CTA Form No. 8 (For DCC)

22-000282-0070

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CASE NO. 10885

INDEPENDENT ELECTRICITY MARKET OPERATOR OF THE PHILIPPINES, INC.,
Petitioner,

- versus -

NOTICE OF RESOLUTION

COMMISSIONER OF INTERNAL REVENUE AND SECRETARY OF FINANCE,
Respondents.

To:

STATE SOL. ABRAHAM D. GENUINO III
Office of the Solicitor General
134 Amorsolo Street, Legazpi Village, Makati City

ATTY. AYESHA HANIA B. GUILING-MATANOG
ATTY. LARA NICOLE T. GONZALES
Bureau of Internal Revenue
Room 703, Litigation Division, BIR National Office Building
Sen. Miriam P. Defensor-Santiago Avenue
Diliman, Quezon City

HON. FREDERICK D. GO
Secretary of Finance
DEPARTMENT OF FINANCE
DOF Bldg., BSP Complex, Roxas Blvd.,
1004 Metro Manila, Philippines

ATTY. SHERYLL J. MALLARI-DY
ATTY. LILIBETH GRACE L. VETUS-MAGTALAS
ATTY. CARLOTA N. VILLAROMAN
ATTY. MANUEL MARTIN C. ESCASURA
(Counsel for the Petitioner)
Independent Electricity Market Operator of the Philippines Inc. (IEMOP)
9th Floor, Robinsons Equitable Tower
ADB Avenue corner Poveda Street
Ortigas Center, Pasig City

AGAN MONTENEGRO MALASAGA & CO.
(Collaborating Counsel for the Petitioner)
7th Floor, Electra House Building
115-117 Esteban St., Legazpi Village
1229 Makati City

GREETINGS:

You are hereby notified by these presents that on **November 19, 2025,** a Resolution was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **November 20, 2025.**

Atty. Maria Johoanna F. Chan-Te
Executive Clerk of Court III

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

INDEPENDENT ELECTRICITY MARKET OPERATOR OF THE PHILIPPINES, INC., *Petitioner*,	**CTA CASE NO. 10885**
	Members:
	BACORRO-VILLENA, *Acting Chairperson, and* **CUI-DAVID**, JJ.
- versus -	
COMMISSIONER OF INTERNAL REVENUE & SECRETARY OF FINANCE, *Respondents.*	Promulgated: NOV 19 2025; 9:16 AM

x- -x

RESOLUTION

CUI-DAVID, J.:

This resolves the following:

1. Petitioner Independent Electricity Market Operator of the Philippines, Inc.'s ("**IEMOP**") *Partial Motion for Reconsideration,* filed on May 20, 2025, with respondent Commissioner of Internal Revenue ("**CIR"**)'s *Comment/Opposition (Re: Petitioner's Partial Motion for Reconsideration dated 15 May 2025),* filed on July 4, 2025, and respondent Secretary of Finance's ("**SOF**")'s *Comment (On Petitioner's Motion for Partial Reconsideration),* filed on July 8, 2025;

2. Respondent SOF's *Motion for Partial Reconsideration (Of the Decision dated April 30, 2025),* filed on May 22, 2025; and

3. Respondent CIR's *Motion for Partial Reconsideration (Re: Decision dated 30 April 2025),* filed on May 22, 2025, with IEMOP's *Comment (Respondent CIR's

Motion for Reconsideration), filed through registered mail on June 30, 2025.

All three motions seek partial reconsideration of the *Decision*[1] promulgated on April 30, 2025, the dispositive portion of which reads:

> **WHEREFORE**, premises considered, the *Petition for Review* filed by petitioner Independent Electricity Market Operator of the Philippines, Inc. is **PARTIALLY GRANTED**. The DOF Opinion No. 008-2022, affirming the Commissioner of Internal Revenue's ruling in BIR Ruling No. OT-323-021 dated August 24, 2021, that the petitioner is not an income tax exempt business league under Section 30(F) of the NIRC of 1997, as amended, is AFFIRMED. However, his opinion that the Market Fees collected by petitioner from WESM Members are subject to income tax and withholding tax, as well as, his opinion that the Net Settlement Surplus form part of petitioner's gross income, are **REVERSED** and **SET ASIDE**.
>
> **SO ORDERED.**

In its *Partial Motion for Reconsideration*,[2] IEMOP maintains that, as the Market Operator of the Wholesale Electricity Spot Market ("**WESM**"), it possesses the characteristics that would qualify it as a business league exempt from income taxation under Section 30(F) of the National Internal Revenue Code (**NIRC**) of 1997, as amended. According to IEMOP, the Court's ruling that it cannot be considered a business league is without basis, since the WESM is not an entity in itself but operates through IEMOP, the duly established Market Operator, as mandated by relevant laws and issuances.

Further, as the Market Operator, IEMOP is limited to the operation of the WESM and the promotion of such common interest, namely: (1) provide a venue for the pricing and settlement of electricity that is generated and consumed and which are not covered by bilateral contracts; and (2) to generate the dispatch schedule that will be the basis for the dispatch of all generation facilities connected, directly or indirectly, to the grid or the power system. Hence, in carrying out its responsibilities as Market Operator, IEMOP necessarily promotes the interests of market participants.

hr

---

1 Docket, pp. 1806–1843.
2 *Id.* at 1844–1853.

Moreover, IEMOP asserts that the common interest that binds IEMOP and the market participants that make up the WESM is the operation of the market *per se*. While market participants are engaged in the business of either producing/selling, or purchasing/distributing electricity, this business requires the operation of the WESM for its accomplishment.

IEMOP likewise maintains that it does not engage in a regular business of a kind that is ordinarily carried on for profit. According to IEMOP, its creation is made pursuant to law to be the only Market Operator of the only electricity spot market in the Philippines. Republic Act ("**RA**") No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001 ("**EPIRA**"), also states that the market operator must not take any profit because the purpose is to reduce the electricity cost for the consuming public, which is the primordial objective of IEMOP. IEMOP adds that its non-profit nature and operation are not diminished when it is allowed to impose a charge on market participants to defray the costs of operating and administering the WESM on a cost-recovery basis only. In fact, according to IEMOP, the inherent non-profit nature of its operations was recognized in the subject DOF Opinion, which expressly stated that IEMOP's operations should result in no taxable income.

Lastly, IEMOP contends that its Articles of Incorporation clearly indicate that it was organized as a non-stock, non-profit corporation, as required under the EPIRA, WESM Rules, and DOE Circular No. DC2018-01-0002; and that no part of its net income or assets shall belong to or inure to the benefit of any of its members, directors, officers, or any other person. Hence, IEMOP asserts that it clearly meets all the requirements and tests for it to be considered as a business league that is exempt from income taxation under Section 30(F) of the NIRC of 1997, as amended.

By way of *Comment/Opposition (Re: Petitioner's Partial Motion for Reconsideration dated 15 May 2025)*, respondent CIR submits that IEMOP's *Motion for Partial Reconsideration* should be denied for lack of merit. According to respondent CIR, the Court is correct in its decision declaring against petitioner's qualification as an exempt entity under Section 30 of the NIRC of 1997, as amended. Allegedly, from the definition of a "business league", IEMOP, as the market operator of WESM, cannot qualify as such, considering the nature and purposes of its incorporation. Further, the various market participants, although registered as members of WESM, cannot be said to have a common business interest with IEMOP, as their membership is to enable them to participate in trading, not to further IEMOP's purposes.

Also, by way of *Comment (On Petitioner's Motion for Partial Reconsideration)*, respondent SOF submits that IEMOP cannot be considered as a tax-exempt business league. For one, IEMOP is not organized as a business league, which itself recognizes by claiming that it is simply "akin" to a business league. Its primary purpose, according to its Articles of Incorporation, is to manage and operate the WESM and to engage in services related to it. Joining the view of respondent CIR, respondent SOF asserts that the various market participants registered in the WESM cannot be said to share a common business interest with IEMOP, since their membership is to enable them to participate in the trading, *i.e.*, to inject or withdraw electricity from the grid, and not to promote a shared business interest with IEMOP.

On the other hand, in his *Motion for Partial Reconsideration (Of the Decision dated April 30, 2025)*,[3] respondent SOF disagrees with the Court's ruling that no income or profit is realized from the imposition of Market Fees; hence, they are not subject to income tax and, by extension, not subject to withholding tax. Respondent SOF explains that IEMOP, as market operator, undoubtedly collects Market Fees from WESM participants to cover the cost of administering and operating the WESM. Hence, the Market Fees collected by IEMOP in exchange for its services form part of its gross income subject to tax.

Respondent SOF likewise disagrees with the Court ruling that the Net Settlement Surplus ("**NSS**") is simply the result of reconciling receivables and payables among market participants; hence, given the absence of actual gain or profit, the same is not subject to tax.

Respondent SOF claims that the WESM Rules, as amended by DOE Circular No. DC2021-03-0007, are clear that the discretion on the disposition of the NSS remains with IEMOP. Hence, considering that IEMOP exercises discretion as to how it disposes the NSS, respondent SOF submits that the

---

3 *Id.* at 1855–1860.

Mr

NSS is not "the result of reconciling receivables and payables among market participants" but income in IEMOP's hands that is likewise subject to tax.

For his part, respondent CIR anchors his *Motion for Partial Reconsideration (Re: Decision dated 30 April 2025)*[4] on the following grounds:

I. WITH ALL DUE RESPECT, THE HONORABLE COURT ERRED IN RULING THAT IT HAS JURISDICTION OVER THE INSTANT CASE.

II. WITH ALL DUE RESPECT, THE HONORABLE COURT ERRED IN DECLARING THAT THE MARKET FEES COLLECTED BY PETITIONER FROM WESM MEMBERS ARE NOT SUBJECT TO INCOME TAX AND WITHHOLDING TAX.

III. WITH ALL DUE RESPECT, THE HONORABLE COURT ERRED IN DECLARING THAT THE NET SETTLEMENT SURPLUS IS NOT PART OF PETITIONER'S GROSS INCOME.

In its *Comment (Respondent CIR's Motion for Reconsideration)*, IEMOP counters that the jurisdiction of the Court in cases involving an appeal of an adverse administrative ruling of the CIR and the SOF has been settled in the case of *Banco de Oro v. Republic of the Philippines*[5] *(Banco de Oro)*.

IEMOP also counters that the Market Fees it collected from WESM Members are not subject to income tax. Citing Section 30 of the EPIRA law, IEMOP emphasizes that the Market Fees imposed on WESM Members (as approved by the Energy Regulatory Commission) are specifically allocated to cover the cost of administering and operating the WESM. For IEMOP, the three (3) elements for the imposition of income tax are: (1) there must be gain or profit; (2) that the gain or profit is realized or received, actually or constructively; and (3) it is not exempted by law or treaty from income tax. IEMOP asserts that, since no income or profit is realized from Market Fees, they are not subject to income tax and, by extension, not subject to withholding tax.

---

4 *Id.* at 1864–1885.
5 G.R. No. 198756 (Resolution), August 16, 2016 [Per J. Leonen, *En Banc*].

Finally, IEMOP counters that the NSS is not part of its gross income or receipts subject to tax. According to IEMOP, the prevailing rules on the disposition of the NSS are contained in: (1) the WESM Price Determination Methodology (**PDM**) set out in the Decision[6] of the Energy Regulatory Commission (**ERC**) dated August 20, 2020, in ERC Case No. 2017-042 RC; and (2) the "Amendments to the Rules for the Distribution of Net Settlement Surplus (NSS)" adopted by the ERC in its ERC Resolution No. 07, Series of 2019[7] dated October 23, 2019 (“**2019 NSS Rules**”).

IEMOP continues that under the prevailing WESM Rules, specifically clause 3.13.16.2 as amended by DOE Circular No. 2021-03-0007[8] dated March 16, 2021, the discretion of the Market Operator to retain the NSS was categorically removed. While indeed the amended WESM Rules clause 3.13.16.2 provides that the remaining NSS "may be flawed back to the Market Participants," the seemingly discretionary nature of this provision has been effectively removed in the rules earlier promulgated by the ERC in the PDM Decision[9] and the 2019 NSS Rules, as well as in the earlier 2009 NSS Rules and 2018 NSS Rules.

Moreover, IEMOP submits that under both the previous and prevailing rules, the net settlement amounts billed and collected in the WESM for electricity purchased through the market are already net of the calculated NSS. Clearly, there are no funds paid for and received as "NSS", and that IEMOP, as market operator, has no discretion as to the treatment of the NSS.

Thus, for IEMOP, it has sufficiently established that the NSS calculated in the course of the WESM settlement processes and netted out from the trading amounts of customers or buyers of electricity through the WESM is not subject to taxation in the hands of the market operator or any other WESM member/participant because there is no flow of wealth or funds arising from or directly attributable to the calculation of NSS in the WESM settlement processes.

---

6 Exhibit "P-18".
7 Exhibit "P-19".
8 Exhibit "P-22".
9 Exhibit "P-18" and "P-19".

After a thorough study of the parties' respective Motions for Partial Reconsideration, the Court finds that, except for respondent CIR's claim that IEMOP failed to exhaust administrative remedies, all the basic issues raised in the said *motions* have been determined and passed upon in the *Decision* sought to be reconsidered. To restate them anew is a waste of time and the meager resources of the Court.

Anent respondent CIR's invocation that IEMOP failed to exhaust administrative remedies as IEMOP should have first filed an appeal of the SOF Opinion to the Office of the President, before filing a *Petition for Review* before the Court, it must be emphasized that the issue of non-exhaustion of administrative remedies is being raised for the first time in respondent CIR's *Motion*. It is a well-settled rule that issues not raised during trial cannot be raised for the first time on appeal, more especially in a motion for reconsideration.[10] This position is confirmed by no less than the Supreme Court in its Decision in the case of *Mercado v. Spouses Espina*[11] which states:

> It is well established that issues raised for the first time on appeal and not raised in the proceedings in the lower court are barred by estoppel. Points of law, theories, issues, and arguments not brought to the attention of the trial court ought not to be considered by a reviewing court, as these cannot be raised for the first time on appeal. Basic considerations of due process impel the adoption of this rule.

Besides, the failure of IEMOP to appeal the SOF Opinion to the Office of the President is of no moment, considering the Supreme Court's pronouncement in *Commissioner of Internal Revenue v. Court of Tax Appeals and Petron Corporation*,[12] where it categorically declared that administrative issuances of the CIR, including revenue orders, memorandum circulars, or rulings, fall squarely within the Court of Tax Appeals' exclusive appellate jurisdiction, provided that there is compliance with the requirement of prior review by the SOF, in accordance with the NIRC of 1997, as amended.

---

[10] *Jesus Cuenco v. Talisay Tourist Sports Complex, Incorporated, et al.*, G.R. No. 174154, July 30, 2009 [Per J. Nachura, Third Division].

[11] G.R. No. 173987, February 25, 2012 [Per J. Peralta, Third Division] citing *Lorzano v. Tabayag, Jr.*, G.R. No. 189647, February 6, 2012 [Per J. Reyes, Second Division]; *Ayala Land, Inc., et al. v. Castillo, et al.*, G.R. No. 178110, June 15, 2011 [Per J. Sereno, Third Division]; *Sime Darby Pilipinas, Inc. v. Goodyear Philippines, Inc., et al.*, G.R. Nos. 182148 & 183210, June 8, 2011 [Per J. Mendoza, Second Division].

[12] G.R. No. 207843 (Resolution), February 14, 2018 [Per J. Perlas-Bernabe, Special First Division].

WHEREFORE, premises considered, the *Partial Motion for Reconsideration, Motion for Partial Reconsideration (Of the Decision dated April 30, 2025),* and *Motion for Partial Reconsideration (Re: Decision dated 30 April 2025)* filed by petitioner Independent Electricity Market Operator of the Philippines, Inc., respondent Secretary of Finance, and respondent Commissioner of Internal Revenue, respectively, are **DENIED** for lack of merit.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

I CONCUR:

JEAN MARIE A. BACORRO-VILLENA
Associate Justice