

**REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY**

SPECIAL FIRST DIVISION

DUTY FREE PHILIPPINES,
Petitioner,

C.T.A. CASE NO. 7282

- versus -

**BUREAU OF INTERNAL REVENUE,
AS REPRESENTED BY HON
ANSELMO G. ADRIANO, ACTING
REGIONAL DIRECTOR, REVENUE
REGION NO. 8, MAKATI CITY,**
Respondent.

Members:

**ACOSTA, Chairperson
BAUTISTA, and
CASANOVA, JJ.**

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**DEPARTMENT OF TOURISM, AS
REPRESENTED BY SECRETARY
JOSEPH H. DURANO,**
Petitioner-In-Intervention.

Promulgated:

JUN 04 2010 ; 4:00 pm

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DECISION

BAUTISTA, J.:

The Petition for Review and Petition-In-Intervention pray for the cancellation of the Formal Assessment Notices all dated April 28, 2005 for deficiency income tax and value-added tax (VAT) for taxable years 1999 to 2002, as well as the setting aside of the Decision dated June 6, 2005 and of the letter dated June 22, 2005, issued by respondent Bureau of Internal Revenue (BIR), as represented by Hon. Anselmo G. Adriano, Acting Regional Director of Revenue Region No. 8.

8/11

The facts as stipulated by the parties and as borne by the records are as follows:

Duty Free Philippines (Petitioner) is a merchandising system established by the Ministry of Tourism (now Department of Tourism) through the Philippine Tourism Authority (PTA), pursuant to Executive Order (E.O.) No. 46 dated September 4, 1986, to augment the service facilities for tourists and to generate foreign exchange and revenue for the government. Its office address is at Fiesta Mall Shopping Center, Ninoy Aquino Avenue, Paranaque City.

Respondent Bureau of Internal Revenue (BIR) is the government office vested by law to decide disputed assessments and to enforce the provisions of the National Internal Revenue Code and other tax laws. Its office address is at BIR National Office Building, BIR Road, Diliman, Quezon City.

In a letter dated June 7, 1995, petitioner requested respondent to render an opinion as to whether it is exempt from withholding tax on certain income payments made by credit card companies to it.

Respondent issued BIR Ruling No. 136-95 on September 6, 1995, denying petitioner's request for exemption from withholding tax on certain payments made by credit card companies on the ground that E.O. No. 93 dated December 17, 1986 withdrew all the tax and duty incentives granted to government and private entities, including petitioner. It also denied petitioner's request for refund of taxes withheld therefrom on the same ground.

On April 10, 2001, petitioner wrote to respondent to seek the reconsideration of BIR Ruling No. 136-95.

A handwritten mark, possibly a signature or initials, consisting of a diagonal line with a small loop and an arrow-like shape at the end.

On December 6, 2001, petitioner reiterated its request for reconsideration of BIR Ruling No. 136-95 and its request for exemption from VAT.

On November 5, 2002, respondent issued BIR Ruling No. 38-2002, denying petitioner's request for reconsideration of BIR Ruling No. 136-95 for the following reasons: (1) PTA, to which petitioner is attached, is a "government instrumentality" which under Section 27(C) of the Tax Code is subject to income tax; (2) PTA is not covered by Section 32(B)(7)(b) of the Tax Code since the term "Government of the Philippines" as used in Section 32(B)(7)(b) does not include "government instrumentality" such as PTA; and (3) petitioner's VAT exemption is limited only to VAT arising from importation/purchases of merchandise made by it and subsequently sold by it through authorized shops. Thus, sales of services to it are subject to VAT pursuant to Section 108 of the Tax Code.

On December 23, 2002, petitioner requested a review of BIR Ruling No. 038-2002 with the Department of Finance (DOF).

In its Resolution dated April 11, 2003, the DOF, through Secretary Jose Isidro N. Camacho, affirmed BIR Ruling No. 30-2002 and held that petitioner is subject to both income tax and VAT for its sale of services.

On April 24, 2003, petitioner, through Tourism Secretary Richard Gordon requested reconsideration of the DOF Resolution. On July 17, 2003, it filed a supplement to its request for reconsideration. However, DOF Undersecretary Gracia M. Pulido-Tan, in a one-page letter dated September 22, 2003, denied its request for reconsideration.



On November 6, 2003, petitioner, represented by the Office of the Government Corporate Counsel (OGCC), filed a second motion for reconsideration of the DOF Resolution. On August 6, 2004, the OGCC filed a supplement to this motion.

On January 20, 2005, in another one-page letter, DOF Undersecretary Pulido-Tan again denied the same.

Respondent initiated assessment proceedings against petitioner for its alleged deficiency income tax and VAT for taxable years 1999 to 2002, by sending Letters of Authority and holding informal conferences.

On February 8, 2005, petitioner received from respondent a Preliminary Assessment Notice for deficiency income tax for taxable year 2001 in the amount of P235,229,174.77.

On February 15, 2005, petitioner again received from respondent three different Preliminary Assessment Notices for deficiency income tax and VAT in the amounts of P179,575,296.21, P177,330,537.28, and P647,569,679.63, for taxable years 1999, 2000, and 2002, respectively.

On February 23, 2005, petitioner filed a protest letter with respondent, contesting the Preliminary Assessment Notice for taxable year 2001.

On February 24, 2005, petitioner received an Amended Preliminary Assessment Notice modifying the deficiency income tax and VAT for the year 2001 in the total amount of P417,935,441.50.

On March 2, 2005, petitioner filed three protest letters all dated March 1, 2005, contesting the Preliminary Assessment Notices for taxable years 1999, 2000, and 2002. On March 14, 2005, petitioner also filed a protest letter dated


874

March 11, 2005, contesting the Amended Preliminary Assessment Notice for the year 2001. All protests were denied by respondent in a letter dated April 4, 2005, which was received by petitioner on April 18, 2005.

On April 29, 2005, petitioner received Assessment Notices issued by respondent on April 28, 2005 for taxable years 1999 to 2002, in the aggregate amount of P1,452,785,087.64.

On May 26, 2005, petitioner filed four protest letters asking reconsideration of the above-stated Assessment Notices.

On June 7, 2005, petitioner received from respondent the Decision contained in a letter dated June 6, 2005, denying the four protest letters and declaring the assessment for the years in dispute in the total amount of P1,487,445,292.76, inclusive of statutory increments, has become final, executory, and demandable.

On June 23, 2005, petitioner received a letter dated June 22, 2005 from respondent, reducing the aggregate amount of deficiency income and VAT from P1,487,445,292.77 to P1,452,785,087.64 due to typographical error made on deficiency VAT for the year 2001 from P183,225,481.33 to P148,565,276.21.

On July 4, 2005, petitioner filed the present Petition for Review (With Prayer for Urgent Suspension of Tax Collection).

In the Answer¹ filed on September 23, 2005, respondent interposed the following Special and Affirmative Defenses:

"14. The assessments in question were made and issued in accordance with law, rules and regulations.

¹ Docket, pp. 217-221

15. Executive Order (E.O.) No. 93 dated March 10, 1987 withdrew all tax and duty incentives granted to government and public entities and the Philippine Tourism Authority (PTA) was not included in the exemptions enumerated under the said executive order.

16. Section 27 (C) of Republic Act (RA) No. 8424, otherwise known as the Tax Reform Act of 1997 which took effect on January 1, 1998, requires government-owned and controlled corporations, agencies, or instrumentalities to pay such rate of tax on their taxable income except the GSIS, SSS, PHIC, PCSO and PAGCOR. Thus, PTA, which is not included, is deemed excluded. Therefore, Petitioner as a merchandising division of PTA is deemed subject to income tax. Besides, the PTA Charter under Presidential Decree (PD) No. 189, as amended by PD No. 564, has no provision expressly stating that it is exempt from payment of all kinds of taxes. The tax exemption provided in Section 11 of PD 189 refers to income accruing from the instruments of indebtedness which PTA is authorized to issue.

17. In BIR Ruling No. 038-02, it was also held that Section 32(B)(7)(b) of the Tax Code of 1997 is not applicable to petitioner. If Congress intended to extend the exception to the agencies and instrumentalities of the Government, such as the PTA, then it should have restated the wording of the law by using the word "*instrumentalities*," as expressly provided in Section 27(C), instead of the phrase "*Government of the Philippines or to any political subdivision thereof*" being used in Section 32(B)(7)(b).

18. The Fiscal Incentives Review Board (FIRB) Resolution No. 10-87 restoring the tax and duty exemptions granted under EO 46 are limited only to taxes and duties arising out of merchandise imported/purchased by petitioner and subsequently sold by it through authorized tax and duty free shops. However, Petitioner's sale of services and income other than the sale of its merchandise is subject to VAT.

19. Petitioner failed to file INCOME and VAT Returns for the period 1999 to 2002, thus, the period to make assessment is ten (10) years from the discovery of the omission pursuant to Section 222(a) of the 1997 Tax Code.

20. It is well-settled principle in taxation that exemption from taxes is strictly construed against the claimant. Anyone who claims exemption must prove beyond doubt that he is legally entitled to it.



21. All presumptions are in favor of the correctness of the tax assessment **(Interprovincial Autobus vs. Collector of Internal Revenue, 98 Phil. 290).**"

On June 7, 2006, the Department of Tourism (DOT), represented by Secretary Joseph H. Durano, filed a Motion for Intervention with attached Petition-In-Intervention².

Trial ensued and petitioner presented testimonial and documentary evidence in support of its petition. On the other hand, respondent's counsel manifested that since the issues are purely legal, he is submitting the case for decision.

Thereafter, the case was submitted for decision on June 8, 2009, taking into consideration the Intervenor's Memorandum filed on April 29, 2009, and petitioner's Memorandum filed on June 1, 2009, *sans* respondent's Memorandum.

The parties agreed on the following issues³ to be resolved by the Court:

- "I. Whether or not the Honorable Court has jurisdiction over the instant petition?
- II. Whether or not the assessments in question have already become final, executory and demandable?
- III. Whether or not the issue as to the taxability of the petitioner to income tax, and value-added tax on its income/gross receipts from sale of goods and services other than sale of merchandise is already final and executory by virtue of the decision of the Secretary/Undersecretary of Finance affirming the decision of the BIR holding that the petitioner is subject to income tax and value-added tax?
- IV. Whether or not the Petitioner is a taxable entity, as it does not possess a juridical personality of its own, being a mere merchandising system established by the Department of Tourism through the Philippine Tourism Authority?

² Docket, pp. 341-435

³ Docket, pp. 281-282

- V. Granting that the Petitioner has juridical personality, whether or not its tax-exempt status derived from Executive Order No. 46 and Presidential Decree No. 564, as amended by Presidential Decree No. 1400, has not been revoked by Presidential Decree No. 1177, Presidential Decree No. 1931 and Executive Order No. 93?
- VI. Granting likewise that the Petitioner has juridical personality, whether or not it is exempt from Income Tax pursuant to Section 32(B)(7)(b) of the National Internal Revenue Code?
- VII. Granting further that petitioner has juridical personality, whether or not the sales of services to it are not subject to Value-Added Tax?
- VIII. Granting also that the Petitioner has juridical personality, whether or not the sale of goods and services to it are exempt from Value-Added Tax considering the nature of its business?
- IX. Granting moreover that the Petitioner has juridical personality, whether or not it must be tax-exempt based on equitable grounds?
- X. Granting finally that the Petitioner has juridical personality and is not tax exempt, whether or not the period to assess it from tax deficiency for the taxable years 1999 and 2000 has already prescribed?"

Petitioner's Arguments

Petitioner claims that it is not a taxable entity as it does not possess a separate juridical personality. Under the National Internal Revenue Code (NIRC) of 1997, only a person who must be either an individual, a trust, an estate, or a corporation may be the subject of taxation.⁴ A reading of E.O. No. 46, the enabling law of petitioner, shows that it is but a merchandising system established by the DOT through the PTA. It asserts that it is not a corporation

⁴ Section 22(a) of the NIRC of 1997, as amended

as it was neither created by an original charter through a special law nor was it formed or organized under the Corporation Code of the Philippines. It likewise does not have its own by-laws, capital stock or corporate term. It is simply a system through which the PTA exercises its exclusive authority to operate duty and tax-free stores and shops. As petitioner is not an individual, a trust, an estate, or a corporation, it posits then that it must not be subject to any form of taxes.

Petitioner argues as well that even granting that it has juridical personality, the PTA, to which petitioner is attached, remains to be a tax-exempt entity. Presidential Decree (P.D.) No. 1177, otherwise known as the "Budget Reform Decree of 1977", issued on July 30, 1977, withdrew the tax and duty exemption privilege of all government units, including government-owned and controlled corporations; however, P.D. No. 1400 was issued on June 5, 1978 to exempt PTA from all forms of taxes and duties, whether national or local. Notwithstanding that P.D. No. 1931 issued on June 11, 1984, was issued after P.D. No. 1400, the former cannot be considered to have repealed the latter since P.D. No. 1931 is a mere continuation of P.D. No. 1177, as clearly stated in its "Whereas" clauses. Similarly, E.O. No. 93 issued on December 17, 1986, as observed from the "Whereas" clauses, the policy being enunciated by it is substantially the same as that of P.D. No. 1931. Thus, petitioner claims that its tax-exempt status, which it derived from E.O. No. 46 and P.D. No. 564, as amended by P.D. No. 1400, had not been revoked by P.D. No. 1177, P.D. No. 1931, and E.O. No. 93.



Petitioner also contends that even granting that it is a taxable entity, it is exempt from income tax pursuant to the Tax Code. Section 32(B)(7)(b) of the NIRC provides for two requisites for the tax exemption to apply, to wit: (1) the income is derived from any public utility or from the exercise of any essential government function; and (2) the income accrues to the Government of the Philippines or to any political subdivision thereof. Petitioner claims that it performs an essential government function in operating tax and duty-free merchandising system to implement DOT's programs and policies on tourism promotion and development in the country, and it remits its income to the DOT, and therefore, the National Government. It then points out that it clearly complies with the two essential requirements of the afore-mentioned provision.

Petitioner likewise asseverates that even granting that it has a separate juridical personality, it is exempt from paying VAT considering the nature of its business. It asserts that its merchandising operation caters to a limited market of international travelers, *balikbayans*, and non-residents of the Philippines, who enjoy tax and duty-exempt purchase privilege pursuant to special laws. It further argues that since its stores are located within the premises of international airports and seaports, which are considered outside of the customs territory, the sale of goods is not subject to VAT as it is consummated outside the jurisdiction of the taxing authority. Moreover, since the sales of goods in its stores are made in acceptable foreign currency and accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas*, these sales must therefore be considered as zero-rated under Section 106(A)(2)(b) of the NIRC of 1997.



Petitioner maintains that it must be tax-exempt based on equitable grounds. It is the only tax and duty-free merchandising system owned and controlled by the government, and as it competes with other international duty-free shops, as well as with retailers, petitioner has to maintain a competitive pricing scheme. The imposition of VAT and other form of taxes will consequently result in higher prices of goods sold in its outlets.

Finally, petitioner points out that it availed of the Tax Amnesty Program to settle all its tax liabilities for the year 2005 and prior taxable years.

Intervenor's Arguments

Intervenor bolsters the claim that petitioner is not subject to income or VAT because it does not have a separate juridical personality. It cites various Tourism Administrative Orders referring to petitioner as a merchandising system of the PTA aimed at augmenting the service facilities for tourists and generating foreign exchange and revenues for the government.

It also maintains that petitioner is exempt from income tax as it is exercising governmental functions. The PTA and the petitioner, which is the implementing arm of the former, both exercise essential governmental functions. Since petitioner's income accrues directly to the intervenor; and E.O. No. 680 provides that the remittances made by petitioner to the intervenor are used exclusively to finance vital government project in the tourism sector and to augment service facilities for tourists; and that the remittance to the intervenor is tantamount to a remittance to the national government, the income of petitioner must be excluded from taxation.



The intervenor further contends that petitioner is exempt from VAT as PTA, the operator of petitioner, is a government corporation that is exempt from all taxes and duties. P.D. No. 564, as amended by P.D. No. 1400, provides that the exemption of PTA from tax is absolute and admits no exception. In other words, respondent's reliance on P.D. No. 93 is misplaced. The tax exclusion from gross income conferred upon petitioner is specifically recognized in P.D. No. 93 and stated in Section 32(B)(7)(b) of the Tax Code.

Jurisdiction of the Court

Respondent issued Assessment Notices dated April 28, 2005, with its corresponding Formal Assessment Notices (FAN) and Details of Discrepancies for taxable years 1999 to 2002 in the aggregate amount of P1,452,785,087.60,⁵ detailed as follows:

PERIOD COVERED	ASSESSMENT NOTICE NO.		AMOUNT
1999	IT-32921-99-05-0167	P	88,632,237.73
	VT-32921-99-05-0167		94,746,227.49
2000	IT-16284-00-05-0174		92,799,291.35
	VT-16284-00-05-0174		88,479,253.84
2001	IT-16286-01-05-0168		274,448,779.23
	VT-16286-01-05-0168		148,565,276.21
2002	IT-16287-02-05-0173		477,818,831.51
	VT-16287-02-05-0173		187,295,190.24
TOTAL		P	1,452,785,087.60

Section 228 of the NIRC of 1997, as amended, provides as follows:

"SEC. 228. *Protesting of Assessment.* – When the Commissioner 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:

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⁵ Annexes "A" to "D," with submarkings, Petition for Review, docket, pp. 42-71

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 the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable."

In the case at bar, the Assessment Notices dated April 28, 2005 were received by petitioner on April 29, 2005. Counting thirty days from receipt thereof, petitioner had until May 29, 2005 within which to dispute the said assessments. Petitioner filed four protest letters all dated May 20, 2005, which respondent received on May 26, 2005.

On June 6, 2005, Acting Regional Director, Anselmo G. Adriano, issued a letter which petitioner received on June 7, 2005, denying the protest letters and stating that the assessment for the years in dispute in the total amount of P1,487,445,292.76, inclusive of statutory increments, has become final, executory, and demandable; to quote:



"This has reference to your four (4) protest letters all dated May 20, 2005, which was received by the Assessment Division, this Region on May 26, 2005, relative to your deficiency Income and Value Added Taxes under Letter of Demand and Assessment Notices, in the aggregate amount of P1,487,445,292.76, inclusive of statutory increments, all dated April 28, 2005 for the taxable years 1999-2002 as follows:

<u>Year</u>	<u>Assessment No.</u>		<u>Income Tax</u>		<u>VAT</u>		<u>Total</u>
1999	32921-99-05-0167	P	88,632,237.73	P	94,746,227.49	P	183,378,465.22
2000	16284-00-05-0174		92,799,291.35		88,479,253.84		181,278,545.19
2001	16286-01-05-0168		274,448,779.23		183,225,481.33		457,674,260.56
2002	16287-02-05-0173		477,818,831.55		187,295,190.24		665,114,021.79
Total			P 933,699,139.86	P	553,746,152.90	P	1,487,445,292.76

Please be informed that after evaluation of your letters, issues raised therein were the same issues being raised in your March 1, 2005 protest letters against our Preliminary Assessment Notices which, we replied per letter dated April 4, 2005. In the said letter, it was stated that the issues being raised are mere reiteration or rehash of the position you advanced in your letter request for ruling dated June 7, 1995 and another letter request for reconsideration dated April 10, 2001 which were already thoroughly resolved in BIR Ruling No. 136-95 dated September 6, 1995 and in more detailed BIR Ruling No. 038-02 dated November 5, 2002.

In view of the foregoing, since your protest letters have been denied and you have failed to settle/pay the aforementioned deficiency Income and Value Added Tax liabilities on the date stated in the Assessment Notice, the assessment has become final, executory and demandable.

Please be informed further that the entire docket for the taxable years 1999-2002 will be forwarded to Collection Division, this Region for monitoring purposes, thereafter, it will be forwarded to RDO No. 52 – Paranaque City, for enforcement of collection thru summary remedies provided for by law.⁶

On June 22, 2005, Acting Regional Director Anselmo G. Adriano issued another letter reducing the aggregate amount of deficiency tax from

⁶ Annex "E", Petition for Review, docket, p. 72

P1,487,445,292.77 to P1,452,785,087.64 due to typographical error. The letter states:

"With reference to our letter dated June 6, 2005, this is to amend the stated aggregate amount of deficiency Income and Value Added Taxes of P1,487,445,292.76 to P1,452,785,087.64 due to typographical error made on deficiency VAT for 2001 from P183,225,481.33 to P148,565,276.21 and as requested, to present in detail the composition of the deficiency taxes for the taxable years 1999-2002, to wit:

<u>Taxable Year</u>	<u>1999</u>	<u>2000</u>	<u>2001</u>	<u>2002</u>	<u>Total</u>
Income Tax					
Basic Tax Due	P 35,099,020.04	P 39,915,633.52	P129,139,879.36	P248,232,295.36	P 452,386,828.28
50% Surcharge	17,549,510.02	19,957,816.76	64,569,939.68	124,116,147.68	226,193,414.14
20% Interest	35,983,707.67	32,925,841.07	80,738,960.19	105,470,388.51	255,118,897.44
Total Amount Due	<u>P 88,632,237.73</u>	<u>P 92,799,291.35</u>	<u>P274,448,779.23</u>	<u>P477,818,831.55</u>	<u>P 933,699,139.86</u>
Value Added Tax					
Basic Tax Due	P 36,872,132.46	P 37,351,009.27	P 69,565,523.82	P 95,128,824.77	P 238,917,490.32
50% Surcharge	18,436,066.23	18,675,504.64	34,782,761.91	47,564,412.38	119,458,745.16
20% Interest	39,438,028.80	32,452,739.93	44,216,990.48	44,601,953.09	160,709,712.30
Total Amount Due	<u>P 94,746,227.49</u>	<u>P 88,479,253.84</u>	<u>P148,565,276.21</u>	<u>P187,295,190.24</u>	<u>P 519,085,947.78</u>
Grand Total	<u>P183,378,165.22</u>	<u>P181,278,545.19</u>	<u>P423,014,055.44</u>	<u>P665,114,021.79</u>	<u>P1,452,785,087.64</u>

As previously mentioned, the entire docket for the taxable years 1999-2002 will be forwarded to Collection Division, this Region for monitoring purposes and thereafter, it will be forwarded to RDO No. 52-Paranaque City, for enforcement of collection thru summary remedies provided for by law."⁷

Section 228 clearly mandates that the administrative protest must be made within 30 days from the taxpayer's receipt of the tax deficiency assessment, otherwise the assessment becomes final, unappealable, and demandable. Only upon failure to file within the given period will the finality of the assessment follows.

Considering that petitioner was able to file its protest within the period provided under Section 228, the letter dated June 6, 2005 constitutes the

⁷ Annex "E-1", Petition for Review, docket, p. 73



decision referred to in the same provision which may be subject of an appeal to this Court. However, as respondent issued a subsequent letter dated June 22, 2005, which reduced the amount of deficiency taxes, it is the subsequent letter which petitioner may elevate to this Court through a Petition for Review. Counting thirty days from June 23, 2005, the date when petitioner received the letter dated June 22, 2005, it had until July 23, 2005 within which to appeal to this Court.

Even granting that the reckoning date of the thirty-day period is from June 7, 2005, or the receipt of the first letter dated June 6, 2005, petitioner had until July 7, 2005 within which to file an appeal before this Court. Thus, petitioner was able to timely protest the assessments within the reglementary period as it filed the Petition for Review on July 4, 2005.

It is well-settled that an assessment must first be disputed by the taxpayer and ruled upon by the Commissioner of Internal Revenue to warrant a decision from which a Petition for Review may be taken to this Court. Where an adverse ruling has been rendered by the Commissioner, the taxpayer may appeal the same within thirty (30) days from receipt thereof.

Section 11 of R.A. No. 1125, as amended by R.A. Nos. 9282 and 9503, provides as follows:

"SEC. 11. Who May Appeal; Mode of Appeal; Effect of Appeal. – Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.



Appeal shall be made by filing a petition for review under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure with the CTA within thirty (30) days from the receipt of the decision or ruling or in the case of inaction as herein provided, from the expiration of the period fixed by law to act thereon. xxx"

Further, Section 7(a)(1) of R.A. No. 1125, as amended by R.A. No. 9282 and R.A. No. 9503, states that:

"SEC. 7. *Jurisdiction.* – The CTA shall exercise:

(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;"

It may be argued, however, that controversies arising among government offices and corporations must be settled or adjudicated in accordance with Chapter 14, Book IV of E.O. No. 292⁸, Section 66 of which states:

"Section 66. *How Settled.* - All disputes, claims and controversies, solely between or among the departments, bureaus, offices, agencies and instrumentalities of the National Government, including government-owned or controlled corporations, such as those arising from the interpretation and application of statutes, contracts or agreements, shall be administratively settled or adjudicated in the manner provided in this Chapter. This Chapter shall, however, not apply to disputes involving the Congress, the Supreme Court, the Constitutional Commissions, and local governments."

This Court disagrees.

⁸ Instituting the "Administrative Code of 1997", dated July 25, 1987



It is an established rule of statutory construction that between a general law and a special law, the special law prevails – *Generalia specialibus non derogant*.⁹

In the case of **Philippine National Oil Company vs. Court of Appeals, et al.**¹⁰, the Supreme Court sustained the contention that Chapter 14, Book IV of E.O. No. 292, otherwise known as the "Revised Administrative Code of the Philippines," is a general law that deals with administrative settlement or adjudication of disputes, claims, and controversies between or among government offices, agencies and instrumentalities, including government-owned or controlled corporations. On the other hand, Republic Act No. 1125 is a special law dealing with a specific subject matter, *viz.*, the creation of the Court of Tax Appeals, which exercises exclusive appellate jurisdiction over tax disputes and controversies enumerated therein.

Following the rule in statutory construction involving a general and a special law, the Court therefore has jurisdiction to take cognizance of the instant Petitions.

***Petitioner as a
Taxable Entity***

On May 11, 1973, P.D. No. 189¹¹ created the DOT, with the PTA attached to it. Sections 2 and 9 thereof provide:

"SECTION 2. *Creation of a Department of Tourism.* – There is hereby created a Department of Tourism, hereinafter referred to

⁹ The province of Misamis Oriental vs. Cagayan Electric Power and Light Company, Inc. (CEPALCO), G.R. No. L-45355, January 12, 1990

¹⁰ G.R. No. 109976, April 26, 2005

¹¹ Amending Part IX of the Integrated Reorganization Plan by Renaming the Department of Trade and Tourism as the Department of Tourism, and Creating the Department of Tourism with a Philippine Tourism Authority Attached to it in lieu of Philippine Tourism Commission



as the Department, which shall be the primary policy, planning, programming, coordinating and administrative entity of the executive branch of government in the development of the tourist industry, both domestic and international.

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SECTION 9. *Creation of Philippine Tourism Authority.* – To implement the policies and programs of the Department, there is hereby created a Philippine Tourism Authority, hereinafter referred to as the Authority, which shall be attached to the Department. The functions of the Authority are hereby declared to be governmental.”

From the afore-quoted provisions, the DOT is an entity of the executive branch of the government which shall be responsible for all the activities related to the tourism industry. On the other hand, the PTA has the following purposes and powers pursuant to Section 10 of P.D. No. 189:

“SECTION 10. *Purposes and Specific Powers.* – The purposes and specific powers of the Authority are as follows:

- a. Implement all policies and programs of the Department on project development;
- b. Collect such taxes as may be provided by law;
- c. Operate and/or contract to operate such agencies, functional units, offices and departments of the Authority as it may deem necessary or useful for the furtherance of any purposes of this Decree;
- d. Extend assistance whenever necessary, to private enterprise in undertaking tourist projects;
- e. Undertake the development of tourist attraction including the conduct of feasibility studies and where necessary, recommend agreements for tourist plant and facilities development with private entities;
- f. Provide and maintain essential facilities for tourists and travelers where private enterprise is not prepared to take care of them; and



- g. Adopt, alter and use a corporate seal which shall be judicially noticed; make contracts, lease, own or otherwise dispose of personal and real property; sue and be sued; and otherwise do and perform any and all things that may be necessary or proper to carry out the purposes of the Authority."

Unlike its predecessor, the Philippine Tourism Commission¹², the PTA was created as a corporate body and attached to the DOT as the latter's implementing arm. It is administered by a General Manager,¹³ and its corporate powers are vested and exercised by a Board of Directors.¹⁴

On October 2, 1974, P.D. No. 564¹⁵ revised the charter of the PTA.

Sections 1 and 2 thereof set forth as follows:

"SECTION 1. *Declaration of Policy.* – It is hereby declared to be the policy of the State to promote, encourage, and develop Philippine tourism as an instrument in accelerating the development of the country, of strengthening the country's foreign exchange reserve position, and of protecting Philippine culture, history, traditions and natural beauty, internationally as well as domestically.

SECTION 2. *Creation of Philippine Tourism Authority.* – To carry out the above policy, there is hereby created a corporate body to be known as the Philippine Tourism Authority, hereinafter called the Authority, which shall be attached to the Department of Tourism."

¹² Presidential Decree No. 132, dated February 19, 1973

¹³ SECTION 13. The Authority shall be administered by a General Manager who shall be appointed by the President from among persons of proven executive competence and experience in the field of tourist development.

¹⁴ SECTION 14. Board of Directors. – The corporate powers of the Authority shall be vested in and exercised by a Board of Directors composed of the Secretary of Tourism as Chairman, the General Manager as Vice Chairman and three part-time members who shall be appointed by the President for their expertise.

¹⁵ Revising the Charter of the Philippine Tourism Authority Created under Presidential Decree No. 189, dated May 11, 1973



Based on the said provisions, the PTA, even as a corporate body, is still attached to the DOT and is entitled to the privileges stated in Section 11 thereof, to wit:

"SECTION 11. *Instruments of Indebtedness Exempt from Taxes.* – The bonds and other instruments of indebtedness which the Authority is authorized to issue under this Decree and any income derived therefrom, including those contracted with private international banking and financial institutions, may be exempt from the payment of all taxes of whatever kind and nature, including withholding taxes imposed by the Republic of the Philippines, its agencies, instrumentalities or political subdivisions, upon the recommendation of the Secretary of Finance and subject to the provisions of Republic Act No. 1000."

The afore-quoted provision specifically mentions that only bonds and other instruments of indebtedness and any income derived therefrom "may be exempt from the payment of all taxes of whatever kind and nature."

However, on July 30, 1977, Section 23 of P.D. No. 1177¹⁶ effectively withdrew the tax and duty incentives accorded to all units of the government, including government-owned and controlled corporations, which states:

"SECTION 23. *Tax and Duty Exemptions.* – All units of government, including government-owned or controlled corporations, shall pay income taxes, customs duties and other taxes and fees as are imposed under revenue laws: provided, that organizations otherwise exempted by law from the payment of such taxes/duties may ask for subsidy from the General Fund in the exact amount of taxes/duties due: provided, further, that a procedure shall be established by the Secretary of Finance and the Commissioner of the Budget, whereby such subsidiaries shall automatically be considered as both revenue and expenditure to the General Fund."

In the case of **National Power Corporation vs. Hon. Presiding Judge, RTC Branch XXV, et al.**¹⁷, the Supreme Court enunciated as follows:

¹⁶ Revising the Budget Process in Order to Institutionalize the Budgetary Innovations of the New Society

"Presidential Decree No. 1177, entitled 'REVISING THE BUDGET PROCESS IN ORDER TO INSTITUTIONALIZE THE BUDGETARY INNOVATIONS OF THE NEW SOCIETY' was passed on July 30, 1977. Section 23 thereof provides:

Section 23. Tax and Duty Exemptions. — All units of government, including government-owned or controlled corporations, shall pay income taxes, customs duties and other taxes and fees as are imposed under revenue laws; provided, that organizations otherwise exempted by law from the payment of such taxes/duties may ask for a subsidy from the General Fund in the exact amount of taxes/duties due; provided, further, that a procedure shall be established by the Secretary of Finance and the Commissioner of the Budget, whereby such subsidies shall automatically be considered as both revenue and expenditure of the General Fund. (Emphasis supplied)

Petitioner alleges that what has been withdrawn is its exemption from taxes, duties, and fees which are payable to the national government while its exemption from taxes, duties and fees payable to government branches, agencies and instrumentalities remains unaffected. Considering that real property taxes are payable to the local government, NAPOCOR maintains that it is exempt therefrom.

We find the above argument untenable. It reads into the law a distinction that is not there. **It is contrary to the clear intent of the law to withdraw from all units of government, including government-owned or controlled corporations their exemptions from all kinds of taxes. Had it been otherwise, then the law would have said so. Not having distinguished as to the kinds of tax exemptions withdrawn, the plain meaning is that all tax exemptions are covered. There the law does not distinguish, neither must we.**" *(Emphasis supplied)*

Apparently, P.D. No. 1177 unequivocally withdrew the tax exemption granted to PTA under Section 11 of P.D. No. 564.

¹⁷ G.R. No. 72477, October 16, 1990

On June 5, 1978, P.D. No. 1400¹⁸ granted anew to the PTA the following:

"Section 1. Section 11 of P.D. 564 is hereby amended by adding a new Section to read as follows:

'Section 11-A. *Authority's Exemption from Taxes.*
In furtherance and effective implementation of the policy enumerated in Section 1 of the Decree, the Authority is hereby declared exempt.

(a) From the payment of all taxes, duties, fees, charges, costs and service fees in any court or administrative proceedings in which it may be a party, to the Republic of the Philippines, its provinces, cities, municipalities and other government agencies and instrumentalities;

(b) From all income taxes, franchise taxes, realty taxes and all other kinds of taxes and licenses imposed by the National Government, or its political subdivisions, instrumentalities or agencies; and

(c) From all tariff and customs duties, and advance sales tax on importations of capital equipment required for its operations."

The foregoing enumeration sufficiently grants the PTA tax exemptions for the furtherance and effective implementation of activities and services related to tourism development.

Nevertheless, on June 11, 1984, P.D. No. 1931¹⁹ withdrew all tax exemption privileges granted to government-owned or controlled corporations.

Section 1 thereof reads:

"Section 1. The provisions of special or general law to the contrary notwithstanding, all exemptions from the payment of duties, taxes, fees, imposts and other charges heretofore granted in favor of government-owned or controlled corporations including their subsidiaries, are hereby withdrawn."

¹⁸ Further Amending Presidential Decree 564, as amended, otherwise known as the Revised Charter of the Philippine Tourism Authority, and for other purposes

¹⁹ Directing the Rationalization of Duty and Tax Exemption Privileges Granted to Government-Owned or Controlled Corporations and All Other Units of Government

The reasons for the withdrawal of tax exemption privileges granted to government-owned and controlled corporations and all other units of government were that such privilege resulted in serious tax base erosion and distortions in the tax treatment of similarly situated enterprises, and the need for these entities to share in the requirements of development, fiscal or otherwise, by paying the taxes and other charges due from them.²⁰ Thus, the High Court affirmed the clear intents of P.D. No. 1177 and P.D. 1931.²¹ Consequently, P.D. No. 1931 effectively withdrew the PTA's exemptions under Section 1 of P.D. No. 1400.

On September 4, 1986, by virtue of E.O. No. 46²², the Ministry of Tourism, through the PTA, was authorized to establish and operate a duty and tax-free merchandising system, to wit:

"SECTION 1. The Ministry of Tourism, through the Philippine Tourism Authority (PTA) is hereby authorized to establish a duty and tax free merchandising system in the Philippines to augment the service facilities for tourist and to generate foreign exchange and revenue for the government. Under this system, the Philippine Tourism Authority shall have the exclusive authority to operate stores and shops that would sell, among others, tax and duty free merchandise, goods and articles, in international airports and sea ports throughout the country in accordance with the rules and regulations issued by the Ministry of Tourism. xxx"

From the foregoing, petitioner is a merchandising system under the exclusive authority of the PTA, an attached agency of the DOT.²³ However, the records belie petitioner's claim that it has no separate personality from the PTA.

²⁰ Mactan Cebu International Airport Authority vs. Marcos, *et al.*, G.R. No. 120082, September 11, 1996

²¹ *Supra*, note 21

²² Granting the Ministry of Tourism, Through the Philippine Tourism Authority (PTA), Authority to Establish and Operate a Duty and Tax Free Merchandising System in the Philippines

²³ Section 21, Chapter 6, Title XIII of E.O. No. 292

In the case of **Duty Free Philippines vs. Mojica**²⁴, the Highest Tribunal declared that petitioner was created primarily to augment the service facilities for tourists and to generate foreign exchange and revenue for the government, and all of its net profits from the merchandising operations of the shops accrue to the DOT.

The DOT itself established petitioner as a separate entity from the PTA. Section 1.2 of Tourism Administrative Order No. 89-04²⁵ dated October 28, 1998, provides:

"Section 1.2. For the purpose aforestated, 'DUTY FREE PHILIPPINES' is hereby **established as a sector of Philippine Tourism Authority** to exclusively manage and operate the stores and shops that would sell tax and duty free merchandise, goods and articles, among others." (*Emphasis supplied*)

Likewise, Section 1 of Tourism Administrative Order No. 04-001 dated April 2, 2004,²⁶ clearly states:

"*Section 1.* Duty Free Philippines shall be maintained and operated as a **separate and autonomous sector of the Philippine Tourism Authority (PTA)**." (*Emphasis supplied*)

In the case of **Manila International Airport Authority vs. Court of Appeals, et al.**²⁷, the Supreme Court enunciated as follows:

"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:

²⁴ G.R. No. 166365, September 30, 2005

²⁵ Exhibit "L"

²⁶ Exhibit "M"

²⁷ G.R. No. 155650, July 20, 2006



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.'

Likewise, when the law makes a government instrumentality **operationally autonomous**, the instrumentality remains part of the National Government machinery although not integrated with the department framework. The MIAA Charter expressly states that transforming MIAA into a 'separate and autonomous body' will make its operation more 'financially viable.'

Many government instrumentalities are vested with corporate powers but they do not become stock or non-stock corporations, which is a necessary condition before an agency or instrumentality is deemed a government-owned or controlled corporation. Examples are the Mactan International Airport Authority, the Philippine Ports Authority, the University of the Philippines and *Bangko Sentral ng Pilipinas*. All these government instrumentalities exercise corporate powers but they are not organized as stock or non-stock corporations as required by Section 2(13) of the Introductory Provisions of the Administrative Code. These government instrumentalities are sometimes loosely called government corporate entities. However, they are not government-owned or controlled corporations in the strict sense as understood under the Administrative Code, which is the governing law defining the legal relationship and status of government entities."



Ergo, petitioner is a separate entity from the PTA, and in the absence of any express grant of tax exemption is not a tax-exempt entity.

Even granting that petitioner has no separate personality from the PTA and that the latter's charter mentions exemption from the payment of the subject taxes, P.D. Nos. 1177 and 1931 effectively withdrew the PTA's exemptions under Section 1 of P.D. No. 1400, considering that 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.²⁸ Consequently, albeit the activities it performs are related to the promotion of the tourism industry, it follows that petitioner is likewise subject to such taxes as may be imposed on the PTA.

Even before the issuance of E.O. No. 46, under P.D. No. 1193²⁹, issued on September 6, 1977, petitioner was not intended as a tax-exempt entity, to wit:

"Section 10. The Tourist Duty-Free Shops, Inc. shall in lieu of the payment of all business and income taxes, whether imposed by the national or local governments, pay annually seven per centum (7%) of its annual net sales, to be apportioned as follows: five per centum (5%) thereof to the Nutrition Center of the Philippines and/or other similar projects as may be directed by the President, and the balance to the national government."

Evidently, as early as the issuance of P.D. No. 1193, petitioner was not meant to be a tax-exempt entity, as its franchise provided for a payment of seven per centum (7%) of its annual net sales in lieu of all other taxes.

E.O. No. 93³⁰, which was issued on December 17, 1986, provides:

²⁸ *Supra*, note 24

²⁹ Authorizing the Tourist Duty-Free Shops, Inc. to Establish and Operate Duty and Tax Free Shops and Requiring it to Pay Franchise Tax in Lieu of All Other Taxes

³⁰ Withdrawing All Tax and Duty Incentives, Subject to Certain Exceptions, Expanding the Powers of the Fiscal Incentives Review Board and for Other Purposes



"Sec. 1. The provisions of any general or special law to the contrary notwithstanding, all tax and duty incentives granted to government and private entities are hereby withdrawn, except:

- a) those covered by the non-impairment clause of the Constitution;
- b) those conferred by effective international agreements to which the Government of the Republic of the Philippines is a signatory;
- c) those enjoyed by enterprises registered with:
 - (i) the Board of Investments pursuant to Presidential Decree No. 1789, as amended;
 - (ii) the Export Processing Zone Authority, pursuant to Presidential Decree No. 66, as amended;
 - (iii) the Philippine Veterans Investment Development Corporation Industrial Authority pursuant to Presidential Decree No. 538, as amended;
- d) those enjoyed by the copper mining industry pursuant to the provisions of Letter of Instruction No. 1416;
- e) those conferred under the four basic codes namely:
 - (i) the Tariff and Customs Code, as amended;
 - (ii) the National Internal Revenue Code, as amended;
 - (iii) the Local Tax Code, as amended;
 - (iv) the Real Property Tax Code, as amended;
- f) those approved by the President upon the recommendation of the Fiscal Incentives Review Board."

Clearly, E.O. No. 93 bolstered the withdrawal of tax and duty incentives granted to government and private entities, save for the enumerations thereof. However, under the same law, the Fiscal Incentives Review Board (FIRB) was authorized to perform the following:³¹

1. restore tax and/or duty exemptions withdrawn hereunder in whole or in part;

³¹ Section 2 of E.O. No. 93



2. revise the scope and average of tax and/or duty exemption that may be restored;
3. impose conditions for the restoration of tax and/or duty exemption;
4. prescribe the date or period of effectivity of the restoration of tax and/or duty exemption;
5. formulate and submit to the President for approval, a complete system for the grant of subsidies to deserving beneficiaries, in lieu of or in combination with the restoration of tax and duty exemptions or preferential treatment in taxation, indicating the source therefore, eligible beneficiaries and the terms and conditions for the grant thereof taking into consideration the international commitments of the Philippines and the necessary precautions such that the grant of subsidies does not become the basis for countervailing action.

Pursuant to such authority, FIRB Resolution No. 10-87 dated April 22, 1987, issued the following tax incentives to petitioner:

1. Restoration shall be limited only to taxes and duties arising out of merchandise imported/purchased by Duty Free Philippines and subsequently sold by it through authorized tax and duty-free shops;
2. Operations of tax and-duty free shops shall be restricted only to the two international airports situated in Manila and Cebu;
3. Sales by tax and-duty free shops to incoming passengers shall be restricted in accordance with rules, regulations and procedures promulgated by the Bureau of Customs; and
4. Sales by tax and duty-free shops to diplomatic personnel and those with authorized special privileges shall be made only through their respective embassies, offices, agencies, institutions, associations or organizations.

The foregoing indicates that petitioner's tax exemption was withdrawn, but was subsequently restored on April 22, 1987, following the issuance of FIRB Resolution No. 10-87. Hence, petitioner, as a taxable entity, is entitled only to the above-enumerated tax and duty exemptions.



While petitioner's autonomy has already been recognized in the earlier quoted administrative orders, it was even clarified on May 12, 2009 with the enactment of R.A. No. 9593³². Section 95 thereof grants to petitioner the following tax exemption privileges:

"SECTION 95. *Duty and Tax Exemptions.* – Consistent with the nature of its operations and primary function to operate as a tax- and duty-free merchandising system, and to enable it to compete in the international tax- and duty-free market, DFPC shall be entitled to exemption from the following:

- (a) Duties and taxes, including excise and VAT, relative to the importation of merchandise for sale;
- (b) Local taxes and fees imposed by the LGUs; and
- (c) Corporate income taxation."

Petitioner was reorganized as a separate corporate body which shall be attached to the DOT,³³ and is apparently entitled to the afore-mentioned duty and tax exemptions.

Assessments

The following are the Assessment Notices issued by respondent on April 28, 2005 against petitioner for taxable years 1999 to 2002 in the aggregate amount of P1,452,785,087.64, detailed as follows:³⁴

PERIOD COVERED	ASSESSMENT NOTICE NO.	INCOME TAX		VAT		TOTAL
1999	32921-99-05-0167	P	88,632,237.73	P	94,746,227.49	P 183,378,465.22
2000	16284-00-05-0174		92,799,291.35		88,479,253.84	181,278,545.19
2001	16286-01-05-0168		274,448,779.23		148,565,276.21	423,014,055.44
2002	16287-02-05-0173		477,818,831.55		187,295,190.24	665,114,021.75
Total			P933,699,139.82		P519,085,947.78	P1,452,785,087.64

³² An Act Declaring a National Policy for Tourism as an Engine of Investment, Employment, Growth and National Development, and Strengthening the Department of Tourism and its Attached Agencies to Effectively and Efficiently Implement that Policy, and Appropriating Funds Therefor

³³ Sections 89 and 90 of R.A. No. 9593

³⁴ Annexes "A" to "E-1", inclusive of submarkings, Petition for Review, docket, pp. 42-71

Section 203 of the NIRC states:

"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."

Stated above, the BIR has three years, counted from the date of the actual filing of the return or from the last date prescribed by law for the filing of such return, whichever comes later, to assess a national internal revenue tax or to begin a court proceeding for the collection thereof without an assessment, except in cases falling under Section 222 of the same Code.

In the case of income taxes, Section 77(B) of the NIRC of 1997 provides for the period for filing the income tax return, thus:

"SEC. 77. *Place and Time of Filing and Payment of Quarterly Corporate Income Tax.* –

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xxx

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(B) *Time of Filing the Income Tax Return.* – **The corporate quarterly declaration shall be filed within sixty (60) days following the close of each of the first three (3) quarters of the taxable year. The final adjustment return shall be filed on or before the fifteenth (15th) day of April, or on or before the fifteenth (15th) day of the fourth (4th) month following the close of the fiscal year, as the case may be.** (*Emphasis supplied*)



It is settled in our jurisdiction that the first three (3) quarterly returns are mere installments of the annual tax due, and the final adjustment return reflects the operations of an establishment.³⁵

Accordingly, the three-year period is to be reckoned from the fifteenth (15th) day of April or the fifteenth (15th) day of the fourth (4th) month following the close of the fiscal year, as the case may be, or the date of actual filing of the final adjustment return, whichever is later.

In the case of VAT, Section 114(A) of the NIRC of 1997 provides as follows:

"SEC. 114. Return and Payment of Value-added Tax. –

(A) In General. – Every person liable to pay the value-added tax imposed under this Title shall file a quarterly return of the amount of his gross sales or receipts within twenty-five (25) days following the close of each taxable quarter prescribed for each taxpayer: Provided, however, That VAT-registered persons shall pay the value-added tax on a monthly basis." (Emphasis supplied)

Based on the foregoing provision, the running of the three-year period within which the BIR can make an assessment is reckoned from the filing of the quarterly VAT returns.

Unlike in corporate income tax, which is reported and paid on installment every quarter but is eventually subjected to a final adjustment at the end of the taxable year, VAT is computed and paid on a purely quarterly basis without need for a final adjustment at the end of the taxable year.³⁶ In other words, each return has its own prescriptive period.

³⁵ Commissioner of Internal Revenue vs. TMX Sales, Inc., *et al.*, G.R. No. 83736, January 15, 1992

³⁶ Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue, G.R. Nos. 141104 and 148763, June 8, 2007

However, as stated in the parties' Joint Stipulation of Facts and Issues, petitioner failed to file income tax and VAT returns for the period covering 1999 to 2002.³⁷ In such case, Section 222 of the NIRC of 1997 applies, which is quoted as follows:

"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." (Emphasis supplied)*

Based on the foregoing, respondent's right to assess said deficiency taxes has not prescribed.

The Court will now proceed to discuss petitioner's liability to pay the assessed deficiency taxes.

Deficiency Income Taxes

Based on the FAN for the years 1999 and 2000,³⁸ petitioner is liable for deficiency income taxes as imposed under Section 27(C) of the NIRC of 1997, considering that it is not among the exempt entities enumerated therein. And since its operation for the said years resulted in a net loss, petitioner is liable for the Minimum Corporate Income Tax (MCIT) of two percent (2%) in accordance with Section 27(E) of the same Code, and as implemented by Revenue Regulations (R.R.) No. 9-98. The fifty (50%) percent surcharge has been

³⁷ Docket, p. 280

³⁸ Docket, pp. 43-46 and 52-55



imposed pursuant to Section 248(B) of the NIRC of 1997 for the willful neglect to file returns within the period prescribed, as well as the twenty percent (20%) interest pursuant to Section 249 of the same Code. The foregoing deficiency income taxes are computed as follows:

Period Covered			
1999	Gross Profit per F/S		P1,694,484,082.00
	Add: Other Income	P 54,966,595.00	
	Miscellaneous Income	4,917,208.00	
	Rent Income	583,117.00	P 60,466,920.00
	Total Gross Income		P1,754,951,002.00
	MCIT Rate		2%
	Tax Due		P 35,099,020.04
	Add: 50% Surcharge	P 17,549,510.02	
	20% Interest (4.16.00 – 5.30.05)	35,983,707.67	P 53,533,217.69
	Total Amount Due		P 88,632,237.73
2000	Gross Profit on Sales		P1,906,639,263.00
	Add: Other Income		
	Miscellaneous Income – others	P 78,108,661.00	
	Advertising and Space Rental	7,569,877.00	
	Gain on Sale of Fixed Assets	2,183,164.00	
	Delivery Income	692,688.00	
	Sale of Waste Materials	588,023.00	89,142,413.00
	Taxable Income per Audit		P1,995,781,676.00
	Tax Due (MCIT – 2%)		39,915,633.52
	Add: 50% Surcharge	P 19,957,816.76	
	20% Interest (4.16.01 – 5.30.05)	32,925,841.07	52,883,657.83
	Total Amount Due		P 92,799,291.35

While for the years 2001 and 2002,³⁹ petitioner is liable for unpaid income taxes pursuant to Section 27(C) of the NIRC of 1997, as issued in BIR Ruling No. 136-95 dated September 6, 1995, and BIR Ruling No. 038-02 dated November 11, 2002. Likewise, the 50% surcharge pursuant to Section 248(B), and the 20% interest pursuant to Section 249 are imposed, to wit:

³⁹ Docket, pp. 57-60 and 67-71



Period Covered			
2001	Net Income per FS		P403,562,123.00
	Tax Due thereon at 32%		P129,139,879.36
	Less: Tax Paid		-
	Basic Deficiency Tax		P129,139,879.36
	Add: Surcharge at 50%	P 64,569,939.68	
	Interest at 20% (4.16.02 – 5.30.05)	80,738,960.19	145,308,899.87
	Total Deficiency Tax		P274,448,779.23
2002	Taxable Income per Audit/FS		P775,725,923.00
	Basic Tax Due (32%)		P248,232,295.36
	Add: 50% Surcharge	P124,116,147.68	
	20% Interest (4.15.03 – 5.30.05)	105,470,388.51	229,586,536.19
	Total Amount Due		P477,818,831.55

As earlier discussed, petitioner is exempt from corporate income tax pursuant to Section 95(c) of R.A. No. 9593. However, this exemption was granted only after the issuance of the subject assessments, or only on May 12, 2009.

Sections 27(C) and (E) of the NIRC of 1997 provides:

"SEC. 27. *Rates of Income Tax on Domestic Corporations.* –

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(C) *Government-owned or -Controlled Corporations, Agencies or Instrumentalities.* – The provisions of existing special or general laws to the contrary notwithstanding, all corporations, agencies, or instrumentalities owned or controlled by the Government, except the Government Service Insurance System (GSIS), the Social Security System (SSS), the Philippine Health Insurance Corporation (PHIC), the Philippine Charity Sweepstakes Office (PCSO) and the Philippine Amusement and Gaming Corporation (PAGCOR), shall pay such rate of tax upon their taxable income as are imposed by this Section upon corporations or associations engaged in a similar business, industry, or activity.

xxx

xxx

xxx



(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 income tax is greater than the tax computed under Subsection (A) of this Section for the taxable year."

As a general rule, tax assessments are presumed correct and made in good faith. All presumptions are in favor of the correctness of a tax assessment.⁴⁰ Since it failed to overcome such presumption, and being a taxable entity when the subject assessments were issued, petitioner is liable for deficiency income taxes. Moreover, the imposition of the 50% surcharge under Section 248(B) and of the 20% interest under Section 249 of the NIRC of 1997 are warranted for petitioner's failure to file its returns for the said years and failure to pay within the date prescribed for its payment.

Any claim for exemption can only be justified if petitioner can seek refuge under any of the exceptions provided in Section 27(C), since Section 32(B)(7)(b), as it asserts, clearly refers to the government and its political subdivisions, to wit:

"SEC. 32. *Gross Income.* -

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xxx

(B) *Exclusions from Gross Income.* - The following items shall not be included in gross income and shall be exempt from taxation under this Title:

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(7) *Miscellaneous Items.* -

⁴⁰ Commissioner of Internal Revenue vs. Hantex Trading Co., Inc., G.R. No. 136975, March 31, 2005

XXX

XXX

XXX

(b) *Income Derived by the Government or its Political Subdivisions.* – Income derived from any public utility or from the exercise of any essential governmental function accruing to the Government of the Philippines or to any political subdivisions thereof.”

The provision clearly qualified the income by the government or any of its political subdivisions as derived from any public utility or from the exercise of any of its essential governmental functions.

The particular functions exercised by a party determine whether these are proprietary or sovereign in nature. The nature of the acts performed by the entity remains the most important barometer.⁴¹

Unequivocally, petitioner’s activities do not partake of the sovereign functions of the government. They are purely private and commercial undertakings, albeit imbued with public interest. The public interest involved in its activities, however, does not distract from the true nature of petitioner’s undertakings as a commercial enterprise, which are ministrant or proprietary functions of government aimed at advancing the general interest of society.⁴² Thus, petitioner, in the exercise of its proprietary functions, is liable for the consequent income taxes.

Deficiency Value-added Taxes

Based on the FAN for the years 1999 to 2002,⁴³ respondent issued the deficiency VAT assessments pursuant to Sections 105 and 108 of the NIRC of 1997, the details of which are computed as follows:

⁴¹ GTZ, *et al.* vs. Court of Appeals, *et al.*, G.R. No. 152318, April 16, 2009

⁴² National Power Corporation vs. City of Cabanatuan, G.R. No. 149110, April 9, 2003

⁴³ Docket, pp. 43-46, 52-55, 57-60, and 67-71



Period Covered				
1999	Income from concession		P	345,126,537.00
	Miscellaneous Income			54,966,595.00
	Rental Income			4,917,208.00
	Delivery Income			583,117.00
	Gross Income subject to VAT (inclusive of VAT)		P	405,593,457.00
	Multiply by			10/11
	Taxable Income		P	368,721,324.55
	Tax Due		P	36,872,132.46
	Add: 50% Surcharge	P	18,436,066.23	
	20% Interest (1.26.00 – 5.30.05)		39,438,028.80	57,874,095.03
	Total Amount Due		P	94,746,227.49
2000	Income on Concession		P	321,718,689.00
	Advertising Space Rental			7,569,877.00
	Delivery Income			692,688.00
	Sale of Waste Materials			588,023.00
	Gain on Sale of Fixed Assets			2,183,164.00
	Miscellaneous - others			78,108,661.00
	Total		P	410,861,102.00
	Sales subject to VAT (P410,861,102.00 x 10/11)		P	373,510,092.73
	Output Tax Due (10%)		P	37,351,009.27
	Add: 50% Surcharge	P	18,675,504.64	
	20% Interest (1.26.01 – 5.30.05)		32,452,739.93	51,128,244.57
	Total Amount Due		P	88,479,253.84
2001	Income from concession		P	609,204,200.00
	Miscellaneous Income			142,334,291.00
	Advertising and Space Rental			9,798,372.00
	Gain on Sale of Fixed Assets			3,146,197.00
	Delivery Income			406,769.00
	Sale of Waste Materials			330,933.00
	Gross Receipts subject to VAT (inclusive of VAT)			765,220,762.00
	Multiply by			10/11
	Taxable Income		P	695,655,238.18
	VAT due at 10%		P	69,565,523.82
	Add: Surcharge at 50%	P	34,782,761.91	
	Interest at 20% (1.26.02 – 5.30.05)		44,216,990.48	78,999,752.39
	Total Deficiency Tax		P	148,565,276.21
2002	Income on Concession*		P	813,416,372.52
	Net Sales	Rate	100.00%	P 7,408,054,920.00

	Cost of Sales		70.60%	5,229,959,381.00
	Gross Profit		24.40%	2,178,095,539.00
	Consignment			P
	Sales (P1,953,305,983.00/70.60%)			2,766,722,355.52
	Cost of Sales (per 2002 Audit Report –COA)			1,953,305,983.00
	*Income on Concession (P2,766,722,355.52 x 29.40%)			P 813,416,372.52
	Advertising and Space Rental			11,266,340.00
	Delivery Income			461,658.00
	Sale of Waste Materials			370,941.00
	Gain on Sale of Fixed Assets			10,620.00
	Miscellaneous			220,891,141.00
	Total			P 1,046,417,072.52
	Sale subject to VAT (P1,046,417,072.52 x 10/11)			P 951,288,247.75
	Output Tax Due			P 95,128,824.77
	Add: 50% Surcharge	P	47,564,412.38	
	20% Interest (1.26.03 – 5.30.05)		44,601,953.09	92,166,365.47
	Total Amount Due			P 187,295,190.24

Sections 105 and 108 of the NIRC of 1997 provide:

"SEC. 105. *Persons Liable.* – Any person who, in the course of trade or business, sells, barter, exchanges, leases goods or properties, renders services, and any person who imports goods shall be subject to the value-added tax (VAT) imposed in Sections 106 to 108 of this Code.

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The phrase '*in the course of trade or business*' means the regular conduct or pursuit of a commercial or an economic activity, including transactions incidental thereto, by any person regardless of whether or not the person engaged therein is a non-stock, nonprofit private organization (irrespective of the disposition of its net income and whether or not it sells exclusively to members or their guests), or government entity.

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SEC. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.* –

(A) *Rate and Base of Tax.* – There shall be levied, assessed and collected, a value-added tax equivalent to ten percent (10%)

of gross receipts derived from the sale or exchange of services, including the use or lease of properties.

The phrase '*sale or exchange of services*' means the performance of all kinds of services in the Philippines for others for a fee, remuneration or consideration, xxx"

Sections 248(B) and 249 of the NIRC of 1997 were applied, considering that petitioner admittedly failed to file the required returns for the said periods of assessments.

As likewise discussed earlier, pursuant to R.A. No. 9593, petitioner is exempt from duties and taxes, including excise tax and VAT, relative to the importation of merchandise for sale.⁴⁴ However, the said exemption was granted only on May 12, 2009, with the enactment of the afore-mentioned law.

The Court also considers FIRB Resolution No. 10-87 dated April 22, 1987, which restored the tax incentive only to taxes and duties arising out of merchandise imported/purchased by petitioner and subsequently sold by it through authorized tax and duty-free shops. The same was affirmed in VAT Ruling No. 361-88 issued on August 5, 1988, which states:

- "1. On the basis of the FIRB Resolution, importations made by DFP are exempt from the value-added tax pursuant to Section 103(u) of the Tax Code as amended by EO 273.
2. Pursuant to Section 100(a)(2) of the Tax Code as amended by EO 273, local purchases made by DFP from VAT-registered suppliers shall be effectively zero-rated upon approval of the application for zero rate to be filed by the supplier with the BIR. This is based on the fact that the tax exemption privilege of DFP under E.O. No. 46 is also extended to its suppliers as implied in one of the conditions set by the FIRB Resolution."

⁴⁴ Section 95, R.A. No. 9593

Inasmuch as the subject VAT assessments were issued before the express grant of exemption under R.A. No. 9593, as confirmed by FIRB Resolution No. 10-87 and BIR VAT Rulings No. 361-88, the only tax exemption privilege of petitioner is limited to the taxes and duties arising out of merchandise imported/purchased by petitioner and subsequently sold by it through authorized tax and duty-free shops.

Indeed, taxation is the rule and exemption is the exception. The burden of proof rests upon the party claiming exemption to prove that it is covered by the exemption so claimed.⁴⁵ They cannot be extended by mere implication or inference.⁴⁶

***Availment of the
Tax Amnesty***

The Court takes note as well of petitioner's availment of the Tax Amnesty Program under Republic Act No. 9480.⁴⁷

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 violation of 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 nor 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.⁴⁸

⁴⁵ Cyanamid Philippines, Inc. vs. Court of Appeals, 379 Phil. 689 (2000)

⁴⁶ Philippine Long Distance Telephone Company, Inc. vs. City of Davao, 447 Phil. 571 (2003)

⁴⁷ Minutes of the May 20, 2008 hearing, docket, p. 583

⁴⁸ Commissioner of Internal Revenue vs. Marubeni Corporation, G.R. No. 137377, December 18, 2001

Sections 1 and 8 of R.A. No. 9480, entitled "An Act Enhancing Revenue Administration and Collection by Granting an Amnesty on All Unpaid Internal Revenue Taxes Imposed by the National Government for Taxable Year 2005 and Prior Years," provide as follows:

"SECTION 1. *Coverage.* — There is hereby authorized and granted a tax amnesty which shall cover all national internal revenue taxes for the taxable year 2005 and prior years, with or without assessments duly issued therefor, that have remained unpaid as of December 31, 2005: *Provided, however,* That the amnesty hereby authorized and granted shall not cover persons or cases enumerated under Section 8 hereof.

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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."



From the above-quoted provisions, income tax and value-added tax are covered by the Tax Amnesty Program. Likewise, petitioner, not falling under any of the exceptions enumerated, is qualified to avail of the tax amnesty benefits under Section 6 of R.A. No. 9480, to wit:

"SECTION 6. *Immunities and Privileges.* — Those who availed themselves of the tax amnesty under Section 5 hereof, and have fully complied with all its conditions shall be entitled to the following immunities and privileges:

1. The taxpayer shall be immune from the payment of taxes, as well as additions thereto, and the appurtenant civil, criminal or administrative penalties under the National Internal Revenue Code of 1997, as amended, arising from the failure to pay any and all internal revenue taxes for taxable year 2005 and prior years.

Petitioner failed however to submit to this Court the following required documents as specified under Sections 2 and 7 of the said law:

"SECTION 2. *Availment of the Amnesty.* — Any person, natural or juridical, who wishes to avail himself of the tax amnesty authorized and granted under this Act **shall file with the Bureau of Internal Revenue (BIR) a notice and Tax Amnesty Return accompanied by a Statement of Assets, Liabilities and Networth (SALN) as of December 31, 2005**, in such form as may be prescribed in the implementing rules and regulations (IRR) of this Act, and **pay the applicable amnesty tax within six months from the effectivity of the IRR.**

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SECTION 7. *When and Where to File and Pay.* — The filing of the Tax Amnesty Return and the payment of the amnesty tax for those availing themselves of the tax amnesty shall be made within six months starting from the effectivity of the IRR. It shall be filed at the office of the Revenue District Officer which has jurisdiction over the legal residence or principal place of business of the filer. The Revenue District Officer shall issue an **acceptance of payment form** authorizing an authorized agent bank, or in the absence thereof, the collection agent or municipal treasurer concerned, to accept the amnesty tax payment."
(Emphasis supplied)



This Court had previously resolved that taxpayers found to have fully complied with the documentation requirements of R.A. No. 9480 are entitled to the immunities as found under Section 6 thereof.⁴⁹ More importantly, in the case of **Philippine Banking Corporation (Now: Global Business Bank, Inc.) vs. Commissioner of Internal Revenue**⁵⁰, the Supreme Court declared that the completion of these requirements shall be deemed full compliance with the Tax Amnesty Program, and the law mandates that the taxpayer shall thereafter be immune from payment of taxes, and additions thereto, as well as the appurtenant civil, criminal or administrative penalties under the NIRC of 1997, arising from failure to pay any and all internal revenue taxes for taxable year 2005 and prior years. However, in the absence of documents evidencing its full compliance with the requirements of R.A. No. 9480, the Court cannot declare petitioner to be entitled to the immunities under the said law.

In fine, petitioner failed to duly comply with the requisites enumerated in R.A. No. 9480.

WHEREFORE, the instant Petition for Review and Petition-In-Intervention are hereby **DENIED** for lack of merit. Accordingly, petitioner is hereby **ORDERED TO PAY** the following amounts:

DEFICIENCY INCOME TAX			
Taxable Year	Basic Tax	50% Surcharge	Total
1999	P 35,099,020.04	P 17,549,510.02	P 52,648,530.06
2000	39,915,633.52	19,957,816.76	59,873,450.28
2001	129,139,879.36	64,569,939.68	193,709,819.04
2002	248,232,295.36	124,116,147.68	372,348,443.04
Total	P452,386,828.28	P226,193,414.14	P 678,580,242.42

⁴⁹ Commissioner of Internal Revenue vs. PILMICO Foods Corporation, C.T.A. EB No. 430 (C.T.A. Case No. 6868), March 31, 2009

⁵⁰ G.R. No. 170574, January 30, 2009



DEFICIENCY VAT			
Taxable Year	Basic Tax	50% Surcharge	Total
1999	P 36,872,132.46	P 18,436,066.23	P 55,308,198.69
2000	37,351,009.27	18,675,504.64	56,026,513.91
2001	69,565,523.82	34,782,761.91	104,348,285.73
2002	95,128,824.77	47,564,412.38	142,693,237.15
Total	P238,917,490.32	P119,458,745.16	P 358,376,235.48
Grand Total	P691,304,318.60	P345,652,159.30	P1,036,956,477.90

Petitioner is likewise **ORDERED TO PAY** the twenty percent (20%) deficiency interest imposed upon the basic deficiency income taxes for the years 1999 to 2002, computed from April 15, 2000, April 15, 2001, April 15, 2002, and April 15, 2003, respectively, until full payment thereof and the twenty percent (20%) deficiency interest imposed upon the basic deficiency VAT for the years 1999 to 2002, computed from January 25, 2000, January 25, 2001, January 25, 2002, and January 25, 2003, respectively, until full payment thereof pursuant to Section 249(B) of the NIRC of 1997.

Petitioner is also **ORDERED TO PAY** twenty percent (20%) delinquency interest on the total amount due of P1,036,956,477.90 and on the twenty percent (20%) deficiency interest which have accrued thereon, computed from May 30, 2005 until fully paid, pursuant to Section 249(C) of the NIRC of 1997.

SO ORDERED.


LOVELL R. BAUTISTA
Associate Justice

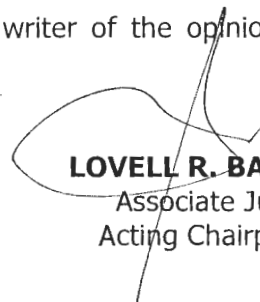
WE CONCUR:

(On Leave)
ERNESTO D. ACOSTA
Presiding Justice


CAESAR A. CASANOVA
Associate Justice

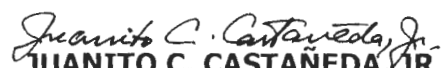
ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


LOVELL R. BAUTISTA
Associate Justice
Acting Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice