income is the property, activity or service that produced the income. For the source of income to be considered as coming from the Philippines, it is sufficient that the income is derived from activity within the Philippines. In BOAC's case, the sale of tickets in the Philippines is the activity that produces the income. The tickets exchanged hands here and payments for fares were also made here in Philippine currency. The site of the source of payments is the Philippines. The flow of wealth proceeded from, and occurred within, Philippine territory, enjoying the protection accorded by the Philippine government. In consideration of such protection, the flow of wealth should share the burden of supporting the government.

A transportation ticket is not a mere piece of paper. When issued by a common carrier, it constitutes the contract between the ticket-holder and the carrier. It gives rise to the obligation of the purchaser of the ticket to pay the fare and the corresponding obligation of the carrier to transport the passenger upon the terms and conditions set forth thereon. The ordinary ticket issued to members of the traveling public in general embraces within its terms all the elements to constitute it a valid contract, binding upon the parties entering into the relationship.

True, Section 37(a) of the Tax Code, which enumerates items of gross income from sources within the Philippines, namely: (1) interest, (21) dividends, (3) service, (4) rentals and royalties, (5) sale of real property, and (6) sale of personal property, does not mention income from the sale of tickets for international transportation. However, that does not render it less an income from sources within the Philippines. Section 37, by its language, does not intend the enumeration to be exclusive. It merely directs that the types of income listed therein be treated as income from sources within the Philippines. A cursory reading of the section will show that it does not state that it is an all-inclusive enumeration, and that no other kind of income may be so considered.

The absence of flight operations to and from the Philippines is not determinative of the source of income or the site of income taxation. Admittedly, BOAC was an off-line international airline at the time pertinent to this case. The test of taxability is the "source"; and the source of an income is that activity ... which produced the income. Unquestionably, the passage documentations in these cases were sold in the Philippines and the revenue therefrom was derived from a activity regularly pursued within the Philippines. business a And even if the BOAC tickets sold covered the "transport of passengers and cargo to and from foreign cities", it cannot alter the fact that income from the sale of tickets was derived from the Philippines. The word "source" conveys one essential idea, that of origin, and the origin of the income herein is the Philippines.

CHAMBER OF REAL ESTATE AND BUILDERS' ASSOCIATIONS, INC., *Petitioner,* -versus - THE HON. EXECUTIVE SECRETARY ALBERTO ROMULO, THE HON. ACTING SECRETARY OF FINANCE JUANITA D. AMATONG, and THE HON. COMMISSIONER OF INTERNAL REVENUE GUILLERMO PARAYNO, JR., *Respondents.*

G.R. No. 160756, EN BANC, March 9, 2010, CORONA, *J.*

MCIT does not tax capital but only taxes income as shown by the fact that the MCIT is arrived at by deducting the capital spent by a corporation in the sale of its goods. Besides, there are sufficient safeguards that exist for the MCIT: (1) it is only imposed on the 4th year of operations; (2) the law allows the carry forward of any excess MCIT paid over the normal income tax; and (3) the Secretary of Finance can suspend the imposition of MCIT in justifiable instances.

The revenue regulations on CWT did not shift the tax base of a real estate business' income tax from net income to GSP or FMV of the property sold since the taxes withheld are in the nature of advance tax payments and they are thus just installments on the annual tax which may be due at the end of the taxable year. As such the tax base for the sale of real property classified as ordinary assets remains to be the net taxable income and the use of the GSP or FMV is because these are the only factors reasonably known to the buyer in connection with the performance of the duties as a withholding agent.

FACTS:

Chamber of Real Estate and Builders' Associations, Inc. (CREBA) is an association of real estate developers and builders in the Philippines. It impleaded former Executive Secretary Alberto Romulo, then acting Secretary of Finance Juanita D. Amatong and then Commissioner of Internal Revenue Guillermo Parayno, Jr. as respondents. CREBA assails the validity of the imposition of minimum corporate income tax (MCIT) on corporations and creditable withholding tax (CWT) on sales of real properties classified as ordinary assets.

Section 27(E) of RA 8424 provides for MCIT on domestic corporations and is implemented by RR 9-98. Petitioner argues that the MCIT violates the due process clause because it levies income tax even if there is no realized gain.

CREBA also seeks to nullify Sections 2.57.2(J) (as amended by RR 6-2001) and 2.58.2 of RR 2-98, and Section 4(a)(ii) and (c)(ii) of RR 7-2003, all of which prescribe the rules and procedures for the collection of CWT on the sale of real properties categorized as ordinary assets. CREBA contends that these revenue regulations are contrary to law for two reasons: (1) they ignore the different treatment by RA 8424 of ordinary assets and capital assets; and (2), respondent Secretary of Finance has no authority to collect CWT, much less, to base the CWT on the gross selling price or fair market value of the real properties classified as ordinary assets.

CREBA also asserts that the enumerated provisions of the subject revenue regulations violate the due process clause because, like the MCIT, the government collects income tax even when the net income has not yet been determined. They contravene the equal protection clause as well because the CWT is being levied upon real estate enterprises but not on other business enterprises, more particularly those in the manufacturing sector.

ISSUE:

1. Whether or not the imposition of the MCIT on domestic corporations is unconstitutional.

2. Whether or not the imposition of CWT on income from sales of real properties classified as ordinary assets under RRs 2-98, 6-2001 and 7-2003, is unconstitutional.

RULING:

1. **NO.** The MCIT on domestic corporations is a new concept introduced by RA 8424 to the Philippine taxation system. It was devised as a relatively simple and effective revenue-raising instrument compared to the normal income tax which is more difficult to control and enforce. It is a means to ensure that everyone will make some minimum contribution to the support of the public sector.

Domestic corporations owe their corporate existence and their privilege to do business to the government. They also benefit from the efforts of the government to improve the financial market and to ensure a favorable business climate. It is therefore fair for the government to require them to make a reasonable contribution to the public expenses.

Congress intended to put a stop to the practice of corporations which, while having large turn-overs, report minimal or negative net income resulting in minimal or zero income taxes year in and year out, through under-declaration of income or over-deduction of expenses otherwise called tax shelters.

Certainly, an income tax is arbitrary and confiscatory if it taxes capital because capital is not income. In other words, it is income, not capital, which is subject to income tax. However, the MCIT is not a tax on capital. The MCIT is imposed on gross income which is arrived at by deducting the capital spent by a corporation in the sale of its goods, i.e., the cost of goods and other direct expenses from gross sales. Clearly, the capital is not being taxed.

Furthermore, the MCIT is not an additional tax imposition. It is imposed in lieu of the normal net income tax, and only if the normal income tax is suspiciously low. The MCIT merely approximates the amount of net income tax due from a corporation, pegging the rate at a very much reduced 2% and uses as the base the corporation's gross income. Besides, there is no legal objection to a broader tax base or taxable income by eliminating all deductible items and at the same time reducing the applicable tax rate.

Statutes taxing the gross "receipts," "earnings," or "income" of particular corporations are found in many jurisdictions. Tax thereon is generally held to be within the power of a state to impose; or constitutional, unless it interferes with interstate commerce or violates the requirement as to uniformity of taxation.

2. **NO.** RR 9-98, in declaring that MCIT should be imposed whenever such corporation has zero or negative taxable income, merely defines the coverage of Section 27(E). This means that even if a corporation incurs a net loss in its business operations or reports zero income after deducting its expenses, it is still subject to an MCIT of 2% of its gross income. This is consistent with the law which imposes the MCIT on gross income notwithstanding the amount of the net income. But the law also states that the MCIT is to be paid only if it is greater than the normal net income. Obviously, it may well be the case that the MCIT would be less than the net income of the corporation which posts a zero or negative taxable income.

On the other hand, the withholding tax system is a procedure through which taxes (including income taxes) are collected. Under Section 57 of RA 8424, the types of income subject to withholding tax are divided into three categories: (a) withholding of final tax on certain incomes; (b) withholding of creditable tax at source and (c) tax-free covenant bonds. Petitioner is concerned with the second category (CWT) and maintains that the revenue regulations on the collection of CWT on sale of real estate categorized as ordinary assets are unconstitutional.

We have long recognized that the method of withholding tax at source is a procedure of collecting income tax which is sanctioned by our tax laws. The withholding tax system was devised for three primary reasons: first, to provide the taxpayer a convenient manner to meet his probable income tax liability; second, to ensure the collection of income tax which can otherwise be lost or substantially reduced through failure to file the corresponding returns and third, to improve the government's cash flow. This results in administrative savings, prompt and efficient collection of taxes, prevention of delinquencies and reduction of governmental effort to collect taxes through more complicated means and remedies.

Respondent Secretary has the authority to require the withholding of a tax on items of income payable to any person, national or juridical, residing in the Philippines. Such authority is derived from Section 57(B) of RA 8424.

Furthermore, the taxes withheld are in the nature of advance tax payments by a taxpayer in order to extinguish its possible tax obligation. They are installments on the annual tax which may be due at the end of the taxable year.

Under RR 2-98, the tax base of the income tax from the sale of real property classified as ordinary assets remains to be the entity's net income imposed under Section 24 (resident individuals) or Section 27 (domestic corporations) in relation to Section 31 of RA 8424, i.e. gross income less allowable deductions. The CWT is to be deducted from the net income tax payable by the taxpayer at the end of the taxable year. Precisely, Section 4(a)(ii) and (c)(ii) of RR 7-2003 reiterate that the tax base for the sale of real property classified as ordinary assets remains to be the net taxable income.

It is stressed that the CWT is creditable against the tax due from the seller of the property at the end of the taxable year. The seller will be able to claim a tax refund if its net income is less than the taxes withheld. Nothing is taken that is not due so there is no confiscation of property repugnant to the constitutional guarantee of due process. More importantly, the due process requirement applies to the power to tax. The CWT does not impose new taxes nor does it increase taxes. It relates entirely to the method and time of payment.

EL ORIENTE FABRICA DE TABACOS, INC., *Petitioner,* -versus - JUAN POSADAS, Collector of Internal Revenue, *Respondent.*
G.R. No. 34774, EN BANC, September 21, 1931, MALCOLM, *J.*

It is true that the Income Tax Law, in exempting individual beneficiaries, speaks of the proceeds of life insurance policies as income, but this is a very slight indication of legislative intention. In reality, what the plaintiff received was in the nature of an indemnity for the loss which it actually suffered because of the death of its manager.

FACTS:

EL ORIENTE FABRICA DE TABACOS, INC. (El Oriente) is a domestic corporation duly organized and existing under and by virtue of the laws of the Philippine Islands, having its principal office at No. 732 Calle Evangelista, Manila, P.I.; and that the defendant is the duly appointed, qualified and acting Collector of Internal Revenue of the Philippine Islands

El Oriente in order to protect itself against the loss that it might suffer by reason of the death of its manager, A. Velhagen, who had had more than thirty-five (35) years of experience in the manufacture of cigars in the Philippines, procured from the Manufacturers Life Insurance Co., of Toronto, Canada, thru its local agent E. E. Elser, an insurance policy on the life of the said A. Velhagen for the sum of $50,000, United States currency designating itself as the beneficiary.

El Oriente paid for the premiums due thereon and charged as expenses of its business all the said premiums and deducted the same from its gross incomes as reported in its annual income tax returns, which deductions were allowed upon a showing that such premiums were legitimate expenses of its business.

Upon the death of A. Velhagen in 1929, the El Oriente received all the proceeds of the said life insurance policy, together with the interests and the dividends accruing thereon, aggregating P104,957.88.

CIR assessed El Oriente for deficiency taxes because El Oriente did not include as income the proceeds received from the insurance.

ISSUE:

Whether or not the proceeds of insurance taken by a corporation on the life of an important official to indemnify it against loss in case of his death, are taxable as income under the Philippine Income Tax Law.

RULING: NO.

In Chapter I of the Tax Code, is to be found section 4 which provides that, "The following incomes shall be exempt from the provisions of this law: (a) The proceeds of life insurance policies paid to beneficiaries upon the death of the insured . . ." Section 10, as amended, in Chapter II On Corporations, provides that, "There shall be levied, assessed, collected, and paid annually upon the total net income received in the preceding calendar year from all sources by every corporation . . .a tax of three per centum upon such income . . ." Section 11 in the same chapter, provides the exemptions under the law, but neither here nor in any other section is reference made to the provisions of section 4 in Chapter I.

Under the view we take of the case, it is sufficient for our purposes to direct attention to the anomalous and vague condition of the law. It is certain that the proceeds of life insurance policies paid to individual beneficiaries upon the death of the insured are exempt. It is not so certain that the proceeds of life insurance policies paid to corporate beneficiaries upon the death of the insured are likewise exempt. But at least, it may be said that the law is indefinite in phraseology and does not permit us unequivocally to hold that the proceeds of life insurance policies received by corporations constitute income which is taxable.

It will be recalled that El Oriente, took out the insurance on the life of its manager, who had had more than thirty-five years' experience in the manufacture of cigars in the Philippines, to protect itself against the loss it might suffer by reason of the death of its manager. We do not believe that this fact signifies that when the plaintiff received P104,957.88 from the insurance on the life of its manager, it thereby realized a net profit in this amount. It is true that the Income Tax Law, in exempting individual beneficiaries, speaks of the proceeds of life insurance policies as income, but this is a very slight indication of legislative intention. In reality, what the plaintiff received was in the nature of an indemnity for the loss which it actually suffered because of the death of its manager.

Considering, therefore, the purport of the stipulated facts, considering the uncertainty of Philippine law, and considering the lack of express legislative intention to tax the proceeds of life insurance policies paid to corporate beneficiaries, particularly when in the exemption in favor of individual beneficiaries in the chapter on this subject, the clause is inserted "exempt from the provisions of this law," we deem it reasonable to hold the proceeds of the life insurance policy in question as representing an indemnity and not taxable income.

MA. ISABEL T. SANTOS, represented by ANTONIO P. SANTOS, *Petitioner*, -versus - SERVIER PHILIPPINES, INC. and NATIONAL LABOR RELATIONS COMMISSION, *Respondents.*
G.R. No. 166377, THIRD DIVISION, November 28, 2008, NACHURA, *J.*

Retirement benefits were exempt from income tax and Servier Philippines had no authority to withhold their salary differentials. Retirement benefits are exempt from income tax, provided the following requirements are met: 1) a reasonable private benefit plan is maintained by the employer; (2) the retiring official or employee has been in the service of the same employer for at least ten (10) years; (3) the retiring official or employee is not less than fifty (50) years of age at the time of his retirement; and (4) the benefit had been availed of only once.

FACTS:

Petitioner Ma. Isabel T. Santos was the Human Resource Manager of respondent Servier Philippines, Inc. since 1991 until her termination from service in 1999. On March 26 and 27, 1998, petitioner attended a meeting of all human resource managers of respondent, held in Paris, France. Since the last day of the meeting coincided with the graduation of petitioners only child, she arranged for a European vacation with her family right after the meeting. She, thus, filed a vacation leave effective March 30, 1998.

On March 29, 1998, petitioner with her family had dinner at one restaurant known for mussels as their specialty. While having dinner, petitioner complained of stomach pain, then vomited. Then, she was brought to the hospital and fell into coma for 21 days and later stayed at the ICU for 52 days. The hospital found that the probable cause of her sudden attack was alimentary allergy, as she had recently ingested a meal of mussels which resulted in a concomitant uticarial eruption.

The hospital expenses were paid by respondent. On June 1998, the petitioner was allowed to go back to the Philippines for the continuation of her medical treatment. She was then confined at the St. Lukes Medical Center for rehabilitation. The respondent continued to pay the petitioner's salaries and to assist her in paying her hospital bills.

In a letter dated May 14, 1999, respondent informed the petitioner that the former had requested the latter's physician to conduct a thorough physical and psychological evaluation of her condition, to determine her fitness to resume her work at the company. Petitioner's physician concluded that the former had not fully recovered mentally and physically. Hence, respondent was constrained to terminate petitioners services effective August 31, 1999 As a consequence of petitioners termination from employment, respondent offered a retirement package which consists of: (1) Retirement Plan Benefits: P 1,063,841.76; (2) Insurance Pension at P20,000.00/month for 60 months from company-sponsored group life policy: P 1,200,000.00; (3) Educational assistance: P 465,000.00; (4) Medical and Health Care: P 200,000.00

However, of the promised retirement benefits amounting to P1,063,841.76, only P701,454.89 was released to petitioners husband, the balance thereof was withheld allegedly for taxation purposes. Respondent also failed to give the other benefits listed above.

Petitioner, represented by her husband, instituted the instant case for unpaid salaries; unpaid separation pay; unpaid balance of retirement package plus interest; insurance pension for permanent disability; educational assistance for her son; medical assistance; reimbursement of medical and rehabilitation expenses; moral, exemplary, and actual damages, plus attorneys fees.

On September 28, 2001, Labor Arbiter Aliman D. Mangandog rendered a Decision dismissing petitioners complaint. The LA stressed that respondent had been generous in giving financial assistance to the petitioner. In denying petitioners claim for separation pay, the Labor Arbiter ratiocinated that the same had already been integrated in the retirement plan established by respondent. Thus, petitioner could no longer collect separation pay over and above her retirement benefits. The arbiter refused to rule on the legality of the deductions made by respondent from petitioners total retirement benefits for taxation purposes, as the issue was beyond the jurisdiction of the NLRC.

On appeal to the National Labor Relations Commission (NLRC), the tribunal set aside the Labor Arbiters decision, respondent was ordered to pay Complainants portion of her separation pay. The NLRC emphasized that petitioner was not retired from the service pursuant to law, collective bargaining agreement (CBA) or other employment contract; rather, she was dismissed from employment due to a disease/disability under Article 284 of the Labor Code. In view of her non-entitlement to retirement benefits, the amounts received by petitioner should then be treated as her separation pay.

Unsatisfied, petitioner elevated the matter to the Court of Appeals which affirmed the NLRC decision. Hence, petitioner filed a petition for certiorari.

ISSUE:

Whether or not the benefits received by Santos are taxable.

RULING: YES.

Section 32 (B) (6) (a) of the New National Internal Revenue Code (NIRC) provides for the exclusion of retirement benefits from gross income, thus:

(6) Retirement Benefits, Pensions, Gratuities, etc.'

a) Retirement benefits received under Republic Act 7641 and those received by officials and employees of private firms, whether individual or corporate, in accordance with a reasonable private benefit plan maintained by the employer: Provided, That the retiring official or employee has been in the service of the same employer for at least ten (10) years and is not less than fifty (50) years of age at the time of his retirement: Provided further, That the benefits granted under this subparagraph shall be availed of by an official or employee only once. x x x.

Thus, for the retirement benefits to be exempt from the withholding tax, the taxpayer is burdened to prove the concurrence of the following elements: (1) a reasonable private benefit plan is maintained by the employer; (2) the retiring official or employee has been in the service of the same employer for at least ten (10) years; (3) the retiring official or employee is not less than fifty (50) years of age at the time of his retirement; and (4) the benefit had been availed of only once.

Petitioner was qualified for disability retirement. At the time of such retirement, petitioner was only 41 years of age; and had been in the service for more or less eight (8) years. As such, the above provision is not applicable for failure to comply with the age and length of service requirements. Therefore, respondent cannot be faulted for deducting from petitioner's total retirement benefits the amount of P362,386.87, for taxation purposes.

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,* -versus - MITSUBISHI METAL CORPORATION, ATLAS CONSOLIDATED MINING AND DEVELOPMENT CORPORATION and the COURT OF TAX APPEALS, *Respondents.*

G.R. No. L-54908, SECOND DIVISION, January 22, 1990, REGALADO, *J.*

It is too settled a rule in this jurisdiction, as to dispense with the need for citations, that laws granting exemption from tax are construed strictissimi juris against the taxpayer and liberally in favor of the taxing power. Taxation is the rule and exemption is the exception. The burden of proof rests upon the party claiming exemption to prove that it is in fact covered by the exemption so claimed, which onus petitioners have failed to discharge. Significantly, private respondents are not even among the entities which, under Section 29 (b) (7) (A) of the tax code, are entitled to exemption and which should indispensably be the party in interest in this case.

FACTS:

On April 17, 1970, Atlas Consolidated Mining and Development Corporation entered into a Loan and Sales Contract with Mitsubishi Metal Corporation, a Japanese corporation licensed to engage in business in the Philippines, for purposes of the projected expansion of the productive capacity of the former's mines in Toledo, Cebu. Under said contract, Mitsubishi agreed to extend a loan to Atlas 'in the amount of $20,000,000.00, United States currency.

Atlas, in turn undertook to sell to Mitsubishi all the copper concentrates produced for a period of fifteen (15) years. Mitsubishi thereafter applied for a loan with the Export-Import Bank of Japan (Eximbank) for purposes of its obligation under said contract. Its loan application was approved on May 26, 1970 in the equivalent sum of $20,000,000.00 in United States currency at the then prevailing exchange rate.

The records in the Bureau of Internal Revenue show that the approval of the loan by Eximbank to Mitsubishi was subject to the condition that Mitsubishi would use the amount as a loan to Atlas and as a consideration for importing copper concentrates from Atlas, and that Mitsubishi had to pay back the total amount of loan by September 30, 1981.

Pursuant to the contract between Atlas and Mitsubishi, interest payments were made by the former to the latter totaling P13,143,966.79 for the years 1974 and 1975. The corresponding 15% tax thereon in the amount of P1,971,595.01 was withheld pursuant to Section 24 (b) (1) and Section 53 (b) (2) of the National Internal Revenue Code, as amended by Presidential Decree No. 131, and duly remitted to the Government.

On March 5, 1976, private respondents filed a claim for tax credit requesting that the sum of P1,971,595.01 be applied against their existing and future tax liabilities. Parenthetically, it was later noted by respondent Court of Tax Appeals in its decision that on August 27, 1976, Mitsubishi executed a waiver and disclaimer of its interest in the claim for tax credit in favor of Atlas.

The petitioner not having acted on the claim for tax credit, on April 23, 1976 private respondents filed a petition for review with respondent court, docketed therein as CTA Case No. 2801.

On April 18, 1980, respondent court promulgated its decision ordering petitioner to grant a tax credit in favor of Atlas in the amount of P1,971,595.01. Interestingly, the tax court held that petitioner admitted the material averments of private respondents when he supposedly prayed "for judgment on the pleadings without off-spring proof as to the truth of his allegations.

While CTA Case No. 2801 was still pending before the tax court, the corresponding 15% tax on the amount of P439,167.95 on the P2,927,789.06 interest payments for the years 1977 and 1978 was withheld and remitted to the Government. Atlas again filed a claim for tax credit with the petitioner, repeating the same basis for exemption.

ISSUE:

Whether or not the interest income from the loans extended to Atlas by Mitsubishi is excludible from gross income taxation pursuant to Section 29 of the tax code and, therefore, exempt from withholding tax.

RULING: NO.

The loan and sales contract between Mitsubishi and Atlas does not contain any direct or inferential reference to Eximbank whatsoever. The agreement is strictly between Mitsubishi as creditor in the contract of loan and Atlas as the seller of the copper concentrates. From the categorical language used in the document, one prestation was in consideration of the other. The specific terms and the reciprocal nature of their obligations make it implausible, if not vacuous to give credit to the cavalier assertion that Mitsubishi was a mere agent in said transaction.

Surely, Eximbank had nothing to do with the sale of the copper concentrates since all that Mitsubishi stated in its loan application with the former was that the amount being procured would be used as a loan to and in consideration for importing copper concentrates from Atlas. Such an innocuous statement of purpose could not have been intended for, nor could it legally constitute, a contract of agency. If that had been the purpose as respondent court believes, said corporations would have specifically so stated, especially considering their experience and expertise in financial transactions, not to speak of the amount involved and its purchasing value in 1970.

The contract between Eximbank and Mitsubishi is entirely different. It is complete in itself, does not appear to be suppletory or collateral to another contract and is, therefore, not to be distorted by other considerations aliunde. The application for the loan was approved on May 20, 1970, or more than a month after the contract between Mitsubishi and Atlas was entered into on April 17, 1970. It is true that under the contract of loan with Eximbank, Mitsubishi agreed to use the amount as a loan to and in consideration for importing copper concentrates from Atlas, but all that this proves is the justification for the loan as represented by Mitsubishi, a standard banking practice for evaluating the prospects of due repayment. There is nothing wrong with such stipulation as the parties in a contract are free to agree on such lawful terms and conditions as they see fit. Limiting the disbursement of the amount borrowed to a certain person or to a certain purpose is not unusual, especially in the case of Eximbank which, aside from protecting its financial exposure, must see to it that the same are in line with the provisions and objectives of its charter.

COMMISSIONER OF INTERNAL REVENUE, *Petitioner*, -versus - ST. LUKE'S MEDICAL CENTER, INC., *Respondents.*
G.R. No. 195909, SECOND DIVISION, September 26, 2012, CARPIO, *J.*

Section 27(B) of the NIRC imposes a 10% preferential tax rate on the income of (1) proprietary nonprofit educational institutions and (2) proprietary non-profit hospitals. The only qualifications for hospitals are that they must be proprietary and non-profit. "Proprietary" means private, following the definition of a "proprietary educational institution" as "any private school maintained and administered by private individuals or groups" with a government permit. "Non-profit" means no net income or asset accrues to or benefits any member or specific person, with all the net income or asset devoted to the institution's purposes and all its activities conducted for profit. "Non-profit" does not necessarily mean "charitable".

FACTS:

St. Luke's Medical Center, Inc. ("St. Luke's") is a hospital organized as a non-stock and non-profit corporation. It provides service to both paying and non-paying clients. The BIR assessed St. Luke's of deficiency taxes for the taxable year 1998 on the ground that St. Luke's was actually operating for profit in 1998 because only 13% of its revenues came from charitable purposes. As such, the BIR imposed the 10% preferential tax rate on the income of proprietary non-profit hospitals, arguing that the tax exemption on non-profit hospitals (which were previously categorized as non-stock, non-profit corporations under Section 26 of the NIRC) was removed with the inclusion of Section 27(B) which provides that non-profit hospitals are subject to the preferential rate of 10% income tax.

ISSUE:
Whether or not St. Luke's is liable for deficiency income tax in 1998 under Section 27(B) of the NIRC, which imposes a preferential rate of 10% on the income of proprietary non-profit hospitals.

RULING: YES.

Insofar as the income obtained from paying clients. Section 27(B) of the NIRC imposes a 10% preferential tax rate on the income of (1) proprietary nonprofit educational institutions and (2) proprietary non-profit hospitals. The only qualifications for hospitals are that they must be proprietary and non-profit. "Proprietary" means private, following the definition of a "proprietary educational institution" as "any private school maintained and administered by private individuals or groups" with a government permit. "Non-profit" means no net income or asset accrues to or benefits any member or specific person, with all the net income or asset devoted to the institution's purposes and all its activities conducted for profit. "Non-profit" does not necessarily mean "charitable." Charity is essentially a gift to an indefinite number of persons which lessens the burden of government. In other words, charitable institutions provide for free goods and services to the public which would otherwise fall on the shoulders of government. Thus, as a matter of efficiency, the government forgoes taxes which should have been spent to address public needs, because certain private entities already assume a part of the burden. This is the rationale for the tax exemption of charitable institutions. The loss of taxes by the government is compensated by its relief from doing public works which would have been funded by appropriations from the Treasury. Charitable institutions, however, are not ipso facto entitled to a tax exemption. The requirements for a tax exemption are specified by the law granting it. On the other hand, Section 30(E) of the NIRC provides that a charitable institution must be: (1) a non-stock corporation or association; (2) **organized exclusively** for charitable purposes; (3) **operated exclusively** for charitable purposes; and (4) no part of its net income or asset shall belong to or inure to the benefit of any member, organizer, officer or any specific person. Thus, both the organization and operations of the charitable institution must be devoted "**exclusively**" for charitable purposes.

Even if the charitable institution must be "organized and operated exclusively" for charitable purposes, it is nevertheless allowed to engage in "activities conducted for profit" without losing its tax exempt status for its not-for-profit activities. The only consequence is that the "**income of whatever kind and character**" of a charitable institution "**from any of its activities conducted for profit, regardless of the disposition made of such income, shall be subject to tax.**" Prior to the introduction of Section 27(B), the tax rate on such income from for-profit activities was the ordinary corporate rate under Section 27(A). With the introduction of Section 27(B) the tax rate is now 10%.

Thus, although St. Luke's is a non-stock, non-profit institution, considering that it receives income from paying patients, it is not an institution "operated exclusively" for charitable purposes. Clearly, revenues from paying patients are income received from "activities conducted for profit". Services to paying patients are activities conducted for profit. There is a "purpose to make profit over and above the cost" of services." As such, income from its paying clients are subject to the preferential rate of 10% tax. Activities for profit should not escape the reach of taxation. Being a non-stock and non-profit corporation does not, by this reason alone, completely exempt an institution from tax. An institution cannot use its corporate form to prevent its profitable activities from being taxed. A tax exemption is effectively a social subsidy granted by the State because an exempt institution is spared from sharing in the expense of government and yet benefits from them. Tax exemptions for charitable institutions should therefore be limited to institutions beneficial to the public and those which improve social welfare. A profit-making entity should not be allowed to exploit this subsidy to the detriment of the government and other taxpayers.

Finally, the Court held that St. Luke's is not liable for interest and surcharges, as it has good reasons to rely on the letter dated 6 June 19990 by the BIR, which opined that St. Luke's is "a corporation for purely charitable and social welfare purposes" and thus, exempt from income tax. In *Michael J. Lhuiller, Inc. v. Commissioner of Internal Revenue,* the Court said that "good faith and honest belief that one is not subject to tax on the basis of previous interpretation of government agencies tasked to implement the tax law, are sufficient justification to delete the imposition of surcharges and interest."

AIR CANADA, *Petitioner,* -versus - COMMISSIONER OF INTERNAL REVENUE, *Respondent.*
G.R. No. 169507, SECOND DIVISION, January 11, 2016, LEONEN, *J.*

An offline international air carrier selling passage tickets in the Philippines, through a general sales agent, is a resident foreign corporation doing business in the Philippines. As such, it is taxable under Section 28(A)(l), and not Section 28(A)(3) of the Tax Code, subject to any applicable tax treaty to which the Philippines is a signatory. Pursuant to Article 8 of the Republic of the Philippines-Canada Tax Treaty, Air Canada may only be imposed a maximum tax of 1 ½% of its gross revenues earned from the sale of its tickets in the Philippines.

FACTS:

Air Canada is a foreign corporation organized and existing under the laws of Canada. It was granted an authority to operate as an offline carrier by the Civil Aeronautics Board. As an off-line carrier, Air Canada does not have flights originating from or coming to the Philippines and does not operate any airplane in the Philippines. Air Canada engaged the services of Aerotel Ltd., Corp. (Aerotel) as its general sales agent in the Philippines. Aerotel sells Air Canada's passage documents in the Philippines.

For the period ranging from the third quarter of 2000 to the second quarter of 2002, Air Canada, through Aerotel, filed quarterly and annual income tax returns and paid the income tax on Gross Philippine Billings in the total amount of ₱5,185,676.77. On November 28, 2002, Air Canada filed a written claim for refund of alleged erroneously paid income taxes. It found basis from the revised definition of Gross Philippine Billings under Section 28(A)(3)(a) of the Tax Code.

To prevent the running of the prescriptive period, Air Canada filed a Petition for Review before the Court of Tax Appeals on November 29, 2002. On December 22, 2004, the Court of Tax Appeals First Division rendered its Decision denying the Petition for Review and, hence, the claim for refund. Air Canada seasonably filed a Motion for Reconsideration, but the Motion was denied. On May 9, 2005, Air Canada appealed to the Court of Tax Appeals En Banc. In the Decision dated August 26, 2005, the Court of Tax Appeals En Banc affirmed the findings of the First Division. Hence, this Petition for Review.

ISSUE:

Whether Air Canada is subject to the 2½% tax on Gross Philippine Billings pursuant to Section 28(A)(3) of the Tax Code.

RULING:

An offline international air carrier selling passage tickets in the Philippines, through a general sales agent, is a resident foreign corporation doing business in the Philippines. As such, it is taxable under Section 28(A)(l), and not Section 28(A)(3) of the Tax Code, subject to any applicable tax treaty to which the Philippines is a signatory. Pursuant to Article 8 of the Republic of the Philippines-Canada Tax Treaty, Air Canada may only be imposed a maximum tax of 1 ½% of its gross revenues earned from the sale of its tickets in the Philippines.

Petitioner is undoubtedly "doing business" or "engaged in trade or business" in the Philippines. Aerotel performs acts or works or exercises functions that are incidental and beneficial to the purpose of petitioner's business. The activities of Aerotel bring direct receipts or profits to petitioner. There is nothing on record to show that Aerotel solicited orders alone and for its own account and without interference from, let alone direction of, petitioner. On the contrary, Aerotel cannot "enter into any contract on behalf of [petitioner Air Canada] without the express written consent of [the latter,]" and it must perform its functions according to the standards required by petitioner. Through Aerotel, petitioner is able to engage in an economic activity in the Philippines.

Petitioner is, therefore, a resident foreign corporation that is taxable on its income derived from sources within the Philippines. International air carrier[s] maintaining flights to and from the Philippines shall be taxed at the rate of 2½% of its Gross Philippine Billings while international air carriers that do not have flights to and from the Philippines but nonetheless earn income from other activities in the country [like sale of airline tickets] will be taxed at the regular income tax rate.

However, the application of the regular tax rate under Section 28(A)(1) of the Tax Code must consider the existence of an effective tax treaty between the Philippines and the home country of the foreign air carrier.

In this case, there is a tax treaty that must be taken into consideration to determine the proper tax rate. While petitioner is taxable as a resident foreign corporation under Section 28(A)(1) of the Tax Code on its taxable income from sale of airline tickets in the Philippines, it could only be taxed at a maximum of 1½% of gross revenues, pursuant to Article VIII of the Republic of the Philippines-Canada Tax Treaty that applies to petitioner as a "foreign corporation organized and existing under the laws of Canada.

The P5,185,676.77 Gross Philippine Billings tax paid by petitioner was computed at the rate of 1 ½% of its gross revenues amounting to P345,711,806.08. It is quite apparent that the tax imposable under Section 28(A)(l) of the Tax Code will exceed the maximum ceiling of 1 ½% of gross revenues as decreed in Article VIII of the Republic of the Philippines-Canada Tax Treaty. Hence, no refund is forthcoming. WHEREFORE, the Petition is DENIED.

FAR EAST INTERNATIONAL IMPORT and EXPORT CORPORATION, *Petitioners,* -versus - NANKAI KOGYO CO. LTD., ET AL., *Respondents.*
G.R. No. L-13525, SECOND DIVISION, November 30, 1962, PAREDES, *J.*

A single act may bring the corporation under the purview of "doing business" if such act is not merely incidental or casual, but it is of such character as distinctly to indicate a purpose on the part of the foreign corporation to do other business in the state, and to make the state a basis of operations for the conduct of a part of corporation's business.

FACTS:

On December 26, 1956, the Far East International Import & Export Corporation, Far East for short, organized under Philippine Laws, entered into a Contract of Sale of Steel Scrap with the Nankai Kogyo Co., Ltd., Nankai for short, a foreign corporation organized under Japanese Laws with address at Osaka, Japan. The buyer sign in Japan and the seller in Manila, Philippines.

Upon perfection of the contract and after having been informed of the readiness to ship and that the Export License was to expire on March 18, 1957,Nankai opened a letter for credit (No. 38/80049) with the China Banking Corporation, issued by the Nippon Kangyo, Ltd., Tokyo, Japan, in the amount of $312,500.00 on January 30, 1957. On March 15, 1957, only four (4) days before the expiration of the Far East licence, three (3) boats sent by Nankai arrived in the Philippines, one to load in Manila, the other two at Poro Point, San Fernando, La Union, and Tacloban, Leyte, respectively. On March 19, 1957, the expiration of the export license, only 1,058.6 metric tons of scrap steel was loaded on the SS Mina (loading in Manila). The loading was accordingly stopped. The boat at Poro Point was also unloaded of the 200 metric tons, for the same reason. An agreement was reached whereby the Far East would seek an extension of the license. However, the untimely death of President Magsaysay and the taking over by President Garcia changed the picture, for the latter and/or his agents refused to extend the license. The two boats sailed to Japan without any cargo, the third (SS Mina) only 1,058.6 metric tons.

On April 27, 1957, Nankai confirmed and acknowledged delivery of the 1,058.6 metric tons of steel scrap, but asked for damages amounting to $148,135.00 consisting of dead freight charges, damages, bank charges, phone and cable expenses.

On May 4, 1957, Far East wrote the Everett Steamship Corporation, requesting the issuance of a complete set of the Bill of Lading for the shipment, in order that payment thereof be effected against the Letter of Credit. Under date of May 7, 1957, the Everett informed Far East that they were not in a position to comply because the Bill of Lading was issued and signed in Tokyo by the Master of the boat, upon request of the Charterer, defendant herein.

As repeated requests, both against the shipping agent and the buyers (Nankai), for the issuance of the Bill Lading were ignored, Far East filed on May 16, 1957, the present complaint for Specific Performance.

Plaintiff filed a Motion to file amended complaint. The most important amendments introduced are the allegation that defendant is doing business in the Philippines with office address at R-517 Luneta Hotel, Manila, represented by Mr. Issei Ishida and Mr. Tominaga.

Defendant Nankai filed a Motion to Dismiss the complaint and dissolve the preliminary mandatory injunction on the following grounds: lack of jurisdiction over the person of the defendant and the subject matter: and failure to state a cause of action against the said defendant. On June 8, 1957 plaintiff Far East opposed the Special Appearance and Motion to Dismiss.

ISSUE:

Whether or not the Nankai is considered doing business in the Philippines.

RULING: YES.

It is true that as a rule the doing of a single act does not constitute "doing business" within the meaning of the law. Nankai only consummated transaction in the Philippines as embodied by the contract of sale. However, a single act may bring the corporation under the purview of "doing business" if such act is not merely incidental or casual, but it is of such character as distinctly to indicate a purpose on the part of the foreign corporation to do other business in the state, and to make the state a basis of operations for the conduct of a part of corporation's business.

In this case, Nankai representatives 1) made inquiry as to the Philippine operation of mines and; 2) allegedly set up an office in Luneta Hotel. It reveals Nankai's purpose to continue engaging business in the Philippines even after receiving the steel crap. It is clear that Nakai's transaction in the Philippines is only the beginning, as it indicates that Nankai intends to build a base in this jurisdiction.

Nankai and Everest shall issue the Bill of Lading so that payment will be effected in favor of Far East International Import and Export.

SOUTH AFRICAN AIRWAYS, *Petitioner*, -versus - COMMISSIONER OF INTERNAL REVENUE, *Respondent.*
G.R. No. 180356, THIRD DIVISION, February 16, 2010, VELASCO, JR., *J.*

In the instant case, the general rule is that resident foreign corporations shall be liable for a 32% income tax on their income from within the Philippines, except for resident foreign corporations that are international carriers that derive income "from carriage of persons, excess baggage, cargo and mail originating from the Philippines" which shall be taxed at 2 1/2% of their Gross Philippine Billings. Petitioner, being an international carrier with no flights originating from the Philippines, does not fall under the exception. As such, petitioner must fall under the general rule. This principle is embodied in the Latin maxim, exception firmat regulam in casibus non exceptis, which means, a thing not being excepted must be regarded as coming within the purview of the general rule.

FACTS:

Petitioner South African Airways (SAA) is a foreign corporation organized and existing under and by virtue of the laws of the Republic of South Africa. Its principal office is located at Airways Park, Jones Road, Johannesburg International Airport, South Africa.

In the Philippines, it is an internal air carrier also having NO LANDING RIGHTS in the country. And like both previous airlines Petitioner herein has a general sales agent in the Philippines in the person of Aerotel Limited Corporation (Aerotel). No they weren't selling tickets. Aerotel sells passage documents for compensation or commission for petitioner's off-line flights for the carriage of passengers and cargo between ports or points outside the territorial jurisdiction of the Philippines.

The thing was, petitioner is not registered with the SEC as a corporation, branch office, or partnership. It is not licensed to do business in the Philippines. It paid a corporate tax in the rate of 32% of its gross billings.

However, it subsequently claim for refund contending that its income should be taxed at the rate of 2 1/2% of its gross billings.

South African Airways, a foreign corporation with no license to do business in the Philippines, sells passage documents for off-line flights through Aerotel Limited, general sales agent in the Philippines.

On February 5, 2003, the petitioner filed a claim for refund erroneously paid tax on Gross Philippine Billing (GPB) for the year 2010.

The Court of Tax Appeals denied. Petitioner is a resident foreign corp. engaged in trade or business in the Philippines and therefore is not liable to pay tax on GPB under the Sec. 28 (A) (3) (a) of the 1997 NIRC but cannot be allowed refund because liable for the 32% income tax from its sales of passage documents.

ISSUE:

1. Whether or not the petitioner is engaged in trade or business in the Philippines is subject to 32% income tax.

2. Whether or not petitioner is entitled to refund.

RULING:

1. **YES**. Since it does not maintain flights to or from the Philippines, it is not taxable under Sec. 28(A)(3)(a) of the 1997 NIRC. This much was also found by the CTA. But petitioner further posits the view that due to the non-applicability of Sec. 28(A)(3)(a) to it, it is precluded from paying any other income tax for its sale of passage documents in the Philippines. But, Sec. 28 (A)(1) of the 1997 NIRC does not exempt all international air carriers from the coverage of Sec. 28 (A) (1) of the 1997 NIRC being a general rule. Petitioner, being an international carrier with no flights originating from the Philippines, does not fall under the exception. As such, petitioner must fall under the general rule. This principle is embodied in the Latin maxim, exception firmat regulam in casibus non exceptis, which means, a thing not being excepted must be regarded as coming within the purview of the general rule.

2. **UNDETERMINABLE**. Although offsetting of tax refund with tax deficiency is unavailing under Art. 1279 of the Civil Code, in CIR v. CTA it granted when deficiency assessment is intimately related and inextricably intertwined with the right to claim for a tax refund. Sec. 72 Chapter XI of 1997 NIRC is not applicable where petitioner's tax refund claim assumes that the tax return that it filed were correct because petitioner is liable under Sec. 28 (A)(1), the correctness is now put in doubt and refund cannot be granted. It cannot be assumed that the liabilities for two different provisions would be the same. There is a necessity for the CTA to receive evidence and establish the correct amount before a refund can be granted.

N.V. REEDERIJ "AMSTERDAM" and ROYAL INTEROCEAN LINES, *Petitioners,* -versus - COMMISSIONER OF INTERNAL REVENUE, *Respondents.*
G.R. No. L-46029, June 23, 1988, GANCAYCO, *J.*

A foreign corporation engaged in trade or business within the Philippines, or which has an office or place of business therein, is taxed on its total net income received from all sources within the Philippines at the rate of 25% upon the amount but which taxable net income does not exceed P100,000.00, and 35% upon the amount but which taxable net income exceeds P100,000.00. On the other hand, a foreign corporation not engaged in trade or business within the Philippmes and which does not have any office or place of business therein is taxed on income received from all sources within the Philippines at the rate of 35% of the gross income.

FACTS:

Both vessels of petitioner N.V. Reederij "Amsterdam" called on Philippine ports to load cargoes for foreign destinations.

The freight fees for these transactions were paid in abroad. In these two transactions, petition Royal Interocean Lines acted as husbanding agent for a fee or commission on said vessels. No income tax has been paid by "Amsterdam" on the freight receipts.

As a result, Commissioner of Internal Revenue filed the corresponding income tax returns for the petitioner. Commissioner assessed petitioner for deficiency of income tax, as a non-resident foreign corporation NOT engaged in trade or business.

On the assumption that the said petitioner is a foreign corporation engaged in trade or business in the Philippines, petitioner Royal Interocean Lines filed an income tax return of the aforementioned vessels and paid the tax in pursuant to their supposed classification.

On the same date, petitioner Royal Interocean Lines, as the husbanding agent of "Amsterdam", filed a written protest against the abovementioned assessment made by the respondent Commissioner. The protest was denied.

On appeal, Court of Tax Appeals modified the assessment by eliminating the 50% fraud compromise penalties imposed upon petitioners. Petitioner still was not satisfied and decided to appeal to the Supreme Court.

ISSUE:

Whether or not N.V. Reederij "Amsterdam" should be taxed as a foreign corporation not engaged in trade or business in the Philippines.

RULING:

Petitioner is a foreign corporation not authorized or licensed to do business in the Philippines. It does not have a branch in the Philippines, and it only made two calls in Philippine ports, one in 1963 and the other in 1964.

In order that a foreign corporation may be considered engaged in trade or business, its business transactions must be continuous. A casual business activity in the Philippines by a foreign corporation does not amount to engaging in trade or business in the Philippines for income tax purposes.

A foreign corporation doing business in the Philippines is taxable on income solely from sources within the Philippines. It is permitted to claim deductions from gross income but only to the extent connected with income earned in the Philippines. On the other hand, foreign corporations not doing business in the Philippines are taxable on income from all sources within the Philippines. The tax is 30% (now 35% for non-resident foreign corporation which is also known as foreign corporation not engaged in trade or business) of such gross income. It is worth to note that in a resident foreign corporation, what is being taxed is the taxable income, which is the deductions, as compared to a non-resident foreign corporation which is taxed on the gross income.

Petitioner "Amsterdam" is a non-resident foreign corporation, organized and existing under the laws of the Netherlands with principal office in Amsterdam and not licensed to do business in the Philippines.

EUFEMIA EVANGELISTA, MANUELA EVANGELISTA, and FRANCISCA EVANGELISTA, *Petitioners,* -versus - THE COLLECTOR OF INTERNAL REVENUE and THE COURT OF TAX APPEALS, *Respondents.*
G.R. No. L-9996, EN BANC, October 15, 1957, CONCEPCION, *J.*

The tax in question is one imposed upon "corporations", which, strictly speaking, are distinct and different from "partnerships". When our Internal Revenue Code includes "partnerships" among the entities subject to the tax on "corporations", said Code must allude, therefore, to organizations which are not necessarily "partnerships", in the technical sense of the term. Thus, for instance, section 24 of said Code exempts from the aforementioned tax "duly registered general partnerships which constitute precisely one of the most typical forms of partnerships in this jurisdiction. Likewise, as defined in section 84(b) of said Code, "the term corporation includes partnerships, no matter how created or organized." This qualifying expression clearly indicates that a joint venture need not be undertaken in any of the standard forms, or in conformity with the usual requirements of the law on partnerships, in order that one could be deemed constituted for purposes of the tax on corporations.

FACTS:

This is a petition, filed by Eufemia Evangelista, Manuela Evangelista and Francisca Evangelista for review of a decision of the Court of Tax Appeals holding that the petitioners are liable for the income tax, real estate dealer's tax and the residence tax for the years 1945 to 1949 in the total amount of P6,878.34. It appears from the stipulation submitted by the parties that petitioners borrowed from their father the sum of P59,140.00. The amount together with their personal monies was used by them for the purpose of buying real properties. They appointed their brother Simeon Evangelista to 'manage their properties with full power to lease; to collect and receive rents; to issue receipts therefor; in default of such payment, to bring' suits against the defaulting tenant; to sign all letters, contracts, etc., for and in their behalf, and to endorse and deposit all notes and checks for them. After having bought the above-mentioned real properties, the petitioners had the same rented or leased to various tenants. Respondent Collector of Internal Revenue demanded the payment, of income tax. A letter of demand and the corresponding assessments were delivered to petitioners.

Whereupon they instituted the present case in the Court of Tax Appeals, with a prayer that the decision of the respondent contained in his letter of demand be reversed, and that they be absolved from the payment of the taxes in question.

Court of Tax Appeals rendered a decision in favour for the respondent. A petition for reconsideration and new trial having been filed by respondent were subsequently denied. Hence, this petition. Petitioners insist, however, that they are mere co-owners not copartners, for, in consequence of the acts performed by them, a legal entity, with a personality independent of that of its members, did not come into existence, and some of the characteristics of partnerships... are lacking in the case at bar.

ISSUES:

Whether or not petitioners are subject to the tax on corporations provided for in section 24 of National Internal Revenue Code.

RULING: YES.

Article 1767 of the Civil Code of the Philippines provides :"By the contract of partnership two or more persons bind themselves to contribute money, property, or industry to a common fund, with the intention of dividing1 the profits among- themselves." Pursuant to this article, the essential elements of a partnership are two, namely: (a) an agreement to contribute money, property or industry to a common fund; and (b) intent to divide the profits among the contracting parties. The first element is undoubtedly present in the... case at bar, for, admittedly, petitioners have agreed to, and did, contribute money and property to a common fund. Hence, the issue narrows down to their intent in acting as they did. Upon consideration of all the facts and circumstances surrounding the case, we are fully satisfied that their purpose was to engage in real estate transactions for monetary gain and then divide the same among themselves because said common fund was created purposely. What is more they jointly borrowed a substantial portion thereof in order to establish said common fund. They invested the same, not merely in one transaction, but in a series of transactions. It is strongly indicative of a pattern or common design that was not limited to... the conservation and preservation of the aforementioned common fund. In other words, one cannot but perceive a character of habituality peculiar to business transactions engaged in for purposes of gain. The aforesaid lots were not devoted to residential purposes or to other personal uses, of petitioners herein. The properties were leased separately to several persons properties have been under the management of one person, namely, Simeon Evangelista. Thus, the affairs relative to said properties have been handled as if the same belonged to a corporation or business enterprise operated for profit.

As defined in section 84(6) of NIRC, "the term corporation includes partnerships, no matter how created or organized." This qualifying expression clearly indicates that a joint venture... need not be undertaken in any of the standard forms, or in conformity with the usual requirements of the law on partnerships, in order that one couid be deemed constituted for purposes of the tax on corporations. Accordingly, the lawmaker could not have regarded that personality as a condition... essential to the existence of the partnerships, therein referred to. In fact, as above stated, "duly registered general co-partnership" which are possessed of the aforementioned personality have been expressly excluded by law (sections 24 and 84 [6]) from the connotation of the term "corporation." It may not be amiss to add that petitioners' allegation to the effect that their liability in connection with the leasing of the lots above referred to, under the management of one person even if true, on which we express no opinion tends... to increase the similarity between the nature of their venture and that of corporations, and is, therefore, an additional argument in favor of the imposition of said tax on corporations.

For purposes of the tax on corporations, our National Internal Revenue Code, includes these partnerships with the exception only of duly registered general co-partnership within the purview of the term "corporation." It is, therefore, clear to our mind that petitioners herein constitute a partnership, insofar as said Code is concerned, and are subject to the income tax for corporations.

LORENZO T. OÑA and HEIRS OF JULIA BUÑALES, namely: RODOLFO B. OÑA, MARIANO B. OÑA, LUZ B. OÑA, VIRGINIA B. OÑA and LORENZO B. OÑA, JR., *Petitioners,* -versus - THE COMMISSIONER OF INTERNAL REVENUE, *Respondent.*
G.R. No. L-19342, EN BANC, May 25, 1972, BARREDO, *J.*

It is thus incontrovertible that petitioners did not, contrary to their contention, merely limit themselves to holding the properties inherited by them. Indeed, it is admitted that during the material years herein involved, some of the said properties were sold at considerable profit, and that with said profit, petitioners engaged, thru Lorenzo T. Oña, in the purchase and sale of corporate securities. It is likewise admitted that all the profits from these ventures were divided among petitioners proportionately in accordance with their respective shares in the inheritance. In these circumstances, it is Our considered view that from the moment petitioners allowed not only the incomes from their respective shares of the inheritance but even the inherited properties themselves to be used by Lorenzo T. Oña as a common fund in undertaking several transactions or in business, with the intention of deriving profit to be shared by them proportionally, such act was tantamount to actually contributing such incomes to a common fund and, in effect, they thereby formed an unregistered partnership within the purview of the above-mentioned provisions of the Tax Code.

FACTS:

Julia Buñales died on March 23, 1944, leaving as heirs her surviving spouse, Lorenzo T. Oña and her five children. Civil case was instituted in CFI Manila for settlement of her estate. Lorenzo T. Oña the surviving spouse was appointed administrator of the estate of said deceased. He submitted the project of partition, which was approved by the Court on May 16, 1949. Since Luz, Virginia and Lorenzo Jr were all minors, he filed a petition for appointment as their guardians.

The project of partition shows that the heirs have undivided 1/2 interest in ten parcels of land with a total assessed value of P87,860.00, six houses with a total assessed value of P17,590.00 and an undetermined amount to be collected from the War Damage Commission. They received from said Commission the amount of P50,000.00.

This amount was not divided among them but was used in the rehabilitation of properties owned by them in common. 2 parcels were acquired after the death of the decedent with money borrowed from the Philippine Trust Company in the amount of P72,173.00 It also showed that the estate shares equally with the administrator in the obligation of P94,973 consisting of loans contracted by the latter.

Although the project of partition was approved by the Court, no attempt was made to divide the properties. Instead, the properties remained under the management of Lorenzo T. Oña who used said properties in business by leasing or selling them and investing the income derived therefrom and the proceeds from the sales in real properties and securities.

The properties and investments gradually increased from P105,450 (1949) to P480,005 (1956). The income earned was recorded in the books of account kept by Lorenzo T. Oña where the corresponding shares of the petitioners in the net income for the year are also known. However, petitioners did not actually receive their shares in the yearly income.

The Commission on Internal Revenue held petitioners formed an unregistered partnership , hence, subject to corporate income tax. He assessed against the petitioners the amounts of P8,092.00 and P13,899.00 as corporate income taxes for 1955 and 1956. Petitioners protested against the assessment and asked for reconsideration. Denied.

ISSUE:

Whether or not CTA erred in holding that the petitioners formed an unregistered partnership.

RULING: NO.

It is incontrovertible that petitioners did not merely limit themselves to holding the properties inherited by them. It is admitted that during the material years involved, some of the said properties were sold at considerable profit, and that with said profit, petitioners engaged, thru Lorenzo T. Oña, in the purchase and sale of corporate securities. All the profits from these ventures were divided among petitioners proportionately in accordance with their respective shares in the inheritance. From the moment petitioners allowed not only the incomes from their respective shares of the inheritance but even the inherited properties themselves to be used by Lorenzo T. Oña as a common fund in undertaking several transactions or in business, with the intention of deriving profit to be shared by them proportionally, such act was tantamonut to actually contributing such incomes to a common fund and, in effect, they thereby formed an unregistered partnership within the purview of the above-mentioned provisions of the Tax Code. In cases of inheritance, there should be a period when the heirs can be considered as co-owners rather than unregistered co-partners within the contemplation of our corporate tax laws. Before the partition and distribution of the estate of the deceased, all the income thereof does belong commonly to all the heirs, obviously, without them becoming thereby unregistered co-partners, but it does not necessarily follow that such status as co-owners continues until the inheritance is actually and physically distributed among the heirs

For tax purposes, the co-ownership of inherited properties is automatically converted into an unregistered partnership the moment the said common properties and/or the incomes derived therefrom are used as a common fund with intent to produce profits for the heirs in proportion to their respective shares in the inheritance as determined in a project partition.

From the moment of such partition, the heirs are entitled already to their respective definite shares of the estate and the incomes thereof, for each of them to manage and dispose of as exclusively his own without the intervention of the other heirs, and, accordingly he becomes liable individually for all taxes in connection therewith. If after such partition, he allows his share to be held in common with his co-heirs under a single management to be used with the intent of making profit thereby in proportion to his share unregistered partnership is formed. Accordingly, the partnership income must include not only the income derived from the purchase and sale of other properties but also the income of the inherited properties.

MARIANO P. PASCUAL and RENATO P. DRAGON, *Petitioners,* -versus - THE COMMISSIONER OF INTERNAL REVENUE and COURT OF TAX APPEALS, *Respondents.*
G.R. No. 78133, FIRST DIVISION, October 18, 1988, GANCAYCO, *J.*

The sharing of returns does not in itself establish a partnership whether or not the persons sharing therein have a joint or common right or interest in the property. There must be a clear intent to form a partnership, the existence of a juridical personality different from the individual partners, and the freedom of each party to transfer or assign the whole property.

FACTS:

Petitioners bought two (2) parcels of land and a year after, they bought another three (3) parcels of land. Petitioners subsequently sold the said lots in 1968 and 1970, and realized net profits. The corresponding capital gains taxes were paid by petitioners in 1973 and 1974 by availing of the tax amnesties granted in the said years. However, the Acting BIR Commissioner assessed and required Petitioners to pay a total amount of P107,101.70 as alleged deficiency corporate income taxes for the years 1968 and 1970. Petitioners protested the said assessment asserting that they had availed of tax amnesties way back in 1974. In a reply, respondent Commissioner informed petitioners that in the years 1968 and 1970, petitioners as co-owners in the real estate transactions formed an unregistered partnership or joint venture taxable as a corporation under Section 20(b) and its income was subject to the taxes prescribed under Section 24, both of the National Internal Revenue Code that the unregistered partnership was subject to corporate income tax as distinguished from profits derived from the partnership by them which is subject to individual income tax; and that the availment of tax amnesty under P.D. No. 23, as amended, by petitioners relieved petitioners of their individual income tax liabilities but did not relieve them from the tax liability of the unregistered partnership. Hence, the petitioners were required to pay the deficiency income tax assessed.

ISSUE:

Whether the Petitioners should be treated as an unregistered partnership or a co-ownership for the purposes of income tax.

RULING:

The Petitioners are simply under the regime of co-ownership and not under unregistered partnership. By the contract of partnership two or more persons bind themselves to contribute money, property, or industry to a common fund, with the intention of dividing the profits among themselves (Art. 1767, Civil Code of the Philippines). In the present case, there is no evidence that petitioners entered into an agreement to contribute money, property or industry to a common fund, and that they intended to divide the profits among themselves. The sharing of returns does not in itself establish a partnership whether or not the persons sharing therein have a joint or common right or interest in the property. There must be a clear intent to form a partnership, the existence of a juridical personality different from the individual partners, and the freedom of each party to transfer or assign the whole property. Hence, there is no adequate basis to support the proposition that they thereby formed an unregistered partnership. The two isolated transactions whereby they purchased properties and sold the same a few years thereafter did not thereby make them partners. They shared in the gross profits as co- owners and paid their capital gains taxes on their net profits and availed of the tax amnesty thereby. Under the circumstances, they cannot be considered to have formed an unregistered partnership which is thereby liable for corporate income tax, as the respondent commissioner proposes.

JOSE P. OBILLOS, JR., SARAH P. OBILLOS, ROMEO P. OBILLOS and REMEDIOS P. OBILLOS, brothers and sisters, *Petitioners,* -versus - COMMISSIONER OF INTERNAL REVENUE and COURT OF TAX APPEALS, *Respondents.*
G.R. No. L-68118, SECOND DIVISION, October 29, 1985, AQUINO, *J.*

All co-ownerships are not deemed unregistered pratnership.—Co-Ownership who own properties which produce income should not automatically be considered partners of an unregistered partnership, or a corporation, within the purview of the income tax law. To hold otherwise, would be to subject the income of all co-ownerships of inherited properties to the tax on corporations, inasmuch as if a property does not produce an income at all, it is not subject to any kind of income tax, whether the income tax on individuals or the income tax on corporation.

FACTS:

This case is about the income tax liability of four brothers and sisters who sold two parcels of land which they had acquired from their father.

On March 2, 1973 Jose Obillos, Sr. completed payment to Ortigas & Co., Ltd. on two lots with areas of 1,124 and 963 square meters located at Greenhills, San Juan, Rizal. The next day he transferred his rights to his four children, the petitioners, to enable them to build their residences. The company sold the two lots to petitioners for P178,708.12 on March 13 . Presumably, the Torrens titles issued to them would show that they were co-owners of the two lots.

In 1974, or after having held the two lots for more than a year, the petitioners resold them to the Walled City Securities Corporation and Olga Cruz Canda for the total sum of P313,050. They derived from the sale a total profit of P134,341.88 or P33,584 for each of them. They treated the profit as a capital gain and paid an income tax on one-half thereof or of P16,792.

In April, 1980, or one day before the expiration of the five-year prescriptive period, the Commissioner of Internal Revenue required the four petitioners to pay corporate income tax on the total profit of P134,336 in addition to individual income tax on their shares thereof He assessed P37,018 as corporate income tax, P18,509 as 50% fraud surcharge and P15,547.56 as 42% accumulated interest, or a total of P71,074.56. Moreover he considered the share of the profits of each petitioner in the sum of P33,584 as a " taxable in full (not a mere capital gain of which ½ is taxable) and required them to pay deficiency income taxes aggregating P56,707.20 including the 50% fraud surcharge and the accumulated interest.

Thus, the petitioners are being held liable for deficiency income taxes and penalties totalling P127,781.76 on their profit of P134,336, in addition to the tax on capital gains already paid by them.

The Commissioner acted on the theory that the four petitioners had formed an unregistered partnership or joint venture within the meaning of sections 24(a) and 84(b) of the Tax Code. The petitioners contested the assessments. Two Judges of the Tax Court sustained the same. Judge Roaquin dissented. Hence, the instant appeal.

ISSUE:

Whether or not petitioners formed a partnership thus liable for corporate income tax.

RULING: NO.

We hold that it is error to consider the petitioners as having formed a partnership under article 1767 of the Civil Code simply because they allegedly contributed P178,708.12 to buy the two lots, resold the same and divided the profit among themselves.

To regard the petitioners as having formed a taxable unregistered partnership would result in oppressive taxation and confirm the dictum that the power to tax involves the power to destroy. That eventuality should be obviated.

As testified by Jose Obillos, Jr., they had no such intention. They were co-owners pure and simple. To consider them as partners would obliterate the distinction between a co-ownership and a partnership. The petitioners were not engaged in any joint venture by reason of that isolated transaction.

Their original purpose was to divide the lots for residential purposes. If later on they found it not feasible to build their residences on the lots because of the high cost of construction, then they had no choice but to resell the same to dissolve the co-ownership. The division of the profit was merely incidental to the dissolution of the co-ownership which was in the nature of things a temporary state. It had to be terminated sooner or later.

Article 1769(3) of the Civil Code provides that "the sharing of gross returns does not of itself establish a partnership, whether or not the persons sharing them have a joint or common right or interest in any property from which the returns are derived". There must be an unmistakable intention to form a partnership or joint venture.

AFISCO INSURANCE CORPORATION; CCC INSURANCE CORPORATION; CHARTER INSURANCE CO., INC.; CIBELES INSURANCE CORPORATION; COMMONWEALTH INSURANCE COMPANY; CONSOLIDATED INSURANCE CO., INC.; DEVELOPMENT INSURANCE & SURETY CORPORATION; DOMESTIC INSURANCE COMPANY OF THE PHILIPPINES; EASTERN ASSURANCE COMPANY & SURETY CORP.; EMPIRE INSURANCE COMPANY; EQUITABLE INSURANCE CORPORATION; FEDERAL INSURANCE CORPORATION INC.; FGU INSURANCE CORPORATION; FIDELITY & SURETY COMPANY OF THE PHILS., INC.; FILIPINO MERCHANTS INSURANCE CO., INC.; GOVERNMENT SERVICE INSURANCE SYSTEM; MALAYAN INSURANCE CO., INC.; MALAYAN ZURICH INSURANCE CO., INC.; MERCANTILE INSURANCE CO., INC.; METROPOLITAN INSURANCE COMPANY; METRO-TAISHO INSURANCE CORPORATION; NEW ZEALAND INSURANCE CO., LTD.; PAN-MALAYAN INSURANCE CORPORATION; PARAMOUNT INSURANCE CORPORATION; PEOPLES TRANS-EAST ASIA INSURANCE CORPORATION; PERLA COMPANIA DE SEGUROS, INC.; PHILIPPINE BRITISH ASSURANCE CO., INC.; PHILIPPINE FIRST INSURANCE CO., INC.; PIONEER INSURANCE & SURETY CORP.; PIONEER INTERCONTINENTAL INSURANCE CORPORATION; PROVIDENT INSURANCE COMPANY OF THE PHILIPPINES; PYRAMID INSURANCE CO., INC.; RELIANCE SURETY & INSURANCE COMPANY; RIZAL SURETY & INSURANCE COMPANY; SANPIRO INSURANCE CORPORATION; SEABOARD-EASTERN INSURANCE CO., INC.; SOLID GUARANTY, INC.; SOUTH SEA SURETY & INSURANCE CO., INC.; STATE BONDING & INSURANCE CO., INC.; SUMMA INSURANCE CORPORATION; TABACALERA INSURANCE CO., INC.all assessed as POOL OF MACHINERY INSURERS, *Petitioners,* -versus -

COURT OF APPEALS, COURT OF TAX APPEALS and COMMISSIONER OF INTERNAL REVENUE, *Respondents.*
G.R. No. 112675, THIRD DIVISION, January 25, 1999, PANGANIBAN, *J.*

Unregistered Partnerships and associations are considered as corporations for tax purposes – Under the old internal revenue code, "A tax is hereby imposed upon the taxable net income received during each taxable year from all sources by every corporation organized in, or existing under the laws of the Philippines, no matter how created or organized, xxx." Ineludibly, the Philippine legislature included in the concept of corporations those entities that resembled them such as unregistered partnerships and associations.

Insurance pool in the case at bar is deemed a partnership or association taxable as a corporation – In the case at bar, petitioners-insurance companies formed a Pool Agreement, or an association that would handle all the insurance businesses covered under their quota-share reinsurance treaty and surplus reinsurance treaty with Munich is considered a partnership or association which may be taxed as a ccorporation.

Double Taxation is not Present in the Case at Bar – Double taxation means "taxing the same person twice by the same jurisdiction for the same thing." In the instant case, the insurance pool is a taxable entity distince from the individual corporate entities of the ceding companies. The tax on its income is obviously different from the tax on the dividends received by the companies. There is no double taxation.

FACTS:

The petitioners are 41 non-life domestic insurance corporations. They issued risk insurance policies for machines. The petitioners in 1965 entered into a Quota Share Reinsurance Treaty and a Surplus Reinsurance Treaty with the Munchener Ruckversicherungs-Gesselschaft (hereafter called Munich), a non-resident foreign insurance corporation. The reinsurance treaties required petitioners to form a pool, which they complied with.

In 1976, the pool of machinery insurers submitted a financial statement and filed an "Information Return of Organization Exempt from Income Tax" for 1975. On the basis of this, the CIR assessed a deficiency of P1,843,273.60, and withholding taxes in the amount of P1,768,799.39 and P89,438.68 on dividends paid to Munich and to the petitioners, respectively.

The Court of Tax Appeal sustained the petitioner's liability. The Court of Appeals dismissed their appeal.

The CA ruled in that the pool of machinery insurers was a partnership taxable as a corporation, and that the latter's collection of premiums on behalf of its members, the ceding companies, was taxable income.

ISSUES:

1. Whether or not the pool of domestic insurance corporations is taxable as a corporation.
2. Whether or not there is double taxation.

RULING:

1. **YES**. Ineludibly, the Philippine legislature included in the concept of corporations those entities that resembled them such as unregistered partnerships and associations. Interestingly, the NIRC's inclusion of such entities in the tax on corporations was made even clearer by the Tax Reform Act of 1997 Sec. 27 read together with Sec. 22 reads:

"SEC. 27. Rates of Income Tax on Domestic Corporations. --

(A) In General. -- Except as otherwise provided in this Code, an income tax of thirty-five percent (35%) is hereby imposed upon the taxable income derived during each taxable year from all sources within and without the Philippines by every corporation, as defined in Section 22 (B) of this Code, and taxable under this Title as a corporation xxx."

"SEC. 22. -- Definition. -- When used in this Title:

xxx xxx xxx

(B) The term 'corporation' shall include partnerships, no matter how created or organized, joint-stock companies, joint accounts (cuentas en participacion), associations, or insurance companies, but does not include general professional partnerships [or] a joint venture or consortium formed for the purpose of undertaking construction projects or engaging in petroleum, coal, geothermal and other energy operations pursuant to an operating or consortium agreement under a service contract without the Government. 'General professional partnerships' are partnerships formed by persons for the sole purpose of exercising their common profession, no part of the income of which is derived from engaging in any trade or business.

Thus, the Court in Evangelista v. Collector of Internal Revenue held that Section 24 covered these unregistered partnerships and even associations or joint accounts, which had no legal personalities apart from their individual members.

Furthermore, Pool Agreement or an association that would handle all the insurance businesses covered under their quota-share reinsurance treaty and surplus reinsurance treaty with Munich may be considered a partnership because it contains the following elements: (1) The pool has a common fund, consisting of money and other valuables that are deposited in the name and credit of the pool. This common fund pays for the administration and operation expenses of the pool. (2) The pool functions through an executive board, which resembles the board of directors of a corporation, composed of one representative for each of the ceding companies. (3) While, the pool itself is not a reinsurer and does not issue any policies; its work is indispensable, beneficial and economically useful to the business of the ceding companies and Munich, because without it they would not have received their premiums pursuant to the agreement with Munich. Profit motive or business is, therefore, the primordial reason for the pool's formation.

2. NO. There is no double taxation.Tax exemption cannot be claimed by non-resident foreign insurance corporattion; tax exemption construed strictly against the taxpayer - Section 24 (b) (1) pertains to tax on foreign corporations; hence, it cannot be claimed by the ceding companies which are domestic corporations. Nor can Munich, a foreign corporation, be granted exemption based solely on this provision of the Tax Code because the same subsection specifically taxes dividends, the type of remittances forwarded to it by the pool. The foregoing interpretation of Section 24 (b) (1) is in line with the doctrine that a tax exemption must be construed strictissimi juris, and the statutory exemption claimed must be expressed in a language too plain to

BROCKI, *Petitioners,* -versus – AMERICAN EXPRESS COMPANY, *Respondents.*
United States Court of Appeals, Sixth Circuit, JunE 16, 1960

Unincorporated associations have never been accorded a status as jural persons for purposes of diversity jurisdiction, nor has there developed a presumption of a single citizenship of the members. This is so even when by the applicable law they have the capacity to sue and be sued in the association name. The citizenship of all the members must be looked to, and not merely that of the officers and managers."

FACTS:

On February 19, 1953, appellant, a citizen of Michigan, filed this action in the court below against defendant American Express Company, which was alleged to be "a corporation organized and existing under and by virtue of the laws of the State of New York." The sole basis claimed for jurisdiction was diversity of citizenship of the parties. The defendant first answered denying the allegation that it was a corporation and alleging that it was an unincorporated joint-stock association having its principal office in New York City and having stockholder-members resident in the State of Michigan and other states and asserting that it had no citizenship other than that of its stockholder-members.

Approximately six years after the filing of the complaint (apparently no steps looking to trial had then been taken), American Express Company filed a motion to dismiss the action for want of jurisdiction. The motion was supported by an affidavit of an officer of the defendant stating that American Express Company was an unincorporated joint-stock association organized and existing under the laws of the State of New York; that it maintained its principal office there, and also maintained offices in the State of Michigan, in which latter state more than 200 of its stockholder-members were resident. Plaintiff resisted this motion, asserting that under the law of the State of Michigan defendant "is regarded as a New York corporation" and that it is "suable in Michigan as a corporation by the name by which it is known." There was no controversy as to the statute under which defendant was organized.

The trial court, holding that diversity jurisdiction was lacking, dismissed the action.

ISSUE:

Whether or not American Express Company is a corporation under the laws of State of New York.

RULING: NO.

It seems plain that jurisdiction may be sustained here only if defendant can be held to be a corporation of the State of New York. The fact that it may be sued by its common name is not enough. Swan v. First Church of Christ, Scientist. Nor is it enough to say that defendant's organization has many features which permit it to operate and carry on its functions in a manner indistinguishable from that followed by corporations Arbuthnot v. State Automobile Insurance Association.

And it also seems plain that whether this defendant was made a corporation by New York depends upon the law of New York. It is significant here that the statute under which defendant was organized negatives an intention to treat such a joint-stock association as a corporation. Article I, § 2, of the General Associations Law (McKinney's Consolidated Law of New York Ann., c. 29, Vol. 18-A), provides: "As used in this chapter: 1. The term `joint stock association' includes every unincorporated joint stock association, company or enterprise having written articles of association and capital stock divided into shares, but does not include a corporation or a business trust."

The New York courts have occasion to consider whether similar joint-stock associations are, or are not, corporations. They have said they are not.

In People ex rel. Winchester v. Coleman, 133 N.Y. 279, 31 N.E. 96, 16 L.R.A. 183, the court was dealing with the question whether the National Express Company, a joint-stock association of that state, was properly regarded as a corporation. After viewing the history of New York legislation relating to such organizations, the court said, 31 N.E. at pages 97-98: "These last and quite recent enactments show that the legislative intent is still to preserve and not destroy the original difference between the two classes of organizations; to maintain in full force the common-law liability of associates, and not to substitute for it that of corporators; and, preserving in continued operation that normal and distinctive difference, to evince a plain purpose not to merge the two organizations in one, or destroy the boundaries which separate them."

That case was cited and followed in Hibbs v. Brown, 190 N.Y. 167, 82 N.E. 1108, where the court was considering the status of Adams Express Company, also a joint-stock association organized under the laws of New York. Judge Hiscock said "Of course, there can be no doubt that a joint-stock association differs from a corporation, or that in its original conception and ultimate analysis it is like a partnership in respect to the individual liability of its members. Proceeding, he noted the many attributes of a corporation which the modern joint-stock association has acquired, and called this a "quasi corporate entity". Judge Bartlett's concurrence said: "It is unnecessary to point out in detail the very great difference between the joint-stock association and a corporation." Judge Werner's separate concurrence, in which some of the other judges also concurred, said: "But the company is concededly not a corporation, although our statutes have invested it with certain corporate attributes."

It follows that we must consider this to be an unincorporated association, and hence it cannot be deemed a citizen, apart from its members, for the purpose of diversity jurisdiction.

Unincorporated associations have never been accorded a status as jural persons for purposes of diversity jurisdiction, nor has there developed a presumption of a single citizenship of the members. This is so even when by the applicable law they have the capacity to sue and be sued in the association name. The citizenship of all the members must be looked to, and not merely that of the officers and managers."

Appellant cites the provision of Article X, § 4 of the New York Constitution: "The term corporations as used in this section, and in sections 1, 2 and 3 of this article shall be construed to include all associations and joint-stock companies having any of the powers or privileges of corporations not possessed by individuals or partnerships. And all corporations shall have the right to sue and shall be subject to be sued in all courts in like cases as natural persons." This means no more than that for the purposes stated in those sections — 1, 2, 3 and 4 of Article X, joint-stock companies are subject to the same regulation as corporations. That such a provision does not suffice to make them corporations for the purpose of diversity of citizenship was noted in Fred Macey Co. v. Macey, supra.

There is nothing unusual about provisions in state statutes that for the purposes of those acts joint-stock associations, and other similar organizations, should be treated as corporations. Michigan has such a statute. The validity of that provision has been upheld. But such provisions do not operate to make such foreign organizations corporations for the purpose of diversity jurisdiction. The Michigan court itself has repeatedly held that for purposes other than those specially named in this statute, and in its constitution, which is similar to the New York constitution previously referred to, the distinction between corporations and unincorporated organizations such as this appellee is fully recognized.

It is not questioned that should a state endow a business organization, by whatever name called, with all the powers and characteristics of a corporation, without declaring it not to be one, it might be found to be a corporation for diversity purposes. Such a case was People of Puerto Rico v. Russell Company, 288 U.S. 476, 53 S.Ct. 447, 77 L. Ed. 903. That case dealt with a sociedad under the code of Puerto Rico, which carried the traditions of the civil law. But in deciding that case the court recognized the continued force of its decisions in Chapman v. Barney, 129 U.S. 677, 9 S.Ct. 426, 32 L.Ed. 800, and Great Southern Fireproof Hotel Co. v. Jones, 177 U.S. 449, 20 S.Ct. 690, 44 L.Ed. 842. Here the New York statutes and the New York decisions have long, as we have noted, indicated that state's policy not to make organizations like appellee association corporations of that state. This purpose cannot be ignored.

DEUTSCHE BANK AG MANILA BRANCH, PETITIONER, VS. COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.
G.R. NO. 188550, FIRST DIVISION, AUGUST 19, 2013, SERENO, CJ.:

Tax conventions are drafted with a view towards the elimination of international juridical double taxation, which is defined as the imposition of comparable taxes in two or more states on the same taxpayer in respect of the same subject matter and for identical periods. A corporation who has paid 15% Branch Profit Remittance Tax (BPRT) has the right to avail (by way of refund) of the benefit of a preferential tax rate of 10% BPRT in accordance with the RP-Germany Tax Treaty despite non-compliance with an application with ITAD at least 15 days before the transaction for the lower rate. Bearing in mind the rationale of tax treaties, the requirements for the application for availment of tax treaty relief as required by RMO No. 1-2000 should not operate to divest entitlement to the relief as it would constitute a violation of the duty required by good faith in complying with a tax treaty.

FACTS:

Petitioner withheld and remitted to respondent on 21 October 2003 the amount of PHP 67,688,553.51, which represented the fifteen percent (15%) branch profit remittance tax (BPRT) on its regular banking unit net income remitted to Deutsche Bank Germany (DB Germany) for 2002 and prior taxable years.

Believing that it made an overpayment of the BPRT, petitioner filed with the BIR an administrative claim for refund or issuance of its tax credit certificate. At the same time, petitioner requested from the International Tax Affairs Division (ITAD) a confirmation of its entitlement to the preferential tax rate of 10% under the RP-Germany Tax Treaty.

Alleging the inaction of the BIR on its administrative claim, petitioner filed a Petition for Review with the CTA. The CTA En Banc affirmed the CTA Second Division's Decision and held that a ruling from the ITAD of the BIR must be secured prior to the availment of a preferential tax rate under a tax treaty. The court likewise ruled that the 15-day rule for tax treaty relief application under RMO No. 1-2000 cannot be relaxed for petitioner.

ISSUE:

Whether or not the failure to strictly comply with RMO No. 1-2000 will deprive persons or corporations of the benefit of a tax treaty

RULING:

Before resolving the issue the Court clarified important points regarding the crux of the controversy in the case- Under Section 28(A)(5) of the NIRC, any profit remitted to its head office shall be subject to a tax of 15% based on the total profits applied for or earmarked for remittance without any deduction of the tax component. However under the RP-Germany Tax Treaty, to which the Philippines is a signatory, it provides that where a resident of the Federal Republic of Germany has a branch in the Republic of the Philippines, this branch may be subjected to the branch profits remittance tax withheld at source in accordance with Philippine law but shall not exceed 10% of the gross amount of the profits remitted by that branch to the head office. Hence, by virtue of the RP-Germany Tax Treaty, we are bound to extend to a branch in the Philippines, remitting to its head office in Germany, the benefit of a preferential rate equivalent to 10% BPRT. To give emphasis on this, on the other hand, the BIR issued RMO No. 1-2000, which requires that any availment of the tax treaty relief must be preceded by an application with ITAD at least 15 days before the transaction. The Order aims to prevent the consequences of an erroneous interpretation and/or application of the treaty provisions (i.e., filing a claim for a tax refund/credit for the overpayment of taxes or for deficiency tax liabilities for underpayment).

Now addressing the issue, the Court ruled in favor of the petitioner. It held that tax treaties are entered into to reconcile the national fiscal legislations of the contracting parties and, in turn, help the taxpayer avoid simultaneous taxations in two different jurisdictions. A state that has contracted valid international obligations is bound to make in its legislations those modifications that may be necessary to ensure the fulfillment of the obligations undertaken

Applying the foregoing statements in the case, the BIR must not impose additional requirements that would negate the availment of the reliefs provided for under international agreements. More so, when the RP-Germany Tax Treaty does not provide for any pre-requisite for the availment of the benefits under said agreement. Likewise, it must be stressed that there is nothing in RMO No. 1-2000, which would indicate a deprivation of entitlement to a tax treaty relief for failure to comply with the 15-day period. The Court recognized the clear intention of the BIR in implementing RMO No. 1-2000, but the CTA's outright denial of a tax treaty relief for failure to strictly comply with the prescribed period is not in harmony with the objectives of the contracting state to ensure that the benefits granted under tax treaties are enjoyed by duly entitled persons or corporations.

Finally, the obligation to comply with a tax treaty must take precedence over the objective of RMO No. 1-2000. Logically, noncompliance with tax treaties has negative implications on international relations, and unduly discourages foreign investors. While the consequences sought to be prevented by RMO No. 1-2000 involve an administrative procedure, these may be remedied through other system management processes, e.g., the imposition of a fine or penalty.

MARUBENI PHILIPPINES CORP. V. COMMISSIONER OF INTERNAL REVENUE, G.R. NO. 198485, FIRST DIVISION, JUNE 5, 2017, CAGUIOA, J.

Section 112 (C) of the Tax Code (NIRC) that applies to the judicial claim for refund and compliance with the 120+30 day periods is mandatory and jurisdictional. The failure to observe the 120 days prior to filing of a judicial claim for refund is not a mere non-exhaustion of administrative remedies but is jurisdictional in nature.

FACTS:

Marubeni is a domestic corporation duly registered with the Bureau of Internal Revenue (BIR) as a Value-Added Tax (VAT) taxpayer. On April 25, 2000, Marubeni filed its Quarterly VAT Return for the 1st quarter of Calendar Year (CY) 2000 with the BIR. On March 27, 2002, Marubeni filed with the BIR a written claim for a refund and/or the issuance of a TCC, which it later amended on April 25, 2002, reducing its claim to ₱3,887,419.31. On the same date, Marubeni filed a petition for review before the CTA claiming a refund and/or issuance of a TCC in the amount of ₱3,887,419.31. On June 2, 2009, the CTA Second Division dismissed Marubeni's judicial claim and ruled that while Marubeni timely filed its administrative claim for refund and/or the issuance of a TCC on March 27, 2002, which was within the two-year period from the close of the 1st quarter of CY 2000, Marubeni's judicial claim for refund and/or issuance of TCC that was filed on April 25, 2002 (or the same day Marubeni amended its administrative claim for a refund and/or the issuance of a TCC) was late because this should have been filed also within the two-year period from the close of the 1st quarter of CY 2000.The CTA *En Banc* agreed with the CTA Second Division that Marubeni timely filed its administrative claim for refund. But as to Marubeni's judicial claim for refund, the CTA *En Banc* ruled that following Section 112 (D) of the 1997 National Internal Revenue Code and the Court's ruling that the filing of the petition for review with the CTA was premature. Accordingly, Marubeni should have filed its petition for review with the CTA 30 days from receipt of the decision of the CIR denying the claim or after the expiration of the 120-day period from the filing of the administrative claim with the CIR. Marubeni's motion for reconsideration was denied. Hence, this petition.

ISSUE: Whether or not Marubeni timely filed its claim.

RULING:
No. Section 112 (C) of the 1997 Tax Code that applies to the judicial claim for refund, and, citing *San Roque,* compliance with the 120+30 day periods is mandatory and jurisdictional. As this law states, the taxpayer may, if he wishes, appeal the decision of the Commissioner to the CTA within 30 days from receipt of the Commissioner's decision, or if the Commissioner does not act on the taxpayer's claim within the 120-day period, the taxpayer may appeal to the CTA within 30 days from the expiration of the 120-day period.

Section 112(A) and (C) must be interpreted according to its clear, plain, and unequivocal language. The taxpayer can file his administrative claim for refund or credit at **anytime** within the two-year prescriptive period. If he files his claim on the last day of the two-year prescriptive period, his claim is still filed on time. The Commissioner will have 120 days from such filing to decide the claim. If the Commissioner decides the claim on the 120th day, or does not decide it on that day, the taxpayer still has 30 days to file his judicial claim with the CTA. This is not only the plain meaning but also the only logical interpretation of Section l 12(A) and (C).

Marubeni therefore failed to comply with the mandatory and jurisdictional requirement of Section 112 (C) when it filed its petition for review with the CTA on April 25, 2002, or just 29 days after filing its administrative claim before the BIR on March 27, 2002. In fine, Marubeni's judicial claim for refund was, as correctly found by the CTA *En Banc,* premature and the CTA was devoid of any jurisdiction over the petition for review because of Marubeni's failure to strictly comply with the 120+30 day periods required by Section 112 (C) of the 1997 Tax Code. The CIR's failure to raise the issue of compliance with the 120+30 day periods in its Answer to Marubeni's petition for review cannot be deemed a waiver of such objection. Marubeni's failure to observe the periods is fatal to its judicial claim for refund.

BANK OF AMERICA NT & SA, PETITIONER, VS. HONORABLE COURT OF APPEALS, AND THE COMMISSIONER OF INTERNAL REVENUE, RESPONDENTS.
G.R. NO. 103092, 103106, THIRD DIVISION, JULY 21, 1994, VITUG, J.

In the 15% remittance tax, the law specifies its own tax base to be on the "profit remitted abroad." There is absolutely nothing equivocal or uncertain about the language of the provision. The tax is imposed on the amount sent abroad, and the law (then in force) calls for nothing further. The taxpayer is a single entity, and it should be understandable if, such as in this case, it is the local branch of the corporation, using its own local funds, which remits the tax to the Philippine Government.

FACTS:

Petitioner Bank of America NT & SA is a foreign corporation duly licensed to engage in business in the Philippines with Philippine branch office at BA Lepanto Bldg., Paseo de Roxas, Makati, Metro Manila. On July 20, 1982 it paid 15% branch profit remittance tax in the amount of P7,538,460.72 on profit from its regular banking unit operations and P445,790.25 on profit from its foreign currency deposit unit operations or a total of P7,984,250.97. The tax was based on net profits after income tax without deducting the amount corresponding to the 15% tax.

Petitioner filed a claim for refund with the Bureau of Internal Revenue of that portion of the payment which corresponds to the 15% branch profit remittance tax, on the ground that the tax should have been computed on the basis of profits actually remitted, which is P45,244,088.85, and not on the amount before profit remittance tax, which is P53,228,339.82. Subsequently, without awaiting respondent's decision, petitioner filed a petition for review on June 14, 1984 with this Honorable Court for the recovery of the amount of P1,041,424.03.

The Court of Tax Appeals upheld petitioner bank in its claim for refund. The Commissioner of Internal Revenue filed a timely appeal to the Supreme Court which referred it to the Court of Appeals following this Court's pronouncement in Development Bank of the Philippines vs. Court of Appeals, et al. (180 SCRA 609). On 19 September 1990, the Court of Appeals set aside the decision of the Court of Tax Appeals. Explaining its reversal of the tax court's decision, the appellate court said:

The Court of Tax Appeals sought to deduce legislative intent vis-a-vis the aforesaid law through an analysis of the wordings thereof, which to their minds reveal an intent to mitigate at least the harshness of successive taxation. The use of the word remitted may well be understood as referring to that part of the said total branch profits which would be sent to the head office as distinguished from the total profits of the branch (not all of which need be sent or would be ordered remitted abroad). If the legislature indeed had wanted to mitigate the harshness of successive taxation, it would have been simpler to just lower the rates without in effect requiring the relatively novel and complicated way of computing the tax, as envisioned by the herein private respondent. The same result would have been achieved.

ISSUE:

Whether or not petitioner's argument should be sustained that the 15% branch profit remittance tax on the basis Section 24(b) (2) (ii) of the National Internal Revenue Code should be assessed on the amount actually remitted abroad. (NO)

RULING:

There is absolutely nothing in Section 24(b) (2) (ii), supra, which indicates that the 15% tax on branch profit remittance is on the total amount of profit to be remitted abroad which shall be collected and paid in accordance with the tax withholding device provided in Sections 53 and 54 of the Tax Code.

The statute employs "Any profit remitted abroad by a branch to its head office shall be subject to a tax of fifteen per cent (15%)" — without more. Nowhere is there said of "base on the total amount actually applied for by the branch with the Central Bank of the Philippines as profit to be remitted abroad, which shall be collected and paid as provided in Sections 53 and 54 of this Code." Where the law does not qualify that the tax is imposed and collected at source based on profit to be remitted abroad, that qualification should not be read into the law. It is a basic rule of statutory construction that there is no safer nor better canon of interpretation than that when the language of the law is clear and unambiguous, it should be applied as written. And to our mind, the term "any profit remitted abroad" can only mean such profit as is "forwarded, sent, or transmitted abroad" as the word "remitted" is commonly and popularly accepted and understood. To say therefore that the tax on branch profit remittance is imposed and collected at source and necessarily the tax base should be the amount actually applied for the branch with the Central Bank as profit to be remitted abroad is to ignore the unmistakable meaning of plain words.

In the 15% remittance tax, the law specifies its own tax base to be on the "profit remitted abroad." There is absolutely nothing equivocal or uncertain about the language of the provision. The tax is imposed on the amount sent abroad, and the law (then in force) calls for nothing further. The taxpayer is a single entity, and it should be understandable if, such as in this case, it is the local branch of the corporation, using its own local funds, which remits the tax to the Philippine Government.

The remittance tax was conceived in an attempt to equalize the income tax burden on foreign corporations maintaining, on the one hand, local branch offices and organizing, on the other hand, subsidiary domestic corporations where at least a majority of all the latter's shares of stock are owned by such foreign corporations. Prior to the amendatory provisions of the Revenue Code, local branches were made to pay only the usual corporate income tax of 25%-35% on net income (now a uniform 35%) applicable to resident foreign corporations (foreign corporations doing business in the Philippines). While Philippine subsidiaries of foreign corporations were subject to the same rate of 25%-35% (now also a uniform 35%) on their net income, dividend payments, however, were additionally subjected to a 15% (withholding) tax (reduced conditionally from 35%). In order to avert what would otherwise appear to be an unequal tax treatment on such subsidiaries vis-a-vis local branch offices, a 20%, later reduced to 15%, profit remittance tax was imposed on local branches on their remittances of profits abroad. But this is where the tax pari-passu ends between domestic branches and subsidiaries of foreign corporations.

The Solicitor General suggests that the analogy should extend to the ordinary application of the withholding tax system and so with the rule on constructive remittance concept as well. It is difficult to accept the proposition. In the operation of the withholding tax system, the payee is the taxpayer, the person on whom the tax is imposed, while the payor, a separate entity, acts no more than an agent of the government for the collection of the tax in order to ensure its payment. Obviously, the amount thereby used to settle the tax liability is deemed sourced from the proceeds constitutive of the tax base. Since the payee, not the payor, is the real taxpayer, the rule on constructive remittance (or receipt) can be easily rationalized, if not indeed, made clearly manifest. It is hardly the case, however, in the imposition of the 15% remittance tax where there is but one taxpayer using its own domestic funds in the payment of the tax. To say that there is constructive remittance even of such funds would be stretching far too much that imaginary rule. Sound logic does not defy but must concede to facts.

The Court holds, accordingly, that the written claim for refund of the excess tax payment filed, within the two-year prescriptive period, with the Court of Tax Appeals has been lawfully made.

CHAMBER OF REAL ESTATE AND BUILDERS' ASSOCIATIONS, INC., Petitioner, vs. THE HON. EXECUTIVE SECRETARY ALBERTO ROMULO, THE HON. ACTING SECRETARY OF FINANCE JUANITA D. AMATONG, and THE HON. COMMISSIONER OF INTERNAL REVENUE GUILLERMO PARAYNO, JR., Respondents.
G.R. No. 160756, EN BANC, March 9, 2010, CORONA, J.

MCIT is constitutional. An income tax is arbitrary and confiscatory if it taxes capital, because it is income, and not capital, which is subject to income tax. However, MCIT is imposed on gross income which is computed by deducting from gross sales the capital spent by a corporation in the sale of its goods, i.e., the cost of goods and other direct expenses from gross sales. Clearly, the capital is not being taxed.

FACTS:

Petitioner Chamber of Real Estate and Builders' Associations, Inc. (CREBA), an association of real estate developers and builders in the Philippines, questioned the validity of Section 27(E) of the Tax Code which imposes the minimum corporate income tax (MCIT) on corporations.

Under the Tax Code, a corporation can become subject to the MCIT at the rate of 2% of gross income, beginning on the 4th taxable year immediately following the year in which it commenced its business operations, when such MCIT is greater than the normal corporate income tax. If the regular income tax is higher than the MCIT, the corporation does not pay the MCIT.

CREBA argued, among others, that the use of gross income as MCIT base amounts to a confiscation of capital because gross income, unlike net income, is not realized gain.

CREBA also sought to invalidate the provisions of RR No. 2-98, as amended, otherwise known as the Consolidated Withholding Tax Regulations, which prescribe the rules and procedures for the collection of CWT on sales of real properties classified as ordinary assets, on the grounds that these regulations:

Ø Use gross selling price (GSP) or fair market value (FMV) as basis for determining the income tax on the sale of real estate classified as ordinary assets, instead of the entity's net taxable income as provided for under the Tax Code;

Ø Mandate the collection of income tax on a per transaction basis, contrary to the Tax Code provision which imposes income tax on net income at the end of the taxable period;

Ø Go against the due process clause because the government collects income tax even when the net income has not yet been determined; gain is never assured by mere receipt of the selling price; and

Ø Contravene the equal protection clause because the CWT is being charged upon real estate enterprises, but not on other business enterprises, more particularly, those in the manufacturing sector, which do business similar to that of a real estate enterprise.

ISSUES:

(1) Is the imposition of MCIT constitutional?

(2) Is the imposition of CWT on income from sales of real properties classified as ordinary assets constitutional?

RULING:

(1) Yes. The imposition of the MCIT is constitutional. An income tax is arbitrary and confiscatory if it taxes capital, because it is income, and not capital, which is subject to income tax. However, MCIT is imposed on gross income which is computed by deducting from gross sales the

capital spent by a corporation in the sale of its goods, i.e., the cost of goods and other direct expenses from gross sales. Clearly, the capital is not being taxed.

Various safeguards were incorporated into the law imposing MCIT.

Firstly, recognizing the birth pangs of businesses and the reality of the need to recoup initial major capital expenditures, the MCIT is imposed only on the 4th taxable year immediately following the year in which the corporation commenced its operations.

Secondly, the law allows the carry-forward of any excess of the MCIT paid over the normal income tax which shall be credited against the normal income tax for the three immediately succeeding years.

Thirdly, since certain businesses may be incurring genuine repeated losses, the law authorizes the Secretary of Finance to suspend the imposition of MCIT if a corporation suffers losses due to prolonged labor dispute, force majeure and legitimate business reverses.

(2) Yes. Despite the imposition of CWT on GSP or FMV, the income tax base for sales of real property classified as ordinary assets remains as the entity's net taxable income as provided in the Tax Code, i.e., gross income less allowable costs and deductions. The seller shall file its income tax return and credit the taxes withheld by the withholding agent-buyer against its tax due. If the tax due is greater than the tax withheld, then the taxpayer shall pay the difference. If, on the other hand, the tax due is less than the tax withheld, the taxpayer will be entitled to a refund or tax credit.

The use of the GSP or FMV as basis to determine the CWT is for purposes of practicality and convenience. The knowledge of the withholding agent-buyer is limited to the particular transaction in which he is a party. Hence, his basis can only be the GSP or FMV which figures are reasonably known to him.

Also, the collection of income tax via the CWT on a per transaction basis, i.e., upon consummation of the sale, is not contrary to the Tax Code which calls for the payment of the net income at the end of the taxable period. The taxes withheld are in the nature of advance tax payments by a taxpayer in order to cancel its possible future tax obligation. They are installments on the annual tax which may be due at the end of the taxable year. The withholding agent-buyer's act of collecting the tax at the time of the transaction, by withholding the tax due from the income payable, is the very essence of the withholding tax method of tax collection.

On the alleged violation of the equal protection clause, the taxing power has the authority to make reasonable classifications for purposes of taxation. Inequalities which result from singling out a particular class for taxation, or exemption, infringe no constitutional limitation. The real estate industry is, by itself, a class and can be validly treated differently from other business enterprises.

What distinguishes the real estate business from other manufacturing enterprises, for purposes of the imposition of the CWT, is not their production processes but the prices of their goods sold and the number of transactions involved. The income from the sale of a real property is bigger and its frequency of transaction limited, making it less cumbersome for the parties to comply with the withholding tax scheme. On the other hand, each manufacturing enterprise may have tens of thousands of transactions with several thousand customers every month involving both minimal and substantial amounts.

THE MANILA BANKING CORPORATION, Petitioner, v. COMMISSIONER OF INTERNAL REVENUE, Respondent.
G.R. NO. 168118, SECOND DIVISION, August 28, 2006, SANDOVAL-GUTIERREZ, J.

Let it be stressed that Revenue Regulations No. 9-98, implementing R.A. No. 8424 imposing the minimum corporate income tax on corporations, provides that for purposes of this tax, the date when business operations commence is the year in which the domestic corporation registered with the BIR. However, under Revenue Regulations No. 4-95, the date of commencement of operations of thrift banks, such as herein petitioner, is the date the particular thrift bank was registered with the SEC or the date when the Certificate of Authority to Operate was issued to it by the Monetary Board of the BSP, whichever comes later.

Clearly then, Revenue Regulations No. 4-95, not Revenue Regulations No. 9-98, applies to petitioner, being a thrift bank. It is, therefore, entitled to a grace period of four (4) years counted from June 23, 1999 when it was authorized by the BSP to operate as a thrift bank. Consequently, it should only pay its minimum corporate income tax after four (4) years from 1999.

FACTS:

The Manila Banking Corporation, petitioner, was incorporated in 1961 and since then had engaged in the commercial banking industry until 1987. On May 22, 1987, the Monetary Board of the Bangko Sentral ng Pilipinas (BSP) issued Resolution No. 505, pursuant to Section 29 of Republic Act (R.A.) No. 265 (the Central Bank Act), prohibiting petitioner from engaging in business by reason of insolvency. Thus, petitioner ceased operations that year and its assets and liabilities were placed under the charge of a government-appointed receiver.

Meanwhile, R.A. No. 8424, otherwise known as the Comprehensive Tax Reform Act of 1997, became effective on January 1, 1998. One of the changes introduced by this law is the imposition of the minimum corporate income tax on domestic and resident foreign corporations. Implementing this law is Revenue Regulations No. 9-98 stating that the law allows a four (4) year period from the time the corporations were registered with the Bureau of Internal Revenue (BIR) during which the minimum corporate income tax should not be imposed.

On June 23, 1999, after 12 years since petitioner stopped its business operations, the BSP authorized it to operate as a thrift bank. The following year, specifically on April 7, 2000, it filed with the BIR its annual corporate income tax return and paid P33,816,164.00 for taxable year 1999.

Prior to the filing of its income tax return, petitioner sent a letter to the BIR requesting a ruling on whether it is entitled to the four (4)-year grace period reckoned from 1999. In other words, petitioner's position is that since it resumed operations in 1999, it will pay its minimum corporate income tax only after four (4) years thereafter.

On February 22, 2001, the BIR issued a ruling stating that petitioner is entitled to the four (4)-year grace period. Since it reopened in 1999, the minimum corporate income tax may be imposed "not earlier than 2002, i.e. the fourth taxable year beginning 1999.

Pursuant to the above Ruling, petitioner filed with the BIR a claim for refund of the sum of P33,816,164.00 erroneously paid as minimum corporate income tax for taxable year 1999.

Due to the inaction of the BIR on its claim, petitioner filed with the Court of Tax Appeals (CTA) a Petition for Review . The CTA held that petitioner is not entitled to the four (4)-year grace period because it is not a new corporation. It has continued to be the same corporation, registered with the Securities and Exchange Commission (SEC) and the BIR, despite being placed under receivership, thus:

ISSUE:

Whether petitioner is entitled to a refund of its minimum corporate income tax paid to the BIR for taxable year 1999. (YES)

RULING:

Section 27(E) of the Tax Code provides:

Sec. 27. Rates of Income Tax on Domestic Corporations. - x x x

(E) Minimum Corporate Income Tax on Domestic Corporations. –

(1) Imposition of Tax. - A minimum corporate income tax of two percent (2%) of the gross income as of the end of the taxable year, as defined herein, is hereby imposed on a corporation taxable under this Title, beginning on the fourth taxable year immediately following the year in which such corporation commenced its business operations, when the minimum corporate income tax is greater than the tax computed under Subsection (A) of this Section for the taxable year.

(2) Carry Forward of Excess Minimum Tax. - Any excess of the minimum corporate income tax over the normal income tax as computed under Subsection (A) of this Section shall be carried forward and credited against the normal income tax for the three (3) immediately succeeding taxable years. x x x

Upon the other hand, Revenue Regulation No. 9-98 specifies the period when a corporation becomes subject to the minimum corporate income tax, thus:

(5) Specific Rules for Determining the Period When a Corporation Becomes Subject to the MCIT (minimum corporate income tax) –

For purposes of the MCIT, the taxable year in which business operations commenced shall be the year in which the domestic corporation registered with the Bureau of Internal Revenue (BIR).

Firms which were registered with BIR in 1994 and earlier years shall be covered by the MCIT beginning January 1, 1998.

The intent of Congress relative to the minimum corporate income tax is to grant a four (4)-year suspension of tax payment to newly formed corporations. Corporations still starting their business operations have to stabilize their venture in order to obtain a stronghold in the industry. It does not come as a surprise then when many companies reported losses in their initial years of operations.

Thus, in order to allow new corporations to grow and develop at the initial stages of their operations, the lawmaking body saw the need to provide a grace period of four years from their registration before they pay their minimum corporate income tax.

As mentioned earlier, petitioner bank was registered with the BIR in 1961. However, in 1987, it was found insolvent by the Monetary Board of the BSP and was placed under receivership. After twelve (12) years, or on June 23, 1999, the BSP issued to it a Certificate of Authority to Operate as a thrift bank. Earlier, or on January 21, 1999, it registered with the BIR. Then it filed with the SEC its Articles of Incorporation which was approved on June 22, 1999.

It is clear from Revenue Regulations No. 4-95 that the date of commencement of operations of a thrift bank is the date it was registered with the SEC or the date when the Certificate of Authority to Operate was issued to it by the Monetary Board of the BSP, whichever comes later.

Let it be stressed that Revenue Regulations No. 9-98, implementing R.A. No. 8424 imposing the minimum corporate income tax on corporations, provides that for purposes of this tax, the date when business operations commence is the year in which the domestic corporation registered with the BIR. However, under Revenue Regulations No. 4-95, the date of commencement of operations of thrift banks, such as herein petitioner, is the date the particular thrift bank was registered with the SEC or the date when the Certificate of Authority to Operate was issued to it by the Monetary Board of the BSP, whichever comes later.

Clearly then, Revenue Regulations No. 4-95, not Revenue Regulations No. 9-98, applies to petitioner, being a thrift bank. It is, therefore, entitled to a grace period of four (4) years counted from June 23, 1999 when it was authorized by the BSP to operate as a thrift bank. Consequently, it should only pay its minimum corporate income tax after four (4) years from 1999.

CYANAMID PHILIPPINES, INC., petitioner, vs. THE COURT OF APPEALS, THE COURT OF TAX APPEALS and COMMISSIONER OF INTERNAL REVENUE, respondent.
G.R. No. 108067, SECOND DIVISION, January 20, 2000, QUISUMBING, J.

If the CIR determined that the corporation avoided the tax on shareholders by permitting earnings or profits to accumulate, and the taxpayer contested such a determination, the burden of proving the determination wrong, together with the corresponding burden of first going forward with evidence, is on the taxpayer. This applies even if the corporation is not a mere holding or investment company and does not have an unreasonable accumulation of earnings or profits.

FACTS:

Petitioner, Cyanamid Philippines, Inc., a corporation organized under Philippine laws, is a wholly owned subsidiary of American Cyanamid Co. based in Maine, USA. It is engaged in the manufacture of pharmaceutical products and chemicals, a wholesaler of imported finished goods, and an importer/indentor.

On February 7, 1985, the CIR sent an assessment letter to petitioner and demanded the payment of deficiency income tax of P119,817.00 for taxable year 1981.

On March 4, 1985, petitioner protested the assessments particularly, (1) the 25% Surtax Assessment of P3,774,867.50; (2) 1981 Deficiency Income Assessment of P119,817.00; and 1981 Deficiency Percentage Assessment of P8,846.72.4 Petitioner, through its external accountant, Sycip, Gorres, Velayo & Co., claimed, among others, that the surtax for the undue accumulation of earnings was not proper because the said profits were retained to increase petitioner's working capital and it would be used for reasonable business needs of the company. Petitioner contended that it availed of the tax amnesty under Executive Order No. 41, hence enjoyed amnesty from civil and criminal prosecution granted by the law.

On October 20, 1987, the CIR in a letter addressed to SGV & Co., refused to allow the cancellation of the assessment notices.

Petitioner appealed to the Court of Tax Appeals. During the pendency of the case, however, both parties agreed to compromise the 1981 deficiency income tax assessment of P119,817.00. Petitioner paid a reduced amount —P26,577.00 — as compromise settlement. However, the surtax on improperly accumulated profits remained unresolved.

ISSUE:

Whether or not the petitioner is liable for the accumulated earnings tax for the year 1981. (YES)

RULING:

Sec. 25 of the old National Internal Revenue Code of 1977 states:

Sec. 25. Additional tax on corporation improperly accumulating profits or surplus —

(a) Imposition of tax. — If any corporation is formed or availed of for the purpose of preventing the imposition of the tax upon its shareholders or members or the shareholders or members of another corporation, through the medium of permitting its gains and profits to accumulate instead of being divided or distributed, there is levied and assessed against such corporation, for each taxable year, a tax equal to twenty-five per-centum of the undistributed portion of its accumulated profits or surplus which shall be in addition to the tax imposed by section twenty-four, and shall be computed, collected and paid in the same manner and subject to the same provisions of law, including penalties, as that tax.

(b) Prima facie evidence. — The fact that any corporation is mere holding company shall be prima facie evidence of a purpose to avoid the tax upon its shareholders or members. Similar presumption will lie in the case of an investment company where at any time during the taxable year more than fifty per centum in value of its outstanding stock is owned, directly or indirectly, by one person.

(c) Evidence determinative of purpose. — The fact that the earnings or profits of a corporation are permitted to accumulate beyond the reasonable needs of the business shall be determinative of the purpose to avoid the tax upon its shareholders or members unless the corporation, by clear preponderance of evidence, shall prove the contrary.

(d) Exception. — The provisions of this sections shall not apply to banks, non-bank financial intermediaries, corporation organized primarily, and authorized by the Central Bank of the Philippines to hold shares of stock of banks, insurance companies, whether domestic or foreign.

The provision discouraged tax avoidance through corporate surplus accumulation. When corporations do not declare dividends, income taxes are not paid on the undeclared dividends received by the shareholders. The tax on improper accumulation of surplus is essentially a penalty tax designed to compel corporations to distribute earnings so that the said earnings by shareholders could, in turn, be taxed.

The amendatory provision of Section 25 of the 1977 NIRC, which was PD 1739, enumerated the corporations exempt from the imposition of improperly accumulated tax: (a) banks; (b) non-bank financial intermediaries; (c) insurance companies; and (d) corporations organized primarily and authorized by the Central Bank of the Philippines to hold shares of stocks of banks. Petitioner does not fall among those exempt classes. Besides, the rule on enumeration is that the express mention of one person, thing, act, or consequence is construed to exclude all others. Laws granting exemption from tax are construed strictissimi juris against the taxpayer and liberally in favor of the taxing power. Taxation is the rule and exemption is the exception.15 The burden of proof rests upon the party claiming exemption to prove that it is, in fact, covered by the exemption so claimed, a burden which petitioner here has failed to discharge.

The Court notes, however, that the companies where the "Bardahl" formula was applied, had operating cycles much shorter than that of petitioner. In Atlas Tool Co., Inc, vs. CIR, the company's operating cycle was only 3.33 months or 27.75% of the year. In Cataphote Corp. of Mississippi vs. United States, the corporation's operating cycle was only 56.87 days, or 15.58% of the year. In the case of Cyanamid, the operating cycle was 288.35 days, or 78.55% of a year, reflecting that petitioner will need sufficient liquid funds, of at least three quarters of the year, to cover the operating costs of the business. There are variations in the application of the "Bardahl" formula, such as average operating cycle or peak operating cycle. In times when there is no recurrence of a business cycle, the working capital needs cannot be predicted with accuracy. As stressed by American authorities, although the "Bardahl" formula is well-established and routinely applied by the courts, it is not a precise rule. It is used only for administrative convenience. Petitioner's application of the "Bardahl" formula merely creates a false illusion of exactitude.

Other formulas are also used, e.g. the ratio of current assets to current liabilities and the adoption of the industry standard. The ratio of current assets to current liabilities is used to determine the sufficiency of working capital. Ideally, the working capital should equal the current liabilities and there must be 2 units of current assets for every unit of current liability, hence the so-called "2 to 1" rule.

As of 1981 the working capital of Cyanamid was P25,776,991.00, or more than twice its current liabilities. That current ratio of Cyanamid, therefore, projects adequacy in working capital. Said working capital was expected to increase further when more funds were generated from the succeeding year's sales. Available income covered expenses or indebtedness for that year, and there appeared no reason to expect an impending "working capital deficit" which could have necessitated an increase in working capital, as rationalized by petitioner.

If the CIR determined that the corporation avoided the tax on shareholders by permitting earnings or profits to accumulate, and the taxpayer contested such a determination, the burden of proving the determination wrong, together with the corresponding burden of first going forward with evidence, is on the taxpayer. This applies even if the corporation is not a mere holding or investment company and does not have an unreasonable accumulation of earnings or profits.

In order to determine whether profits are accumulated for the reasonable needs to avoid the surtax upon shareholders, it must be shown that the controlling intention of the taxpayer is manifest at the time of accumulation, not intentions declared subsequently, which are mere afterthoughts. Furthermore, the accumulated profits must be used within a reasonable time after the close of the taxable year. In the instant case, petitioner did not establish, by clear and convincing evidence, that such accumulation of profit was for the immediate needs of the business.

Helvering v. National Grocery Co.,
304 U.S. 282, 16 May 1938

If any corporation, however created or organized, is formed or availed of for the purpose of preventing the imposition of the surtax upon its shareholders through the medium of permitting its gains and profits to accumulate instead of being divided or distributed, there shall be levied, collected, and paid for each taxable year upon the net income of such corporation an additional tax equal to 50% of the amount of such income, and that the fact that the gains or profits are permitted to accumulate beyond the reasonable needs of the business shall be prima facie evidence of a purpose to escape the surtax.

FACTS:

National Grocery Company is a New Jersey corporation, which operates chain stores. Since 1911 it has had $200,000 capital stock, all owned beneficially by Henry Kohl. In the year ending January 31, 1931, the corporation's books showed a net profit of.$682,850.38, after paying $104, 000 to Kohl as salary and the regular federal corporation income tax of 12%. Its surplus, as shown by its books, increased during the year from $7,245,824.26 to $7,938,965.54; that is $ 693,141.28. It paid no dividend.

The Commissioner of Internal Revenue, having found that the corporation had been availed of for the purpose of preventing the imposition of the surtax upon Kohl by permitting the gains and profits to accumulate, assessed upon it, , a deficiency tax of $477, 322.81 for the tax year, in addition to the regular corporation income tax, which had been paid. This amount, together with $37.87 admittedly due, constitutes the total deficiency assessment of $477,360.68.

ISSUE:

Whether or not the corporation is liable for the accumulated earnings tax for the year 1981. (YES)

RULING:

If any corporation, however created or organized, is formed or availed of for the purpose of preventing the imposition of the surtax upon its shareholders through the medium of permitting its gains and profits to accumulate instead of being divided or distributed, there shall be levied, collected, and paid for each taxable year upon the net income of such corporation an additional tax equal to 50% of the amount of such income, and that the fact that the gains or profits are permitted to accumulate beyond the reasonable needs of the business shall be prima facie evidence of a purpose to escape the surtax.

From the evidence, it was found that the respondent's accumulations in a taxable year were beyond such needs; that the evidence did not overcome the presumption, and that the corporation was availed of for the interdicted purpose. The corporation had but one stockholder, so that rights of minority stockholders were not involved.

COMMISSIONER OF INTERNAL REVENUE, petitioner, vs. PROCTER & GAMBLE PHILIPPINE MANUFACTURING CORPORATION and THE COURT OF TAX APPEALS, respondents.
G.R. No. L-66838, EN BANC, December 2, 1991, FELICIANO, J.

Sec 24 (b) (1) of the NIRC states that an ordinary 35% tax rate will be applied to dividend remittances to non-resident corporate stockholders of a Philippine corporation. This rate goes down to 15% ONLY IF the country of domicile of the foreign stockholder corporation "shall allow" such foreign corporation a tax credit for "taxes deemed paid in the Philippines," applicable against the tax payable to the domiciliary country by the foreign stockholder corporation.

FACTS:

For the taxable year 1974 ending on 30 June 1974, and the taxable year 1975 ending 30 June 1975, private respondent Procter and Gamble Philippine Manufacturing Corporation ("P&G-Phil.") declared dividends payable to its parent company and sole stockholder, Procter and Gamble Co., Inc. (USA) ("P&G-USA"), amounting to P24,164,946.30, from which dividends the amount of P8,457,731.21 representing the thirty-five percent (35%) withholding tax at source was deducted.

On 5 January 1977, private respondent P&G-Phil. filed with petitioner Commissioner of Internal Revenue a claim for refund or tax credit in the amount of P4,832,989.26 claiming, among other things, that pursuant to Section 24 (b) (1) of the National Internal Revenue Code ("NITC"), as amended by Presidential Decree No. 369, the applicable rate of withholding tax on the dividends remitted was only fifteen percent (15%) (and not thirty-five percent [35%]) of the dividends.

There being no responsive action on the part of the Commissioner, P&G-Phil., on 13 July 1977, filed a petition for review with public respondent Court of Tax Appeals ("CTA"). On 31 January 1984, the CTA rendered a decision ordering petitioner Commissioner to refund or grant the tax credit in the amount of P4,832,989.00.

ISSUE:

Whether or not P&G Philippines is entitled to the refund or tax credit. (YES)

RULING:

Sec 24 (b) (1) of the NIRC states that an ordinary 35% tax rate will be applied to dividend remittances to non-resident corporate stockholders of a Philippine corporation. This rate goes down to 15% ONLY IF the country of domicile of the foreign stockholder corporation "shall allow" such foreign corporation a tax credit for "taxes deemed paid in the Philippines," applicable against the tax payable to the domiciliary country by the foreign stockholder corporation.

However, such tax credit for "taxes deemed paid in the Philippines" MUST, as a minimum, reach an amount equivalent to 20% points which represents the difference between the regular 35% dividend tax rate and the reduced 15% tax rate. Thus, the test is if USA "shall allow" P&G USA a tax credit for "taxes deemed paid in the Philippines" applicable against the US taxes of P&G USA, and such tax credit must reach at least 20 percentage points. Requirements were met

COMMISSIONER OF INTERNAL REVENUE, Petitioner, v. DE LA SALLE UNIVERSITY, INC., Respondent.
G.R. No. 196596, 198841, 198941, SECOND DIVISION, November 09, 2016, BRION, J.

The tax exemption granted by the Constitution to non-stock, non-profit educational institutions is conditioned only on the actual, direct and exclusive use of their assets, revenues and income for educational purposes, as provided in Section 4(3), Article XIV of the Constitution. Section 30(H) of the Tax Code, or any other law, cannot qualify/amend this exemption constitutionally granted to non-stock, non-profit educational institutions.

FACTS:

De La Salle University ("DLSU") was assessed with deficiency taxes for taxable years 2001, 2002 an 2003, particularly: (1) income tax on rental earnings from restaurants/canteens and bookstores operating within the campus; (2) value-added tax ("VAT") on business income; and (3) documentary stamp tax ("DST") on loans and lease contracts.

DLSU protested the assessment, citing Section 4(3), Article XIV of the Constitution, which provides that "all revenues and assets of non-stock, non-profit educational institutions used actually, directly, and exclusively for educational purposes shall be exempt from taxes and duties." Further, DLSU claims that the assessment is based on a defective Letter of Assessment ("LOA") as it provides that it covers the year 2003 and for "prior unverified years."

On the other hand, the CIR argues that DLSU, a non-stock, non-profit educational institution, is subject to income tax, regardless of the disposition made of such income, pursuant to Section 30(H) of the Tax Code. In other words, the Tax Code qualified the exemption granted to non-stock, non-profit educational institutions under the Constitution.

ISSUES:
1. Whether or not DLSU's income and revenues proved to have been used actually, directly, and exclusively for educational purposes are exempt from duties and taxes. [YES]
2. Whether or not the entire tax assessment should be declared null and void because of the defective Letter of Assessment [Void only for the unverified taxable years but valid for year 2003].

RULING:
1. The revenues and assets of non-stock, non-profit educational institutions proved to have been used actually, directly, and exclusively for educational purposes are exempt from duties and taxes.
The Court noted that there are two kinds of educational institutions – (1) non-stock, non-profit educational institutions, and (2) proprietary educational institutions. The tax exemption granted to non-stock, non-profit educational institutions is conditioned only on the actual, direct and exclusive use of their revenues and assets for educational purposes. On the other hand, tax exemptions may also be granted to proprietary educational institutions, subject to limitations imposed by Congress.
As such, the tax-exemption constitutionally granted to non-stock, non-profit educational institutions is not subject to limitations imposed by law.
The following are the requisites for availing of the tax exemption under Article IV, Section 4 (3) of the Constitution:
a. The taxpayer falls under the classification non-stock, non-profit educational institution; and
b. The income it seeks to be exempted from taxation is used actually, directly and exclusively for educational purposes.
The tax exemption granted to non-stock, non-profit educational institutions covers (1) revenues and income, regardless of its source, and (2) assets; provided that, the revenues and assets are used actually, directly and exclusively for educational purposes. The crucial point of inquiry then is two-tiered - (1) the use of the assets or (2) the use of the revenues.
The use of the revenues or assets for commercial purposes (or for any other purpose other than educational purposes) effectively removes the tax exemption of non-stock, non-profit educational institutions. The commercial use of the property, i.e. cafeteria or lease of school building, is not incidental to and reasonably necessary for the accomplishment of the main purpose of a university, which is to educate its students.
However, if the university actually, directly and exclusively used the proceeds of its revenues from commercial use for educational purposes, then the same is exempt from taxes.
In this line, the Supreme Court held that the last paragraph of Section 30 (H) of the Tax Code is without force and effect with respect to non-stock, non-profit educational institutions, provided that the non-stock, non-profit educational institution prove that its assets and revenues are used actually, directly and exclusively for educational purposes.

2. Only the assessment for taxable year 2003 is valid. The assessment issued on "prior unverified years" is void.
A LOA is the authority given to the appropriate revenue officer to examine the books of account and other accounting records of the taxpayer in order to determine the taxpayer's correct internal revenue liabilities and for the purpose of collecting the correct amount of tax, in accordance with Section 5 of the Tax Code, which gives the CIR the power to obtain information, to summon/examine, and take testimony of persons. The LOA commences the audit process and informs the taxpayer that it is under audit for possible deficiency tax assessment.
Section C of Revenue Memorandum Order No. 43-90 prohibts the practice of issuing LOAs covering audit of unverified prior years, but it did not provide that the LOA which contains the unverified prior years is void. It merely prescribes that if the audit includes more than one taxable period, the other periods or years must be specified. The requirement to specify the taxable period covered by LOA is simply to inform the taxpayer of the extent of the audit and the scope of the revenue officer's authority.
As such, the assessment for taxable year 2003 is valid because this taxable period is specified in the LOA. On the other hand, assessments for taxable years 2001 and 2002 are void for having been unspecified on separate LOAs as required under RMO No. 43-90.

COMMISSIONER OF INTERNAL REVENUE, petitioner, vs. COURT OF APPEALS, COURT OF TAX APPEALS and YOUNG MEN'S CHRISTIAN ASSOCIATION OF THE PHILIPPINES, INC., respondents.
G.R. No. 124043, FIRST DIVISION, October 14, 1998, PANGANIBAN, J.

Taxes are the lifeblood of the nation; the Court has always applied the doctrine of strict interpretation in construing tax exemptions. Furthermore, a claim of statutory exemption from taxation should be manifest and unmistakable from the language of the law on which it is based.

FACTS:
YMCA is a non-stock, non-profit institution, which conducts various programs and activities that are beneficial to the public, especially the young people, pursuant to its religious, educational and charitable objectives.
YMCA earned, among others, an income of P676,829.80 from leasing out a portion of its premises to small shop owners, like restaurants and canteen operators, and P44,259.00 from parking fees collected from non-members.
The CIR issued an assessment in the total amount of P415,615.01 including surcharge and interest, for deficiency income tax, deficiency expanded withholding taxes on rentals and professional fees and deficiency withholding tax on wages.

ISSUE: Is the rental income of the YMCA from its real estate subject to tax? (YES)

RULING:
Taxes are the lifeblood of the nation; the Court has always applied the doctrine of strict interpretation in construing tax exemptions. Furthermore, a claim of statutory exemption from taxation should be manifest and unmistakable from the language of the law on which it is based.
The last paragraph of Section 27, the YMCA argues, should be "subject to the qualification that the income from the properties must arise from activities 'conducted for profit' before it may be considered taxable."
As previously stated, a reading of said paragraph ineludibly shows that the income from any property of exempt organizations, as well as that arising from any activity it conducts for profit, is taxable. The phrase "any of their activities conducted for profit" does not qualify the word "properties." This makes income from the property of the organization taxable, regardless of how that income is used — whether for profit or for non-profit purposes.
The law does not make a distinction. The rental income is taxable regardless of whence such income is derived and how it used or disposed of. Where the law does not distinguish, neither should we.
Invoking not only the NIRC but also the fundamental law, private respondent submits that Article VI, Section 28 of par. 3 of the 1987 Constitution, exempts "charitable institutions" from the payment not only of property taxes but also of income tax from any source.
Accordingly, Justice Hilario G. Davide, Jr what is exempted is not the institution itself; those exempted from real estate taxes are lands, buildings and improvements actually, directly and exclusively used for religious, charitable or educational purposes.
Indeed, the income tax exemption claimed by private respondent finds no basis in Article VI, Section 28, par. 3 of the Constitution.
Private respondent also invokes Article XIV, Section 4, par. 3 of the Charter, claiming that the YMCA "is a non-stock, non-profit educational institution whose revenues and assets are used actually, directly and exclusively for educational purposes so it is exempt from taxes on its properties and income."
The Court reiterates that private respondent is exempt from the payment of property tax, but not income tax on the rentals from its property.
The bare allegation alone that it is a non-stock, non-profit educational institution is insufficient to justify its exemption from the payment of income tax.
The YMCA to be granted the exemption it claims under the, it must prove with substantial evidence that it falls under the classification non-stock, non-profit educational institution; and the income it seeks to be exempted from taxation is used actually, directly, and exclusively for educational purposes.
The term "educational institution" or "institution of learning" has acquired a well-known technical meaning. Under the Education Act of 1982, such term refers to schools. The school system is synonymous with formal education, which "refers to the hierarchically structured and chronological

graded learnings organized and provided by the formal school system and for which certification is required in order for the learner to progress through the grades or move to the higher levels."

The Court has examined the "Amended Articles of Incorporation" and "By-Laws" of the YMCA, but found nothing in them that even hints that it is a school or an educational institution.

Moreover, without conceding that Private Respondent YMCA is an educational institution, the Court also notes that the former did not submit proof of the proportionate amount of the subject income that was actually, directly and exclusively used for educational purposes. Article XIII, Section 5 of the YMCA by-laws, which formed part of the evidence submitted, is patently insufficient, since the same merely signified that "the net income derived from the rentals of the commercial buildings shall be apportioned to the Federation and Member Associations as the National Board may decide."

COMMISSIONER OF INTERNAL REVENUE, PETITIONER, vs. ST. LUKE'S MEDICAL CENTER, INC., RESPONDENT.
G.R. No. 195909, 195960, SECOND DIVISION, September 26, 2012, CARPIO, J.

Section 27(B) of the NIRC imposes a 10% preferential tax rate on the income of (1) proprietary non-profit educational institutions and (2) proprietary non-profit hospitals. The only qualifications for hospitals are that they must be proprietary and non-profit. "Proprietary" means private, following the definition of a "proprietary educational institution" as "any private school maintained and administered by private individuals or groups" with a government permit. "Non-profit" means no net income or asset accrues to or benefits any member or specific person, with all the net income or asset devoted to the institution's purposes and all its activities conducted for profit. "Non-profit" does not necessarily mean "charitable."

FACTS:

St. Luke's Medical Center, Inc. ("St. Luke's") is a hospital organized as a non-stock and non-profit corporation. It provides service to both paying and non-paying clients. The BIR assessed St. Luke's of deficiency taxes for the taxable year 1998 on the ground that St. Luke's was actually operating for profit in 1998 because only 13% of its revenues came from charitable purposes. As such, the BIR imposed the 10% preferential tax rate on the income of proprietary non-profit hospitals, arguing that the tax exemption on non-profit hospitals (which were previously categorized as non-stock, non-profit corporations under Section 26 of the NIRC) was removed with the inclusion of Section 27(B) which provides that non-profit hospitals are subject to the preferential rate of 10% income tax.

ISSUE:

Whether or not St. Luke's is liable for deficiency income tax in 1998 under Section 27(B) of the NIRC, which imposes a preferential rate of 10% on the income of proprietary non-profit hospitals.

RULING:

Yes, insofar as the income obtained from paying clients.

Section 27(B) of the NIRC imposes a 10% preferential tax rate on the income of (1) proprietary non-profit educational institutions and (2) proprietary non-profit hospitals. The only qualifications for hospitals are that they must be proprietary and non-profit. "Proprietary" means private, following the definition of a "proprietary educational institution" as "any private school maintained and administered by private individuals or groups" with a government permit. "Non-profit" means no net income or asset accrues to or benefits any member or specific person, with all the net income or asset devoted to the institution's purposes and all its activities conducted for profit. "Non-profit" does not necessarily mean "charitable."

Charity is essentially a gift to an indefinite number of persons which lessens the burden of government. In other words, charitable institutions provide for free goods and services to the public which would otherwise fall on the shoulders of government. Thus, as a matter of efficiency, the government forgoes taxes which should have been spent to address public needs, because certain private entities already assume a part of the burden. This is the rationale for the tax exemption of charitable institutions. The loss of taxes by the government is compensated by its relief from doing public works which would have been funded by appropriations from the Treasury. Charitable institutions, however, are not ipso facto entitled to a tax exemption. The requirements for a tax exemption are specified by the law granting it.

On the other hand, Section 30(E) of the NIRC provides that a charitable institution must be: (1) a non-stock corporation or association; (2) organized exclusively for charitable purposes; (3) operated exclusively for charitable purposes; and (4) no part of its net income or asset shall belong to or inure to the benefit of any member, organizer, officer or any specific person. Thus, both the organization and operations of the charitable institution must be devoted "exclusively" for charitable purposes.

Even if the charitable institution must be "organized and operated exclusively" for charitable purposes, it is nevertheless allowed to engage in "activities conducted for profit" without losing its tax exempt status for its not-for-profit activities. The only consequence is that the "income of whatever kind and character" of a charitable institution "from any of its activities conducted for profit, regardless of the disposition made of such income, shall be subject to tax." Prior to the introduction of Section 27(B), the tax rate on such income from for-profit activities was the ordinary corporate rate under Section 27(A). With the introduction of Section 27(B) the tax rate is now 10%.

Thus, although St. Luke's is a non-stock, non-profit institution, considering that it receives income from paying patients, it is not an institution "operated exclusively" for charitable purposes. Clearly, revenues from paying patients are income received from "activities conducted for profit". Services to paying patients are activities conducted for profit. There is a "purpose to make profit over and above the cost" of services." As such, income from its paying clients are subject to the preferential rate of 10% tax.

Activities for profit should not escape the reach of taxation. Being a non-stock and non-profit corporation does not, by this reason alone, completely exempt an institution from tax. An institution cannot use its corporate form to prevent its profitable activities from being taxed. A tax exemption is effectively a social subsidy granted by the State because an exempt institution is spared from sharing in the expense of government and yet benefits from them. Tax exemptions for charitable institutions should therefore be limited to institutions beneficial to the public and those which improve social welfare. A profit-making entity should not be allowed to exploit this subsidy to the detriment of the government and other taxpayers.

Finally, the Court held that St. Luke's is not liable for interest and surcharges, as it has good reasons to rely on the letter dated 6 June 19990 by the BIR, which opined that St. Luke's is "a corporation for purely charitable and social welfare purposes" and thus, exempt from income tax. In Michael J. Lhuiller, Inc. v. Commissioner of Internal Revenue, the Court said that "good faith and honest belief that one is not subject to tax on the basis of previous interpretation of government agencies tasked to implement the tax law, are sufficient justification to delete the imposition of surcharges and interest."

PHILIPPINE AMUSEMENT AND GAMING CORPORATION (PAGCOR), Petitioner, vs. THE BUREAU OF INTERNAL REVENUE, represented by JOSE MARIO BUNAG, in his capacity as Commissioner of the Bureau of Internal Revenue, and JOHN DOE and JANE DOE, who are Promulgated: persons acting for, in behalf or under the authority of respondent, Respondents.
G.R. No. 215427, EN BANC, December 10, 2014, PERALTA, J.

Section 1 of R.A. No. 9337, amending Section 27(c) of R.A. No. 8424, by excluding petitioner from the enumeration of GOCCs exempted from corporate income tax, is valid and constitutional. In addition, we hold that: 1)Petitioner's tax privilege of paying five percent (5%) franchise tax in lieu of all other taxes with respect to its income from gaming operations, pursuant to P.D. 1869, as amended, is not repealed or amended by Section 1(c) of R.A. No. 9337; 2)Petitioner's income from gaming operations is subject to the five percent (5%) franchise tax only; and 3)Petitioner's income from other related services is subject to corporate income tax only.

FACTS:
PAGCOR filed before this Court a Petition for Review on Certiorari and Prohibition (With Prayer for the Issuance of a Temporary Restraining Order and/or Preliminary Injunction) seeking the declaration of nullity of Section 1 of Republic Act No. 9337 insofar as it amends Section 27(C) of R.A.

No. 8424, otherwise known as the National Internal Revenue Code (NIRC) by excluding PAGCOR from the enumeration of government-owned or controlled corporations exempted from liability for corporate income tax.
This Court upheld that Section 1 of Republic Act No. 9337, amending Section 27(c) of the National Internal Revenue Code of 1997, by excluding petitioner Philippine Amusement and Gaming Corporation from the enumeration of government-owned and controlled corporations exempted from corporate income tax is valid and constitutional, while BIR Revenue Regulations No. 16-2005 insofar as it subjects PAGCOR to 10% VAT is null and void for being contrary to the National Internal Revenue Code of 1997, as amended by Republic Act No. 9337.
The CIR issued RMC No. 33-2013 on April 17, 2013 pursuant to the Decision dated March 15, 2011 and the Resolution dated May 31, 2011, which clarifies the "Income Tax and Franchise Tax Due from the Philippine Amusement and Gaming Corporation (PAGCOR), its Contractees and Licensees." Relevant portions thereof state:
II. INCOME TAX. Pursuant to Section 1 of R.A. 9337, amending Section 27(C) of the NIRC, as amended, PAGCOR is no longer exempt from corporate income tax as it has been effectively omitted from the list of government-owned or controlled corporations (GOCCs) that are exempt from income tax. Accordingly, PAGCOR's income from its operations and licensing of gambling casinos, gaming clubs and other similar recreation or amusement places, gaming pools, and other related operations, are subject to corporate income tax under the NIRC, as amended.
III. FRANCHISE TAX. Pursuant to Section 13(2) (a) of P.D. No. 1869,9 PAGCOR is subject to a franchise tax of five percent (5%) of the gross revenue or earnings it derives from its operations and licensing of gambling casinos, gaming clubs and other similar recreation or amusement places, gaming pools, and other related operations as described above.
PAGCOR wrote the BIR Commissioner requesting for reconsideration of the tax treatment of its income from gaming operations and other related operations under RMC No. 33-2013. The request was, however, denied by the BIR Commissioner. The Decision dated March 15, 2011 became final. Consequently, PAGCOR filed a Motion for Clarification alleging that RMC No. 33-2013 is an erroneous interpretation and application of the aforesaid Decision, and seeking clarification as to the following: a) whether PAGCOR's tax privilege of paying 5% franchise tax in lieu of all other taxes with respect to its gaming income, pursuant to its Charter – P.D. 1869, as amended by R.A. 9487, is deemed repealed or amended by Section 1 (c) of R.A. 9337; b) If it is deemed repealed or amended, whether PAGCOR's gaming income is subject to both 5% franchise tax and income tax; c) whether PAGCOR's income from operation of related services is subject to both income tax and 5% franchise tax.

ISSUE:
Whether or not PAGCOR's gaming income and income from operation of related services are subject to both 5% franchise tax and income tax. (NO)

RULING:
For clarity, it is worthy to note that under P.D. 1869, as amended, PAGCOR's income is classified into two: (1) income from its operations conducted under its Franchise, pursuant to Section 13(2) (b) thereof (income from gaming operations); and (2) income from its operation of necessary and related services under Section 14(5) thereof (income from other related services). In RMC No. 33-2013, respondent further classified the aforesaid income as follows: a) PAGCOR's income from its operations and licensing of gambling casinos, gaming clubs and other similar recreation or amusement places, gaming pools; b) Income from "other related operations".
After a thorough study of the arguments and points raised by the parties, and in accordance with our Decision dated March 15, 2011, we sustain PAGCOR's contention that its income from gaming operations is subject only to five percent (5%) franchise tax under P.D. 1869, as amended, while its income from other related services is subject to corporate income tax pursuant to P.D. 1869, as amended, as well as R.A. No. 9337. This is demonstrable.
First, under P.D. 1869, as amended, PAGCOR is subject to income tax only with respect to its operation of related services. Accordingly, the income tax exemption ordained under Section 27(c) of R.A. No. 8424 clearly pertains only to PAGCOR's income from operation of related services. Such income tax exemption could not have been applicable to PAGCOR's income from gaming operations as it is already exempt therefrom under P.D. 1869, as amended, to wit:
SECTION 13. Exemptions. –(2) Income and other taxes. — (a) Franchise Holder: No tax of any kind or form, income or otherwise, as well as fees, charges or levies of whatever nature, whether National or Local, shall be assessed and collected under this Franchise from the Corporation; nor

shall any form of tax or charge attach in any way to the earnings of the Corporation, except a Franchise Tax of five (5%) percent of the gross revenue or earnings derived by the Corporation from its operation under this Franchise. Such tax shall be due and payable quarterly to the National Government and shall be in lieu of all kinds of taxes, levies, fees or assessments of any kind, nature or description, levied, established or collected by any municipal, provincial, or national government authority.

In other words, there was no need for Congress to grant tax exemption to PAGCOR with respect to its income from gaming operations as the same is already exempted from all taxes of any kind or form, income or otherwise, whether national or local, under its Charter, save only for the five percent (5%) franchise tax. The exemption attached to the income from gaming operations exists independently from the enactment of R.A. No. 8424. To adopt an assumption otherwise would be downright ridiculous, if not deleterious, since PAGCOR would be in a worse position if the exemption was granted (then withdrawn) than when it was not granted at all in the first place.

Second, every effort must be exerted to avoid a conflict between statutes; so that if reasonable construction is possible, the laws must be reconciled in that manner. As we see it, there is no conflict between P.D. 1869, as amended, and R.A. No. 9337. The former lays down the taxes imposable upon PAGCOR, as follows: (1) a five percent (5%) franchise tax of the gross revenues or earnings derived from its operations conducted under the Franchise, which shall be due and payable in lieu of all kinds of taxes, levies, fees or assessments of any kind, nature or description, levied, established or collected by any municipal, provincial or national government authority; (2) income taxfor income realized from other necessary and related services, shows and entertainment of PAGCOR. With the enactment of R.A. No. 9337, which withdrew the income tax exemption under R.A. No. 8424, petitioner's tax liability on income from other related services was merely reinstated. It cannot be gainsaid, therefore, that the nature of taxes imposable is well defined for each kind of activity or operation. There is no inconsistency between the statutes; and in fact, they complement each other.

In view of the foregoing disquisition, respondent, therefore, committed grave abuse of discretion amounting to lack of jurisdiction when it issued RMC No. 33-2013 subjecting both income from gaming operations and other related services to corporate income tax and five percent (5%) franchise tax. This unduly expands our Decision dated March 15, 2011 without due process since the imposition creates additional burden upon PAGCOR. Such act constitutes an overreach on the part of the respondent, which should be immediately struck down, lest grave injustice results. More, it is settled that in case of discrepancy between the basic law and a rule or regulation issued to implement said law, the basic law prevails, because the said rule or regulation cannot go beyond the terms and provisions of the basic law.

PILMICO-MAURI FOODS CORP., Petitioner, v. COMMISSIONER OF INTERNAL REVENUE, Respondent.
G.R. No. 175651, THIRD DIVISION, September 14, 2016, REYES, J.

To support deductions for business expenses, official receipts and sales invoices must meet the requirements provided for in Section 238 of the 1977 Tax Code.

FACTS:

Petitioner was assessed deficiency income, value-added and withholding tax for the taxable year 1996. In the assessment, petitioner's claim for business deduction on purchases of raw materials was disallowed on the ground that petitioner failed to support sales invoices which are compliant with Section 238 of the 1977 Tax Code, particularly in the name of the purchaser and the date of the transaction. The CTA found that the alterations in the sales invoices gave rise to serious doubts as to their authenticity. Petitioner argues that Section 29 of the 1977 Tax Code is applicable to determine the deductibility of an expense, particularly, (1) the expense must be ordinary and necessary; (2) it must be paid or incurred within the taxable year; and (3) it must be paid or incurred in carrying on a trade or business. Petitioner argues that, prior to the promulgation of the 1997 Tax Code, the law does not require the production of official receipts to prove an expense.

ISSUE:

Whether or not Section 238 of the 1977 Tax Code, particularly the requirements on the information reflected in the receipts and invoices, is applicable to determine business deductibility of expenses. [Yes]

RULING:

The law intends for Section 29 and 238 of the 1977 Tax Code to be read together, and not for one provision to be accorded preference over the other. While official receipts are not the only pieces of evidences which can prove deductible expenses, if presented, they shall be subjected to examination. The petitioner submitted the receipts as evidence of its business deductions. Accordingly, Section 238 of the 1977 Tax Code is applicable to determine if such receipts and invoices may substantiate such claims for deduction.

ATLAS CONSOLIDATED MINING & DEVELOPMENT CORPORATION, petitioner, vs. COMMISSIONER OF INTERNAL REVENUE, respondent.
G.R. No. L-26911, L-26924, FIRST DIVISION, January 27, 1981, DE CASTRO, J.

The principle is recognized that when a taxpayer claims a deduction, he must point to some specific provision of the statute in which that deduction is authorized and must be able to prove that he is entitled to the deduction which the law allows. As previously adverted to, the law allowing expenses as deduction from gross income for purposes of the income tax is Section 30 (a) (1) of the National Internal Revenue which allows a deduction of "all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business." An item of expenditure, in order to be deductible under this section of the statute, must fall squarely within its language.

FACTS:

Atlas is a corporation engaged in the mining industry registered under the laws of the Philippines. On August 20, 1962, the Commissioner assessed against Atlas the sum of P546,295.16 and P215,493.96 or a total of P761,789.12 as deficiency income taxes for the years 1957 and 1958. For the year 1957, it was the opinion of the Commissioner that Atlas is not entitled to exemption from the income tax under Section 4 of Republic Act 909 1 because same covers only gold mines.

For the year 1958, the assessment of deficiency income tax of P761,789.12 covers the disallowance of items claimed by Atlas as deductible from gross income.

On October 9, 1962, Atlas protested the assessment asking for its reconsideration and cancellation. Acting on the protest, the Commissioner conducted a reinvestigation of the case.

On October 25, 1962, the Secretary of Finance ruled that the exemption provided in Republic Act 909 embraces all new mines and old mines whether gold or other minerals. Accordingly, the Commissioner recomputed Atlas deficiency income tax liabilities in the light of the ruling of the Secretary of Finance. On June 9, 1964, the Commissioner issued a revised assessment entirely eliminating the assessment of P546,295.16 for the year 1957.

The assessment for 1958 was reduced from P215,493.96 to P39,646.82 from which Atlas appealed to the Court of Tax Appeals, assailing the disallowance of the following items claimed as deductible from its gross income for 1958:

Transfer agent's fee...P59,477.42
Stockholders relation service fee....................................25,523.14
U.S. stock listing expenses..8,326.70
Suit expenses...6,666.65
Provision for contingencies.................................... ....60,000.00
Total..P159,993.91

After hearing, the Court of Tax Appeals rendered a decision on October 25, 1966 allowing the above mentioned disallowed items, except the items denominated by Atlas as stockholders relation service fee and suit expenses.

ISSUE:

Whether or not the expenses paid for the services rendered by a public relations firm P.K MacKer & Co. labelled as stockholders relation service fee is an allowable deduction as business expense under Section 30 (a) (1) of the National Internal Revenue Code.

RULING:

The principle is recognized that when a taxpayer claims a deduction, he must point to some specific provision of the statute in which that deduction is authorized and must be able to prove that he is entitled to the deduction which the law allows. As previously adverted to, the law allowing expenses as deduction from gross income for purposes of the income tax is Section 30 (a) (1) of the National Internal Revenue which allows a deduction of "all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business." An item of expenditure, in order to be deductible under this section of the statute, must fall squarely within its language.

The Court comes, then, to the statutory test of deductibility where it is axiomatic that to be deductible as a business expense, three conditions are imposed, namely: (1) the expense must be ordinary and necessary, (2) it must be paid or incurred within the taxable year, and (3) it must be paid or incurred in carrying in a trade or business. In addition, not only must the taxpayer meet the business test, he must substantially prove by evidence or records the deductions claimed under the law, otherwise, the same will be disallowed. The mere allegation of the taxpayer that an item of expense is ordinary and necessary does not justify its deduction.

There is thus no hard and fast rule on the matter. The right to a deduction depends in each case on the particular facts and the relation of the payment to the type of business in which the taxpayer is engaged. The intention of the taxpayer often may be the controlling fact in making the determination. Assuming that the expenditure is ordinary and necessary in the operation of the taxpayer's business, the answer to the question as to whether the expenditure is an allowable deduction as a business expense must be determined from the nature of the expenditure itself, which in turn depends on the extent and permanency of the work accomplished by the expenditure.

It appears that on December 27, 1957, Atlas increased its capital stock from P15,000,000 to P18,325,000. It was claimed by Atlas that its shares of stock worth P3,325,000 were sold in the United States because of the services rendered by the public relations firm, P. K. Macker & Company. The Court of Tax Appeals ruled that the information about Atlas given out and played up in the mass communication media resulted in full subscription of the additional shares issued by Atlas; consequently, the questioned item, stockholders relation service fee, was in effect spent for the acquisition of additional capital, ergo, a capital expenditure.

The Court sustained that the expenditure of P25,523.14 paid to P.K. Macker & Co. as compensation for services carrying on the selling campaign in an effort to sell Atlas' additional capital stock of P3,325,000 is not an ordinary expense. Accordingly, the said expense is not deductible from Atlas gross income in 1958 because expenses relating to recapitalization and reorganization of the corporation, the cost of obtaining stock subscription, promotion expenses, and commission or fees paid for the sale of stock reorganization are capital expenditures.

That the expense in question was incurred to create a favorable image of the corporation in order to gain or maintain the public's and its stockholders' patronage, does not make it deductible as business expense. The efforts to establish reputation are akin to acquisition of capital assets and, therefore, expenses related thereto are not business expense but capital expenditures.

HOSPITAL DE SAN JUAN DE DIOS, INC., petitioner, vs. COMMISSIONER OF INTERNAL REVENUE, respondent.
G.R. No. L-31305, FIRST DIVISION, May 10, 1990, GRIÑO-AQUINO, J.

Hospital de San Juan De Dios, Inc., according to its Articles of Incorporation, was established for purposes "Which are benevolent, charitable and religious, and not for financial gain". It is not carrying on a trade or business for the word "business" in its ordinary and common use means "human efforts which have for their end living or reward; it is not commonly used as descriptive of charitable, religious, educational or social agencies" or "any particular occupation or employment habitually engaged in especially for livelihood or gain" or "activities where profit is the purpose or livelihood is the motive."

FACTS:

Petitioner is engaged in both taxable and non-taxable operations. The income derived from the operations of the hospital and the nursing school are exempt from income tax while the rest of petitioner's income are subject thereto.

Its taxable or non-operating income consists of rentals, interests and dividends received from its properties and investments. In the computation of its taxable income for the years 1952 to 1955, petitioner allowed all its taxable income to share in the allocation of administrative expenses.

Respondent, Commissioner of Internal Revenue disallowed, however, the interests and dividends from sharing in the allocation of administrative expense on the ground that the expenses incurred in the administration or management of petitioner's investments are not allowable business expenses inasmuch as they were not incurred in 'carrying on any trade or business' within the contemplation of Section 30 (a) (1) of the Revenue Code. Consequently, petitioner was assessed deficiency income taxes for the years in question.

The petitioner protested against the assessment and requested the Commissioner to cancel and withdraw it. After reviewing the assessment, the Commissioner advised petitioner that the deficiency income tax assessment against it was reduced to only P16,852.41. Still the petitioner, through its auditors, insisted on the cancellation of the revised assessment. The request was, however, denied.

Petitioner sought a review of the assessment by the CTA, which upheld the Commissioner holding that the expenses incurred by the petitioner for handling its funds or income consisting solely of dividends and interests, were not expenses incurred in "carrying on any trade or business," hence, not deductible as business or administrative expenses.

ISSUE:

Whether or not the dividends and interests are expenses incurred in carrying on any trade or business, hence, deductible as business expense under Section 30 (A) (I) of the Revenue Code. (NO)

RULING:

The Supreme Court ruled in the negative. The CTA found that petitioner failed to establish by competent proof that its receipt of interests and dividends constituted the carrying on of a trade or business so as to warrant the deductibility of the expenses incurred in their realization. Petitioner could have easily required any of its responsible officials to testify on this regard but it failed to do so.

Under these circumstances and coupled with the fact that the interests and dividends here in question are merely incidental income to petitioner's main activity, which is the operation of its hospital and nursing schools, the conclusion becomes inevitable that petitioner's activities never go beyond that of a passive investor, which under existing jurisprudence do not come within the purview of carrying on any "trade or business".

That factual finding is binding on this Court. And, as the principle of allocating expenses is grounded on the premise that the taxable income was derived from carrying on a trade or business, as distinguished from mere receipt of interests and dividends from one's investments, the CTA correctly ruled that said income should not share in the allocation of administrative expenses.

Hospital de San Juan De Dios, Inc., according to its Articles of Incorporation, was established for purposes "Which are benevolent, charitable and religious, and not for financial gain". It is not carrying on a trade or business for the word "business" in its ordinary and common use means "human efforts which have for their end living or reward; it is not commonly used as descriptive of charitable, religious, educational or social agencies" or "any particular occupation or employment habitually engaged in especially for livelihood or gain" or "activities where profit is the purpose or livelihood is the motive."

ESSO STANDARD EASTERN, INC., (formerly, Standard-Vacuum Oil Company), petitioner, vs. THE COMMISSIONER OF INTERNAL REVENUE, respondent.
G.R. Nos. L-28508-9, FIRST DIVISION, July 7, 1989, CRUZ, J.

For an item to be deductible as a business expense, the expense must be ordinary and necessary; it must be paid or incurred within the taxable year; and it must be paid or incurred in carrying on a trade or business. In addition, the taxpayer must substantially prove by evidence or records the deductions claimed under law, otherwise, the same will be disallowed.

FACTS:

ESSO deducted from its gross income for 1959, as part of its ordinary and necessary business expenses, the amount it had spent for drilling and exploration of its petroleum concessions. The Commissioner disallowed the claim on the ground that the expenses should be capitalized and might be written off as a loss only when a "dry hole" should result. Hence, ESSO filed an amended return where it asked for the refund of P323,270 by reason of its abandonment, as dry holes, of several of its oil wells. It also claimed as ordinary and necessary expenses in the same return amount representing margin fees it had paid to the Central Bank on its profit remittances to its New York Office.

ISSUE: Whether the margin fees may be considered ordinary and necessary expenses when paid.

RULING:

For an item to be deductible as a business expense, the expense must be ordinary and necessary; it must be paid or incurred within the taxable year; and it must be paid or incurred in carrying on a trade or business. In addition, the taxpayer must substantially prove by evidence or records the deductions claimed under law, otherwise, the same will be disallowed. There has been no attempt to define "ordinary and necessary" with precision. However, as guiding principle in the proper adjudication of conflicting claims, an expenses is considered necessary where the expenditure is appropriate and helpful in the development of the taxpayer's business. It is ordinary when it connotes a payment which is normal in relation to the business of the taxpayer and the surrounding circumstances. Assuming that the expenditure is ordinary and necessary in the operation of the taxpayer's business; the expenditure, to be an allowable deduction as a business expense, must be determined from the nature of the expenditure itself, and on the extent and permanency of the work accomplished by the expenditure. Herein, ESSO has not shown that the remittance to the head office of part of its profits was made in furtherance of its own trade or business. The petitioner merely presumed that all corporate expenses are necessary and appropriate in the absence of a showing that they are illegal or ultra vires; which is erroneous. Claims for deductions are a matter of legislative grace and do not turn on mere equitable considerations.

COMMISSIONER OF INTERNAL REVENUE, petitioner, vs. ALGUE, INC., and THE COURT OF TAX APPEALS, respondents.
G.R. No. L-28896, FIRST DIVISION, February 17, 1988, CRUZ, J.

Taxes are the lifeblood of the government and so should be collected without unnecessary hindrance. On the other hand, such collection should be made in accordance with law as any arbitrariness will negate the very reason for government itself. It is therefore necessary to reconcile the apparently conflicting interests of the authorities and the taxpayers so that the real purpose of taxation, which is the promotion of the common good, may be achieved.

FACTS:

Algue, Inc., a domestic corporation engaged in engineering, construction and other allied activities. Philippine Sugar Estate Development Company had earlier appointed Algue as its agent, authorizing it to sell its land, factories and oil manufacturing process. [There was a sale for which] Algue received as agent a commission of P126,000.00, and it was from this commission that the P75,000.00 promotional fees were paid to the aforenamed individuals. The payees duly reported their respective shares of the fees in their income tax returns and paid the corresponding taxes thereon, and there was no distribution of dividends was involved.

Algue claimed the 75,000 to be deductible from their tax, to which the CIR disallowed.

ISSUE:

Whether or not the Collector of Internal Revenue correctly disallowed the P75,000.00 deduction claimed by private respondent Algue as legitimate business expenses in its income tax returns.

RULING:

NO – CIR is not correct. The burden is on the taxpayer to prove the validity of the claimed deduction. In the present case, however, the Court finds that the onus has been discharged satisfactorily. The private respondent has proved that the payment of the fees was necessary and reasonable in the light of the efforts exerted by the payees in inducing investors and prominent businessmen to venture in an experimental enterprise and involve themselves in a new business requiring millions of pesos. This was no mean feat and should be, as it was, sufficiently recompensed.

Taxes are the lifeblood of the government and so should be collected without unnecessary hindrance. On the other hand, such collection should be made in accordance with law as any arbitrariness will negate the very reason for government itself. It is therefore necessary to reconcile the apparently conflicting interests of the authorities and the taxpayers so that the real purpose of taxation, which is the promotion of the common good, may be achieved.

It is said that taxes are what we pay for civilization society. Without taxes, the government would be paralyzed for lack of the motive power to activate and operate it. Hence, despite the natural reluctance to surrender part of one's hard earned income to the taxing authorities, every person who is able to must contribute his share in the running of the government. The government for its part, is expected to respond in the form of tangible and intangible benefits intended to improve the lives of the people and enhance their moral and material values. This symbiotic relationship is the rationale of taxation and should dispel the erroneous notion that it is an arbitrary method of exaction by those in the seat of power.

But even as we concede the inevitability and indispensability of taxation, it is a requirement in all democratic regimes that it be exercised reasonably and in accordance with the prescribed procedure. If it is not, then the taxpayer has a right to complain and the courts will then come to his succor. For all the awesome power of the tax collector, he may still be stopped in his tracks if the taxpayer can demonstrate, as it has here, that the law has not been observed.

COMMISSIONER OF INTERNAL REVENUE, Petitioner, vs. ISABELA CULTURAL CORPORATION, Respondent.
G.R. No. 172231, THIRD DIVISION, February 12, 2007, YNARES-SANTIAGO, J.

The requisites for the deductibility of ordinary and necessary trade, business, or professional expenses, like expenses paid for legal and auditing services, are: (a) the expense must be ordinary and necessary; (b) it must have been paid or incurred during the taxable year; (c) it must have been paid or incurred in carrying on the trade or business of the taxpayer; and (d) it must be supported by receipts, records or other pertinent papers.

FACTS:

On February 23, 1990, Isabela Cultural Corporation (ICC), a domestic corporation, received from the BIR Assessment Notice for deficiency income tax in the amount of P333,196.86, and for deficiency expanded withholding tax in the amount of P4,897.79, inclusive of surcharges and interest, both for the taxable year 1986.

The deficiency expanded withholding tax of P4,897.79 (inclusive of interest and surcharge) was allegedly due to the failure of ICC to withhold 1% expanded withholding tax on its claimed P244,890.00 deduction for security services.

On March 23, 1990, ICC sought a reconsideration of the subject assessments. On February 9, 1995, however, it received a final notice before seizure demanding payment of the amounts stated in the said notices. Hence, it brought the case to the CTA which held that the petition is premature because the final notice of assessment cannot be considered as a final decision appealable to the tax court. This was reversed by the Court of Appeals holding that a demand letter of the BIR reiterating the payment of deficiency tax, amounts to a final decision on the protested assessment and may therefore be questioned before the CTA. This conclusion was sustained by this Court on July 1, 2001, in G.R. No. 135210. The case was thus remanded to the CTA for further proceedings.

On February 26, 2003, the CTA rendered a decision cancelling and setting aside the assessment notices issued against ICC. It held that the claimed deductions for professional and security services were properly claimed by ICC in 1986 because it was only in the said year when the bills demanding payment were sent to ICC. Hence, even if some of these professional services were rendered to ICC in 1984 or 1985, it could not declare the same as deduction for the said years as the amount thereof could not be determined at that time.

The CTA also held that ICC did not understate its interest income on the subject promissory notes. It found that it was the BIR which made an overstatement of said income when it compounded the interest income receivable by ICC from the promissory notes of Realty Investment, Inc., despite the absence of a stipulation in the contract providing for a compounded interest; nor of a circumstance, like delay in payment or breach of contract, that would justify the application of compounded interest.

Likewise, the CTA found that ICC in fact withheld 1% expanded withholding tax on its claimed deduction for security services as shown by the various payment orders and confirmation receipts it presented as evidence.

ISSUES:

Whether the Court of Appeals correctly sustained the deduction of the expenses for professional and security services from ICC's gross income; and held that ICC did not understate its interest income from the promissory notes of Realty Investment, Inc; and that ICC withheld the required 1% withholding tax from the deductions for security services.

RULING:

The requisites for the deductibility of ordinary and necessary trade, business, or professional expenses, like expenses paid for legal and auditing services, are: (a) the expense must be ordinary and necessary; (b) it must have been paid or incurred during the taxable year; (c) it must have been paid or incurred in carrying on the trade or business of the taxpayer; and (d) it must be supported by receipts, records or other pertinent papers.

The requisite that it must have been paid or incurred during the taxable year is further qualified by Section 45 of the National Internal Revenue Code (NIRC) which states that: "[t]he deduction provided for in this Title shall be taken for the taxable year in which 'paid or accrued' or 'paid or incurred', dependent upon the method of accounting upon the basis of which the net income is computed x x x".

In the instant case, the accounting method used by ICC is the accrual method. The accrual method relies upon the taxpayer's right to receive amounts or its obligation to pay them, in opposition to actual receipt or payment, which characterizes the cash method of accounting. Amounts of income accrue where the right to receive them become fixed, where there is created an enforceable liability. Similarly, liabilities are accrued when fixed and determinable in amount, without regard to indeterminacy merely of time of payment.

For a taxpayer using the accrual method, the determinative question is, when do the facts present themselves in such a manner that the taxpayer must recognize income or expense? The accrual of income and expense is permitted when the all-events test has been met. This test requires: (1) fixing of a right to income or liability to pay; and (2) the availability of the reasonable accurate determination of such income or liability.

The all-events test requires the right to income or liability be fixed, and the amount of such income or liability be determined with reasonable accuracy. However, the test does not demand that the amount of income or liability be known absolutely, only that a taxpayer has at his disposal the information necessary to compute the amount with reasonable accuracy. The all-events test is satisfied where computation remains uncertain, if its basis is unchangeable; the test is satisfied where a computation may be unknown, but is not as much as unknowable, within the taxable year. The amount of liability does not have to be determined exactly; it must be determined with "reasonable accuracy." Accordingly, the term "reasonable accuracy" implies something less than an exact or completely accurate amount.

The propriety of an accrual must be judged by the facts that a taxpayer knew, or could reasonably be expected to have known, at the closing of its books for the taxable year. Accrual method of accounting presents largely a question of fact; such that the taxpayer bears the burden of proof of establishing the accrual of an item of income or deduction.

Corollarily, it is a governing principle in taxation that tax exemptions must be construed in strictissimi juris against the taxpayer and liberally in favor of the taxing authority; and one who claims an exemption must be able to justify the same by the clearest grant of organic or statute law. An exemption from the common burden cannot be permitted to exist upon vague implications. And since a deduction for income tax purposes partakes of the nature of a tax exemption, then it must also be strictly construed.

In the instant case, the expenses for professional fees consist of expenses for legal and auditing services. The expenses for legal services pertain to the 1984 and 1985 legal and retainer fees of the law firm Bengzon Zarraga Narciso Cudala Pecson Azcuna & Bengson, and for reimbursement of the expenses of said firm in connection with ICC's tax problems for the year 1984. As testified by the Treasurer of ICC, the firm has been its counsel since the 1960's. From the nature of the claimed deductions and the span of time during which the firm was retained, ICC can be expected to have reasonably known the retainer fees charged by the firm as well as the compensation for its legal services. The failure to determine the exact amount of the expense during the taxable year when they could have been claimed as deductions cannot thus be attributed solely to the delayed billing of these liabilities by the firm. For one, ICC, in the exercise of due diligence could have inquired into the amount of their obligation to the firm, especially so that it is using the accrual method of accounting. For another, it could have reasonably determined the amount of legal and retainer fees owing to its familiarity with the rates charged by their long time legal consultant.

In the same vein, the professional fees of SGV & Co. for auditing the financial statements of ICC for the year 1985 cannot be validly claimed as expense deductions in 1986. This is so because ICC failed to present evidence showing that even with only "reasonable accuracy," as the standard to ascertain its liability to SGV & Co. in the year 1985, it cannot determine the professional fees which said company would charge for its services.

ICC thus failed to discharge the burden of proving that the claimed expense deductions for the professional services were allowable deductions for the taxable year 1986. Hence, per Revenue

Audit Memorandum Order No. 1-2000, they cannot be validly deducted from its gross income for the said year and were therefore properly disallowed by the BIR.

As to the expenses for security services, the records show that these expenses were incurred by ICC in 1986 and could therefore be properly claimed as deductions for the said year.

Anent the purported understatement of interest income from the promissory notes of Realty Investment, Inc., the Court sustained that no such understatement exists and that only simple interest computation and not a compounded one should have been applied by the BIR. There is indeed no stipulation between the latter and ICC on the application of compounded interest. Under Article 1959 of the Civil Code, unless there is a stipulation to the contrary, interest due should not further earn interest.

Likewise, the findings of the CTA and the Court of Appeals that ICC truly withheld the required withholding tax from its claimed deductions for security services and remitted the same to the BIR is supported by payment order and confirmation receipts. Hence, the Assessment Notice for deficiency expanded withholding tax was properly cancelled and set aside.

COMMISSIONER OF INTERNAL REVENUE, petitioner, vs. GENERAL FOODS (PHILS.), INC., respondent.
G.R. No. 143672, THIRD DIVISION, April 24, 2003, CORONA, J.

Tax exemptions must be construed in stricissimi juris against the taxpayer and liberally in favor of the taxing authority, and he who claims an exemption must be able to justify his claim by the clearest grant of organic or statute law. Deductions for income taxes partake of the nature of tax exemptions; hence, if tax exemptions are strictly construed, then deductions must also be strictly construed.

FACTS:

Respondent corporation General Foods (Phils), which is engaged in the manufacture of "Tang", "Calumet" and "Kool-Aid", filed its income tax return for the fiscal year ending February 1985 and claimed as deduction, among other business expenses, P9,461,246 for media advertising for "Tang".

The Commissioner of Internal Revenue disallowed 50% of the deduction claimed and assessed deficiency income taxes of P2,635,141.42 against General Foods, prompting the latter to file an Motion for Reconsideration which was denied.

General Foods later on filed a petition for review, which reversed and set aside an earlier decision by CTA dismissing the company's appeal.

ISSUE:

Whether or not the subject media advertising expense for "Tang" was ordinary and necessary expense fully deductible. (NO)

RULING:

Tax exemptions must be construed in stricissimi juris against the taxpayer and liberally in favor of the taxing authority, and he who claims an exemption must be able to justify his claim by the clearest grant of organic or statute law. Deductions for income taxes partake of the nature of tax exemptions; hence, if tax exemptions are strictly construed, then deductions must also be strictly construed.

To be deductible from gross income, the subject advertising expense must comply with the following requisites: (a) the expense must be ordinary and necessary; (b) it must have been paid or incurred during the taxable year; (c) it must have been paid or incurred in carrying on the trade or business of the taxpayer; and (d) it must be supported by receipts, records or other pertinent papers.

While the subject advertising expense was paid or incurred within the corresponding taxable year and was incurred in carrying on a trade or business, hence necessary, the parties' views conflict as to whether or not it was ordinary. To be deductible, an advertising expense should not only be necessary but also ordinary.

The Commissioner maintains that the subject advertising expense was not ordinary on the ground that it failed the two conditions set by U.S. jurisprudence: first, "reasonableness" of the amount incurred and second, the amount incurred must not be a capital outlay to create "goodwill" for the product and/or private respondent's business. Otherwise, the expense must be considered a capital expenditure to be spread out over a reasonable time.

There is yet to be a clear-cut criteria or fixed test for determining the reasonableness of an advertising expense. There being no hard and fast rule on the matter, the right to a deduction depends on a number of factors such as but not limited to: the type and size of business in which the taxpayer is engaged; the volume and amount of its net earnings; the nature of the expenditure itself; the intention of the taxpayer and the general economic conditions. It is the interplay of these, among other factors and properly weighed, that will yield a proper evaluation.

The Court finds the subject expense for the advertisement of a single product to be inordinately large. Therefore, even if it is necessary, it cannot be considered an ordinary expense deductible under then Section 29 (a) (1) (A) of the NIRC.

Advertising is generally of two kinds: (1) advertising to stimulate the current sale of merchandise or use of services and (2) advertising designed to stimulate the future sale of merchandise or use of services. The second type involves expenditures incurred, in whole or in part, to create or maintain some form of goodwill for the taxpayer's trade or business or for the industry or profession of which the taxpayer is a member. If the expenditures are for the advertising of the first kind, then, except as to the question of the reasonableness of amount, there is no doubt such expenditures are deductible as business expenses. If, however, the expenditures are for advertising of the second kind, then normally they should be spread out over a reasonable period of time.

The company's media advertising expense for the promotion of a single product is doubtlessly unreasonable considering it comprises almost one-half of the company's entire claim for marketing expenses for that year under review.

COMMISSIONER OF INTERNAL REVENUE, petitioner, vs. CARLOS PALANCA, JR., respondent.
G.R. No. L-16626, EN BANC, October 29, 1966, REGALA, J.

The rule is settled that although taxes already due have not, strictly speaking, the same concept as debts, they are, however, obligations that may be considered as such. In CIR v Prieto, the Court explicitly announced that while the distinction between "taxes" and "debts" was recognized in this jurisdiction, the variance in their legal conception does not extend to the interests paid on them.

FACTS:

The late Don Carlos Palanca, Sr. donated in favor of his son, Carlos Palanca, Jr. shares of stock in La Tondeña Inc. amounting to 12,500 shares. Later, the BIR considered the donation as transfer in contemplation of death; consequently, the BIR assessed against the respondent, Palanca Jr., the sum of P191,591.62 as estate and inheritance taxes on the transfer of said 12,500 shares of stock, including therein interest for delinquency of P60,581.80.

The respondent then filed an amended income tax return, claiming an additional deduction in the amount P60,581.80; hence, his new income tax due is only P428. He attached a letter requesting the refund of P20,624.01. However, the said request for refund was denied by the BIR. Court of Tax Appeals ordered the refund.

ISSUES:

1. Whether the interest on the delinquent estate and inheritance tax is deductible from the gross income
2. Whether the respondent's claim for refund has prescribed

RULING:

1. Yes, the interest is deductible. The rule is settled that although taxes already due have not, strictly speaking, the same concept as debts, they are, however, obligations that may be considered as such. In CIR v Prieto, the Court explicitly announced that while the distinction between "taxes" and "debts" was recognized in this jurisdiction, the variance in their legal conception does not extend to the interests paid on them.

The Court does not see any element in this case which can justify a departure from or abandonment of the doctrine in the Prieto case above. In both this and the said case, the taxpayer sought the allowance as deductible items from the gross income of the amounts paid by them as interests on delinquent tax liabilities. Of course, what was involved in the cited case was the donor's tax while the present suit pertains to interest paid on the estate and inheritance tax. This difference, however, submits no appreciable consequence to the rationale of this Court's previous determination that interests on taxes should be considered as interests on indebtedness within the meaning of Section 30(b) (1) of the Tax Code. The interpretation we have placed upon the said section was predicated on the congressional intent, not on the nature of the tax for which the interest was paid.

2. No, respondent's claim has not yet prescribed. Considering that it is the interest paid on this latter-assessed estate and inheritance tax that respondent is claiming for refund, then the 30-day period for prescription under RA 1125 should be computed from the receipt of the final denial by the BIR of the said claim.

Inasmuch as the said account was paid by him by installment, then the computation of the two-year prescriptive period, under Section 306 of the National Internal Revenue Code, should be from the date of the last installment. Respondent Palanca paid the last installment on his 1955 income tax account on August 14, 1956. His claim for refund was filed on August 13, 1958. It was, therefore, still timely instituted.

THE COMMISSIONER OF INTERNAL REVENUE, Petitioner, v. CONSUELO L. VDA. DE PRIETO, Respondent.
G.R. No. L-13912, EN BANC, September 30, 1960, GUTIERREZ DAVID, J.

The term "indebtedness" as used in the Tax Code of the United States containing similar provisions as in the above-quoted section has been defined as an unconditional and legally enforceable obligation for the payment of money. Within the meaning of that definition, it is apparent that a tax may be considered an indebtedness.

It follows that the interest paid by herein respondent for the late payment of her donor's tax is deductible from her gross income under section 30(b) of the Tax Code above quoted.

FACTS:

On December 4, 1945, the respondent conveyed by way of gifts to her four children, namely, Antonio, Benito, Carmen and Mauro, all surnamed Prieto, real property with a total assessed value of P892,497.50.

After the filing of the gift tax returns on or about February 1, 1954, the petitioner Commissioner of Internal Revenue appraised the real property donated for gift tax purposes at P1,231,268.00, and assessed the total sum of P117,706.50 as donor's gift tax, interest and compromises due thereon. Of the total sum of P117,706.50 paid by respondent on April 29, 1954, the sum of P55,978.65 represents the total interest on account of deliquency.

This sum of P55,978.65 was claimed as deduction, among others, by respondent in her 1954 income tax return. Petitioner, however, disallowed the claim and as a consequence of such disallowance assessed respondent for 1954 the total sum of P21,410.38 as deficiency income tax due on the aforesaid P55,978.65, including interest up to March 31, 1957, surcharge and compromise for the late payment.

ISSUE:

Whether or not such interest was paid upon an indebtedness within the contemplation of section 30 (b) (1) of the Tax Code

RULING:

SEC. 30 Deductions from gross income. — In computing net income there shall be allowed as deductions — x x x x x x x x x

(b) Interest:

(1) In general. — The amount of interest paid within the taxable year on indebtedness, except on indebtedness incurred or continued to purchase or carry obligations the interest upon which is exempt from taxation as income under this Title.

The term "indebtedness" as used in the Tax Code of the United States containing similar provisions as in the above-quoted section has been defined as an unconditional and legally enforceable obligation for the payment of money. Within the meaning of that definition, it is apparent that a tax may be considered an indebtedness.

It follows that the interest paid by herein respondent for the late payment of her donor's tax is deductible from her gross income under section 30(b) of the Tax Code above quoted.

To sustain the proposition that the interest payment in question is not deductible for the purpose of computing respondent's net income, petitioner relies heavily on section 80 of Revenue Regulation No. 2 (known as Income Tax Regulation) promulgated by the Department of Finance, which

provides that "the word `taxes' means taxes proper and no deductions should be allowed for amounts representing interest, surcharge, or penalties incident to delinquency." The court below, however, held Section 80 as inapplicable to the instant case because while it implements sections 30(c) of the Tax Code governing deduction of taxes, the respondent taxpayer seeks to come under section 30(b) of the same Code providing for deduction of interest on indebtedness.
The Court finds the lower court's ruling to be correct. Contrary to petitioner's belief, the portion of Section 80 of Revenue Regulation No. 2 under consideration has been part and parcel of the development to the law on deduction of taxes in the United States. Thus, Mertens in his treatise says: "Penalties are to be distinguished from taxes and they are not deductible under the heading of taxs." . . . Interest on state taxes is not deductible as taxes." This notwithstanding, courts in that jurisdiction, however, have invariably held that interest on deficiency taxes are deductible, not as taxes, but as interest. Section 80 of Revenue Regulation No. 2, therefore, merely incorporated the established application of the tax deduction statute in the United States, where deduction of "taxes" has always been limited to taxes proper and has never included interest on delinquent taxes, penalties and surcharges.
To give to the quoted portion of Section 80 of our Income Tax Regulations the meaning that the petitioner gives it would run counter to the provision of Section 30(b) of the Tax Code and the construction given to it by courts in the United States. Such effect would thus make the regulation invalid for a "regulation which operates to create a rule out of harmony with the statute, is a mere nullity." As already stated, Section 80 implements only Section 30(c) of the Tax Code, or the provision allowing deduction of taxes, while herein respondent seeks to be allowed deduction under section 30(b), which provides for deduction of interest on indebtedness.
In conclusion, the Court is of the opinion and so holds that although interest payment for delinquent taxes is not deductible as tax under Section 30(c) of the Tax Code and Section 80 of the Income Tax Regulations, the taxpayer is not precluded thereby from claiming said interest payment as deduction under Section 30(b) of the same Code.

PAPER INDUSTRIES CORPORATION OF THE PHILIPPINES (PICOP), petitioner, vs. COURT OF APPEALS, COMMISSIONER OF INTERNAL REVENUE and COURT OF TAX APPEALS, respondents.
G.R. Nos. 106949-50, 106984-85, EN BANC, December 1, 1995, FELICIANO, J.

The Supreme Court holds that that PICOP's tax exemption under R.A. No. 5186, as amended, does not include exemption from the thirty-five percent (35%) transaction tax. In the first place, the thirty-five percent (35%) transaction tax is an income tax, a tax on the interest income of the lenders or creditors as held by the Supreme Court in the case of Western Minolco Corporation v. Commissioner of Internal Revenue. The 35% transaction tax is an income tax on interest earnings to the lenders or placers. The latter are actually the taxpayers. Therefore, the tax cannot be a tax imposed upon the petitioner.

Tax exemptions are, to be sure, to be "strictly construed," that is, they are not to be extended beyond the ordinary and reasonable intendment of the language actually used by the legislative authority in granting the exemption.

FACTS:

Paper Industries Corporation of the Philippines (PICOP) is a Philippine corporation registered with the Board of Investments (BOI) as a preferred pioneer enterprise with respect to its integrated pulp and paper mill, and as a preferred non-pioneer enterprise with respect to its integrated plywood and veneer mills. Petitioner received from the Commissioner of Internal Revenue (CIR) two (2) letters of assessment and demand (a) one for deficiency transaction tax and for documentary and science stamp tax; and (b) the other for deficiency income tax for 1977, for an aggregate amount of PhP88,763,255.00.

PICOP protested the assessment of deficiency transaction tax , the documentary and science stamp taxes, and the deficiency income tax assessment. CIR did not formally act upon these protests, but issued a warrant of distraint on personal property and a warrant of levy on real property against PICOP, to enforce collection of the contested assessments, thereby denying PICOP's protests. Thereupon, PICOP went before (CTA) appealing the assessments.

On 15 August 1989, CTA rendered a decision, modifying the CIR's findings and holding PICOP liable for the reduced aggregate amount of P20,133,762.33. Both parties went to the Supreme Court, which referred the case to the Court of Appeals (CA).

CA denied the appeal of the CIR and modified the judgment against PICOP holding it liable for transaction tax and absolved it from payment of documentary and science stamp tax and compromise penalty. It also held PICOP liable for deficiency of income tax.

ISSUES:
1. Whether PICOP is liable for transaction tax
2. Whether PICOP is liable for documentary and science stamp tax
3. Whether PICOP is liable for deficiency income tax

RULING:

1. YES. PICOP reiterates that it is exempt from the payment of the transaction tax by virtue of its tax exemption under R.A. No. 5186, as amended, known as the Investment Incentives Act, which in the form it existed in 1977-1978, read in relevant part as follows: "SECTION 8. Incentives to a Pioneer Enterprise. — In addition to the incentives provided in the preceding section, pioneer enterprises shall be granted the following incentive benefits: (a) Tax Exemption. Exemption from all taxes under the National Internal Revenue Code, except income tax, from the date of investment is included in the Investment Priorities Plan x x x".

The Supreme Court holds that that PICOP's tax exemption under R.A. No. 5186, as amended, does not include exemption from the thirty-five percent (35%) transaction tax. In the first place, the thirty-five percent (35%) transaction tax is an income tax, a tax on the interest income of the lenders or creditors as held by the Supreme Court in the case of Western Minolco Corporation v. Commissioner of Internal Revenue. The 35% transaction tax is an income tax on interest earnings to the lenders or placers. The latter are actually the taxpayers. Therefore, the tax cannot be a tax imposed upon the petitioner.

In other words, the petitioner who borrowed funds from several financial institutions by issuing commercial papers merely withheld the 35% transaction tax before paying to the financial institutions the interest earned by them and later remitted the same to the respondent CIR. The tax could have been collected by a different procedure but the statute chose this method. Whatever collecting procedure is adopted does not change the nature of the tax. It is thus clear that the transaction tax is an income tax and as such, in any event, falls outside the scope of the tax exemption granted to registered pioneer enterprises by Section 8 of R.A. No. 5186, as amended. PICOP was the withholding agent, obliged to withhold thirty-five percent (35%) of the interest payable to its lenders and to remit the amounts so withheld to the Bureau of Internal Revenue ("BIR"). As a withholding, agent, PICOP is made personally liable for the thirty-five percent (35%) transaction tax and if it did not actually withhold thirty-five percent (35%) of the interest monies it had paid to its lenders, PICOP had only itself to blame.

2. NO. The CIR assessed documentary and science stamp taxes, amounting to PhP300,000.00, on the issuance of PICOP's debenture bonds. Tax exemptions are, to be sure, to be "strictly construed," that is, they are not to be extended beyond the ordinary and reasonable intendment of the language actually used by the legislative authority in granting the exemption.

The issuance of debenture bonds is certainly conceptually distinct from pulping and paper manufacturing operations. But no one contends that issuance of bonds was a principal or regular business activity of PICOP; only banks or other financial institutions are in the regular business of raising money by issuing bonds or other instruments to the general public. The actual dedication of the proceeds of the bonds to the carrying out of PICOP's registered operations constituted a sufficient nexus with such registered operations so as to exempt PICOP from taxes ordinarily imposed upon or in connection with issuance of such bonds. The Supreme Court agrees with the Court of Appeals on this matter that the CTA and the CIR had erred in rejecting PICOP's claim for exemption from stamp taxes.

3. YES. PICOP did not deny the existence of discrepancy in their Income Tax Return and Books of Account owing to their procedure of recording its export sales (reckoned in U.S. dollars) on the basis of a fixed rate, day to day and month to month, regardless of the actual exchange rate and without waiting when the actual proceeds are received. In other words, PICOP recorded its export sales at a pre-determined fixed exchange rate. That pre-determined rate was decided upon at the beginning of the year and continued to be used throughout the year. Because of this, the CIR has made out at least a prima facie case that PICOP had understated its sales and overstated its cost of sales as set out in its Income Tax Return. For the CIR has a right to assume that PICOP's Books of

Accounts speak the truth in this case since, as already noted, they embody what must appear to be admissions against PICOP's own interest.

BICOLANDIA DRUG CORPORATION (FORMERLY ELMAS DRUG COPRORATION), Petitioner, v. COMMISSIONER OF INTERNAL REVENUE, Respondent.
G.R. NO. 142299, SECOND DIVISION, June 22, 2006, AZCUNA, J.

In this regard, petitioner's claim for refund must be denied. The law expressly provides that the discount given to senior citizens may be claimed as a tax credit, and not a refund. Thus, where the words of a statute are clear, plain and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation.

FACTS:

Petitioner Bicolandia Drug Corporation is a domestic corporation principally engaged in the retail of pharmaceutical products. Petitioner has a drugstore located in Naga City under the name and business style of "Mercury Drug."

Pursuant to the provisions of R.A. No. 7432, entitled "An Act to Maximize the Contribution of Senior Citizens to Nation Building, Grant Benefits and Special Privileges and for Other Purposes," also known as the "Senior Citizens Act," and Revenue Regulations No. 2-94, petitioner granted to qualified senior citizens a 20% sales discount on their purchase of medicines covering the period from July 19, 1993 to December 31, 1994.

When petitioner filed its corresponding corporate annual income tax returns for taxable years 1993 and 1994, it claimed as a deduction from its gross income the respective amounts of P80,330 and P515,000 representing the 20% sales discount it granted to senior citizens.

On March 28, 1995, however, alleging error in the computation and claiming that the aforementioned 20% sales discount should have been treated as a tax credit pursuant to R.A. No. 7432 instead of a deduction from gross income, petitioner filed a claim for refund or credit of overpaid income tax for 1993 and 1994, amounting to P52,215 and P334,750, respectively.

On December 29, 1995, petitioner filed a Petition for Review with the Court of Tax Appeals (CTA) in order to toll the running of the two-year prescriptive period for claiming for a tax refund under Section 230, now Section 229, of the Tax Code.

It contended that Section 4 of R.A. No. 7432 provides in clear and unequivocal language that discounts granted to senior citizens may be claimed as a tax credit. Revenue Regulations No. 2-94, therefore, which is merely an implementing regulation cannot modify, alter or depart from the clear mandate of Section 4 of R.A. No. 7432, and, thus, is null and void for being inconsistent with the very statute it seeks to implement.

The Commissioner of Internal Revenue, on the other hand, maintained that the aforesaid section providing for a 20% sales discount to senior citizens is a misnomer as it runs counter to the solemn duty of the government to collect taxes. The Commissioner likewise pointed out that the provision in question employs the word "may," thereby implying that the availability of the remedy of tax credit is not absolute and mandatory and it does not confer an absolute right on the taxpayer to avail of the tax credit scheme if he so chooses. The Commissioner further stated that in statutory construction, the contemporaneous construction of a statute by executive officers of the government whose duty is to execute it is entitled to great respect and should ordinarily control in its interpretation.

ISSUE:

Whether or not petitioner is entitled to the claim for refund of its overpaid income taxes for the years 1993 and 1994 based on the evidence at hand. (NO)

RULING:

Section 4(a) of R.A. No. 7432 which states:

Sec. 4. Privileges for the Senior citizens. – The senior citizens shall be entitled to the following:

a) the grant of twenty percent (20%) discount from all establishments relative to utilization of transportation services, hotels and similar lodging establishments, restaurants and recreation centers and purchase of medicines anywhere in the country: Provided, That private establishments may claim the cost8 as tax credit.

The term "cost" in the above provision refers to the amount of the 20% discount extended by a private establishment to senior citizens in their purchase of medicines. This amount shall be applied as a tax credit, and may be deducted from the tax liability of the entity concerned. If there is no current tax due or the establishment reports a net loss for the period, the credit may be carried over to the succeeding taxable year. This is in line with the interpretation of this Court in Commissioner of Internal Revenue v. Central Luzon Drug Corporation wherein it affirmed that R.A. No. 7432 allows private establishments to claim as tax credit the amount of discounts they grant to senior citizens.

The Court notes that petitioner, while praying for the reinstatement of the CTA Resolution, directing the issuance of tax certificates in favor of petitioner for the respective amounts of P45,574.63 and P135,906.48 representing overpaid income tax for 1993 and 1994, asks for the refund of the same.

In this regard, petitioner's claim for refund must be denied. The law expressly provides that the discount given to senior citizens may be claimed as a tax credit, and not a refund. Thus, where the words of a statute are clear, plain and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation.

COMMISSIONER OF INTERNAL REVENUE, petitioner, vs. PRISCILA ESTATE, INC., and THE COURT OF APPEALS, respondents.
G.R. No. L-18282, EN BANC, May 29, 1964, REYES, J.B.L., J.

Since the demolished building was not compensated for by insurance or otherwise, its loss should be charged off as deduction from gross income. (Sec. 30[2], Internal Revenue Code.)

FACTS:

The corporation duly filed its income tax returns for the years 1949, 1950 and 1951. On 13 June 1952, however, it amended its income tax returns for 1951 and paid the tax corresponding to the assessment made by the petitioner on the basis of the returns, as amended; and on 13 September 1952, the company claimed a refund of P4,941.00 as overpaid income tax for the year 1950 for having deducted from gross income only the sum of P6,013.85 instead of P39,673.25 as its loss in the sale of a lot and building. Thereupon, the Commissioner of Internal Revenue conducted an investigation of the company's income tax returns for 1949 through 1951 and, thereafter, granted a tax credit of P1,443.00 for 1950 but assessed on 3 November 1953 deficiency income taxes of P3,575.49 for 1949 and P22,166.10 for 1951.

The Priscila Estate, Inc., contested the deficiency assessments and when the Commissioner of Internal Revenue refused to reconsider them, the former brought suit to the tax court which after trial, rendered the decision that, in 1961, the Commissioner elevated to this Supreme Court for review.

ISSUE:

1. Whether or not value of the demolished building should not be deducted from gross income but added to the cost of the building replacing it. (NO)
2. Whether or not the basis for commuting the depreciation of this building should be limited to the capital invested, which is the assessed value. (NO)

RULING:

1. The first assignment of error refers to the allowance of a deduction in the 1949 income tax returns of the respondent corporation the amount of P11,237.35 representing the cost of a "barong-barong" (a make-shift building), situated at the corner of Azcarraga Street and Rizal Avenue, Manila, which was demolished on 31 December 1949 and a new one built in its place. The petitioner claims that the value of the demolished building should not be deducted from gross income but added to the cost of the building replacing it because its demolition or removal was to make way for the erection of another in its place.

The foregoing argument is erroneous inasmuch as the tax court found that the removal of the "barong-barong", instead of being voluntary, was forced upon the corporation by the city engineer because the structure was a fire hazard; that the rental income of the old building was about P3,730.00 per month, and that the corporation had no funds but had to borrow, in order to construct a new building. All these facts, taken together, belie any intention on the part of the corporation to demolish the old building merely for the purpose of erecting another in its place. Since the demolished building was not compensated for by insurance or otherwise, its loss should be charged off as deduction from gross income. (Sec. 30[2], Internal Revenue Code.)

2. Particularly contested by the petitioner is the basis for depreciation of Building Priscila No. 3. This building, with an assessed value of P70,343.00 but with a construction cost of P110,600.00, was acquired by the respondent corporation from the spouses, Carlos Moran Sison and Priscila F. Sison, in exchange for shares of stock. According to the petitioner, the basis for commuting the depreciation of this building should be limited to the capital invested, which is the assessed value. On the other hand, the respondent based its computation on its construction cost, revaluing the property on this basis by a board resolution in order to "give justice to the Sison spouse Since this revaluation would import an obligation of the corporation to pay the Sison spouses, as vendors, the difference between the assessed value and the revalued construction cost, as provided in resolution Exhibit F-1 (otherwise the revaluation would make no sense), the corporate investment would ultimately be the construction cost which is undisputed), and depreciation logically had to be on that basis. That the revaluation may import additional profit to the vendor spouses is a matter related to their own income tax, and not to that of respondent corporation.

PHILIPPINE REFINING COMPANY (now known as "UNILEVER PHILIPPINES [PRC], INC."), petitioner, vs. COURT OF APPEALS, COURT OF TAX APPEALS, and THE COMMISSIONER OF INTERNAL REVENUE, respondents.
G.R. No. 118794, SECOND DIVISION, May 8, 1996, REGALADO, J.

The contentions of PRC that nobody is in a better position to determine when an obligation becomes a bad debt than the creditor itself, and that its judgment should not be substituted by that of respondent court as it is PRC which has the facilities in ascertaining the collectibility or uncollectibility of these debts, are presumptuous and uncalled for. The Court of Tax Appeals is a highly specialized body specifically created for the purpose of reviewing tax cases. Through its expertise, it is undeniably competent to determine the
issue of whether or not the debt is deductible through the evidence presented before it.

FACTS:

Petitioner Philippine Refining Company (PRC) was assessed by respondent Commissioner of Internal Revenue (Commissioner) to pay a deficiency tax for the year 1985 in the amount of P1,892,584.00.

The assessment was timely protested by petitioner on April 26, 1989, on the ground that it was based on the erroneous disallowances of "bad debts" and "interest expense" although the same are both allowable and legal deductions. Respondent Commissioner, however, issued a warrant of garnishment against the deposits of petitioner at a branch of City Trust Bank, in Makati, Metro Manila, which action the latter considered as a denial of its protest.

ISSUE:

Whether or not the petitioner did not satisfy the requirements of "worthlessness of a debt" as to the thirteen (13) accounts disallowed as deductions. (YES)

RULING:

The petitioner did not satisfy the requirements of "worthlessness of a debt" as to the thirteen (13) accounts disallowed as deductions.

It appears that the only evidentiary support given by PRC for its aforesaid claimed deductions was the explanation or justification posited by its accountant. Her allegations were not supported by any documentary evidence, hence that said contentions per se cannot prove that the debts were indeed uncollectible and can be considered as bad debts as to make them deductible.

The contentions of PRC that nobody is in a better position to determine when an obligation becomes a bad debt than the creditor itself, and that its judgment should not be substituted by that of respondent court as it is PRC which has the facilities in ascertaining the collectibility or uncollectibility of these debts, are presumptuous and uncalled for. The Court of Tax Appeals is a highly specialized body specifically created for the purpose of reviewing tax cases. Through its expertise, it is undeniably competent to determine the
issue of whether or not the debt is deductible through the evidence presented before it.

Because of this recognized expertise, the findings of the CTA will not ordinarily be reviewed absent a showing of gross error or abuse on its part. The findings of fact of the CTA are binding on this Court and in the absence of strong reasons for this Court to delve into facts, only questions of law are open for determination. Were it not, therefore, due to the desire of this Court to satisfy petitioner's calls for clarification and to use this case as a vehicle for exemplification, this appeal could very well have been summarily dismissed.

The Court vehemently rejects the absurd thesis of petitioner that despite the supervening delay in the tax payment, nothing is lost on the part of the Government because in the event that these debts are collected, the same will be returned as taxes to it in the year of the recovery. This is an irresponsible statement which deliberately ignores the fact that while the Government may eventually recover revenues under that hypothesis, the delay caused by the non-payment of taxes under such a contingency will obviously have a disastrous effect on the revenue collections necessary for governmental operations during the period concerned.

NATIONAL DEVELOPMENT COMPANY, petitioner, vs. COMMISSIONER OF INTERNAL REVENUE, respondent.
G.R. No. L-53961, EN BANC, June 30, 1987, CRUZ, J.

In case of doubt, a withholding agent may always protect himself by withholding the tax due, and promptly causing a query to be addressed to the Commissioner of Internal Revenue for the determination whether or not the income paid to an individual is not subject to withholding. In case the Commissioner of Internal Revenue decides that the income paid to an individual is not subject to withholding, the withholding agent may thereupon remit the amount of a tax withheld.

"Strict observance of said steps is required of a withholding agent before he could be released from liability," so said Justice Jose P. Bengson, who wrote the decision. "Generally, the law frowns upon exemption from taxation; hence, an exempting provision should be construed strictissimi juris."

The petitioner was remiss in the discharge of its obligation as the withholding agent of the government and so should be held liable for its omission.

FACTS:

The National Development Company entered into contracts in Tokyo with several Japanese shipbuilding companies for the construction of twelve ocean-going vessels. The purchase price was to come from the proceeds of bonds issued by the Central Bank. Initial payments were made in cash and through irrevocable letters of credit. Fourteen promissory notes were signed for the balance by the NDC and, as required by the shipbuilders, guaranteed by the Republic of the Philippines. Pursuant thereto, the remaining payments and the interests thereon were remitted in due time by the NDC to Tokyo. The vessels were eventually completed and delivered to the NDC in Tokyo.

The NDC remitted to the shipbuilders in Tokyo the total amount of US$4,066,580.70 as interest on the balance of the purchase price. No tax was withheld. The Commissioner then held the NDC liable on such tax in the total sum of P5,115,234.74. Negotiations followed but failed. The BIR thereupon served on the NDC a warrant of distraint and levy to enforce collection of the claimed amount. The NDC went to the Court of Tax Appeals.

The BIR was sustained by the CTA except for a slight reduction of the tax deficiency in the sum of P900.00, representing the compromise penalty. The NDC then filed a petition for certiorari.

ISSUE:

Whether or not NDC is liable for withholding taxes. (YES)

RULING:

The petitioner argues that the Japanese Shipbuilders were not subject to tax under Section 37(1)of the Tax Code because all the related activities — the signing of the contract, the construction of the vessels, the payment of the stipulated price, and their delivery to the NDC — were done in Tokyo. The law, however, does not speak of activity but of "source," which in this case is the NDC. This is a domestic and resident corporation with principal offices in Manila.

As the Tax Court put it: It is quite apparent, under the terms of the law, that the Government's right to levy and collect income tax on interest received by foreign corporations not engaged in trade or business within the Philippines is not planted upon the condition that 'the activity or labor — and the sale from which the (interest) income flowed had its situs' in the Philippines. The law specifies: 'Interest derived from sources within the Philippines, and interest on bonds, notes, or other interest-bearing obligations of residents, corporate or otherwise.' Nothing there speaks of the 'act or activity' of non-resident corporations in the Philippines, or place where the contract is signed. The residence of the obligor who pays the interest rather than the physical location of the securities, bonds or notes or the place of payment, is the determining factor of the source of interest income.

Accordingly, if the obligor is a resident of the Philippines the interest payment paid by him can have no other source than within the Philippines. The interest is paid not by the bond, note or other interest-bearing obligations, but by the obligor.

Here in the case at bar, petitioner National Development Company, a corporation duly organized and existing under the laws of the Republic of the Philippines, with address and principal office at Calle Pureza, Sta. Mesa, Manila, Philippines unconditionally promised to pay the Japanese shipbuilders, as obligor in fourteen (14) promissory notes for each vessel, the balance of the contract price of the twelve (12) ocean-going vessels purchased and acquired by it from the Japanese corporations, including the interest on the principal sum at the rate of five per cent (5%) per annum.

The law is clear. Our plain duty is to apply it as written. The residence of the obligor which paid the interest under consideration, petitioner herein, is Calle Pureza, Sta. Mesa, Manila, Philippines; and as a corporation duly organized and existing under the laws of the Philippines, it is a domestic corporation, resident of the Philippines. The interest paid by petitioner, which is admittedly a resident of the Philippines, is on the promissory notes issued by it. Clearly, therefore, the interest remitted to the Japanese shipbuilders in Japan in 1960, 1961 and 1962 on the unpaid balance of the purchase price of the vessels acquired by petitioner is interest derived from sources within the Philippines subject to income tax under the then Section 24(b)(1) of the National Internal Revenue Code.

There is no basis for saying that the interest payments were obligations of the Republic of the Philippines and that the promissory notes of the NDC were government securities exempt from taxation under Section 29(b)[4] of the Tax Code.

It is also incorrect to suggest that the Republic of the Philippines could not collect taxes on the interest remitted because of the undertaking signed by the Secretary of Finance in each of the promissory notes that: "Upon authority of the President of the Republic of the Philippines, the undersigned, for value received, hereby absolutely and unconditionally guarantee (sic), on behalf of the Republic of the Philippines, the due and punctual payment of both principal and interest of the above note."

There is nothing in the above undertaking exempting the interests from taxes. Petitioner has not established a clear waiver therein of the right to tax interests. Tax exemptions cannot be merely implied but must be categorically and unmistakably expressed. Any doubt concerning this question must be resolved in favor of the taxing power.

Manifestly, the said undertaking of the Republic of the Philippines merely guaranteed the obligations of the NDC but without diminution of its taxing power under existing laws.

The petitioner also forgets that it is not the NDC that is being taxed. The tax was due on the interests earned by the Japanese shipbuilders. It was the income of these companies and not the Republic of the Philippines that was subject to the tax the NDC did not withhold.

In effect, therefore, the imposition of the deficiency taxes on the NDC is a penalty for its failure to withhold the same from the Japanese shipbuilders. Such liability is imposed by Section 53(c) of the Tax Code.

In case of doubt, a withholding agent may always protect himself by withholding the tax due, and promptly causing a query to be addressed to the Commissioner of Internal Revenue for the determination whether or not the income paid to an individual is not subject to withholding. In case the Commissioner of Internal Revenue decides that the income paid to an individual is not subject to withholding, the withholding agent may thereupon remit the amount of a tax withheld.

"Strict observance of said steps is required of a withholding agent before he could be released from liability," so said Justice Jose P. Bengson, who wrote the decision. "Generally, the law frowns upon exemption from taxation; hence, an exempting provision should be construed strictissimi juris."

The petitioner was remiss in the discharge of its obligation as the withholding agent of the government and so should be held liable for its omission.

TOMAS CALASANZ, ET AL., petitioners, vs. THE COMMISSIONER OF INTERNAL REVENUE and the COURT OF TAX APPEALS, respondents.
G.R. No. L-26284, SECOND DIVISION, October 8, 1986, FERNAN, J.

Also a property initially classified as a capital asset may thereafter be treated as an ordinary asset if a combination of the factors indubitably tend to show that the activity was in furtherance of or in the *course of the taxpayer's trade or business. Thus, a sale of inherited real property usually gives capital gain or loss even though the property has to be subdivided or improved or both to make it salable. However, if the inherited property is substantially improved or very actively sold or both it may be treated as held primarily for sale to customers in the ordinary course of the heir's business.*

FACTS:
Ursula Calasanz inherited from her father an agricultural land. Improvements were introduced to make such land. After sometime, it was sold to the public at a profit. The Revenue examiner adjudged Ursula and her spouse as engaged in business as real estate dealers and required them to pay the real estate dealer's tax.

ISSUE:
Whether or not the gains realized from the sale of the lots are taxable in full as ordinary income or capital gains taxable at capital gain rates.

RULING:
They are taxable as ordinary income.
The assets of a taxpayer are classified for income tax purposes into ordinary assets and capital assets. Section 34[a] [1] of the National Internal Revenue Code broadly defines capital assets as follows:
[1] Capital assets.-The term 'capital assets' means property held by the taxpayer [whether or not connected with his trade or business], but does not include, stock in trade of the taxpayer or other property of a kind which would properly be included, in the inventory of the taxpayer if on hand at the close of the taxable year, or property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business, or property used in the trade or business of a character which is subject to the allowance for depreciation provided in subsection [f] of section thirty; or real property used in the trade or business of the taxpayer.
The statutory definition of capital assets is negative in nature. If the asset is not among the exceptions, it is a capital asset; conversely, assets falling within the exceptions are ordinary assets. And necessarily, any gain resulting from the sale or exchange of an asset is a capital gain or an ordinary gain depending on the kind of asset involved in the transaction.
However, there is no rigid rule or fixed formula by which it can be determined with finality whether property sold by a taxpayer was held primarily for sale to customers in the ordinary course of his trade or business or whether it was sold as a capital asset. Although several factors or indices have been recognized as helpful guides in making a determination, none of these is decisive; neither is the presence nor the absence of these factors conclusive. Each case must in the last analysis rest upon its own peculiar facts and circumstances.
Also a property initially classified as a capital asset may thereafter be treated as an ordinary asset if a combination of the factors indubitably tend to show that the activity was in furtherance of or in the course of the taxpayer's trade or business. Thus, a sale of inherited real property usually gives capital gain or loss even though the property has to be subdivided or improved or both to make it salable. However, if the inherited property is substantially improved or very actively sold or both it may be treated as held primarily for sale to customers in the ordinary course of the heir's business.
One strong factor against petitioners' contention is the business element of development which is very much in evidence. Petitioners did not sell the land in the condition in which they acquired it. While the land was originally devoted to rice and fruit trees, it was subdivided into small lots and in the process converted into a residential subdivision and given the name Don Mariano Subdivision. Extensive improvements like the laying out of streets, construction of concrete gutters and installation of lighting system and drainage facilities, among others, were undertaken to enhance the value of the lots and make them more attractive to prospective buyers. The audited financial statements submitted together with the tax return in question disclosed that a considerable amount was expended to cover the cost of improvements. As a matter of fact, the estimated improvements of the lots sold reached P170,028.60 whereas the cost of the land is only P 4,742.66. There is authority that a property ceases to be a capital asset if the amount expended to improve it is double its original cost, for the extensive improvement indicates that the seller held the property primarily for sale to customers in the ordinary course of his business.

ANTONIO TUASON, JR., petitioner, vs. JOSE B. LINGAD, as Commissioner of Internal Revenue, respondent.
G.R. No. L-24248 July 31, 1974 FIRST DIVISION CASTRO, *J*

Captial Assets; definition: The term "capital assets" includes all the properties of a taxpayer whether or not connected with his trade or business, except: (1) stock in trade or other property included in the taxpayer's inventory; (2) property primarily for sale to customers in the ordinary course of his trade or business; (3) property used in the trade or business of the taxpayer and subject to depreciation allowance; and (4) real property used in trade or business. If the taxpayer sells or exchanges any of the properties above-enumerated, any gain or loss relative thereto is an ordinary gain or an ordinary loss; the gain or loss from the sale or exchange of all other properties of the taxpayer is a capital gain or a capital loss.

In the case at bar, Taxpayer operated a substantial rental business of several properties, not only those subject in this case, such that the Taxpayer had to a real estate dealer's tax. Taxpayer's sales of the several lots forming part of his rental business cannot be characterized as other than sales of non-capital assets.

FACTS
The mother of Taxpayer (Petitioner Antonio Tuason) owned a 7 hectare parcel of land located in the City of Manila. She subdivided the land into twenty-nine (29) lots. Possession of the land was eventually inherited by Taxpayer in 1948.

Taxpayer instructed his attorney-in-fact to sell the lots. Twenty-eight (28) out of the twenty-nine parcels were all sold easily. The attorney-in-fact was not able to sell the twenty-ninth lot (hereinafter Lot 29) immediately because it was located at a low elevation.

In 1952, Lot 29 was filled, subdivided and gravel roads were constructed. The small lots were then sold over the years on a uniform 10-year annual amortization basis. The attorney-in-fact, did not employ any broker nor did he put up advertisements in the matter of the sale thereof.

In 1953 and 1954 the Taxpayer reported his income from the sale of the small lots (P102,050.79 and P103,468.56, respectively) as long-term capital gains. The CIR upheld Taxpayer's treatment of this tax.

In his 1957 tax return the Taxpayer as before treated his income from the sale of the small lots (P119,072.18) as capital gains. This treatment was initially approved by the CIR, but by 1963, the CIR reversed itself and considered the Taxpayer's profits from the sales of the lots as ordinary gains

The CIR assessed a deficiency of P31,095.36 from the Taxpayer.

*Contention of Taxpayer: A*s he was engaged in the business of leasing the lots he inherited from his mother as well other real properties, his subsequent sales of the mentioned lots cannot be recognized as sales of capital assets but of "real property used in trade or business of the taxpayer."

ISSUE
Whether or not the properties in question which the Taxpayer had inherited and subsequently sold in small lots to other persons should be regarded as capital assets.

RULING
No. It is Ordinary Income.

As thus defined by law, CAPITAL ASSETS include all properties of a taxpayer whether or not connected with his trade or business, except:

1. stock in trade or other property included in the taxpayer's inventory;
2. property primarily for sale to customers in the ordinary course of his trade or business;
3. property used in the trade or business of the taxpayer and subject to depreciation allowance; and
4. real property used in trade or business.

If the taxpayer sells or exchanges any of the properties above, any gain or loss relative thereto is an ordinary gain or an ordinary loss; the loss or gain from the sale or exchange of all other properties of the taxpayer is a capital gain or a capital loss.

Under Section 34(b)(2) of the old Tax Code, if a gain is realized by a taxpayer (other than a corporation) from the sale or exchange of capital assets held for more than 12 months, only 50% of the net capital gain shall be taken into account in computing the net income.

The Tax Code's provisions on so-called long-term capital gains constitutes a statute of partial exemption. In view of the familiar and settled rule that tax exemptions are construed in strictissimi juris against the taxpayer and liberally in favor of the taxing authority, it is the taxpayer's burden to bring himself clearly and squarely within the terms of a tax-exempting statutory provision, otherwise, all fair doubts will be resolved against him.

In the case at bar, after a thoroughgoing study of all the circumstances, this Court is of the view and so holds that Petitioner-Taxpayer's thesis is bereft of merit. Under the circumstances, Taxpayer's sales of the several lots forming part of his rental business cannot be characterized as other than sales of non-capital assets. the sales concluded on installment basis of the subdivided lots do not deserve a different characterization for tax purposes.

This Court finds no error in the holding that the income of the Taxpayer from the sales of the lots in question should be considered as ordinary income.

SMI-ED PHILIPPINES TECHNOLOGY, INC., Petitioner, vs. COMMISSIONER OF INTERNAL REVENUE, Respondent.
G.R. No. 175410, November 12, 2014, LEONEN, *J.:*

The respondents allege that the Court of Tax Appeals has no jurisdiction to make an assessment in cases of an administrative claim for tax refunds. The Supreme Court ruled that in an action for the refund of taxes allegedly erroneously paid, the Court of Tax Appeals may determine whether there are taxes that should have been paid in lieu of the taxes paid. Determining the proper category of tax that should have been paid is not an assessment. It is incidental to determining whether there should be a refund

FACTS
The petitioner SMI-ED Philippines Technology, Inc. is a PEZA-registered corporation that has never commenced operations. During its existence, it subjected itself to 5% final tax imposed upon PEZA-registered corporations. The amount of tax it paid is Php 44M. However, upon finding that it made erroneous payment of taxes, it filed with the BIR an administrative claim for tax refund.

The BIR, however, did not act in its claim. Court of Tax Appeals, after finding that SMI-Ed Philippines sold properties that were capital assets under Section 39(A)(1) of the National Internal Revenue Code of 1997, the Court of Tax Appeals Second Division subjected the sale of SMI-Ed Philippines' assets to 6% capital gains tax under Section 27(D)(5) of the same Code and Section 2 of Revenue Regulations No. 8-98. It was found liable for capital gains tax amounting to P53,613,000.00 Therefore, SMI-Ed Philippines must still pay the balance of P8,935,500.00 as deficiency tax, "which respondent should perhaps look into. By way of petition for review, the Court of Tax Appeals En Banc affirmed the decision of Court of Tax Appeals Division. Hence, the current petition.

Petitioner argued that the Court of Tax Appeals has no jurisdiction to make an assessment since its jurisdiction, with respect to the decisions of respondent, is merely appellate. Moreover, the power to make assessment had already prescribed under Section 203 of the National Internal Revenue Code of 1997 since the return for the erroneous payment was filed on September 13, 2000. This is more than three (3) years from the last day prescribed by law for the filing of the return.
Petitioner also argued that the Court of Tax Appeals En Banc erroneously subjected petitioner's machineries to 6% capital gains tax. Section 27(D)(5) of the National Internal Revenue Code of 1997 is clear that the 6% capital gains tax on domestic corporations applies only on the sale of lands and buildings and not to machineries and equipment.

ISSUE

Whether or not the Court of Tax Appeals can make a tax assessment within its appellate jurisdiction.

RULING
Yes.
The term "assessment" refers to the determination of amounts due from a person obligated to make payments. In the context of national internal revenue collection, it refers the determination of the taxes due from a taxpayer under the National Internal Revenue Code of 1997.

The power and duty to assess national internal revenue taxes are lodged with the BIR. The BIR is not mandated to make an assessment relative to every return filed with it. Tax returns filed with the BIR enjoy the presumption that these are in accordance with the law. Tax returns are also presumed correct since these are filed under the penalty of perjury. Generally, however, the BIR assesses taxes when it appears, after a return had been filed, that the taxes paid were incorrect, false, or fraudulent. The BIR also assesses taxes when taxes are due but no return is filed.
The Court of Tax Appeals has no power to make an assessment at the first instance. On matters such as tax collection, tax refund, and others related to the national internal revenue taxes, the Court of Tax Appeals' jurisdiction is appellate in nature.

Section 7(a)(1) and Section 7(a)(2) of Republic Act No. 1125,51 as amended by Republic Act No. 9282, provide that the Court of Tax Appeals reviews decisions and inactions of the Commissioner of Internal Revenue in disputed assessments and claims for tax refunds.

Thus, the BIR first has to make an assessment of the taxpayer's liabilities. When the BIR makes the assessment, the taxpayer is allowed to dispute that assessment before the BIR. If the BIR issues a decision that is unfavorable to the taxpayer or if the BIR fails to act on a dispute brought by the taxpayer, the BIR's decision or inaction may be brought on appeal to the Court of Tax Appeals. The Court of Tax Appeals then acquires jurisdiction over the case.
When the BIR's unfavorable decision is brought on appeal to the Court of Tax Appeals, the Court of Tax Appeals reviews the correctness of the BIR's assessment and decision. In reviewing the BIR's assessment and decision, the Court of Tax Appeals had to make its own determination of the taxpayer's tax liabilities. The Court of Tax Appeals may not make such determination before the BIR makes its assessment and before a dispute involving such assessment is brought to the Court of Tax Appeals on appeal.

The Court of Tax Appeals' jurisdiction is not limited to cases when the BIR makes an assessment or a decision unfavorable to the taxpayer. Because Republic Act No. 1125 also vests the Court of Tax Appeals with jurisdiction over the BIR's inaction on a taxpayer's refund claim, there may be instances when the Court of Tax Appeals has to take cognizance of cases that have nothing to do with the BIR's assessments or decisions. When the BIR fails to act on a claim for refund of voluntarily but mistakenly paid taxes, for example, there is no decision or assessment involved.

Taxes are generally self-assessed. They are initially computed and voluntarily paid by the taxpayer. The government does not have to demand it. If the tax payments are correct, the BIR need not make an assessment.

The self-assessing and voluntarily paying taxpayer, however, may later find that he or she has erroneously paid taxes. Erroneously paid taxes may come in the form of amounts that should not have been paid. Thus, a taxpayer may find that he or she has paid more than the amount that should have been paid under the law. Erroneously paid taxes may also come in the form of tax payments for the wrong category of tax. Thus, a taxpayer may find that he or she has paid a certain kind of tax that he or she is not subject to. In these instances, the taxpayer may ask for a refund. If the BIR fails to act on the request for refund, the taxpayer may bring the matter to the Court of Tax Appeals.

In this case, the Court of Tax Appeals' jurisdiction was acquired because petitioner brought the case on appeal before the Court of Tax Appeals after the BIR had failed to act on petitioner's claim for refund of erroneously paid taxes. The Court of Tax Appeals did not acquire jurisdiction as a result of a disputed assessment of a BIR decision.

The determination of the proper category of tax that petitioner should have paid is an incidental matter necessary for the resolution of the principal issue, which is whether petitioner was entitled to a refund.

The issue of petitioner's claim for tax refund is intertwined with the issue of the proper taxes that are due from petitioner. A claim for tax refund carries the assumption that the tax returns filed were correct. If the tax return filed was not proper, the correctness of the amount paid and, therefore, the claim for refund become questionable. In that case, the court must determine if a taxpayer claiming refund of erroneously paid taxes is more properly liable for taxes other than that paid.
In this case, petitioner's claim that it erroneously paid the 5% final tax is an admission that the quarterly tax return it filed in 2000 was improper. Hence, to determine if petitioner was entitled to the refund being claimed, the Court of Tax Appeals has the duty to determine if petitioner was indeed not liable for the 5% final tax and, instead, liable for taxes other than the 5% final tax. As in South African Airways, petitioner's request for refund can neither be granted nor denied outright without such determination.

If the taxpayer is found liable for taxes other than the erroneously paid 5% final tax, the amount of the taxpayer's liability should be computed and deducted from the refundable amount.

Any liability in excess of the refundable amount, however, may not be collected in a case involving solely the issue of the taxpayer's entitlement to refund. The question of tax deficiency is distinct and unrelated to the question of petitioner's entitlement to refund. Tax deficiencies should be subject to assessment procedures and the rules of prescription. The court cannot be expected to perform the BIR's duties whenever it fails to do so either through neglect or oversight. Neither can court processes be used as a tool to circumvent laws protecting the rights of taxpayers.

SUPREME TRANSLINER, INC., MOISES C. ALVAREZ and PAULITA S. ALVAREZ *v.* BPI FAMILY SAVINGS BANK, INC
G.R. No. 165617/165837, 25 February 2011, THIRD DIVISION *(*Villarama, *J.)*

In foreclosure sale, there is no actual transfer of the mortgaged real property until after the expiration of the one-year redemption period as provided in Act No. 3135 and title thereto is consolidated in the name of the mortgagee in case of non-redemption.

FACTS
Supreme Transliner, Inc. obtained a loan in the amount of P9,853,000.00 from BPI Family Savings Bank with a 714-square meter lot as collateral. For non-payment of the loan, the mortgage was extrajudicially foreclosed and the property was sold to the bank as the highest bidder in the public auction. Before the expiration of the one-year redemption period, the mortgagors notified the bank of their intention to redeem the property. Accordingly, a Statement of Account was prepared by the bank indicating the total amount due under the mortgage loan agreement in the amount of P 15,704,249.12. The mortgagors requested for the elimination of liquidated damages and reduction of attorneys fees and interest (1% per month) but the bank refused. On May 21, 1997, the mortgagors redeemed the property by paying the sum of P15,704,249.12. The mortgagors filed a complaint against the bank to recover the allegedly unlawful and excessive charges totaling P5,331,237.77, with prayer for damages and attorney's fees.

The petitioners-mortgagors raise the single issue of whether the foreclosing mortgagee should pay capital gains tax upon execution of the certificate of sale, and if paid by the mortgagee, whether the same should be shouldered by the redemptioner. They specifically prayed for the return of all asset-acquired expenses consisting of documentary stamps tax, capital gains tax, foreclosure fee, registration and filing fee, and additional registration and filing fee totaling P906,142.79, with 6% interest thereon from May 21, 1997.

ISSUES:
1. Whether or not the capital gains tax upon execution of the certificate of sale.
2. Whether or not such capital gains tax should be shouldered by the redemptioner.

RULING:

1. **NO**, there is no legal basis for the inclusion of this charge in the redemption price. Under Revenue Regulations (RR) No. 13-85 (December 12, 1985), every sale or exchange or other disposition of real property classified as capital asset under Section 34(a) of the Tax Code shall be subject to the final capital gains tax. The term sale includes *pacto de retro* and other forms of conditional sale. Section 2.2 of Revenue Memorandum Order (RMO) No. 29-86 (as amended by RMO No. 16-88 and as further amended by RMO Nos. 27-89 and 6-92) states that these conditional sales necessarily include mortgage foreclosure sales (judicial and extrajudicial foreclosure sales). Further, for real property foreclosed by a bank on or after September 3, 1986, the capital gains tax and documentary stamp tax must be paid before title to the property can be consolidated in favor of the bank.

2. Under Section 63 of Presidential Decree No. 1529 otherwise known as the Property Registration Decree, if no right of redemption exists, the certificate of title of the mortgagor shall be cancelled, and a new certificate issued in the name of the purchaser. But where the right of redemption exists, the certificate of title of the mortgagor shall not be cancelled, but the certificate of sale and the order confirming the sale shall be registered by brief memorandum thereof made by the Register of Deeds upon the certificate of title. In the event the property is redeemed, the certificate or deed of redemption shall be filed with the Register of Deeds, and a brief memorandum thereof shall be made by the Register of Deeds on the certificate of title.

It is therefore clear that in foreclosure sale, there is no actual transfer of the mortgaged real property until after the expiration of the one-year redemption period as provided in Act No. 3135 and title thereto is consolidated in the name of the mortgagee in case of non-redemption. In the interim, the mortgagor is given the option whether or not to redeem the real property. The issuance of the Certificate of Sale does not by itself transfer ownership

DELPHER TRADES CORPORATION, and DELPHIN PACHECO, petitioners, vs. INTERMEDIATE APPELLATE COURT and HYDRO PIPES PHILIPPINES, INC., respondents.
G.R. No. L-69259 January 26, 1988 THIRD DIVISION GUTIERREZ, JR., *J.*

There is nothing wrong or objectionable about the estate planning scheme resorted to by the Pachecos. "The legal right of a taxpayer to decrease the amount of what otherwise could be his taxes or altogether avoid them, by means which the law permits, cannot be doubted."

FACTS
Delfin Pacheco and his sister Pelagia Pacheco were the co-owners of a real estate in Polo (now Valenzuela).
They leased the property to Construction Components International Inc. (CCII), providing that during the existence or after the term of this lease the lessor, should he decide to sell the property leased shall first offer the same to the lessee and the latter has the priority to buy under similar conditions.

CCII assigned its rights and obligations under the contract of lease in favour of Hydro Pipes Philippines, Inc. with the signed conformity and consent of the Pachecos. The contract and assignment of lease were annotated at the back of the title.
A deed of exchange was executed between the Pachecos and defendant Delpher Trades Corporation whereby the former conveyed to the latter the leased property together with another parcel of land also in Valenzuela for 2500 shares of stock of Delpher (total value of P1.5M)

On the ground that it was not given the first option to buy the leased property pursuant to the proviso in the lease agreement, Hydro Pipes filed an amended complaint for reconveyance of the lot in its favour under conditions similar to those whereby Delpher acquired the property from the Pachecos.

The CFI ruled in favour of Hydro Pipes. This was affirmed on appeal by the IAC.

Petitioners filed a petition for certiorari which was initially denied by the SC but upon MR, the SC gave it due course.
Eduardo Neria, CPA and son-in-law of Pelagia testified that:

Delpher is a family corporation, organized by the children of Pelagia Pacheco and Benjamin Hernandez, and Sps. Delfin and Pilar Pacheco, who owned in common the parcel of land leased to Hydro Pipes in order to perpetuate their control over the property through the corporation and to avoid taxes;

To accomplish this, two pieces of real estate, including the land leased to Hydro Pipes, were transferred to the corporation;
The leased property was transferred to the corporation by virtue of a deed of exchange of property; in exchange for these properties, Pelagia and Delfin acquired 2500 unissued no par value shares of stock which are equivalent to a 55% majority in the corporation because the other owners only owned 2000 shares

At the time of incorporation, he knew all about the contract of lease to Hydro Pipes. In the petitioners' MR, they refer to this scheme as "estate planning"

Petitioners contend that there was actually no transfer of ownership of the subject parcel of land since the Pachecos remained in control of the property. The transfer of ownership, if anything, was merely in form, but not in substance.
Petitioner corporation is a mere alter ego or conduit of the Pacheco co-owners; hence the corporation and the co-owners should be deemed to be the same, there being identity of interest.
The Pachecos did not sell the property. There was no sale and they exchanged the land for shares of stocks in their own corporation.

Respondents argue that Delpher is a corporate entity separate and distinct from the Pachecos. It cannot be said that Delpher is the Pacheco's alter ego or conduit.

That Delfin, having treated Delpher as such a separate and distinct corporate entity, is not a party who may allege that this separate corporate existence should be disregarded.
There was actual transfer of ownership interest over the leased property when the same was transferred to Delpher in exchange for the latter's shares of stock.

ISSUE
Whether or Not the Deed of Exchange executed by the Pachecos and Delpher was meant to be a contract of sale, which prejudiced respondent's right of first refusal. (NO)

RULING
The Delpher Trades Corporation is a business conduit of the Pachecos. What they really did was to invest their properties and change the nature of their ownership from unincorporated to incorporated form by organizing Delpher Trades Corporation to take control of their properties and at the same time save on inheritance taxes.
The Deed of Exchange of property cannot be a considered a contract of sale since there was no transfer of actual ownership interests by the Pachecos to a third party. The Pacheco family merely changed their ownership from one form to another.
There is nothing wrong or objectionable about the estate planning scheme resorted to by the Pachecos. "The legal right of a taxpayer to decrease the amount of what otherwise could be his taxes or altogether avoid them, by means which the law permits, cannot be doubted."

After incorporation, one becomes a stockholder of a corporation by subscription or by purchasing stock directly from the corporation or from individual owners thereof.

In exchange of their properties, the Pachecos acquired 2500 original unissued no par value shares of stocks of the Delpher Trades Corporation. Consequently, the Pachecos became stockholders of the corporation by subscription.

A no-par value share does not purport to represent any stated proportionate interest in the capital stock measured by value, but only an aliquot part of the whole number of such share issuing corporation. The holder of no-par shares may see from the certificate itself that he is an aliquot sharer in the assets of the corporation. But this character of proportionate interest is not hidden beneath a false appearance of a given sum in money, as in the case of par value shares. The capital stock of a corporation issuing only no-par value shares is not set forth by a stated amount of money, but instead is expressed to be divided into a stated number of shares, such as 1000 shares. This indicates that a shareholder of 100 such shares is an aliquot sharer in the assets of the corporation, no matter what value they may have to the extent of 100/1000, or 1/10. Thus, by removing the par value of shares, the attention of persons interested in the financial condition of a corporation is focused upon the value of assets and the amount of its debts.

There was no attempt to state the true or current market value of the real estate. Land valued at P300.00 per square meter was turned over to the family's corporation for only P14.00 a square meter.

BANCO DE ORO, BANK OF COMMERCE, CHINA BANKING CORPORATION, METROPOLITAN BANK & TRUST COMPANY, PHILIPPINE BANK OF COMMUNICATIONS, PHILIPPINE NATIONAL BANK, PHILIPPINE VETERANS BANK AND PLANTERS DEVELOPMENT BANK *vs.* REPUBLIC OF THE PHILIPPINES, THE COMMISSIONER OF INTERNAL REVENUE, BUREAU OF INTERNAL REVENUE, SECRETARY OF FINANCE, DEPARTMENT OF FINANCE, THE NATIONAL TREASURER AND BUREAU OF TREASURY
A.C. No. 198756, January 13, 2015, J. Leonen

Should there have been a simultaneous sale to 20 or more lenders/investors, the Poverty Eradication and Alleviation Certificates or the PEACe Bonds are deemed deposit substitutes within the meaning of Sec. 22(Y) of the 1997 NIRC and RCBC Capital would have been obliged to pay the 20% FWT on the interest or discount from the PEACe Bonds. Further, the obligation to withhold the 20% final tax on the corresponding interest from the PEACe Bonds would likewise be required of any lender/investor had the latter turned around and sold said PEACe Bonds, whether in whole or part, simultaneously to 20 or more lenders or investors.
The Court notes, however, that under Section 242 of the 1997 NIRC, interest income received by individuals from longterm deposits or investments with a holding period of not less than five (5) years is exempt from the final tax.
Thus, should the PEACe Bonds be found to be within the coverage of deposit substitutes, the proper procedure was for the Bureau of Treasury to pay the face value of the PEACe Bonds to the bondholders and for the BIR to collect the unpaid FWT directly from RCBC Capital, or any lender or investor if such be the case, as the withholding agents.

FACTS:
The instant case involves the proper tax treatment of the discount or interest income arising from the PhP 35 billion worth of 10-year zero-coupon treasury bonds issued by the Bureau of Treasury in October 2001, denominated as the Poverty Eradication and Alleviation Certificates or the PEACe Bonds. These PhP 35 billion worth PEACe Bonds, upon maturity on October 18, 2011 were bought by RCBC Capital from the Government at the discounted price of PhP 10.17 billion, which later sold the same in the secondary markets at its desired price.

Prior to the said date of maturity, the CIR issued BIR Ruling No. 370-2011 (2011 BIR Ruling), declaring that the PEACe Bonds being deposit substitutes are subject to the 20% FWT. Pursuant to this ruling, the Secretary of Finance directed the Bureau of Treasury (BTr) to withhold a 20% final tax from the face value of the PEACe Bonds upon their payment at maturity. The 2011 BIR Ruling reversed the two (2) previous rulings declaring that the PEACe Bonds are not covered by the provision on deposit substitutes.

Resultantly, fearing smaller returns on the bonds they bought, once drawn against the BTr, herein petitioner-banks filed these petitions for certiorari, prohibition and/or mandamus seeking, among others, to:

1. annul Respondent BIR's Ruling No. 370-2011 and other related rulings of similar tenor and import, for being unconstitutional and for having been issued without jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdic-tion;
2. prohibit all parties particularly the BTr from withholding or collecting the 20% FWT from the payment of the face value of the PEACe Bonds; and,
3. command respondents particularly the BTr to pay the full amount of the face value of the PEACe Bonds.

ISSUES

1. Whether the petitions should be dismissed owing to the alleged failure of petitioners to follow the principle of exhaustion of administrative remedies and the doctrine of hierarchy of courts;
2. Whether the PEACe Bonds are *"deposit substitutes"* and thus subject to 20% FWT under the 1997 NIRC, following the phraseology of Sec. 22(Y) of the NIRC; and,
3. If the PEACe Bonds are considered *"deposit substitutes,"* whether the government or the Bureau of Internal Revenue is estopped from imposing and/or collecting the 20% [FWT] from the face value of these Bonds.

RULING
1. NO, the filing of instant petitions is tenable under the circumstances.

Under Sec. 4 of the 1997 [NIRC], interpretative rulings are reviewable by the Secretary of Finance.
SEC. 4. Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases. - The power to interpret the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance.

Nonetheless, jurisprudence allows certain exceptions to the rule on exhaustion of administrative remedies:

"[The doctrine of exhaustion of administrative remedies] is a relative one and its flexibility is called upon by the peculiarity and uniqueness of the factual and circumstantial settings of a case. Hence, it is disregarded (1) when there is a violation of due process, (2) when the issue involved is purely a legal question, (3) when the administrative action is patently illegal amounting to lack or excess of jurisdiction,(4) when there is estoppel on the part of the administrative agency concerned, (5) when there is irreparable injury, (6) when the respondent is a department secretary whose acts as an alter ego of the President bears the implied and assumed approval of the latter, (7) when to require exhaustion of administrative remedies would be unreasonable, (8) when it would amount to a nullification of a claim, (9) when the subject matter is a private land in land case proceedings, (10) when the rule does not provide a plain, speedy and adequate remedy, (11) when there are circumstances indicating the urgency of judicial intervention."

The exceptions under (2) and (11) are present in this case. The question involved is purely legal, namely: (a) the interpretation of the 20-lender rule in the definition of the terms public and deposit substitutes under the 1997 [NIR]; and (b) whether the imposition of the 20% [FWT] on the PEACe Bonds upon maturity violates the constitutional provisions on non-impairment of contracts and due process. xxx.
The rule on exhaustion of administrative remedies also finds no application when the exhaustion will result in an exercise in futility.

In this case, an appeal to the Secretary of Finance from the questioned 2011 BIR Ruling would be a futile exercise because it was upon the request of the Secretary of Finance that the 2011 BIR Ruling was issued by the [BIR]. It appears that the Secretary of Finance adopted the [CIR's] opinions as his own. This position was in fact confirmed in the letter... where he ordered the [BTr] to withhold the amount corresponding to the 20% [FWT] on the interest or discounts allegedly due from the bondholders on the strength of the 2011 BIR Ruling.

On the doctrine of hierarchy of courts, [the Court agrees] with respondents that the jurisdiction to review the rulings of the [CIR] pertains to the [CTA]. The questioned BIR Ruling Nos. 370-2011 and 378-2011 were issued in connection with the implementation of the 1997 [NIRC] on the taxability of the interest income from [PEACe] bonds issued by the government.
In exceptional cases, however, [the Court] entertained direct recourse to it when "dictated by public welfare and the advancement of public policy, or demanded by the broader interest of justice, or the orders complained of were found to be patent nullities, or the appeal was considered as clearly an inappropriate remedy."

Here, the nature and importance of the issues raised to the investment and banking industry with regard to a definitive declaration of whether government debt instruments are deposit substitutes under existing laws, and the novelty thereof, constitute exceptional and compelling circumstances to justify resort to [the Court] in the first instance.

2. There is a need to determine whether the PEACe Bonds were sold to more than 20 individuals at any given time. Although the assailed BIR rulings are hereby annulled, the Government is not precluded from collecting 20% FWT on the sale of PEACe Bonds as provided under the law.

Under Secs. 24(B)(1), 27(D)(1), and 28(A)(7) of the 1997 [NIRC], a [FWT] at the rate of 20% is imposed on interest on any currency bank deposit and yield or any other monetary benefit from deposit substitutes and from trust funds and similar arrangements.

This tax treatment of interest from bank deposits and yield from deposit substitutes was first introduced in the 1977 [NIRC] through [PD] No. 1739 issued in 1980. Later, [PD] No. 1959, effective... formally added the definition of deposit substitutes, viz:

"(y) 'Deposit substitutes' shall mean an alternative form of obtaining funds from the public, other than deposits, through the issuance, endorsement, or acceptance of debt instruments for the borrower's own account, for the purpose of relending or purcha-sing of receivables and other obligations, or financing their own needs or the needs of their agent or dealer. These promissory notes, repurchase agreements, certificates of assignment or participation and similar instrument with recourse as may be authori-zed by the [BSP], for banks and non-bank financial intermediaries or by the [SEC] of the Philippines for commercial, industrial, finance companies and either non-financial companies: Provided, however, that only debt instruments issued for inter-bank call loans to cover deficiency in reserves against deposit liabilities including those between or among banks and quasi-banks shall not be considered as deposit substitute debt instruments."
Revenue Regulations No. 17-84, issued to implement [PD] No. 1959, adopted verbatim the same definition and specifically identified the following borrowings as "deposit substitutes":

"Sec. 2. Definitions of Terms. . . .
"(h) 'Deposit substitutes' shall mean...
(a) All interbank borrowings by or among banks and non-bank financial institutions authorized to engage in quasi-banking functions evidenced by deposit substitutes instruments, except interbank call loans to cover deficiency in reserves against deposit liabilities as evidenced by interbank loan advice or repayment transfer tickets.
"(b) All borrowings of the national and local government and its instrumentalities including the Central Bank of the Philippines, evidenced by debt instruments denoted as treasury bonds, bills, notes, certificates of indebtedness and similar instruments.
"(c) All borrowings of banks, non-bank financial intermediaries, finance companies, investment companies, trust companies, including the trust department of banks and investment houses, evidenced by deposit substitutes instruments."
The definition of deposit substitutes was amended under the 1997 [NIRC] with the addition of the qualifying phrase for public borrowing from 20 or more individual or corporate lenders at any one time. Under Sec. 22(Y), deposit substitute is defined thus:

"Sec. 22. Definitions - When used in this Title: xxxx xxxx
"(Y) The term 'deposit substitutes' shall mean an alternative form of obtaining funds from the public (the term 'public' means borrowing from twenty (20) or more individual or corporate lenders at any one time) other than deposits, through the issuance, endorsement, or acceptance of debt instruments for the borrower's own account, for the purpose of relending or purchasing of receivables and other obligations, or financing their own needs or the needs of their agent or dealer. These instruments may include, but need not be limited to, bankers' acceptances, promissory notes, repurchase agreements, including reverse repurchase agreements entered into by and between the [BSP] and any authorized agent bank, certificates of assignment or participation and similar instruments with recourse: Provided, however, That debt instruments issued for interbank call loans with maturity of not more than five (5) days to cover deficiency in reserves against deposit liabilities, including those between or among banks and quasi-banks, shall not be considered as deposit substitute debt instruments."
Under the 1997 [NIRC], Congress specifically defined "public" to mean "twenty (20) or more individual or corporate lenders at any one time." Hence, the number of lenders is determi-native of whether a debt instrument should be considered a deposit substitute and conse-quently subject to the 20% [FWT].

Petitioners contend that "there [is] only one (1) lender (i.e. RCBC) to whom the BTr issued the Government Bonds." On the other hand, respondents theorize that the word "any" "indicates that the period contemplated is the entire term of the bond and not merely the point of origination or issuance[,]" such that if the debt instruments "were subsequently sold in secondary markets and so on, in such a way that twenty (20) or more buyers eventually own the instruments, then it becomes indubitable that funds would be obtained from the 'public' as defined in Sec. 22(Y) of the NIRC." Indeed, in the context of the financial market, the words "at any one time" create an ambiguity.

To accurately respond to this question, there is a need to tackle the basic precepts con- cerning financial markets.

The financial markets that facilitate the transfer of debt securities are commonly classified by the maturity of the securities[,]" namely: (1) the money market, which facilitates the flow of short- term funds (with maturities of one year or less); and (2) the capital market, which facilitates the flow of long-term funds (with maturities of more than one year).
Whether referring to money market securities or capital market securities, transactions occur either in the primary market or in the secondary market. "Primary markets facilitate the issuance of new securities. Secondary markets facilitate the trading of existing securities, which allows for a change in the ownership of the securities." The transactions in primary markets exist between issuers and investors, while secondary market transactions exist among investors.

"Over time, the system of financial markets has evolved from simple to more complex ways of carrying out financial transactions." Still, all systems perform one basic function: the quick mobilization of money from the lenders/investors to the borrowers.

Fund transfers are accomplished in three ways: (1) direct finance; (2) semidirect finance; and (3) indirect finance.

With direct financing, the "borrower and lender meet each other and exchange funds in return for financial assets" (e.g., purchasing bonds directly from the company issuing them). This method provides certain limitations such as: (a) "both borrower and lender must desire to exchange the same amount of funds at the same time"[;] and (b) "both lender and borrower must frequently incur substantial information costs simply to find each other."

xxx In semidirect financing, "[t]he ultimate lender still winds up holding the borrower's securities, and therefore the lender must be willing to accept the risk, liquidity, and maturity characteristics of the borrower's [debt security]. There still must be a fundamental coincidence of wants and needs between [lenders and borrowers] for semidirect financial transactions to take place."

"The limitations of both direct and semidirect finance stimulated the development of indirect financial transactions, carried out with the help of financial intermediaries" or financial institutions, like banks, investment banks, finance companies, insurance companies, and mutual funds. Financial intermediaries accept funds from surplus units and channel the funds to deficit units. "Depository institutions [such as banks] accept deposits from surplus units and provide credit to deficit units through loans and purchase of [debt] securities." Nondepository institutions, like mutual funds, issue securities of their own (usually in smaller and affordable denomina-tions) to surplus units and at the same time purchase debt securities of deficit units. "By pooling the resources of [small savers, a financial intermediary] can service the credit needs of large firms simultaneously."

The financial market, therefore, is an agglomeration of financial transactions in securities performed by market participants that works to transfer the funds from the surplus units (or investors/lenders) to those who need them (deficit units or borrowers).

Thus, from the point of view of the financial market, the phrase "at any one time" for purposes of determining the "20 or more lenders" would mean every transaction executed in the primary or secondary market in connection with the purchase or sale of securities.

For example, where the financial assets involved are government securities like bonds, the reckoning of "20 or more lenders/investors" is made at any transaction in connection with the purchase or sale of the Government Bonds, such as:

1. Issuance by the Bureau of Treasury of the bonds to [Government Securities Eli-gible Dealers or GSEDs] in the primary market;
2. Sale and distribution by GSEDs to various lenders/investors in the secondary market;
3. Subsequent sale or trading by a bondholder to another lender/investor in the secondary market usually through a broker or dealer; or
4. Sale by a financial intermediary-bondholder of its participation interests in the bonds to individual or corporate lenders in the secondary market. When, through any of the foregoing transactions, funds are simultaneously obtained from 20 or more lenders/investors, there is deemed to be a public borrowing and the bonds at that point in time are deemed deposit substitutes. Consequently, the seller is required to withhold the 20% [FWT] on the imputed interest income from the bonds.

For debt instruments that are not deposit substitutes, regular income tax applies.

It must be emphasized, however, that debt instruments that do not qualify as deposit substitutes under the 1997 [NIRC] are subject to the regular income tax.

The phrase "all income derived from whatever source" in Chap. VI, Computation of Gross Income, Sec. 32(A) of the 1997 [NIRC] discloses a legislative policy to include all income not expressly exempted as within the class of taxable income under our laws.

Hence, when there are 20 or more lenders/investors in a transaction for a specific bond issue, the seller is required to withhold the 20% final income tax on the imputed interest income from the bonds.

With respect to interest income and gains from sale or redemption, the following matters are relevant.

The interest income earned from bonds is not synonymous with the "gains" contemplated under Sec. 32(B)(7)(g)203 of the 1997 [NIRC], which exempts gains derived from trading, redemption, or retirement of long-term securities from ordinary income tax.

The term "gain" as used in Sec. 32(B)(7)(g) does not include interest, which represents forbearance for the use of money. Gains from sale or exchange or retirement of bonds or other certificate of indebtedness fall within the general category of "gains derived from dealings in property" under Sec. 32(A)(3), while interest from bonds or other certificate of indebtedness falls within the category of "interests" under Sec. 32(A)(4). The use of the term "gains from sale" in Sec. 32(B)(7)(g) shows the intent of Congress not to include interest as referred under Secs. 24, 25, 27, and 28 in the exemption.

Hence, the "gains" contemplated in Sec. 32(B)(7)(g) refers to: (1) gain realized from the trading of the bonds before their maturity date, which is the difference between the selling price of the bonds in the secondary market and the price at which the bonds were purchased by the seller; and (2) gain realized by the last holder of the bonds when the bonds are redeemed at maturity, which is the difference between the proceeds from the retirement of the bonds and the price at which such last holder acquired the bonds. For discounted instruments, like the zero-coupon bonds, the trading gain shall be the excess of the selling price over the book value or accreted value (original issue price plus accumulated discount from the time of purchase up to the time of sale) of the instruments.

Taking this into account, "[t]he [BIR's] interpretation as expressed in the three 2001 BIR Rulings is not consistent with law. Its interpretation of 'at any one time' to mean at the point of origination alone is unduly restrictive." BIR Ruling No. 370-2011 is likewise erroneous insofar as it stated... that "all treasury bonds . . . regardless of the number of purchasers/lenders at the time of origination/issuance are considered deposit substitutes." Being the subject of this petition, it is, thus, declared void because it completely disregarded the 20 or more lender rule added by Congress in the 1997 [NIRC]. It also created a distinction for government debt instruments as against those issued by private corporations when there was none in the law.

The transactions executed for the sale of the PEACe Bonds are:

1. The issuance of the 35 billion Bonds by the [BTr] to [RCBC Capital] at 10.2 billion; and
2. The sale and distribution by RCBC Capital... of the PEACe Bonds to undisclosed investors at 11.996 billion...

Should there have been a simultaneous sale to 20 or more lenders/investors, the PEACe Bonds are deemed deposit substitutes within the meaning of Sec. 22(Y) of the 1997 [NIRC] and [RCBC Capital] would have been obliged to pay the 20% [FWT] on the interest or discount from the PEACe Bonds. Further, the obligation to withhold the 20% final tax on the corresponding interest from the PEACe Bonds would likewise be required of any lender/investor had the latter turned around and sold said PEACe Bonds, whether in whole or part, simultaneously to 20 or more lenders or investors.

[The Court notes], however, that under Section 242 of the 1997 [NIRC], interest income received by individuals from longterm deposits or investments with a holding period of not less than five (5) years is exempt from the final tax.
Thus, should the PEACe Bonds be found to be within the coverage of deposit substitutes, the proper procedure was for the [BTr] to pay the face value of the PEACe Bonds to the bondholders and for the [BIR] to collect the unpaid [FWT] directly from [RCBC Capital], or any lender or investor if such be the case, as the withholding agents.

3. NO, the Government's right to collect the tax in this case subsists provided it deter-mines that there was fraud on the part of RCBC Capital.

[NIRC] to assess and collect internal revenue taxes is extended to 10 years in cases of (1) fraudulent returns; (2) false returns with intent to evade tax; and (3) failure to file a return, to be computed from the time of discovery of the falsity, fraud, or omission. Secs. 203 and 222 state:

"Sec. 203. Period of Limitation Upon Assessment and Collection. -Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: Provided, That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day.

"Sec. 222. Exceptions as to Period of Limitation of Assessment and Collection of Taxes.

a) In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission: Provided, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof."

Thus, should it be found that [RCBC Capital] sold the PEACe Bonds to 20 or more lenders/investors, the [BIR] may still collect the unpaid tax from [RCBC Capital] within 10 years after the discovery of the omission.

RIZAL COMMERCIAL BANKING CORPORATION, Petitioner, vs. COMMISSIONER OF INTERNAL REVENUE, Respondent.
G.R. No. 170257 September 7, 2011 THIRD DIVISION MENDOZA, *J.:*

In the operation of the withholding tax system, the withholding agent is the payor, a separate entity acting no more than an agent of the government for the collection of the tax in order to ensure its payments; the payer is the taxpayer – he is the person subject to tax imposed by law; and the payee is the taxing authority. In other words, the withholding agent is merely a tax collector, not a taxpayer. Under the withholding system, however, the agent-payor becomes a payee by fiction of law. His (agent) liability is direct and independent from the taxpayer, because the income tax is still imposed on and due from the latter. The agent is not liable for the tax as no wealth flowed into him – he earned no income. The Tax Code only makes the agent personally liable for the tax arising from the breach of its legal duty to withhold as distinguished from its duty to pay tax since:

"the government's cause of action against the withholding agent is not for the collection of income tax, but for the enforcement of the withholding provision of Section 53 of the Tax Code, compliance with which is imposed on the withholding agent and not upon the taxpayer."

FACTS
On January 23, 1997, RCBC executed 2 waivers of Defense of Prescription. Under the statute of limitation of the NIRC covering the Internal Revenue Taxes due for 1994 and 1995 extending the assessment up to Dec. 31, 2000.

January 27, 2000: RCBC received a formal letter of demand together with assessment notices for deficiency taxes. RCBC filed a Protest and then, a Petition for Review before the CTA pursuant to Sec. 228 of the 1997 Tax Code.

Dec. 6, 2000: It again received a letter of demand which drastically reduced the deficiency tax except from the onshore tax and document stamp tax (DST).

RCBC argued the validity of the waivers for not being signed and for the onshore tax, it should not be primarily liable since it is only a withholding agent.

CTA terminated the assessment for other deficiencies except for the FCDU shore tax and DST charging 20% deficiency tax. Being denied in CTA en banc, it raised the matter to the Supreme Court. While the case is pending, the DST deficiency was paid after the BIR approved its application for abatement.

ISSUES
Whether or Not the RCBC as payee bank can be held liable for deficiency on shore tax which is mandatory by law to be collected at source in the form of a final withholding tax.

RULING
Petition is denied. As held in Chamber of Real Estate and Builder's Association Inc. v. Executive Sec., the purpose of the withholding tax system are:

1. to provide the taxpayer with a convenient way of paying his tax liability
2. to ensure the collection of tax
3. to improve the governments cashflow.

Under the withholding tax system, the payor is the taxpayer upon whom the tax is imposed, while the withholding agent simply acts as an agent or a collector of the government to ensure the collection of taxes

The liability of the withholding agent is independent from that of the taxpayer.

The former cannot be made liable for the tax due because it is the latter who earned the income subject to withholding tax.
Based on the foregoing, the liability of the withholding agent is independent from that of the taxpayer. The former cannot be made liable for the tax due because it is the latter who earned the income subject to withholding tax. The withholding agent is liable only insofar as he failed to perform his duty to withhold the tax and remit the same to the government. The liability for the tax, however, remains with the taxpayer because the gain was realized and received by him.

While the payor-borrower can be held accountable for its negligence in performing its duty to withhold the amount of tax due on the transaction, RCBC, as the taxpayer and the one which earned income on the transaction, remains liable for the payment of tax as the taxpayer shares the responsibility of making certain that the tax is properly withheld by the withholding agent, so as to avoid any penalty that may arise from the non-payment of the withholding tax due.

RCBC cannot evade its liability for FCDU Onshore Tax by shifting the blame on the payor-borrower as the withholding agent.

The CTA, as a specialized court dedicated exclusively to the study and resolution of tax problems, has developed an expertise on the subject of taxation and shall be accorded the highest respect and shall be presumed valid, in the absence of any clear and convincing proof to the contrary

CITIBANK, N.A., *Petitioner*, v. COURT OF APPEALS and COMMISSIONER OF INTERNAL REVENUE, *Respondents*.
G.R. No. 107434. October 10, 1997THIRD DIVISION PANGANIBAN, *J.*

Clearly the prescriptive period of two years should commence to run only from the time that the refund is ascertained, which can only be determined after a final adjustment return is accomplished. Private respondent being a corporation, Section 292 (now Section 230) cannot serve as the sole basis for determining the two-year prescriptive period for refunds . . . ."

FACTS
Citibank N.A. Philippine Branch (CITIBANK) is a foreign corporation doing business in the Philippines. In 1979 and 1980, its tenants withheld and paid to the Bureau of Internal Revenue the taxes on rents due to Citibank, pursuant to Section 1(c) of the Expanded Withholding Tax Regulations. On April 15, 1980, Citibank field its corporate income tax returns for the year and ended December 31, 1979 showing a net loss of P74,854,916.00 and its tax credits totaled P6,257,780.00, even without including the amounts withheld on rental income under the Expanded Withholding Tax System, the same not having been utilized or applied for the reason that the year's operation resulted in a loss. The taxes thus withheld by the tenants from rentals paid to Citibank in 1979 were not included as tax credits although a rental income amounting to P7,796,811.00 was included in its income declared for the year ended December 31, 1979.

For the year ended December 31, 1980, Citibank's corporate income tax returns, filed on April 15, 1981, showed a net loss P77,071,790.00 for income tax purposes. Its available tax credit at the end of 1980 amounting to P11,532,855.00 was not utilized or applied. The said available tax credits did not include the amounts withheld by Citibank's tenants from rental payment sin 1980 but the rental payments for that year were declared as part of its gross income included in its annual income tax returns. On October 31, 1981, Citibank submitted its claim for refund of the aforesaid amounts of P270,160.56 and P298,829.29, respectively or a total of P568,989.85; and on October 12, 1981 filed a petition for review with the Court of Tax Appeals concerning subject claim for tax refund. On August 30, 1981, the CTA adjudged Citibank's entitlement to the tax refund sought for, representing the 5% tax withheld and paid on Citibank's rental income for 1979 and 1980. The Court of Tax Appeals, rejected Respondent CIR's argument that the claim was not seasonably filed. Not satisfied the Commissioner appealed to the Court of Appeals, CA ruled that Citibank N.A. Philippine branch, entitled to a tax refund/credit in the amount of P569,989.85, representing the 5% withheld tax in Citibank's rental income for the years 1979 and 1980 is REVERSED. Motion for Reconsideration of the petitioner bank was denied. Hence, this petition.

ISSUE
Whether or not income taxes remitted partially on a periodic or quarterly basis should be credited or refunded to the taxpayer on the basis of the taxpayer's final adjusted returns? (YES)

RULING
Tax refunds are allowed under Section 230 of the National Internal Revenue Code. In any case, no such suit or proceeding shall be begun after the expiration of two years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: Provided, however, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid." In several cases, we have already ruled that income taxes remitted partially on a periodic or quarterly basis should be credited or refunded to the taxpayer on the basis of the taxpayer's final adjusted returns, not on such periodic or quarterly basis. For instance, in the recent case of Commissioner of Internal Revenue v. Philippine American Life Insurance Co., 12 the Court held:

". . . When applied to taxpayers filing income tax returns on a quarterly basis, the date of payment mentioned in Section 292 (now Section 230) must be deemed to be qualified by Sections 68 and 69 of the present Tax Code . . . .

It may be observed that although quarterly taxes due are required to be paid within 60 days from the close of each quarter, the fact that the amount shall be deducted from the tax due for the succeeding quarter shows that until a final adjustment return shall have been filed, the taxes paid in the preceding quarters are merely partial taxes due from a corporation. Neither amount can serve as the final figure to quantify what is due the government nor what should be refunded to the corporation.

This interpretation may be gleaned from the last paragraph of Section 69 of the Tax Code which provides that the refundable amount, in case a refund is due a corporation, is that amount which is shown on its final adjustment return and not on its quarterly returns.

x x x

Clearly the prescriptive period of two years should commence to run only from the time that the refund is ascertained, which can only be determined after a final adjustment return is accomplished. Private respondent being a corporation, Section 292 (now Section 230) cannot serve as the sole basis for determining the two-year prescriptive period for refunds . . . ."In the present case, there is no question that the taxes were withheld in accordance with Section 1(c), Rev. Reg. No. 13-78. In that sense, it can be said that they were withheld legally by the tenants. However, the annual income tax returns of petitioner-bank for tax years 1979 and 1980 undisputedly reflected the net losses it suffered. The question arises: whether the taxes withheld remained legal and correct at the end of each taxable year. We hold in the negative.

The withholding tax system was devised for two main reasons: first, to provide the taxpayer a convenient manner to meet his probable income tax liability; and second, to ensure the collection of the income tax which could otherwise be lost or substantially reduced through failure to file the corresponding returns. 13 To these, a third reason may be added: to improve the government's cash flow. Under Section 53 a-f of the tax code which was in effect at the time this case ripened, withholding of tax at source was mandated in cases of: (a) tax free covenant bonds, (b) payments of interest, dividends, rents, royalties, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual, periodical, or casual gains, profits and income, and capital gains of non-resident aliens and foreign corporations; (c) dividends from a domestic corporation and royalties received by resident individuals and corporation; (d) certain dividends; (e) interest on bank deposit; and (f) other items of income payable to resident individuals or corporations. Section 53-f was amended by Presidential Decree No. 1351, delegating to the Secretary of Finance the power to require the withholding of a tax.

Pursuant to said P.D. No. 1351 and in accordance with Section 4 in relation to Section 326 14 of the National Internal Revenue Code, the Commissioner promulgated on September 7, 1978, Revenue Regulations No. 13-78 to implement the withholding of creditable income taxes from certain types of income. Rev. Reg. No. 13-78 requires that a certain percentage of income be deducted and withheld by a payor, who is constituted as the withholding agent, and paid to the revenue district officer or BIR collection agent. Under this system, income is viewed as a flow 15 and is measured over a period of time known as an "accounting period." An accounting period covers twelve months, subdivided into four equal segments known as "quarters." Income realized within the taxpayer's annual accounting period (fiscal or calendar year) becomes the basis for the computation of the gross income and the tax liability.

The same basic principles apply under the prevailing tax laws. Under the present tax code, the types of income subject to withholding tax in Section 53, now Section 50, is simplified into three categories: (a) withholding of final tax on certain incomes; (b) withholding of creditable tax at source; and (c) tax free covenant bonds.

Accordingly, the withheld amounts equivalent to five percent of the gross rental are remitted to the BIR and are considered creditable withholding taxes under Section 53-f, i.e., creditable against income tax liability for that year. The taxes withheld, as ruled in Gibbs v. Commissioner of Internal Revenue, 17 are in the nature of payment by a taxpayer in order to extinguish his possible tax obligation. They are installments on the annual tax which may be due at the end of the taxable year.

In this case, petitioner's lessees withheld and remitted to the BIR the amounts now claimed as tax refunds. That they were withheld and remitted pursuant to Rev. Reg. No. 13-78 does not derogate from the fact that they were merely partial payments of probable taxes. Like the corporate quarterly income tax, creditable withholding taxes are subject to adjustment upon determination of the correct income tax liability after the filing of the corporate income tax return, as at the end of the taxable year. This final determination of the corporate income tax liability is provided in Section 69, NIRC.

The taxes thus withheld and remitted are provisional in nature. We repeat: five per cent of the rental income withheld and remitted to the BIR pursuant to Rev. Reg. No. 13-78 is, unlike the withholding of final taxes on passive incomes, a creditable withholding tax; that is, creditable against income tax liability if any, for that taxable year.

In Commissioner of Internal Revenue v. TMX Sales, Inc., this Court ruled that the payments of quarterly income taxes (Sec. 68, NIRC) should be considered mere installments on the annual tax due. These quarterly tax payments, which are computed based on the cumulative figures of gross receipts and deductions in order to arrive at a net taxable income, should be treated as advances or portions of the annual income tax due, to be adjusted at the end of the calendar or fiscal year. The same holds true in the case of the withholding of creditable tax at source. Withholding taxes are "deposits" which are subject to adjustments at the proper time when the complete tax liability is determined.

In this case, the payments of the withholding taxes for 1979 and 1980 were creditable to the income tax liability, if any, of petitioner-bank, determined after the filing of the corporate income tax returns on April 15, 1980 and April 15, 1981. As petitioner posted net losses in its 1979 and 1980 returns, it was not liable for any income taxes. Consequently and clearly, the taxes withheld during the course of the taxable year, while collected legally under the aforesaid revenue regulation, became untenable and took on the nature of erroneously collected taxes at the end of the taxable year.

In general, there is no disagreement that a claimant has the burden of proof to establish the factual basis of his or her claim for tax credit or refund. Tax refunds, like tax exemptions, are construed strictly against the taxpayer.

A refund claimant is required to prove the inclusion of the income payments which were the basis of the withholding taxes and the fact of withholding. However, detailed proof of the truthfulness of each and every item in the income tax return is not required. That function is lodged in the commissioner of internal revenue by the NIRC which requires the commissioner to assess internal revenue taxes within three years after the last day prescribed by law for the filing of the return. In San Carlos Milling Co., Inc. v. Commissioner of Internal Revenue, the Court held that the internal revenue branch of government must investigate and confirm the claims for tax refund or credit before taxpayers may avail themselves of this option. The grant of a refund is founded on the assumption that the tax return is valid; that is, the facts stated therein are true and correct. In fact, even without petitioner's tax claim, the commissioner can proceed to examine the books, records of the petitioner-bank, or any data which may be relevant or material in accordance with Section 16 of the present NIRC.

In the case in hand, Respondent Commissioner examined petitioner's income tax returns and presumably found no false declaration in them, because he did not allege any such false declaration before Respondent Court and CTA. In the CTA, Respondent Commissioner's refusal to refund was based on the argument that the claim filed on October 31, 1981 was time-barred. It bears stressing that this issue was not raised in the appeal before us. The issue of operational losses was not raised until the appeal before Respondent Court was filed on February 5, 1992. By such time, at least a decade had already passed since the pertinent books and accounting records of petitioner-bank were closed. Section 235 of the Tax Code requires the preservation of the books of account and records only "for a period beginning from the last entry in each book until the last day prescribed by Section 203." Section 203 provides that internal revenue taxes shall be assessed within three years after the last day prescribed by law for the filing of the return, and no proceeding in Court without an assessment for the collection of such taxes shall begin after the expiration of such period. To expect petitioner to have its books and records on hand during the appeal was obviously unreasonable and violative of Section 235 in relation to Section 203 of the Tax Code.

In addition, the Tax Code has placed several safety measures to prevent falsification of income tax returns which the Court recognized in Commissioner v. TMX Sales, Inc.: "Furthermore, Section 321 (now Section 232) of the National Internal Revenue Code requires that the books of accounts of companies or persons with gross quarterly sales or earnings exceeding Twenty Five Thousand Pesos (P25,000.00) be audited and examined yearly by an independent Certified Public Accountant and their income tax returns be accompanied by certified balance sheets, profit and loss statements, schedules listing income producing properties and the corresponding incomes therefrom and other related statements.

It is generally recognized that before an accountant can make a certification on the financial statements or render an auditor's opinion, an audit of the books of accounts has to be conducted in accordance with generally accepted auditing standards.

Since the audit, as required by Section 321 (now Section 232) of the Tax Code is to be conducted yearly, then it is the Final Adjustment Return, where the figures of the gross receipts and deductions have been audited and adjusted, that is truly reflective of the results of the operations of a business enterprise. Thus, it is only when the Adjustment Return covering the whole year is filed that the taxpayer would know whether a tax is still due or a refund can be claimed based on the adjusted and audited figures."

Therefore, the alleged irregularity in the declared operational losses is a matter which must be proven by competent evidence. In resisting the claims of petitioner, Respondent Commissioner set up the defense of the legality of the collection of the creditable withholding tax as well as prescription, instead of presenting an assessment of the proper tax liability of the petitioner. This fact leads us to the conclusion that the income tax returns were accepted as accurate and regular by the BIR. After this case was filed, the Commissioner clarified on June 27, 1994, the onus probandi of a taxpayer claiming refund of overpaid withholding taxes.

If the taxpayer, in lieu of the aforesaid automatic application of his excess credit, wants a cash refund or a tax credit certificate for use in payment of his other national internal tax liabilities, he shall make a written request therefor. Upon filing of his request, the taxpayer's income tax return showing the excess expanded withholding tax credits shall be examined. The excess expanded withholding tax, if any, shall be determined and refunded/credited to the taxpayer-applicant. The refund/credit shall be made within a period of sixty (60) days from date of the taxpayer's request provided, however, that the taxpayer-applicant submitted for audit all his pertinent accounting records and that the aforesaid records established the veracity of his claim for a refund/credit of his excess expanded withholding tax credits."

Prior to Rev. Reg. 12-94, the requisites for a refund were: (1) the income tax return for the previous year must show that income payment (rental in this case) was reported as part of the gross income; and (2) the withholding tax statement of the withholding tax agent must show that payment of the creditable withholding tax was made. However, even without this regulation, the commissioner may inspect the books of the taxpayer and reassess a taxpayer for deficiency tax payments under Section 7, NIRC. We stress that what was required under Rev. Reg. 12-94 was only a submission of records but the verification of the tax return remained the function of the commissioner.

Worth emphasizing are these uncontested facts: (1) the amounts withheld were actually remitted to the BIR and (2) the final adjusted returns — which the BIR did not question — showed that, for 1979 and 1980, no income taxes from petitioner were due. Hence, under the principle of solutio indebiti provided in Art. 2154, Civil Code, 26 the BIR received something when "there [was] no right to demand it," and thus "the obligation to return arises." 27 Heavily militating against Respondent Commissioner is the ancient principle that no one, not even the state, shall enrich oneself at the expense of another. Indeed, simple justice requires the speedy refund of the wrongly held taxes.