

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PHILIPPINE AMUSEMENT AND
GAMING CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 7976

THE COMMISSIONER OF
INTERNAL REVENUE and THE
HEAD REVENUE EXECUTIVE
ASSISTANT LARGE TAXPAYER
SERVICE, in their official
capacities as Officers of the
BUREAU OF INTERNAL
REVENUE,

Respondents.

Members:

ACOSTA, *Chairperson*
UY, *and*
FABON-VICTORINO, JJ.

Promulgated:

SEP 05 2011 ; 2:00 pm

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DECISION

Fabon-Victorino, J.:

In this Petition for Review, petitioner Philippine Amusement and Gaming Corporation (PAGCOR) seeks to cancel the Final Assessment Notices Nos. IT-05-000234, VT-05-000279, FBT-05-000070, IT-06-000235, VT-06-000280, FBT-06-000071, all dated December 09, 2008, issued against it for alleged deficiency income tax, value-added tax (VAT), and fringe benefit tax (FBT) for taxable years 2005 and 2006 in the aggregate amount of

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Php5,927,542,547.76, inclusive of interests, penalties, and surcharges.

THE FACTS

Petitioner alleges that it is a duly created government instrumentality by virtue of Presidential Decree (P.D.) No. 1869, as amended,¹ with business address at 6th Floor, Hyatt Hotel and Casino, Pedro Gil cor. M. H. Del Pilar Sts., Malate, Manila.

Respondent Commissioner of Internal Revenue (CIR) is the government official empowered, among others, to assess and collect internal revenue taxes, and to decide disputed assessments. She holds office at the 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.

The other respondent is the Head Revenue Executive Assistant (HREA) of the Large Taxpayers Service who is impleaded as such and as authorized representative of his co-respondent CIR. ✓

¹ Par. 1, Summary of Admitted Facts by the Petitioner and by the Respondent, Pre-trial Order, docket, pp. 348 -349.

Under P.D. No. 1869, specifically in Section 10, Title IV thereof, petitioner's franchise includes the "rights, privilege and authority to operate and maintain gambling casinos, clubs, and other recreation or amusement places, sports, gaming pools, i.e. basketball, football, lotteries, etc. whether on land or sea, within the territorial jurisdiction of the Republic of the Philippines". Likewise it is legally empowered to "do and perform such other acts directly related to the efficient and successful operation and conduct of games of chance in accordance with existing laws and decrees." It also has regulatory powers over "all persons primarily engaged in gambling, together with their allied business."

The franchise mandates petitioner to remit to the Bureau of Internal Revenue (BIR) five percent (5%) franchise tax of its gross revenue or earnings derived from its operations.² It shall be in lieu of all kinds of taxes, levies, fees or assessments of any kind, nature or description, levied, established or collected by any municipal, provincial or national government authority.

On July 14, 2008, petitioner received a letter dated July 2, 2008 from respondent HREA, requesting for an informal

² Par. 2, Summary of Admitted Facts, Pre-trial Order, docket, p. 348; Sec. 13(2), Title IV, P.D. 1869, as amended.



conference on the results of an investigation regarding all its internal revenue tax liabilities for taxable years 2005 and 2006.³

On August 11, 2008, petitioner received from respondent CIR a Preliminary Assessment Notice (PAN) dated July 29, 2008, on its alleged deficiency income tax, VAT, FBT, and documentary stamp tax (DST) for taxable years 2005 and 2006.⁴

On February 3, 2009, petitioner received from respondent CIR a Formal Letter of Demand (FLD), with attached Assessment Notices all dated December 9, 2008, but this time only for deficiency income tax, VAT, and FBT, inclusive of charges, interest and compromise penalties for taxable years 2005 and 2006, in the aggregate amount of P5,927,542,547.76, broken down as follows:⁵

Taxable Year 2005

Particulars	Basic Tax	Surcharge	Interest	Compromise	Total
Income Tax	P 98,856,851.52	P 24,714,212.88	P 53,680,624.58	P 25,000.00	P 177,276,688.98
VAT	837,606,020.73	209,401,505.18	491,548,519.56	25,000.00	1,538,581,045.48
FBT	32,297,128.28	8,074,282.07	18,953,547.61	25,000.00	59,349,957.96
Totals	P 68,760,000.53	P 42,190,000.13	P564,182,691.75	P 75,000.00	P1,775,207,692.42

Taxable Year 2006

³ Par. 3, Summary of Admitted Facts by the Petitioner and by the Respondent, Pre-trial Order, docket, pp. 349-350.

⁴ Par. 4, Summary of Admitted Facts by the Petitioner and by the Respondent, Pre-trial Order, docket, pp. 349- 350.

⁵ Par. 5, Summary of Admitted Facts by the Respondent, Pre-trial Order, docket, p. 350; Annexes "A" to "M" of Petition for Review, docket, pp. 38-50.



Particulars	Basic Tax	Surcharge	Interest	Compromise	Total
Income Tax	P 889,270,123.21	P 222,317,530.80	P 305,031,834.04	P 25,000.00	P 1,416,644,488.06
VAT	1,665,267,061.23	416,316,765.31	644,207,422.04	25,000.00	2,725,816,248.58
FBT	6,017,119.97	1,504,279.99	2,327,718.74	25,000.00	9,874,118.70
Totals	P2,560,554,304.41	P 40,138,576.10	P 951,566,974.82	P 75,000.00	P4,152,334,855.34

On March 3, 2009, petitioner filed a letter-protest dated February 16, 2009, addressed to respondent CIR.⁶

On September 29, 2009, petitioner filed the instant Petition for Review alleging inaction on the part of respondent CIR.

On December 10, 2009, respondent filed her Answer⁷ and anchored her defense on the following Special and Affirmative Defenses:

"Special and Affirmative Defenses"

4. Respondent hereby repleads the above admissions and denials as part of his Special and Affirmative Defenses.
5. Petitioner is subject to ordinary corporate income tax.
 - 5.1 Philippine Amusement and Gaming Corporation (PAGCOR) was one of the five government-owned or controlled corporation (GOCCs) exempted from payment of corporate income tax under Section 27(C) of Republic Act No. 8424 otherwise known as 'An Act Amending the National Internal



⁶ Par. 5, Summary of Admitted Facts by the Petitioner, Pre-trial Order, docket, p. 349.

⁷ Docket, pp. 243-254.

Revenue Code, as amended and for other purposes'. Under Section 1(C) of RA 9337 (effective November 1, 2005), PAGCOR was deleted from the list of exempted GOCCs.

- 5.2 Before RA 9337 became effective, various groups already lodged petitions for certiorari with the Supreme Court (SC), questioning the validity and constitutionality of RA 9337. On September 1, 2005 the SC dismissed all the petitions and declared RA 9337 as constitutional.
 - 5.3 PAGCOR is no longer exempt from corporate income tax in view of its exclusion from the list of government-owned or controlled corporations (GOCCs) exempt from income tax under Section 27(C) of RA 8424. This is evident from the enactment of RA 9337. When the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation. Where the law speaks in clear and categorical language, there is no occasion for interpretation; there is only room for application.
 - 5.4 In the case of *Abakada Guro Party List vs. Honourable Secretary Ermita et al.* the SC succinctly stated: 'The Philippine Amusement and Gaming Corporation is not exempt from income tax anymore.' Both in law and jurisprudence the ultimate truth is announced of the relegation of petitioner into the status of an ordinary corporate taxpayer.
6. As an ordinary corporate taxpayer, petitioner is liable for payment of VAT on its income from casino operations and related services pursuant to the provisions of RA No. 7716 otherwise known as the Expanded VAT Law.
- 6.1 After the apparent relegation of petitioner into the status of an ordinary taxpayer, respondent issued

Revenue Regulations No. 16-2005, an existing and valid regulation imposing VAT on corporate taxpayers.

- 6.2 The issuance of RR 16-2005 has the presumption of validity. With the proliferation of specialized activities and its attendant peculiar problems, the national legislature has found it more and more necessary to entrust to administrative agencies the authority to issue rules to carry out the general provisions of the statute. By virtue of the power of subordinate legislation, administrative bodies such as the BIR may implement the broad policies laid down in the statute by filling in the details which Congress may not have the opportunity or competence to provide.
- 6.3 In fact, even before the issuance of RR 16-2005, the BIR maintains that PAGCOR is subject to 10% VAT. This stand is reflected in several BIR rulings. All legislative franchisees, except only electric gas and water utilities have been expressly subjected to the 10% VAT pursuant to Section 102 of the old NIRC as amended by RA 7716 (now Sec. 108 of the NIRC of 1997). Upon effectivity of Section 102 of the old NIRC as amended by RA 7716, PAGCOR ceased to be embraced by the franchise tax. Instead, it became subject to 10% VAT, in lieu of all other taxes, pursuant to Section 13 of PD No. 1869 as amended by Sections 3 and 12 of RA 7716. The 5% franchise tax had already been replaced by VAT. Section 108 of the NIRC of 1997 (then Section 106 of old NIRC as amended) provides that all franchise grantees which are not subject to the franchise tax under Section 119 NIRC of 1997 shall be considered as other franchise grantees subject to the 10% VAT.
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7. Petitioner is liable for Fringe Benefits Tax (FBT) under Section 33 of the NIRC of 1997 in relation to RR No. 3-98.

7.1 Pursuant to Section 33(A) of the NIRC of 1997 in relation to RR No. 3-98, employers are required to withhold at the rate of 32% effective 01 January 2000 on the grossed up monetary value of fringe benefits furnished or granted to the employee, except rank and file employees.

7.2 Based on the investigation conducted by respondent's examiners, petitioner provided automobiles for all its officers. Pursuant to the car expense plan, petitioner would shoulder sixty percent (60%) of the price tag of the automobile and forty percent (40%) will be paid by the officer thru a five year interest free loan. Petitioner, however, did not subject the aforementioned fringe benefits as part of compensation.

7.3 Section 2.78.1 of RR No. 2-98(A) defines compensation as follows:

'(A) Compensation Income Defined-

In general, the term 'compensation' means all remuneration for services performed by an employee for his employer under an employer-employee relationship, unless specifically excluded by the Code.

The name by which the remuneration for services is designated is immaterial. Thus, salaries, wages, emoluments and honoraria, allowances, commissions (e.g. transportation, representation, entertainment and the like); fees including director's fees, if the director is at the same time, an employee of the employer/corporation; taxable bonuses and **fringe benefits except those which are subject to the fringe benefits tax under Sec. 33 of the Code.**' (Emphasis supplied)



7.4 Section 2.33(B)(3)(a) of RR No. 3-98 also states:

'If the employer purchases the motor vehicle in the name of the employee, the value of the benefit is the acquisition cost thereof. The monetary value of the fringe benefit shall be the entire value of the benefit, regardless of whether the motor vehicle is used by the employee partly for his personal purpose and partly for the benefit of his employer.'

7.5 Undoubtedly, such failure on the part of petitioner to perform the sacred duty of a government withholding agent will result in FBT liability. Hence, assessment will ensue as a matter of course.

8. Petitioner was duly assessed and informed of its deficiency income tax, VAT and FBT liabilities for taxable years 2005 and 2006.

8.1 After petitioner ceased to be one of the listed GOCCs exempt from corporate income tax under the NIRC of 1997, respondent issued Letter of Authority No. 2007 32676 dated 19 March 2008 to authorize the revenue examiners named therein for the purpose of examining petitioner's books of accounts and other accounting records for all internal revenue taxes for the period 01 January 2005 to 31 December 2006.

8.2 A Preliminary Assessment Notice (PAN) dated 29 July 2008 was issued to petitioner for deficiency Income Tax, VAT, FBT and Documentary Stamp Tax (DST) for taxable years 2005 and 2006.

8.3 A Formal Letter of Demand (FLOD) with annexed Details of Discrepancies and attached Assessment Notices dated 09 December 2008 was issued to petitioner for deficiency Income



Tax, VAT and FBT for taxable year 2005 and 2006.

8.4 Along with the FLOD, were Assessment Notice Nos. IT-05-000234; VT-05-000279; FBT-05-000-070; IT-06-000235; VT-06-000280; and FBT-06-000071 all dated 09 December 2008 attached thereto.

9. All told, petitioner is therefore liable for deficiency taxes broken down as follows:

Taxable Year 2005

Assessment Notice No. IT-05-000234 (Income Tax)

Winnings	20,274,893,157.40
Bingo-In House	105,778,364.69
Bingo-Franchisee	1,374,675,920.88
Other Business Income	1,455,655,844.89
Total Income	23,211,003,287.86
Less: Expenses	
Personal Services	5,224,572,117.12
Maintenance & Other Operating Expenses	4,338,100,146.88
Contributions to the Government	11,953,634,140.64
Total Expenses	21,516,314,404.64
Net Income	1,694,688,883.22
Tax Due (For November & December only)	98,856,851.52
Tax Paid	0.00
Deficiency Income Tax	98,856,851.52
Add: Surcharge	24,714,212.88
Interest	53,680,624.58
Compromise	25,000.00
Total Tax Due	177,276,688.98

Assessment Notice No. VT-05-000279 (VAT)

Winnings	18,431,721,052.18
Bingo - In House	96,162,149.72
Bingo - Franchisee	1,249,705,382.62
Other Business Income	1,327,602,290.42
Total Gross Receipts	21,105,190,874.94
Less: Creditable Input Tax	
Total Maintenance & Other Operating	4,454,027,737.93

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	Expenses	
	Less: Expenses not subject to VAT	1,603,175,240.33
	Total Possible Sources of Input VAT	2,850,852,497.60
	Divided by VAT Rate	1.10
	Total Allowable Input Tax	259,168,408.87
Value Added Tax Due		1,851,350,678.62
Tax Paid (Franchise Tax Paid)		1,013,744,657.89
Deficiency Value Added Tax		837,606,020.73
Add:	Surcharge	209,401,505.18
	Interest	491,548,519.56
	Compromise	25,000.00
Total Tax Due		1,538,581,045.48

Assessment Notice No. FBT-05-000070 (FBT)

PAGCOR 60% share on Car Plan	65,250,539.17
Officer 40% share (Interest Free Loan)	3,380,858.41
Total Fringe Benefit	68,631,397.58
Divide by Percentage for CY 2000 above	68%
Grossed Up Monetary Value	100,928,525.86
Multiply by: Fringe Benefit Tax Rate	32%
Total Fringe Benefit Tax Due	32,297,128.28
Less: Fringe Benefit Tax Paid	0.00
Basic Fringe Benefit Tax Deficiency	32,297,128.28
Add: Surcharge	8,074,282.07
Interest	18,953,547.61
Compromise	25,000.00
Total Tax Due	59,349,957.95

Taxable Year 2006

Assessment Notice No. IT-06-000235 (Income Tax)

Winnings	20,461,208,552.70
Bingo-In House	107,749,320.50
Bingo-Franchisee	1,433,044,821.20
Other Business Income	3,275,860,681.62
Total Income	25,277,863,376.02
Less: Expenses	
Personal Services	5,778,832,235.84
Maintenance & Other Operating Expenses	4,979,751,269.44
Contributions to the Government	11,978,529,718.03
Total Expenses	22,737,113,223.31
Net Income	2,540,771,780.61
Tax Due (For November & December only)	889,270,123.21

Tax Paid	0.00
Deficiency Income Tax	889,270,123.21
Add: Surcharge	222,317,530.80
Interest	305,031,834.04
Compromise	25,000.00
Total Tax Due	1,416,644,488.05

Assessment Notice No. VT-06-000080 (VAT)

Winnings	18,601,098,684.27
Bingo-In House	97,953,927.73
Bingo- Franchisee	1,302,768,019.27
Other Business Income	2,991,769,817.64
Total Gross Receipts	22,993,590,448.91
Less: Creditable Input Tax	
Total Maintenance & other Operating Expenses	4,979,751,269.44
Less: Expenses not subject to VAT	4,193,029,614.48
Total Possible Sources of Input VAT	786,721,654.96
Divided by VAT Rate	1.12
Total allowable input tax	84,291,605.89
Value Added Tax Due	2,636,616,597.23
Tax Paid (Franchise Tax Paid)	971,349,536.00
Deficiency Value Added Tax	1,665,267,061.23
Add: Surcharge	416,316,765.31
Interest	644,207,422.04
Compromise	25,000.00
Total Tax Due	2,725,816,248.58

Assessment Notice No. FBT-06-000071 (FBT)

PAGCOR 60% share on Car Plan	8,725,566.45
Officer 40% share (Interest Free Loan)	4,060,813.50
Total Fringe Benefit	12,786,379.95
Divide by Percentage for CY 2000 above	68%
Grossed Up Monetary Value	18,803,499.92
Multiply by: Fringe Benefit Tax Rate	32%
Total Fringe Benefit Tax Due	6,017,119.97
Less: Fringe Benefit Tax Paid	0.00
Basic Fringe Benefit Tax Deficiency	6,017,119.97
Add: Surcharge	1,504,279.99
Interest	2,327,718.74
Compromise	25,000.00
Total Tax Due	9,874,118.71

10. In the case of *Commissioner of Internal Revenue vs. Bank of Philippine Islands* the Supreme Court held:

'Tax assessments by tax examiners are presumed correct and made in good faith. The taxpayer has the duty to prove otherwise. In the absence of proof of any irregularities in the performance of duties, an assessment duly made by a Bureau of Internal Revenue examiner and approved by his superior officers will not be disturbed. All presumptions are in favor of the correctness of tax assessments.'"

During the pre-trial conference on April 30, 2010, the parties submitted the instant Petition for Review for decision without presentation of evidence on agreement that there are no factual issues involved and only the legal issues are left for the determination of the Court. In view thereof and as prayed for, the parties were granted a period of thirty (30) days from receipt of the Pre-trial Order dated July 21, 2010,⁸ within which to file their respective memoranda.

On September 9, 2010, the instant case was submitted for decision, after respondent CIR filed her Memorandum on July 20, 2010 and petitioner, on September 2, 2010.⁹

⁸ Pre-trial Order dated July 21, 2010, docket, p. 351.

⁹ Minutes of Hearing held on September 9, 2010, docket, p. 325; Resolution dated September 13, 2010, docket, p. 326.



THE ISSUES

The following are the issues submitted by the parties for the resolution of the Court:¹⁰

- "1. Whether PD 1869 (also known as PAGCOR charter), as amended, specifically on PAGCOR'S exemption from all forms/kinds of taxes provided in Section 13 thereof, has been amended/repealed by Republic Act Nos. 8424 and 9337;
2. Whether or not petitioner PAGCOR is liable for payment of deficiency Income Tax, its corresponding surcharges, interest and penalties for the taxable years 2005 and 2006;
3. Whether or not petitioner PAGCOR is liable for payment of VAT on its income from casino operations and related services pursuant to the provisions of R.A. 7716 (Expanded VAT Law) and its corresponding surcharges, interest and penalties for the taxable year 2005 and 2006; and
4. Whether or not PAGCOR is liable for deficiency Fringe Benefits Tax for the taxable years 2005 and 2006."

The foregoing may however be summed up into one issue,
to wit:



¹⁰ Legal Issues for Resolution, Pre-trial Order, docket, pp. 350-351.

WHETHER OR NOT PETITIONER IS LIABLE TO PAY THE ALLEGED DEFICIENCY INCOME TAX, VALUE-ADDED TAX, AND FRINGE BENEFIT TAX, INCLUSIVE OF CHARGES, INTEREST AND COMPROMISE PENALTIES, IN THE AGGREGATE AMOUNT OF PHP5,927,542,547.76, FOR THE TAXABLE YEARS 2005 AND 2006.

Petitioner's Arguments:

Petitioner claims that under its charter, P.D. No. 1869, its income from casino operations and related services is tax exempt bar 5% franchise tax. And it continues to enjoy such benefit as P.D No. 1869 has not been amended or repealed by R.A. No. 8424 and R.A. No. 9337. Respondents cannot also impose VAT on its income from casino operations and other business income under R.A. No. 7716 (Expanded VAT Law) as held in the case of *The Commissioner of Internal Revenue vs. Acesite (Philippines) Hotel Corporation*.¹¹ Finally, it is also exempt from paying FBT on its car plan provided to its officers on the ground that the said fringe benefit is required by the nature of or is necessary to its business operations, pursuant to Section 33(A) of the NIRC of 1997, as amended, and Section 2.33 of Revenue Regulations (R.R.) No. 3-98. ✓

¹¹ G.R. No. 147295, February 16, 2007.

Respondent's Arguments:

Respondent CIR does not agree. She counters that petitioner is no longer exempt from corporate income tax having been deleted from the list of government-owned or controlled corporations (GOCCs) exempt from income tax under Section 27(C) of R.A. No. 8424, as amended by Section 1 of R.A. No. 9337. In the case of *Abakada Guro Party List v. Honorable Secretary Ermita et al.*,¹² it was held that petitioner "is not exempt from income tax anymore."

As an ordinary corporate taxpayer, petitioner is also liable for VAT on its gross receipts from casino operations and related services, pursuant to R.A. No. 7716, otherwise known as the Expanded VAT Law. The issuance of Revenue Regulations No. 16-2005 strengthened the law as it emphasized the imposition of VAT on corporate taxpayers. Even prior to RR 16-2005, respondent was consistent in ruling that petitioner is subject to 10% VAT. Allegedly, pursuant to Section 102 of the NIRC, as amended by R.A. 7716 (now 108 of the NIRC of 1997) petitioner ceased to be liable for franchise tax and in lieu thereof, it has been expressly subjected to the 10% VAT. ✓

¹² G.R. No. 1680556, September 1, 2005.

Lastly, petitioner cannot also escape payment of FBT based on the provision of Section 33 (A) of the NIRC of 1997, in relation to R.R. No. 3-98, which requires employers to withhold at the rate of 32% effective January 1, 2000 on the grossed up monetary value of fringe benefits granted unto the employee, except the rank and file. Per investigation, petitioner provided automobiles to its executives and shouldered sixty percent (60%) of its cost and only forty percent (40%) was for the account of the executive stretched over a period of five years, interest-free. However, petitioner, failed to comply with the relevant provision of the law.

THE COURT'S RULING

The petition is partly meritorious.

A. INCOME TAX

Petitioner is a government-owned or controlled corporation (GOCC) created by virtue of its charter - Presidential Decree No. 1869. Under Section 13 thereof, petitioner, as franchise holder, is exempt from paying "**tax of any kind or form, income or otherwise, as well as fees, charges or levies of whatever**



nature, whether National or Local" except a franchise tax of five (5%) percent of the gross revenue or earnings derived from its operation under the franchise. Such tax shall be **in lieu of all kinds of taxes**, levies, fees or assessments of any kind, nature or description, levied, established or collected by any municipal, provincial, or national government authority. The provision is reproduced below, thus:

"SECTION. 13. *Exemptions.* –

xxx xxx xxx

(2) *Income and other taxes.* – (a) Franchise Holder: **No tax of any kind or form, income or otherwise, as well as fees, charges or levies of whatever nature, whether National or Local, shall be assessed and collected under this Franchise from the Corporation; nor shall any form of tax or charge attach in any way to the earnings of the Corporation, except a Franchise Tax of five (5%) percent of the gross revenue or earnings derived by the Corporation from its operation under this Franchise. Such tax shall be due and payable quarterly to the National Government and shall be in lieu of all kinds of taxes, levies, fees or assessments of any kind, nature or description, levied, established or collected by any municipal, provincial, or national government authority.**

(b) Others: The exemptions herein granted for earnings derived from the operations conducted under the franchise specifically from the payment of any tax, income or otherwise, as well as any form of charges, fees or levies, shall inure to the



benefit of and extend to corporation(s), association(s), agency(ies), or individual(s) with whom the Corporation or operator has any contractual relationship in connection with the operations of the casino(s) authorized to be conducted under this Franchise and to those receiving compensation or other remuneration from the Corporation or operator as a result of essential facilities furnished and/or technical services rendered to the Corporation or operator." (*Emphasis supplied*)

Section 27(C) of R.A. No. 8424 also provides that:

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

xxx xxx xxx

(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." (*Emphasis supplied*)

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However, when R.A. No. 9337¹³ took effect, petitioner was deleted from the list and ceased to be among those GOCCs that are exempted from paying income tax upon their taxable income. Section 27 of the NIRC of 1997, as amended, now reads as follows:

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

(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 and Insurance System (GSIS), the Social Security System (SSS), the Philippine Health Insurance Corporation (PHIC), and the Philippine Charity Sweepstakes Office (PCSO), 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."

In other words, the amendment effectively withdrew the exemption of petitioner from paying income tax under its charter. It cannot insist enjoyment of such exemption in the light of the pronouncement in *Abakada Guro Party List vs.*

¹³ AN ACT AMENDING SECTIONS 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 AND 288 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES.

Honourable Secretary Ermita, et al.,¹⁴ where the Supreme Court held that “(t)he Philippine Amusement and Gaming Corporation is not exempt from income taxes anymore.”¹⁵

In the more recent case of *Philippine Amusement and Gaming Corporation (PAGCOR) vs. The Bureau of Internal Revenue (BIR), et al.*¹⁶, the Final Arbiter expressly ruled that under Section 1 of R.A. No. 9337, amending Section 27(C) of R.A. No. 8424 or the NIRC of 1997, petitioner is no longer exempt from corporate income tax as it has been effectively removed from the list of GOCCs that are exempt from it. The relevant portion of the decision reads:

“Under Section 1 of R.A. No. 9337, amending Section 27 (c) of the National Internal Revenue Code of 1977, petitioner is no longer exempt from corporate income tax as it has been effectively omitted from the list of GOCCs that are exempt from it. xxx

xxx xxx xxx

It is not contested that before the enactment of R.A. No. 9337, petitioner was one of the five GOCCs exempted from payment of corporate income tax xxx

xxx xxx xxx

**With the subsequent enactment of
R.A. No. 9337, amending R.A. No. 8424,**



¹⁴ G.R. No. 168056, September 1, 2005.

¹⁵ Par. 5.4, Answer, docket, p. 245; Respondent’s Memorandum, docket, p. 330.

¹⁶ G.R. No. 172087, March 15, 2011.

PAGCOR has been excluded from the enumeration of GOCCs that are exempt from paying corporate income tax. The records of the Bicameral Conference Meeting dated April 18, 2005, of the Committee on the Disagreeing Provisions of Senate Bill No. 1950 and House Bill No. 3555, show that it is the legislative intent that PAGCOR be subject to the payment of corporate income tax, thus:

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In this case, **PAGCOR failed to prove that it is still exempt from the payment of corporate income tax, considering that Section 1 of R.A. No. 9337 amended Section 27 (c) of the National Internal Revenue Code of 1997 by omitting PAGCOR from the exemption.** The legislative intent, as shown by the discussions in the Bicameral Conference Meeting, is to require PAGCOR to pay corporate income tax; hence, the omission or removal of PAGCOR from exemption from the payment of corporate income tax. It is a basic precept of statutory construction that the express mention of one person, thing, act, or consequence excludes all others as expressed in the familiar maxim *expressio unius est exclusio alterius*. Thus, the express mention of the GOCCs exempted from payment of corporate income tax excludes all others. **Not being excepted, petitioner PAGCOR must be regarded as coming within the purview of the general rule that GOCCs shall pay corporate income tax,** expressed in the maxim: *exceptio firmat regulam in casibus non exceptis.*" (Emphasis supplied)

Clearly, petitioner is liable to pay deficiency income tax for taxable years 2005 and 2006. And considering that petitioner

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did not question the factual basis of the income tax assessment, it shall be upheld with modification.

B. Value-added Tax

The same is however not true insofar as respondent's assessment against petitioner for deficiency VAT on its income from casino operations and related services covering taxable years 2005 and 2006 is concern.

Section 109 of the NIRC of 1997 provides for VAT exempt transactions, as follows:

"SEC. 109. *Exempt Transactions.* – The following shall be exempt from the value-added tax:

xxx xxx xxx

(q) Transactions which are exempt under international agreements to which the Philippines is a signatory or **under special laws**, except those under Presidential Decree Nos. 66, 529 and 1590;" (*Emphasis supplied*)

Section 7 of Republic Act No. 9337 retains the provision on VAT exempt transactions under special laws, to wit: ✓

"SEC. 7. Section 109 of the same Code, as amended, is hereby further amended to read as follows:

"SEC. 109. *Exempt Transactions.* - (1)
Subject to the provisions of Subsection (2)
hereof, the following transactions shall be
exempt from the value-added tax:

xxx xxx xxx

(K) **Transactions which are exempt** under international agreements to which the Philippines is a signatory or **under special laws**, except those under Presidential Decree No. 529;" (*Emphasis supplied*)

In fine, petitioner is VAT exempt under a special law - P.D. No. 1869. In the case of *The Commissioner of Internal Revenue vs. Acesite (Philippines) Hotel Corporation*¹⁷, the Supreme Court postulated that P.D. No. 1869, grants petitioner a blanket exemption to taxes with no distinction on whether the taxes are direct or indirect. The Supreme Court explained, thus:

"A close scrutiny of the above provisos clearly gives PAGCOR a blanket exemption to taxes with no distinction on whether the taxes are direct or indirect. xxx

Under the above provision [Section 13 (2) (b) of P.D. 1869], the term 'Corporation' or operator refers to PAGCOR. **Although the law does not specifically mention PAGCOR's exemption from indirect taxes, PAGCOR is undoubtedly exempt from such taxes because the law exempts from taxes persons or entities contracting with PAGCOR in casino** ✓

¹⁷ G.R. 147295, February 16, 2007.

operations. Although, differently worded, the provision clearly exempts PAGCOR from indirect taxes. In fact, it goes one step further by granting tax exempt status to persons dealing with PAGCOR in casino operations. The unmistakable conclusion is that PAGCOR is not liable for the P30,152,892.02 VAT and neither is Acesite as the latter is effectively subject to zero percent rate under Sec. 108 B (3). R.A. 8424. (Emphasis supplied.)

Indeed, by extending the exemption to entities or individuals dealing with PAGCOR, the legislature clearly granted exemption also from indirect taxes. It must be noted that the indirect tax of VAT, as in the instant case, can be shifted or passed to the buyer, transferee, or lessee of the goods, properties, or services subject to VAT. Thus, by extending the tax exemption to entities or individuals dealing with PAGCOR in casino operations, it is exempting PAGCOR from being liable to indirect taxes." (Emphasis supplied)

The Supreme Court *En Banc* similarly elucidated in *Philippine Amusement and Gaming Corporation (PAGCOR) vs. The Bureau of Internal Revenue (BIR), et al.*¹⁸, that nowhere in R.A. No. 9337 is it provided that petitioner could be subjected to VAT. The law is clear only as to the exclusion of petitioner in the list of GOCCs exempted from the payment of corporate income tax. Further it was held that R.A. No. 9337 itself exempts petitioner from VAT pursuant to Section 7(k) thereof; that petitioner is exempt from the payment of VAT, because its charter is a special law that grants petitioner exemption from taxes; and that the exemption of petitioner from VAT is



¹⁸ G.R. No. 172087, March 15, 2011.

supported by Section 6 of R.A. No. 9337, which retained Section 108(B)(3) of R.A. No. 8424.

Thus, the deficiency VAT assessments for taxable years 2005 and 2006, in the aggregate amount of P4,264,397,294.06, should be cancelled/withdrawn, for lack of legal basis.

C. Fringe Benefits Tax

Respondent assessed petitioner for deficiency FBT in the amount of P59,349,957.95 and P9,874,118.71, inclusive of surcharges, interest and compromise penalties for taxable years 2005 and 2006, respectively, pursuant to Section 33 of the 1997 NIRC in relation to R.R. No. 3-98. Petitioner however denies any liability claiming that the car plan benefit it provided to its officers was a fringe benefit required by the nature of, or necessary to its business operation, invoking Section 33(A) of the NIRC of 1997, as amended, and Section 2.33 of Revenue Regulations No. 3-98. This is not to mention that under Section 13 of its charter, it is not subject to all kinds of taxes, including FBT.

The Court finds for respondent.

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The pertinent provision is Section 33 of the NIRC of 1997,
which states as follows:

"SEC. 33. Special Treatment of Fringe Benefit. —

(A) *Imposition of Tax. — A final tax* of thirty-four percent (34%) effective January 1, 1998; thirty-three percent (33%) effective January 1, 1999; and **thirty-two percent (32%) effective January 1, 2000 and thereafter, is hereby imposed on the grossed-up monetary value of fringe benefit furnished or granted to the employee (except rank and file employees as defined herein) by the employer, whether an individual or a corporation (unless the fringe benefit is required by the nature of, or necessary to the trade, business or profession of the employer, or when the fringe benefit is for the convenience or advantage of the employer). The tax herein imposed is payable by the employer which tax shall be paid in the same manner as provided for under Section 57(A) of this Code.** The grossed-up monetary value of the fringe benefit shall be determined by dividing the actual monetary value of the fringe benefit by sixty-six percent (66%) effective January 1, 1998; sixty-seven percent (67%) effective January 1, 1999; and sixty-eight percent (68%) effective January 1, 2000 and thereafter: *Provided, however,* That fringe benefit furnished to employees and taxable under Subsections (B), (C), (D) and (E) of Section 25 shall be taxed at the applicable rates imposed thereat: *Provided, further,* That the grossed-up value of the fringe benefit shall be determined by dividing the actual monetary value of the fringe benefit by the difference between one hundred percent (100%) and the applicable rates of income tax under Subsections (B), (C), (D) and (E) of Section 25.

(B) *Fringe Benefit Defined. —* For purposes of this Section, the term '*fringe benefit*' means any good, service or other benefit furnished or granted in cash or in kind by an employer to an individual employee (except rank and file employees as defined herein) such as, but not limited to, the following:

- (1) Housing;
- (2) Expense account;
- (3) **Vehicle of any kind;**
- (4) Household personnel, such as maid,
driver and others;

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- (5) Interest on loan at less than market rate to the extent of the difference between the market rate and actual rate granted;
- (6) Membership fees, dues and other expenses borne by the employer for the employee in social and athletic clubs or other similar organizations;
- (7) Expenses for foreign travel;
- (8) Holiday and vacation expenses;
- (9) Educational assistance to the employee or his dependents; and
- (10) Life or health insurance and other non-life insurance premiums or similar amounts in excess of what the law allows." (*Emphasis supplied*)

The provision sufficiently states that a final tax of thirty-two percent (32%) is imposed on the grossed-up monetary value of fringe benefit furnished or granted to the employee by the employer, except the rank and file employees. The FBT imposed is payable by the employer whether individual, professional partnership or corporation as withholding agent. The taxes deducted and withheld by the withholding agent shall be held as a special fund in trust for the government until paid to the collecting officers.

R.R. No. 3-98 which implements Section 33 of the NIRC of 1997, as amended, provides:

"Pursuant to Section 244, in relation to Section 33 of the National Internal Revenue Code of 1997, these



Regulations are hereby promulgated to govern the collection at source of the tax on fringe benefits which have been furnished, granted or paid by the employer beginning January 1, 1998.

SEC. 2.33. SPECIAL TREATMENT OF FRINGE BENEFITS

(A) Imposition of Fringe Benefits Tax — A final withholding tax is hereby imposed on the grossed-up monetary value of fringe benefit furnished, granted or paid by the employer to the employee, except rank and file employees as defined in these Regulations, whether such employer is an individual, professional partnership or a corporation, regardless of whether the corporation is taxable or not, or the government and its instrumentalities except when: (1) the fringe benefit is required by the nature of or necessary to the trade, business or profession of the employer; or (2) when the fringe benefit is for the convenience or advantage of the employer. The fringe benefit tax shall be imposed at the following rates:

Effective January 1, 1998 -	34%
Effective January 1, 1999 -	33%
Effective January 1, 2000 -	32%

The tax imposed under Sec. 33 of the Code shall be treated as a final income tax on the employee which shall be withheld and paid by the employer on a calendar quarterly basis as provided under Sec. 57 (A) (Withholding of Final Tax on certain Incomes) and Sec. 58 A (Quarterly Returns and Payments of Taxes Withheld) of the Code.

The grossed-up monetary value of the fringe benefit shall be determined by dividing the monetary value of the fringe benefit by the following percentages and in accordance with the following schedule:

Effective January 1, 1998 -	66%
Effective January 1, 1999 -	67%
Effective January 1, 2000 -	68%

The grossed-up monetary value of the fringe benefit represents the whole amount of income realized by the employee which includes the net amount of money

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or net monetary value of property which has been received plus the amount of fringe benefit tax thereon otherwise due from the employee but paid by the employer for and in behalf of his employee, pursuant to the provisions of this Section." (*Emphasis supplied*)

Evidently, the tax imposed under Section 33 of the NIRC shall be treated as a final income tax on the employee which shall be withheld and paid by the employer. In final withholding tax, the amount of income tax withheld by the withholding agent is constituted as a full and final payment of the income tax due from the payee on the said income and that the liability for payment of the tax rests primarily on the payor as a withholding agent.¹⁹

Significantly, Section 57 of the same law provides that the tax imposed or prescribed by Section 33 of NIRC of 1997 on specified items of income **shall be withheld by payor-corporation and paid in the same manner and subject to the conditions under Section 58 of the same Code.** The full text of the provision is reproduced as follows:

¹⁹ Chamber of Real Estate and Builders' Associations, Inc. vs. The Hon. Executive Secretary Alberto Romulo, et al., G.R. No. 160756, March 9, 2010.



"SEC. 57. *Withholding of Tax at Source.* -

(A) *Withholding of Final Tax on Certain Incomes.* - Subject to rules and regulations the Secretary of Finance may promulgate, upon the recommendation of the Commissioner, requiring the filing of income tax return by certain income payees, the tax imposed or prescribed by Sections 24(B)(1), 24(B)(2), 24(C), 24(D)(1); 25(A)(2), 25(A)(3), 25(B), 25(C), 25(D), 25(E), 27(D)(1), 27(D)(2), 27(D)(3), 27(D)(5), 28(A)(4), 28(A)(5), 28(A)(7)(a), 28(A)(7)(b), 28(A)(7)(c), 28(B)(1), 28(B)(2), 28(B)(3), 28(B)(4), 28(B)(5)(a), 28(B)(5)(b), 28(B)(5)(c); **33**; and 282 of this Code on specified items of income **shall be withheld by payor-corporation and/or person and paid in the same manner and subject to the same conditions as provided in Section 58 of this Code.**" (*Emphasis supplied*)

And Section 58 of the NIRC of 1997 provides:

"SEC. 58. *Returns and Payment of Taxes Withheld at Source.* -

(A) *Quarterly Returns and Payments of Taxes Withheld.* - **Taxes deducted and withheld under Section 57 by withholding agents shall be covered by a return and paid to,** except in cases where the Commissioner otherwise permits, **an authorized agent bank, Revenue District Officer, Collection Agent, or duly authorized Treasurer of the city or municipality** where the withholding agent has his legal residence or principal place of business, or **where the withholding agent is a corporation, where the principal office is located.**

The taxes deducted and withheld by the withholding agent shall be held as a special fund in trust for the



government until paid to the collecting officers.

The return for final withholding tax shall be filed and the payment made within twenty-five (25) days from the close of each calendar quarter, while the return for creditable withholding taxes shall be filed and the payment made not later than the last day of the month following the close of the quarter during which withholding was made: *Provided, That the Commissioner, with the approval of the Secretary of Finance, may require these withholding agents to pay or deposit the taxes deducted or withheld at more frequent intervals when necessary to protect the interest of the government.*" (*Emphasis supplied*)

In *Commissioner of Internal Revenue vs. The Court of Appeals, et al.*²⁰, the Supreme Court explained the withholding tax system in this wise:

"In the operation of the withholding tax system, the withholding agent is the payor, a separate entity acting no more than an agent of the government for the collection of the tax in order to ensure its payments; the payer is the taxpayer — he is the person subject to tax imposed by law; and the payee is the taxing authority. In other words, the withholding agent is merely a tax collector, not a taxpayer. Under the withholding system, however, the agent-payor becomes a payee by fiction of law. His (agent) liability is direct and independent from the taxpayer, because the income tax is still imposed on and due from the latter. The agent is not liable for the tax as no wealth flowed into him — he earned no income. The Tax Code only makes the agent personally liable for the tax arising from



²⁰ G.R. No. 108576, January 20, 1999.

the breach of its legal duty to withhold as distinguish from its duty to pay tax since:

'the government's cause of action against the withholding agent is not for the collection of income tax, but for the enforcement of the withholding provision of Section 53 of the Tax Code, compliance with which is imposed on the withholding agent and *not* upon the taxpayer.'

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xxx

Codal provisions on withholding tax are mandatory and must be complied with by the withholding agent. The taxpayer should not answer for the non-performance by the withholding agent of its legal duty to withhold unless there is collusion or bad faith. The former could not be deemed to have evaded the tax had the withholding agent performed its duty." (*Emphasis supplied*)

Therefore, the government's cause of action against petitioner is not for the collection of income tax but for the enforcement of the withholding tax provisions of the NIRC of 1997, and compliance is imposed on petitioner as the withholding agent.

Petitioner admitted that it provided car plan benefits to its executives during the taxable years 2005 and 2006, for which respondent assessed it with FBT. However, it did not present any evidence to prove that the said car plan benefits were required by the nature of or necessary to its business. ✓

During the pre-trial conference on April 30, 2010, petitioner insists that no factual issues are involved in this case and agreed to submit it for decision based on the stipulated legal issues.²¹ Hence, the Court is constrained to consider that the said car plan benefit is in the nature of fringe benefits subject to FBT.

In fine, the liability for payment of the tax rests primarily on petitioner, as a withholding agent. Therefore, petitioner's non-compliance with said obligation to withhold renders it personally liable for the tax arising from the breach of a legal duty. Consequently, the assessments pertaining to petitioner deficiency FBT covering the years 2005 and 2006 should be sustained albeit with modification.

Statutes in derogation of sovereignty, such as those containing exemption from taxation, should be strictly construed in favor of the state.²² Tax exemption is a result of legislative grace. And he who claims an exemption from the burden of taxation must justify his claim by showing that the legislature intended to exempt him by words too plain to be mistaken. The rule is that tax exemptions must be strictly construed such that



²¹ Pre-trial Order dated July 21, 2010, docket, p. 351.

²² PLDT vs. City of Davao, et al., G.R. No. 143867, March 25, 2003.

the exemption will not be held to be conferred unless the terms under which it is granted clearly and distinctly show that such was the intention.²³

WHEREFORE, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, the assessments representing deficiency VAT, as well as the surcharges, interests, and compromise penalties imposed thereon, in the aggregate amount of P4,264,397,294.06 for taxable years 2005 and 2006, are hereby **CANCELLED** and **SET ASIDE**.

However, the assessments for deficiency income tax and Fringe Benefit Tax (FBT) for taxable years 2005 and 2006 are hereby **AFFIRMED** with **MODIFICATIONS**. The compromise penalties are cancelled in the absence of mutual agreement between the parties. Accordingly, petitioner is hereby **ORDERED** to **PAY** respondent the following basic deficiency income tax and FBT for taxable years 2005 and 2006, inclusive of the 25% surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended:

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²³ Commissioner of Internal Revenue vs. Fortune Tobacco Corporation, G.R. Nos. 167274-75, July 21, 2008.

	CY 2005	CY 2006	TOTAL
INCOME TAX			
Basic	P 98,856,851.52	P 889,270,123.21	P 988,126,974.73
Surcharge	24,714,212.88	222,317,530.80	247,031,743.68
Subtotal	P 123,571,064.40	P1,111,587,654.01	P 1,235,158,718.41
FBT			
Basic	P 32,297,128.28	P 6,017,119.97	P 38,314,248.25
Surcharge	8,074,282.07	1,504,279.99	9,578,562.06
Subtotal	P 40,371,410.35	P 7,521,399.96	P 47,892,810.31
TOTAL DEFICIENCY TAX	P 163,942,474.75	P1,119,109,053.97	P1,283,051,528.72

In addition, petitioner shall pay deficiency interest at the rate of twenty percent (20%) *per annum* on the following basic deficiency income taxes and FBT computed from the dates indicated herein until full payment thereof pursuant to Section 249(B) of the NIRC of 1997, as amended:

	CY 2005	CY 2006
Income Tax	P 98,856,851.52	P 889,270,123.21
Computed from	April 15, 2006	April 15, 2007
FBT	P 32,297,128.28	P 6,017,119.97
Computed from	January 25, 2006	January 25, 2007

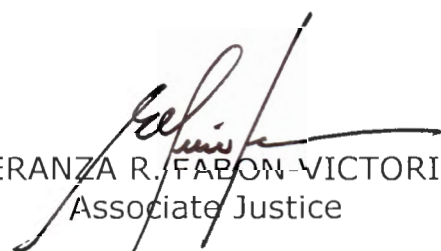
Petitioner is also liable to pay delinquency interest at the rate of twenty percent (20%) *per annum* on the accrued deficiency interest which was due for payment on December 31, 2008 and on the following total deficiency taxes, computed from



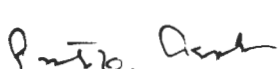
December 31, 2008 until full payment thereof pursuant to
Section 249(C) of the NIRC of 1997, as amended:

	CY 2005	CY 2006	TOTAL
INCOME TAX	P 123,571,064.40	P 1,111,587,654.01	P 1,235,158,718.41
FBT	40,371,410.35	7,521,399.96	47,892,810.31
TOTAL DEFICIENCY TAX	P 163,942,474.75	P1,119,109,053.97	P 1,283,051,528.72

SO ORDERED.


ESPERANZA R. FABON-VICTORINO
Associate Justice

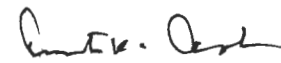
We concur:


ERNESTO D. ACOSTA
Presiding Justice


ERLINDA P. UY
Associate Justice

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.


ERNESTO D. ACOSTA
Presiding Justice