

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

NESTLE PHILIPPINES,
INC.,

Petitioner,

CTA EB NO. 2896
(CTA Case No. 10276)

Present:

- versus -

RINGPIS-LIBAN, P.J.,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES,
ANGELES,
TESTON, *and*
CENTENO-DIJAMCO, JJ.

COMMISSIONER OF
INTERNAL REVENUE,

Respondent.

Promulgated:

OCT 01 2026

x - - - - - x

RESOLUTION

FERRER-FLORES, J.:

For this Court's resolution is respondent's **Motion for Reconsideration (Re: Decision dated 30 January 2026)** filed on February 18, 2026, with petitioner's **Opposition [Re: Motion for Reconsideration (Re: Decision dated 30 January 2026) dated 17 February 2026]** filed on March 9, 2026.

In the instant *Motion for Reconsideration*, respondent prays for the Court *En Banc* to set aside its Decision dated January 30, 2026 (**assailed Decision**),¹ granting the *Petition for Review* filed on April 11, 2024, the dispositive portion of which reads:

¹ Rollo, pp. 968 to 997.

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WHEREFORE, premises considered, the **Petition for Review** filed on April 11, 2024 is **GRANTED**. Accordingly, the Decision dated October 6, 2023 and the Resolution dated March 4, 2024 in CTA Case No. 10276 entitled *Nestle Philippines, Inc. vs. Commissioner of Internal Revenue*, are **REVERSED** and **SET ASIDE**.

Respondent Commissioner of Internal Revenue is **ORDERED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner Nestle Philippines, Inc. in the total amount of **₱1,266,599,459.91**, representing the erroneously paid excise taxes on sweetened beverages covering the removals of MILO products from May 1, 2018 to December 31, 2018.

SO ORDERED.

In his *Motion for Reconsideration*, respondent claims that the Court may have erred in its pronouncement in the assailed Decision. Respondent again insists that a plain reading of the Codex Alimentarius Food Category Descriptors (Codex Stan 192-1995) shows that MILO products cannot be considered under “flavoured fluid milk drink” as the subject products involved are chocolate drink in powder form, not in liquid form. According to respondent, petitioner cannot seek refuge to consider their product as “Milk powder and cream powder” to claim exemption from sweetened beverages tax (SBT) as Codex 207-1999 provides only plain milk powders, cream powders, or combination of the two and not flavored ones.

Respondent also opposes that, petitioner’s allegation to qualify as milk, the essentiality of milk is the standard and not the dominance in quantity. Respondent points out that petitioner defined a composite milk product as “[a] product which the milk, milk products or milk constituents are an essential part in terms of quantity in the final product, as consumed provided that the constituents not derived from milk are not intended to take the place in part or in whole of any milk constituent”. A plain reading thereof purportedly shows that milk should be the dominant product in terms of quantity of the final product.

Respondent likewise maintains that, if petitioner’s MILO products would be given SBT exemption, the purpose of the law would be defeated.

Lastly, respondent repeats that the Court cannot go beyond the enrolled bill and look into the committee hearings to find basis for classifying MILO products as an example of a milk product. 

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On the other hand, petitioner counters that the present *Motion*, having been sent by respondent to petitioner's previous counsel-of-record, is deemed not served and filed. Petitioner further contends that the *Motion* is a mere scrap of paper as it is a *pro forma* motion, having rehashed arguments already considered and rejected by the Court *En Banc*.

Nevertheless, even assuming *arguendo* that the CIR's above errors are not fatal to the *Motion*, petitioner points out that the arguments raised therein remain baseless and misleading. According to petitioner, the Court correctly ruled that the subject MILO products are not subject to SBT imposed under Section 150-B of the National Internal Revenue Code (NIRC) of 1997, as amended, as it is a milk product within the contemplation of the Codex Stan 192-1995 and Revenue Regulations (RR) No. 20-18, the implementing regulations on SBT.

Petitioner emphasizes that MILO's powder form does not exclude it from the definition of a "Milk Product" under Codex Stan 192-1995. As aptly found by the Court *En Banc*, the term "all mixes" mentioned in the definition of *flavoured fluid milk* under Food Category 01.1.4 must be construed to include milk in powder form. Petitioner continues that the Food Category Descriptor for subcategory 01.1 "Fluid Milk and Milk Products" provides for two definite inclusions: "fluid milks" and "milk products". Petitioner cites the definition of "milk product" under Codex Stan 206-1999 that is "obtained by any processing of milk, which may contain food additives and other ingredients functionally necessary for the processing" and concluded that MILO products are milk products in powder form because of processing of milk through drying, as testified by its witnesses.

Petitioner also avers that the clear wording of the law—that all milk products, including flavoured milk, are excluded from the scope of the SBT—necessarily includes flavoured fluid milk drinks. To argue that flavoured fluid milk drinks are not exempt due to its non-inclusion in RR No. 20-18 is clearly contrary to the established doctrine on subordinate legislation. According to petitioner, respondent may only implement the provisions of the NIRC of 1997, as amended, and it cannot modify the same by limiting the bounds of its application.

Finally, petitioner posits that milk is the dominant product in the subject MILO products and not sugar.

Upon evaluation of the respective arguments raised by the parties, this Court finds respondent's *Motion for Reconsideration* devoid of merit.



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As for respondent's contentions that MILO products cannot be considered under "flavoured fluid milk drink" for being in powder form and not in liquid form and that it is the dominance, and not essentiality, of milk in terms of quantity in the subject MILO products which should be the standard, these have been thoroughly addressed and passed upon by the Court in the assailed Decision. Respondent offers no new argument, evidence, or authority that would warrant a departure from the Court's earlier findings.

To reiterate, *Food Category 01.1.4* of the Codex Stan 192-1995, entitled "Flavoured fluid milk", was described to include "all mixes and ready-to-drink fermented or not fermented milk-based drinks with flavourings xxx" and the term "mixes," when read in the context of the Codex Food Category System as a whole, necessarily encompasses products in powder form. As such, MILO products fall under the flavoured fluid milk category and, thus, classified as a milk product under the Codex Stan 192-1995.

Neither can the Court subscribe to respondent's insistence that milk must be the dominant ingredient by quantity before a product may be considered a milk product. As held in the assailed Decision, the ingredients of the MILO products and their respective weights in relation to the total weight of all ingredients demonstrate that milk is the main ingredient of the subject products.

Significantly, the foregoing conclusion is reinforced by the FDA's own regulatory determination. The FDA approved the use of the term "milk" in the product names of MILO products. Under the prevailing rule on labelling of food products (i.e., DOH Administrative Order No. 2014-0030), the product name should represent the true nature of the product and should not be false, misleading or deceptive or be likely to create erroneous impression regarding its character. Hence, the FDA's approval of the use of the term "milk" constitutes a recognition that MILO products possess the characteristics of a milk drink and may properly be represented to consumers as such. Absent any showing that such determination was erroneous, arbitrary, or contrary to law, it deserves considerable weight. Such regulatory determination, uncontroverted, bolster the conclusion that MILO products are milk products for purposes of the exemption from the SBT.

In his bid to reverse the assailed Decision, respondent again argues that exempting MILO products from SBT would defeat the very purpose of the law, which is to deter consumers from purchasing beverages with high sugar content.

The Court is not persuaded, as the NIRC of 1997, as amended, itself expressly excludes all milk products (including flavored milk) from the

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coverage of SBT, without any qualification as to sugar content. Stated differently, the presence of sugar does not remove a product from the category of milk products. This is evident from Section 150-B(C) of the NIRC of 1997, as amended, which provides:

(C) *Exclusions.* — The following products, as described in the food category system from Codex Alimentarius Food Category Descriptors (Codex Stan 192-1995, Rev. 2017 or the latest) as adopted by the FDA, are excluded from the scope of this Act:

- (1) **All milk products, including plain milk, infant formula milk, follow-on milk, growing up milk, powdered milk, ready-to-drink milk and flavored milk, fermented milk, soymilk, and flavored soymilk;**
- (2) One Hundred Percent (100%) Natural Fruit Juices — Original liquid resulting from the pressing of fruit, the liquid resulting from the reconstitution of natural fruit juice concentrate, or the liquid resulting from the restoration of water to dehydrated natural fruit juice **that do not have added sugar or caloric sweetener;**
- (3) One Hundred Percent (100%) Natural Vegetable Juices — Original liquid resulting from the pressing of vegetables, the liquid resulting from the reconstitution of natural vegetable juice concentrate, or the liquid resulting from the restoration of water to dehydrated natural vegetable juice **that do not have added sugar or caloric sweetener;**
- (4) Meal Replacement and Medically Indicated Beverages — Any liquid or powder drink/product for oral nutritional therapy for persons who cannot absorb or metabolize dietary nutrients from food or beverages, or as a source of necessary nutrition used due to a medical condition and an oral electrolyte solution for infants and children formulated to prevent dehydration due to illness; and
- (5) Ground coffee, instant soluble coffee, and pre-packaged powdered coffee products. (*Emphasis and underscoring supplied*)

Such unqualified exclusion of milk products is likewise adopted by the BIR in the implementing regulations of SBT, specifically in Section 6 of RR No. 20-18, to wit:

SECTION 6. *Exclusions.* — The following products, as described in the food category system from Codex Alimentarius Food Category Descriptors (Codex Stan 192-1995, Rev 2017 or the latest) as adopted by the FDA, are not subject to the excise tax imposed under Section 150-B of the NIRC, as amended, to wit:

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- a. **All milk products**, including plain milk, infant formula milk, follow-on milk, growing up milk, powdered milk, ready-to-drink milk, **flavored milk**, and fermented milk.

Milk product refers to products obtained by any processing of milk, which may contain food additives, and other ingredients functionally necessary for the processing (Codex General Standard for the Use of Dairy Terms (Codex Stan 206-1999).

In accordance with the Codex Alimentarius, the following Codex Standards for various milk products are adopted:

1. Milk powders and cream powder (Codex Stan 207-1999)
2. Fermented milks (Codex Stan 243-2003)
3. Blend of evaporated skimmed milk and vegetable fat (Codex Stan 250-2006)
4. Blend of skimmed milk and vegetable fat in powdered form (Codex Stan 251-2006)
5. Blend of sweetened condensed skimmed milk and vegetable fat (Codex Stan 252-2006)
6. Evaporated milks (Codex Stan 281-1971)
7. Sweetened condensed milks (Codex Stan 282-1971)

Dairy products are not synonymous with milk products. Only milk products are covered by the exemption.

- b. Soymilk and flavored soymilk shall refer to products, the main ingredients of which are the soybean and/or soy derivative(s) (e.g., soybean flour, soybean concentrates, soybean isolates or defatted soya) and water which are produced without fermentation process. (Codex Stan. CXS 322R-2015)
- c. One Hundred Percent (100%) Natural Fruit Juices — Original liquid resulting from the pressing of fruit, the liquid resulting from the reconstitution of natural fruit juice concentrate, or the liquid resulting from the restoration of water to dehydrated natural fruit juice that do not have added sugar or caloric sweetener. **If there is sugar or sweetener added at any amount, the product shall be considered excisable depending on the kind of sweetener added and its corresponding rate specified under the Act;**
- d. One Hundred Percent (100%) Natural Vegetable Juices — Original liquid resulting from the pressing of vegetables, the liquid resulting from the reconstitution of natural vegetable juice concentrate, or the liquid resulting from the restoration of water to dehydrated natural vegetable juice that do not have added sugar or

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caloric sweetener. **If there is sugar or sweetener added at any amount, the product shall be considered excisable depending on the kind of sweetener added and its corresponding rate specified under the Act;**

- e. Meal Replacement and Medically Indicated Beverages — Any liquid or powder drink/product for oral nutritional therapy for persons who cannot absorb or metabolize dietary nutrients from food or beverages, or as a source of necessary nutrition used due to a medical condition and an oral electrolyte solution for infants and children formulated to prevent dehydration due to illness; and
- f. Ground coffee, instant soluble coffee, and pre-packaged powdered coffee products. (*Emphasis and underscoring supplied*)

Based on all the foregoing, all milk products are excluded from the coverage of the SBT without any qualification as to the presence or absence of sugar or sweeteners. In contrast, the legislature expressly required that 100% natural fruit juices and 100% natural vegetable juices must be free from added sugar or caloric sweeteners before they may qualify for exemption. Had the legislature intended to impose a similar limitation on milk products, it could have easily done so. Its failure to do so is significant and must be deemed intentional.

It is a settled rule of statutory construction that the express mention of one person, thing, act, or consequence excludes all others. This rule is expressed in the familiar maxim *expressio unius est exclusio alterius*. Where a statute, by its terms, is expressly limited to certain matters, it may not, by interpretation or construction, be extended to others. The rule proceeds from the premise that the legislature would not have made specified enumerations in a statute had the intention been not to restrict its meaning and to confine its terms to those expressly mentioned.² Hence, what is not included/required in the express terms of a law cannot be impliedly included/required.

In fine, the law itself recognizes that a milk product does not cease to be a milk product merely because it contains added sugar. To rule otherwise would be to qualify an exemption that the legislature deliberately framed in unqualified terms.

All told, for as long as a product is classified as a milk product pursuant to the food category system from Codex Alimentarius Food Category

² *Development Bank of the Philippines vs. Commission on Audit*, G.R. No. 221706, March 13, 2018, citing *Commissioner of Customs vs. Court of Tax Appeals*, G.R. Nos. L-48886-88, July 21, 1993.

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Descriptors as adopted by the FDA, it remains excluded from the coverage of the SBT.

As a final note, in *Department of Energy vs. Commissioner of Internal Revenue*,³ the Supreme Court, citing *Shangri-la International Hotel Management, Ltd. vs. Developers Group of Companies, Inc.*,⁴ held that, while a motion for reconsideration, by its nature, may tend to dwell on issues already resolved in the decision or resolution sought to be reconsidered, a circumstance which should not be an obstacle for a reconsideration, petitioners must still raise matters substantially plausible or compellingly persuasive to warrant a reversal of the Court's previous ruling.

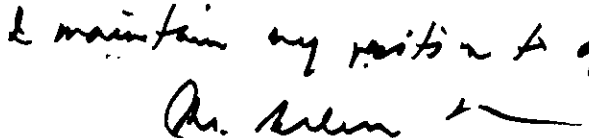
In view of the foregoing disquisitions, there being no new matter or substantial issue raised by respondent in his *Motion for Reconsideration*, the Court finds no compelling reason to reverse or modify the conclusions reached in the assailed Decision.

ACCORDINGLY, respondent's **Motion for Reconsideration (Re: Decision dated 30 January 2026)** is **DENIED** for lack of merit.

SO ORDERED.


CORAZON G. FERRER-FLORES
Associate Justice

WE CONCUR:


I maintain my position to affirm the Division Decision

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice


JEAN MARIE A. BACORRO-VILLENA
Associate Justice

³ G.R. No. 260912 (Resolution), August 30, 2023.

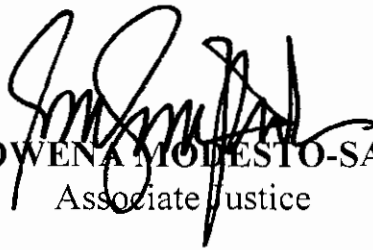
⁴ G.R. No. 159938 (Resolution), January 22, 2007.

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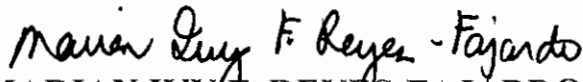
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MARIA ROWENA MODESTO-SAN PEDRO

Associate Justice



MARIAN IVY F. REYES-FAJARDO

Associate Justice



LANEE S. CUI-DAVID

Associate Justice



HENRY S. ANGELES

Associate Justice



PAOLO S. TESTON

Associate Justice



DEBBIE JEAN I. CENTENO-DIJAMCO

Associate Justice