REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PREMIUMLEISURE AND AMUSEMENT, INC. (PLAI), *Petitioner,*	**CTA Case No. 10060**
	Members:
-versus-	**DEL ROSARIO,** *P.J., Chairperson,* **MANAHAN,** and **REYES-FAJARDO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: MAY 26 2022 10:32am

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DECISION

REYES-FAJARDO, J.:

THE CASE

This is a Petition for Review filed by petitioner Premiumleisure and Amusement Inc. (PLAI) against respondent Commissioner of Internal Revenue on April 5, 2019, praying that judgment be rendered ordering respondent to refund or issue in favor of petitioner a tax credit certificate (TCC) in the amount of ₱115,384,991.00, representing petitioner's alleged erroneously paid income tax for calendar year (CY) 2016.[1]

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[1] Statement of the Case, Pre-Trial Order dated December 10, 2019, Docket – Vol. III, p. 1530.

THE PARTIES

Petitioner PLAI is a corporation duly organized and existing under the laws of the Philippines.[2] It is registered with the Bureau of Internal Revenue (BIR) under Tax Identification No. 007-174-657-000, with address at 10/F One E-Com Center, Harbor Drive, Mall of Asia Complex, CBP 1A, Pasay City.[3]

On the other hand, respondent is the duly appointed Commissioner of Internal Revenue vested under the appropriate laws with the authority to carry out the functions, duties and responsibilities of said Office, including *inter alia,* the power to decide disputed assessments, cancel, and abate tax liabilities pursuant to the provisions of the National Internal Revenue Code (NIRC) of 1997, as amended, and other tax laws, rules and regulations. He may be served summons, pleadings and other processes at his office at the BIR National Office Building, BIR Road, Diliman, Quezon City.[4]

THE FACTS

On December 12, 2008, the Philippine Amusement and Gaming Corporation (PAGCOR) granted a Provisional License to establish and operate casinos in favor of SM Investments Corporation, SM Land, Inc., SM Hotels Corporation, SM Development Corporation, SM Commercial Properties, Inc., and PLAI, collectively referred to as "Consortium."[5]

On January 28, 2013, PAGCOR issued an Amended Certificate of Affiliation and Provisional License certifying that the Consortium will be the co-licensees and holders of the Provisional License dated December 12, 2008 issued by PAGCOR, in accordance with Presidential Decree (PD) No. 1869, as amended by Republic Act No. 9487.[6] The Affiliation and Provisional License applies to casinos located in the Bagong Nayong Pilipino Manila Bay Entertainment

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2 Exhibit "P-1", Docket - Vol. III, pp. 1595.
3 Exhibit "P-2" and "P-3", Docket - Vol. III.
4 Par. 1, Admitted Facts, *Joint Stipulation of Facts and Issues* (JSFI) dated October 25, 2019, Docket - Vol. II, p. 1007.
5 Exhibits "P-4", Docket - Vol. III, pp. 1595 to 1605.
6 Exhibit "P-5", Docket - Vol. III, p. 1605.

City, Parañaque City, and in the Newport City Integrated Resort, Pasay City.[7]

Thereafter, on April 29, 2015, PAGCOR issued a Gaming License to the same Consortium.[8] The Gaming License shall be valid until July 11, 2033, and applies to casinos located in the Entertainment City, Parañaque City, and in the Newport City Integrated Resort, Pasay City, specifically to the licensees' casino located along Asean Avenue and Roxas Boulevard, Tambo, Parañaque City, with the brand name of City of Dreams Manila.[9]

On April 17, 2013, the BIR issued Revenue Memorandum Circular (RMC) No. 33-2013 to clarify the income tax and franchise tax due from PAGCOR, its contractees, and licensees.[10]

In compliance with RMC No. 33-2013, petitioner filed its quarterly income tax returns (ITRs) for the first, second, and third quarters of CY 2016, through the BIR Electronic Filing and Payment System (eFPS), on May 26, 2016, August 25, 2016 and November 28, 2016, respectively. Likewise, petitioner filed its Annual ITR for CY 2016 on April 7, 2017, through the BIR eFPS.[11]

On February 14, 2019, petitioner filed a *Claim for Refund of Erroneously Paid Income Tax for CY 2016* dated January 31, 2019, in the amount of ₱98,851,263.00, representing the annual income tax it allegedly erroneously paid for CY 2016.[12] On April 4, 2019, petitioner filed an *Amended Claim for Refund of Erroneously Paid Income Tax for CY 2016* in the increased amount of ₱115,384,991.00.[13]

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7 *Id.*
8 Exhibit "P-6", Docket - Vol. III, p. 1605.
9 *Id.*
10 Par. 2, Admitted Facts, JSFI, Docket - Vol. II, p. 1007.
11 Par. 3, Admitted Facts, JSFI, Docket - Vol. II, p. 1008; Exhibit "P-14", Docket - Vol. III, pp. 1824 to 1834.
12 Exhibit "P-20", Docket - Vol. III, pp. 1942-1948.
13 Exhibit "P-21", Docket - Vol. III, pp. 1949 to 1951; Exhibit "P-22", Q&A 55-61, Docket - Vol. II, pp. 1060 to 1061.

Petitioner then filed the present Petition for Review on April 6, 2019.[14] After two (2) granted extensions,[15] respondent submitted his Answer on July 23, 2019.[16]

On July 30, 2019, respondent filed a Motion with Leave of Court to Admit Attached Amended Answer,[17] alleging that the submitted Answer did not embody some of the arguments respondent wishes to discuss. In the Resolution dated August 22, 2019,[18] the Court granted the Motion, and admitted respondent's Amended Answer.

On August 27, 2019, respondent transmitted to the Court the BIR Records of this case.[19]

The Pre-Trial Conference was scheduled and held on September 19, 2019.[20] Prior thereto, on September 13, 2019, Petitioner's Pre-Trial Brief[21] and Respondent's Pre-Trial Brief[22] were separately filed.

The parties submitted their Joint Stipulation of Facts and Issues on October 28, 2019.[23]

Respondent then filed a Motion for Early Resolution on the Issue of Jurisdiction of the Honorable Court on October 31, 2019,[24] arguing that both the administrative and judicial claims for refund were filed beyond the period provided by law, and hence, the Court has no jurisdiction and the instant petition must be dismissed. In opposition, petitioner filed its Comment/Opposition (Re: Respondent's Motion for Early Resolution of the Issue of Jurisdiction

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14 Docket - Vol. I, pp. 9 to 24.
15 Orders dated May 24, 2019 and June 28, 2019 Docket - Vol. I, pp. 431 and 451, respectively.
16 Docket - Vol. I, pp. 457 to 465.
17 Docket - Vol. I, pp. 471 to 490.
18 Docket - Vol. I, pp. 493 to 494.
19 Respondent's *Compliance* dated August 23, 2019, Docket - Vol. I, pp. 495 to 496.
20 *Notice of Pre-Trial Conference* dated July 29, 2019, Docket - Vol. I, pp. 467 to 468; Minutes of the hearing held on, and Order dated, September 19, 2019, Docket - Vol. II, pp. 970 to 972, and 974 to 975, respectively.
21 Docket - Vol. I, pp. 499 to 515.
22 Docket - Vol. II, pp. 965 to 968.
23 Docket - Vol. II, pp. 1007 to 1020.
24 Docket - Vol. II, pp. 1021 to 1028.

of the Honorable Court dated October 29, 2019) on December 9, 2019.[25] On December 13, 2019, respondent filed his Reply.[26] In its Resolution dated January 16, 2020,[27] the Court denied said Motion for Early Resolution and held that a full-blown trial is necessary for the parties be given ample opportunity to present evidence to prove their respective allegations.

In the meantime, the Pre-Trial Order dated December 10, 2019 was issued,[28] deeming the termination of the Pre-Trial.

As trial ensued, petitioner presented its testimonial and documentary evidence. Petitioner offered the testimony of Mr. Jackson T. Onsip,[29] its Chief Financial Officer and Vice President of Finance.

On November 20, 2020, petitioner filed its Formal Offer of Evidence.[30] Respondent filed his Comment (on Petitioner's Formal Offer of Evidence dated 17 November 2020) on December 7, 2020.[31] In the Resolution dated January 21, 2021,[32] the Court admitted petitioner's exhibits.

For his part, respondent filed a Manifestation on March 9, 2021,[33] stating that he will not be presenting a witness to testify on his behalf. In the Resolution dated May 19, 2021,[34] the Court then granted parties a period thirty (30) days from receipt of the Resolution to file their respective memoranda.

Respondent posted his Memorandum on July 1, 2021;[35] while petitioner's Memorandum was submitted on July 2, 2021.[36]

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25 Docket - Vol. II, pp. 1520 to 1527.
26 Docket - Vol. II, pp. 1547 to 1554.
27 Docket - Vol. II, pp. 1561 to 1565.
28 Docket - Vol. II, pp. 1530 to 1546.
29 Exhibit "P-22", Docket - Vol. II, pp. 1041 to 1063; Minutes of the hearing held on, and Order dated, November 10, 2020, Docket - Vol. II, pp. 1579 to 1583.
30 Docket - Vol. III, pp. 1587 to 1595.
31 Docket - Vol. III, pp. 1953 to 1955.
32 Docket - Vol. III, pp. 1959 to 1960.
33 Docket - Vol. III, pp. 1963 to 1964.
34 Resolution dated May 19, 2021, Docket - Vol. III, p. 1969.
35 Docket - Vol. III, pp. 1997 to 2013.
36 Docket - Vol. III, pp. 1970 to 1995.

The present case was submitted for decision on July 26, 2021.[37]

THE ISSUE

As stipulated by the parties, the sole issue to be resolved in this case, is as follows:

> "WHETHER OR NOT THE PETITIONER IS ENTITLED TO ITS CLAIM FOR REFUND OF OR ISSUANCE OF TCC FOR THE AMOUNT OF ₱115,384,991.00 REPRESENTING PETITIONER'S ERRONEOUSLY PAID INCOME TAX FOR CY 2016."[38]

Petitioner's Arguments:

Petitioner argues that it filed its administrative and judicial claims for refund within the prescriptive period fixed by law; that PAGCOR's exemption from income tax on gaming revenues extends to its licensees and contractees; that it erroneously paid income tax on its gaming revenues for CY 2016; and that petitioner's reported revenues for CY 2016 were already subjected to five percent (5%) franchise tax.

Respondent's Arguments:

Respondent contends that petitioner has not proven its entitlement to the refund or issuance of a TCC of alleged erroneously paid income taxes for CY 2016; that petitioner's reliance on the theory that Section 13(2)(b) in relation to Section 13(2)(a) of PD No. 1869 exempts it from payment of income taxes is misplaced; and that petitioner's claim was filed out of time.

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37 Resolution dated July 26, 2021, Docket - Vol. III, p. 2017.
38 Par. II.4, JSFI, Docket - Vol. II, p. 1008.

THE COURT'S RULING

The present Petition for Review lacks merit.

Petitioner timely filed its administrative and judicial claims.

Section 204(C) in relation to Section 229 of the NIRC of 1997, as amended, provides that judicial claims for refund must be filed within two (2) years from the date of payment of the tax or penalty, and that the same may not be maintained until a claim for refund or credit has been duly filed with respondent.[39] To wit:

> SEC. 204. - Authority of the Commissioner to Compromise, Abate, and Refund or Credit Taxes. - The Commissioner may -
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> . . .
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> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. **No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty**: Provided, however, that a return filed showing an overpayment shall be considered as a written claim for credit or refund.[40]
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> SEC. 229. - Recovery of Tax Erroneously or Illegally Collected. - **No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner;** but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

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39 *Commissioner of Internal Revenue vs. Goodyear Philippines, Inc.*, G.R. No. 216130, August 3, 2016.

40 Emphasis supplied.

> **In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment:** Provided, however, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.[41]

The foregoing provisions apply only to instances of erroneous payment or illegal collection of internal revenue taxes.[42] Section 229 states that judicial claims for refund must be filed within two (2) years from the date of payment of the tax or penalty, providing further that the same may not be maintained until a claim for refund or credit has been duly filed with respondent.[43] Plainly stated, the administrative and judicial claims for refund and/or issuance of TCC must be filed within the two-year prescriptive period starting from the date of payment of tax.[44]

It is jurisprudentially settled that the two-year prescriptive period in Section 229 of the NIRC of 1997, as amended, should be computed from the time of filing the Adjustment Return or Annual ITR and final payment of income tax.[45] This is so because at that point, it can already be determined whether there has been an overpayment by the taxpayer.[46] In the same vein, taxes withheld on certain payments under the creditable withholding tax system are but intended to approximate the tax due from the payee. The withheld taxes remitted to the BIR are treated as deposits or advances on the actual tax liability of the taxpayer, subject to adjustments at the

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41 Emphasis supplied.

42 *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.* G.R. No.184823, October 6, 2010.

43 *Commissioner of Internal Revenue vs. Goodyear Philippines, Inc.* G.R. No.216130, August 3, 2016.

44 Refer to *Commissioner of Internal Revenue vs. Team [Philippines] Operations Corporation [formerly Mirant (Phils) Operations Corporation]*, G.R. No. 179260, April 2, 2014.

45 *Commissioner of Internal Revenue vs. Mirant (Philippines) Operations Corp.*, G.R. Nos. 171742 & 176165, June 15, 2011; *Commissioner of Internal Revenue vs. Court of Appeals, et al.*, G.R. No. 117254, January 21, 1999; *Commissioner of Internal Revenue vs. The Philippine American Life Insurance Co., et al.*, G.R. No. 105208, May 29, 1995; *Commissioner of Internal Revenue vs. TMX Sales, Inc., et al.*, G.R. No. 83736, January 15, 1992; *ACCRA Investments Corporation vs. Court of Appeals, et al.*, G.R. No. 96322, December 20, 1991.

46 *Commissioner of Internal Revenue vs. Court of Appeals, et al.*, G.R. No. 117254, January 21, 1999.

proper time when the actual tax liability can be fully and finally determined.[47]

The prescriptive period of two (2) years should commence to run only from the time that the refund is ascertained, which can only be determined after a final adjustment return is accomplished.[48] In this case, petitioner filed its Annual ITR for CY 2016 and paid the corresponding income tax due on April 7, 2017.[49] Thus, reckoned from said date, petitioner had until **April 7, 2019**, within which to file its refund claim both at the administrative and judicial levels.

Petitioner filed its administrative claim for refund entitled *Claim for Refund of Erroneously Paid Income Tax for CY 2016* dated January 31, 2019 with attached Application for Tax Credits/Refunds (BIR Form No. 1914) stamped received by the BIR on February 14, 2019.[50] Petitioner then filed an *"Amended Claim for Refund of Erroneously Paid Income Tax for CY 2016"* in the amount of ₱115,384,991.00 on **April 4, 2019**.[51] A day after filing the *Amended Claim for Refund*, petitioner then filed the present Petition for Review on **April 5, 2019**,[52] two (2) days before the end of the two (2)-year prescriptive period on **April 7, 2019**, as above determined. Thus, both administrative and judicial claims of petitioner were timely made.

It may be contended that by filing the administrative and judicial claims only one (1) day apart, respondent, in effect, was deprived of the opportunity to ascertain the validity of the administrative claim. We reiterate the Supreme Court's pronouncement in the case of *Commissioner of Internal Revenue vs. Goodyear Philippines, Inc.*[53] where it was ruled that respondent taxpayer correctly and timely sought judicial redress, notwithstanding that its administrative and judicial claims were filed

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47 *Commissioner of Internal Revenue vs. Ironcon Builders and Development Corporation*, G.R. No. 180042, February 8, 2010.

48 *Commissioner of Internal Revenue vs. Mirant (Philippines) Operations Corp.*, G.R. Nos. 171742 & 176165, June 15, 2011; *Commissioner of Internal Revenue vs. Court of Appeals, et al.*, G.R. No. 117254, January 21, 1999; *Commissioner of Internal Revenue vs. The Philippine American Life Insurance Co., et al.*, G.R. No. 105208, May 29, 1995.

49 Par. 3, Admitted Facts, JSFI, Docket - Vol. II, p. 1008; Exhibit "P-14", Docket - Vol. III, pp. 1824 to 1834.

50 Exhibit "P-21", Docket - Vol. I, p. 962.

51 Exhibit "P-21", Docket - Vol. III, pp. 1949 to 1951.

52 Docket - Vol. I, pp. 9 to 24.

53 G.R. No. 216130, August 3, 2016.

only thirteen (13) days apart. The Supreme Court clarified that Section 229 of the NIRC, as amended, does not mean that the taxpayer must await the final resolution of its administrative claim for refund, since doing so would be tantamount to the taxpayer's forfeiture of its right to seek judicial recourse should the two (2)-year prescriptive period expire without the appropriate judicial claim being filed. Section 229, as worded, only requires that an administrative claim should first be filed.

We do not subscribe to respondent's contention that the two-year prescriptive should be reckoned from the filing of the quarterly ITR and the payment of the corresponding income due tax declared therein, i.e., on May 26, 2016,[54] August 25, 2016,[55] and December 9, 2016, [56] respectively. Respondent opines that said two (2)-year prescriptive period would only be reckoned from the filing of the annual ITR when the error is due to adjustments, error in computation, in estimation of payments, and not when the taxpayer claims to be wholly exempt from its payment.

Respondent's contention has no leg to stand on.

The case of *Metropolitan Bank & Trust Company vs. The Commissioner of Internal Revenue*,[57] —the jurisprudence being relied upon by respondent himself—does not support his contention. In said case, the Supreme Court held, to wit:

> As correctly pointed out by the CIR, the cases cited by Metrobank involved corporate income taxes, in which the corporate taxpayer is required to file and pay income tax on a quarterly basis, with such payments being subject to an adjustment at the end of the taxable year. As aptly put in CIR v. TMX Sales, Inc., **'<u>payment of quarterly income tax should only be considered [as] mere installments of the annual tax due</u>. These quarterly tax payments which are computed based on the cumulative figures of gross receipts and deductions in order to arrive at a net taxable income, should be treated <u>as advances or portions of the annual income tax due</u>, to be adjusted at the end of the calendar or fiscal year.** x x x **Consequently, the two-year prescriptive period** x x x **should be computed from the time of filing of the Adjustment Return or**

54 Exhibits "P-15" and "P-15-a", Docket - Vol. III, pp. 1835 to 1839.
55 Exhibits "P-16" and "P-16-a", Docket - Vol. III, pp. 1840 to 1848.
56 Exhibit "P-17", Docket - Vol. III, pp. 1851 to 1857.
57 G.R. No. 182582, April 17, 2017.

> **Annual Income Tax Return and final payment of income tax.'** Verily, **since quarterly income tax payments are treated as mere 'advance payments' of the annual corporate income tax, there may arise certain situations where such 'advance payments' would cover more than said corporate taxpayer's entire income tax liability for a specific taxable year. Thus, it is only logical to reckon the two (2)-year prescriptive period from the time the Final Adjustment Return or the Annual Income Tax Return was filed, since it is only at that time that it would be possible to determine whether the corporate taxpayer had paid an amount exceeding its annual income tax liability.** [58]

The foregoing jurisprudential pronouncements are clear that for corporate income taxes, the reckoning of the two-year prescriptive period is *"from the time the Final Adjustment Return or the Annual Income Tax Return was filed;"* and that the quarterly tax payments are *"mere advance payments of the annual corporate income tax."* Nowhere in the pronouncements was it qualified that the same two (2)-year prescriptive period would only be reckoned from the filing of the annual ITR when the error is due to adjustments, error in computation, in estimation of payments, and not when the taxpayer claims to be wholly exempt from its payment. As a corollary, respondent's argument already assumes that petitioner is already exempt from payment of the subject income tax—which the Court cannot simply adopt. Needless to state, when exemption is claimed, it must be shown indubitably to exist, for every presumption is against it, and a well-founded doubt is fatal to the claim.[59]

Based on Section 13(2)(a) of PD No. 1869, the exemption of PAGCOR from income tax on gaming revenues extends to its contractees and licensees. However, contractees or licencees must show PAGCOR's payment of the five percent (5%) franchise tax.

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58 Emphasis and underscoring supplied.

59 *Digital Telecommunications Philippines, Inc. vs. Province of Pangasinan*, G.R. No. 152534, February 23, 2007.

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In *Bloomberry Resorts and Hotels, Inc. vs. Bureau of Internal Revenue, represented by Commissioner Kim S. Jacinto,*[60] the Supreme Court settled that the income tax exemption of PAGCOR may indeed extend to its licensees and contractees. The Supreme Court discussed as follows:

> Section 13 of PD No. 1869 evidently states that payment of the 5% franchise tax by PAGCOR and its contractees and licensees exempts them from payment of any other taxes, including corporate income tax, quoted hereunder for ready reference:
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> Sec. 13. Exemptions. -
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> . . .
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> (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.
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> **(b) Others: The exemption 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**

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60 G.R. No. 212530, August 10, 2016.

> **and/or technical services rendered to the Corporation or operator.** [61]
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> As previously recognized, the above-quoted provision providing for the said exemption was neither amended nor repealed by any subsequent laws (i.e. Section 1 of R.A. No. 9337 which amended Section 27(C) of the NIRC of 1997); thus, it is still in effect. Guided by the doctrinal teachings in resolving the case at bench, **it is without a doubt that, like PAGCOR, its contractees and licensees remain exempted from the payment of corporate income tax and other taxes since the law is clear that said exemption inures to their benefit.**
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> . . .
>
> As the PAGCOR Charter states in unequivocal terms that exemptions 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 PAGCOR or operator has any contractual relationship in connection with the operations of the casino(s) authorized to be conducted under this Franchise, so it must be that **all contractees and licensees of PAGCOR, upon payment of the 5% franchise tax, shall likewise be exempted from all other taxes, including corporate income tax realized from the operation of casinos.**
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> . . .
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> **Plainly, too, upon payment of the 5% franchise tax, petitioner's income from its gaming operations of gambling casinos, gaming clubs and other similar recreation or amusement places, and gaming pools, defined within the purview of the aforesaid section, is not subject to corporate income tax.** [62]

Based on the foregoing, it is clear that pursuant to Section 13(2)(a) and (b) of PD No. 1869: (1) the income of PAGCOR from gaming operations is subject to five percent (5%) *franchise tax*; (2) upon payment of the five percent (5%) *franchise tax*, PAGCOR's income from its gaming operations are exempt for all other taxes; (3) the tax regime or incentive of PAGCOR inures to the benefit of and extend to all its contractees and licensees upon showing of the payment of the five percent (5%) *franchise tax*. To stress, to be entitled to the above-stated tax regime or incentive of PAGCOR, particularly,

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61 Emphasis and underscoring supplied.
62 Emphasis and underscoring supplied.

the exemption from corporate income tax, petitioner must primarily show that: (a) it is a contractee and licensee of PAGCOR and (b) the pertinent five percent (5%) *franchise tax* was paid.

In this case, the Court finds that petitioner was able to show that it is a contractee and licensee of PAGCOR. Petitioner is part of, or is one of the corporations composing the Consortium, which was granted the Gaming License dated April 29, 2015 issued by PAGCOR for the period from December 12, 2008 until July 11, 2033.[63]

Having convinced the Court that it is a licensee and contractee of PAGCOR, petitioner must next show that the five percent (5%) *franchise tax* was paid and remitted by PAGCOR to be entitled to the tax regime or incentive of PAGCOR. To stress, PD No. 1869 provides for the imposition of a five percent (5%) franchise tax of the gross revenues or earnings derived by PAGCOR from its operations conducted under the franchise, which shall be due and payable *in lieu* of all kinds of taxes, levies, fees or assessments of any kind, nature or description, levied, established or collected by any municipal, provincial or national government authority.[64] Since the payment of said five percent (5%) franchise tax shall be "*in lieu of all kinds of taxes,*" the tax exemption privilege being enjoyed by PAGCOR is dependent on the payment of the franchise tax. Thus, in case of non-payment of the franchise tax by PAGCOR, no tax exemption privilege is conferred on PAGCOR, and consequently, it follows that PAGCOR's contractees and licensees shall neither be entitled to any tax exemption.[65]

Under Section 21 of the Provisional License, the payment of *franchise tax* is the obligation of PAGCOR. To wit:[66]

> Section 21. FRANCHISE TAX. — PAGCOR shall pay the franchise tax on actual Gross Gaming Revenues generated by the Casino ("Franchise Tax"). **<u>The License Fees as stipulated under Section 20 hereof is inclusive of the Franchise Tax.</u>** As provided under the

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[63] Exhibit "P-6", Docket - Vol. III, p. 1605. Refer also to Exhibit "P-5", Docket - Vol. III, p. 1605; and Exhibits "P-4", Docket - Vol. III, pp. 1595 to 1605.

[64] *Philippine Amusement and Gaming Corporation (PAGCOR) vs. The Bureau of Internal Revenue, et al.*, G.R. No. 215427, December 10, 2014.

[65] *Melco Resorts Leisure (Php) Corp. vs. Commissioner of Internal Revenue*, C.T.A. Case No. 9811, October 28, 2021.

[66] Exhibits "P-4", Docket - Vol. III, pp. 1595 to 1605.

> PAGCOR Charter, the Franchise Tax shall be due and payable quarterly to the national government by PAGCOR.
>
> If the LICENSEE is required to make any payment on account of the franchise tax, PAGCOR shall defend and hold LICENSEE harmless against such payment or liability, so that the LICENSEE shall only be liable for and pay the License Fees as contemplated under this License.[67]

The terms and conditions, including the abovementioned provisions, in the said Provisional License were also adopted in the regular Gaming License issued by PAGCOR to the Consortium of which petitioner is a member.[68] It is, thus, petitioner's argument that "*the license fee remitted to PAGCOR on a monthly basis is in lieu of all taxes with reference to the income component of the licensee's gross gaming revenues.*"[69] The Court does not agree.

While the Provisional License provides that the *license fees* stipulated therein and remitted by the Consortium to PAGCOR is inclusive of the *franchise tax* and that said *franchise tax* shall be due and payable quarterly to the National Government by PAGCOR, the said remittance of *license fees* by the Consortium to PAGCOR, as thoroughly discussed in the ensuing paragraphs, cannot be equated as proof of payment of the *franchise tax* by PAGCOR to the National Government, even when the remittance of the *license fees* to PAGCOR includes the share of the Consortium in the same *franchise tax*.

To begin, it bears stressing that a *franchise* is different and distinct from a *license*. The Supreme Court in the case of *New Vision Satellite Network, Inc. vs. Provincial Government of Cagayan,*[70] distinguished between a franchise and a license, to wit:

> A "**franchise**" is a right or privilege granted by the sovereignty to one or more parties to do some act or acts, which they could not do without this grant from the sovereign power; a privilege which emanates from the sovereign power of the state government; a branch of the sovereign power of the state,

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[67] Emphasis and underscoring supplied.
[68] Exhibits "P-6", Docket - Vol. III, p.1605.
[69] Par. 63 of Memorandum, Docket - Vol. III, p. 1991-1992.
[70] G.R. No. 248840, July 5, 2021, citing *ABS-CBN Broadcasting Corp. vs. Commissioner of Internal Revenue*, C.T.A. Case No. 5060, April 8, 1997; and *Republic Broadcasting System, Inc. vs. Commissioner of Internal Revenue*, C.T.A. Case No. 4630, July 27, 1993

> subsisting in a person or corporation by grant from the state (17 Words and Phrases 471, 482, 469).
>
> A "**license**" on the other hand, confers no right or estate nor vested interest, nor does it constitute a binding contract between the parties, but it is a mere leave to be enjoyed as matter of indulgence at the will of the party granting it. It is in no sense a contract between the state and the licensee, but is a mere personal permit, neither transferable nor vendible (25 Words and Phrases 150, 174).[71]

In a plethora of cases,[72] the Supreme Court consistently defined a *franchise* as a legislative grant of a special privilege to a person to do certain things conferred by government. It is distinct from a *license* in such a way that the *franchise* is a vested right protected by the Constitution while a *license* is a mere personal privilege and is revocable.[73] In a *franchise*, matters like extent of operation, area of responsibilities, franchise tax to be paid to the State, and tax exemption privileges are recited.[74]

In the case before us, the Franchise of PAGCOR is granted to it by law, PD No. 1869, otherwise known as the PAGCOR Charter. The said Franchise granted PAGCOR *the rights, privileges and authority to operate and license gambling casinos, gaming clubs and other similar recreation or amusement places, gaming pools, i.e. basketball, football, bingo, etc. except jai-alai, whether on land or sea, within the territorial jurisdiction of the Republic of the Philippines.*[75] The imposition of the five percent (5%) franchise tax "*in lieu of all kinds of taxes*" is provided under Section 13(2)(a) therein.

On the other hand, the Provisional License[76] was issued by PAGCOR in favor of the Consortium of which petitioner is a

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[71] Emphasis and underscoring supplied.

[72] *Radio Communication of the Phils., Inc. vs. National Telecommunications Commission*, G.R. No. L-68729, May 29, 1987; *Associated Communications & Wireless Services – United Broadcasting Networks vs. National Telecommunications Commission*, G.R. No. 144109, February 17, 2003; *ABS-CBN Corp. vs. National Telecommunications Commission*, G.R. No. 252119, August 25, 2020; *New Vision Satellite Network, Inc. vs. Provincial Government of Cagayan*, G.R. No. 248840, July 5, 2021.

[73] *New Vision Satellite Network, Inc. vs. Provincial Government of Cagayan*, G.R. No. 248840, July 5, 2021, *citing Republic Broadcasting System, Inc. vs. Commissioner of Internal Revenue*, C.T.A. Case No. 4630, July 27, 1993.

[74] *Id.*

[75] PAGCOR Charter, Title IV, Section 10.

[76] Exhibits "P-6", Docket - Vol. III, p.1605.

member. The Provisional License entitles petitioner and other co-licensees to the custom duties and tax exemptions specified under the Title IV, Section 13 of the PAGCOR Charter.[77] Under Section 20 of said Provisional License, the payment of license fee by the licensee to PAGCOR is an essential condition for the issuance of license to the licensee. To wit:[78]

> Section 20. LICENSE FEE. — **As an essential condition for the License to be issued by PAGCOR to LICENSEE to establish and operate the Casino within the Project, LICENSEE must remit to PAGCOR on monthly basis, starting from the date the Casino commences operations, the following License Fees**, in lieu of all taxes with reference to the Income Component of the Gross Gaming Revenue:
>
> (a) 15% of Gross Gaming Revenues generated from High Roller tables;
> (b) 25% of Gross Gaming Revenues generated from non-High Roller Tables;
> (c) 25% of Gross Gaming Revenues generated from slot machines and electronic gaming machines;
> (d) 15% of Gross Gaming Revenues generated from Junket Operation.[79]
>
> . . .

From the analysis above, it is apparent that a franchise is separate and distinct from a license as the two stem from different sources and are of distinct nature. Given the distinction between a franchise and a license, it necessarily follows that the payment of license fees is likewise separate and distinct from the payment of franchise taxes. It is therefore crucial for petitioner to prove payment of the five percent (5%) franchise tax to the National Government, not only its remittance of the license fees to PAGCOR, in order to benefit from PAGCOR's tax privileges and exemption under its Franchise.

The records of this case reveal that while petitioner undoubtedly demonstrated that their Consortium, through the co-licensee MCE Leisure (Philippines) Corporation, remitted ***license fees*** to PAGCOR in relation to the gaming revenues,[80] it, however,

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77 Exhibits "P-4", Docket - Vol. III, p.1595.
78 *Id.* at pp. 1595 to 1605.
79 Emphasis supplied.
80 Exhibits "P-12-a" to "P-12-vv", Docket - Vol. III, pp. 1742 to 1789.

miserably failed to prove PAGCOR's payment of the franchise tax due to the National Government. As established, the remittance of *license fees* by the Consortium to PAGCOR cannot be equated as payment of *franchise tax* by PAGCOR to the National Government for the reason that the *license fees* are paid by the Consortium as a consideration for the grant of the Gaming License by PAGCOR; while, the *franchise tax* is paid by PAGCOR as a consideration for the grant of the said franchise by the government, which is necessary for PAGCOR to enjoy certain tax incentives under the franchise which may inure to the benefit of and extend to its contractees and licensees, as provided under Section 13(a) and (b) of PD No. 1869.

The case of *Travellers International Hotel Group, Inc. vs. Commissioner of Internal Revenue,*[81] which was decided by this Court and relied upon by petitioner in arguing for its tax exemption does not fall squarely to the present case because in *Travellers*, there is proof of payment of the five percent (5%) franchise tax. In said case, this Court found that petitioner has been authorized by PAGCOR to establish and operate casinos in line with the latter's regulatory and licensing authority under the PAGCOR Charter and, **as shown by the records, paid the five percent (5%) *franchise tax* due on its gross receipts**, as evidenced by the *PAGCOR Certification* dated April 11, 2014 and the *Statements of Franchise Tax Remittances* for CY 2010. Hence, being a licensee of PAGCOR **<u>and</u>** having paid the five percent (5%) *franchise tax* on its gross gaming revenues, this Court held in that case that petitioner is clearly exempt from tax on its income generated from its gaming operations.

In the present case, however, there are no such records, *PAGCOR Certification*, or *Statement of Franchise Tax Remittances* and the like, that clearly and unequivocally show that the five percent (5%) *franchise tax* on petitioner's gross gaming revenues was indeed paid and remitted by PAGCOR to the National Government. The *undated Certification issued by PAGCOR* only certifies that: 1) petitioner and MCE Leisure (Philippines) Corporation are co-licencees and holders of a Regular Casino Gaming License, and 2) MCE Leisure (Philippines) Corporation pays monthly *license fees*, on behalf of the Consortium of which petitioner is a member.[82] It does not provide

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[81] C.T.A. Case No. 9168, November 8, 2018.

[82] Exhibits "P-8", Docket - Vol. III, p.1670.

any certification as to the payment or remittance by PAGCOR of the *franchise tax* to the National Government.

There being no proof that the corresponding *franchise tax* was paid by PAGCOR for CY 2016, petitioner's tax exemption under Section 13(2)(a) of PD No. 1869 was not established in the present case. Thus, PAGCOR's tax regime or incentive cannot inure to the benefit of and extend to petitioner, particularly, the exemption from the imposition of corporate income tax on its gaming revenues for the same year.

In the recent case of *Melco Resorts Leisure (PHP) Corporation vs. Commissioner of Internal Revenue,*[83] this Court held that in case of lack of proof of payment of the five percent (5%) franchise tax by PAGCOR, no tax exemption privilege shall be granted to PAGCOR, and thus, it follows that PAGCOR's contractees and licensees shall likewise be not entitled to any tax exemption. As the old adage goes, the spring cannot rise higher than its source.[84]

In *Bloomberry Resorts and Hotels, Inc. vs. Bureau of Internal Revenue,*[85] the Supreme Court emphasized the significance of the payment of the five percent (5%) franchise tax to entitle PAGCOR and all its contractees and licensees to the tax exemption to be enjoyed by them. To wit:

> As the PAGCOR Charter states in unequivocal terms that exemptions 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 PAGCOR or operator has any contractual relationship in connection with the operations of the casino(s) authorized to be conducted under this Franchise, **so it must be that all contractees and licensees of PAGCOR, <u>upon payment of the 5% franchise tax</u>, shall likewise be exempted from all other taxes, including corporate income tax realized from the operation of casinos.**
>
> . . .

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83 C.T.A. Case No. 9811, October 28, 2021.

84 *Heirs of Maximo Labanon, et al. vs. Heirs of Constancio Labanon,* G.R. No. 160711, August 14, 2007.

85 G.R. No. 212530, August 10, 2016.

> Plainly, too, **upon payment of the 5% franchise tax**, petitioner's income from its gaming operations of gambling casinos, gaming clubs and other similar recreation or amusement places, and gaming pools, defined within the purview of the aforesaid section, **is not subject to corporate income tax.**[86]

Well-settled is the rule that tax refunds are in the nature of tax exemptions. As such, they are regarded as derogation of sovereign authority and to be construed *strictissimi juris* against the person or entity claiming the refund.[87] Tax refund cannot be allowed unless granted in the most explicit and categorical language and is strictly construed against the claimant who must discharge such burden convincingly.[88] Petitioner has the burden of proof to establish the factual basis of its claim for tax refund. Having failed to discharge said burden of proof, the instant refund claim must perforce be denied.

It is also noteworthy that under Section 8 of Republic Act No. 1125, this Court is described as a court of record. As cases filed before this Court are litigated de novo, party litigants should prove every minute aspect of their cases.[89] In this case, petitioner failed to prove its entitlement to the refund.

WHEREFORE, in light of the foregoing considerations, the instant Petition for Review is **DISMISSED** for lack of merit.

SO ORDERED.

Marian Ivy F. Reyes - Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

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86 Emphasis and underscoring supplied.

87 *Commissioner of Internal Revenue vs. S.C. Johnson & Son, Inc.*, G.R. No. 127105, June 25, 1999.

88 *The Commissioner of Internal Revenue vs. Acesite (Philippines) Hotel Corp.*, G.R. No. 147295, February 16, 2007.

89 *Atlas Consolidated Mining and Development Corp. vs. Commissioner of Internal Revenue*, G.R. Nos. 141104 & 148763, June 8, 2007.

WE CONCUR:

(With due respect, see Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

CATHERINE T. MANAHAN
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.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

<u>FIRST DIVISION</u>

PREMIUMLEISURE AND AMUSEMENT, INC. (PLAI),
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 10060

Members:

DEL ROSARIO, *P.J., Chairperson*
MANAHAN, and
REYES-FAJARDO, *<u>JJ.</u>*

Promulgated:
MAY 26 2022 10:32am

x---x

DISSENTING OPINION

***DEL ROSARIO, <u>P.J.</u>*:**

With due respect, I am constrained to withhold my assent on the *ponencia*.

Sections 20 and 21 of the Provisional License[1] granted by the Philippine Amusement and Gaming Corporation (PAGCOR) in favor of the Consortium, which includes petitioner, state that:

> "**SECTION 20. LICENSE FEE**. – As an essential condition for the License to be issued by PAGCOR to LICENSEE to establish and operate the Casino within the Project, **<u>LICENSEE must remit to PAGCOR on monthly basis</u>**, starting from the date the Casino commences operations, **<u>the following License Fees</u>**, in lieu of all taxes with reference to the Income Component of the Gross Gaming Revenues:
>
> xxx xxx xxx.
>
> **SECTION 21. FRANCHISE TAX.** – PAGCOR shall pay the franchise tax on actual Gross Gaming Revenues generated by the Casino

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[1] Exhibit "P-4", CTA Docket Vol. III, pp. 1595 to 1605.

('Franchise Tax'). **The License Fee as stipulated under Section 20 hereof is <u>inclusive</u> of the Franchise Tax.** As provided under the PAGCOR Charter, the Franchise Tax shall be due and payable quarterly to the national government by PAGCOR.

Xxx xxx xxx." *(Boldfacing and underscoring supplied)*

As explicitly stated in the Provisional License, petitioner, as licensee of PAGCOR, is required to **remit license fee to PAGCOR**, which is **inclusive of the franchise tax.**

Contrary to the *ponencia*'s conclusion, I submit that petitioner is not required to prove the actual remittance or payment of the 5% franchise tax to the National Government by the PAGCOR. **It is sufficient that petitioner has proven the payment of the license fee, which is inclusive of franchise tax due, to PAGCOR**. This is consistent with the pronouncement in *Bloomberry Resorts and Hotels, Inc. vs. Bureau of Internal Revenue*,[2] *viz.*:

> "Xxx. Guided by the doctrinal teachings in resolving the case at bench, it is without a doubt that, like PAGCOR, **its contractees and licensees remain exempted from the payment of corporate income tax and other taxes** since the law is clear that said exemption inures to their benefit.
>
> xxx
>
> As the PAGCOR Charter states in unequivocal terms that exemptions 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 PAGCOR or operator has any contractual relationship in connection with the operations of the casino(s) authorized to be conducted under this Franchise, so it must be that all contractees and licensees of PAGCOR, **upon payment of the 5% franchise tax**, shall likewise be exempted from all other taxes, including corporate income tax realized from the operation of casinos.
>
> xxx
>
> **Plainly, too, <u>upon payment of the 5% franchise tax, petitioner's income</u> from its gaming operations of gambling casinos, gaming clubs and other similar recreation or amusement places, and gaming pools, defined within the purview of the aforesaid section, is not subject to corporate income tax.** *(Additional boldfacing and underscoring supplied)*

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[2] G.R. No. 212530, August 10, 2016.

Prescinding from *Bloomberry*, when it is PAGCOR which is claiming refund of regular corporate income tax paid on its gaming operations, it is required to prove the payment to the National Government of the franchise tax due from it. **On the other hand, when a licensee, like petitioner, claims a refund of the regular corporate income tax paid on its gaming operations, it must prove that it paid the franchise tax due from it. <u>Under its License with PAGCOR, petitioner is required to remit the license fee to PAGCOR which is inclusive of the franchise tax.</u> The payment by petitioner of its licensee fee to PAGCOR, which includes the franchise tax, exempts it from payment of any other taxes, including corporate income tax.**

Otherwise stated, there is nothing in *Bloomberry* or even in the PAGCOR Charter which requires petitioner to prove PAGCOR's actual payment to the National Government of the franchise tax. Thus, in support of its claim for refund, petitioner must establish the following:

(i) It is a licensee of PAGCOR;

(ii) It derived income from gaming operations;

(iii) It remitted the franchise tax due from it as a licensee of PAGCOR; and,

(iv) It paid regular corporate income tax on its gaming operations.

Incidentally, the *ponencia* declares that the case of *Travellers International Hotel Group, Inc. vs. Commissioner of Internal Revenue*,[3] being relied upon by petitioner, does not fall squarely to the present case. Apparently, the *ponencia* declared that in that case, Travellers International Hotel Group, Inc. (TIHGI) was able to prove that **it was a licensee of PAGCOR and that PAGCOR itself paid the 5% franchise tax to the National Government thereby upholding TIHGI's tax exemption.**

With due respect, the factual deduction is inaccurate.

A perusal of the said case reveals that there is nothing therein, which suggests even remotely, that the Court, in confirming TIHGI's tax exemption, premised such conclusion on PAGCOR's payment of the 5% franchise tax to the National Government. What the Court

[3] CTA Case No. 9168, November 8, 2018.

settled is simply that the payment of the franchise tax by a PAGCOR licensee or contractee is a condition *sine qua non* for the latter to be exempt from income tax. As aforediscussed, the payment of license fee by a PAGCOR licensee should be made to PAGCOR itself and that the license fee is inclusive of the franchise tax. Said the Court:

> "Being a licensee of PAGCOR and having paid the five percent (5%) franchise tax on its gross gaming revenues, petitioner is clearly exempt from tax on its income generated from its gaming operations."

Here, it is also undisputed that petitioner is a licensee of PAGCOR. With respect to the remittance of petitioner's franchise tax, **the *ponencia* declared, on page 17 thereof, that petitioner paid and remitted the license fees due to PAGCOR in relation to its gaming revenues. Under Section 21 of the Provisional License, and as testified by petitioner's witness,[4] <u>the license fee is inclusive of the franchise tax</u>. Hence, the fact of payment of the franchise tax due from petitioner was proven and as a consequence, petitioner is exempted from the payment of any other taxes, including corporate income tax.**

Anent *Melco Resorts Leisure (PHP) Corporation vs. Commissioner of Internal Revenue*,[5] I submit that the same is not applicable to the present case as *Melco* involves a claim for refund of input VAT attributable to Melco Resorts Leisure (PHP) Corporation's (MRLC) gaming revenues. The claim for refund was denied not because MRLC failed to prove that the franchise tax was remitted by PAGCOR to the National Government, but for a totally different reasoning, that is -- **the sales of petitioner were not zero-rated sales. Thus, the Court, in elucidating that claims for input VAT refund belongs to those engaged in VAT zero-rated sales and not in VAT exempt sales, judiciously opined**:

> "There is no question then that the benefits extended to PAGCOR under its Charter inure to the benefit of its licensees and contractees including exemption from taxes subject to the condition that the 5% franchise tax is paid.
>
> While this Court agrees with the petitioner that it similarly enjoys tax exemption granted to PAGCOR under its charter, it is significant to point out that the instant case is a **claim for refund of alleged excess input taxes attributable to zero-rated sales**. Xxx.
>
> As distinguished from an exemption from taxes, petitioner is seeking the refund of input VAT supposedly passed on to it by its

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[4] Exhibit "P-22", CTA Docket Vol. II, pp. 1050 to 1051.
[5] CTA Case No. 9811, October 28, 2021.

suppliers/ sellers which are allegedly attributable to its zero-rated sales.

Xxx

Even PAGCOR's sales from whom it secured its license to engage in gaming operations are **not considered zero-rated but VAT exempt** under PD 1869 and Section 108 (B) (3) of the 1997 NIRC, as amended. PAGCOR's tax exemption from the payment of taxes including VAT which inures to the benefit of its licensees and contractees, does not entitle the latter to claim the input VAT that may have been passed on to it by its suppliers/ sellers as discussed earlier, **because such privilege belongs only to those which are engaged in VAT zero-rated and not VAT-exempt sales**.

Xxx

Xxx, **a cursory reading of the aforequoted Section 13(2) of PD No. 1869 would reveal that PAGCOR was not given any VAT zero-rating treatment on its sales. Thus, no such treatment 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"**.

Xxx

Seen in the perspective of PAGCOR being exempt under a special law, it is apparent that the proper party to seek the subject tax refund or credit should be petitioner's suppliers because **it is the latter's supply of services to a VAT exempt entity (PAGCOR and/ or its licensees) that are considered effectively zero-rated.**

Xxx

In conclusion, **the claim for refund of alleged excess/unutilized input tax incurred by petitioner during the first quarter of 2016 cannot be refunded because the latter is not engaged in zero-rated activities pursuant to the relevant afore-quoted provisions of the 1997 NIRC, as amended.** *(Boldfacing supplied)*

Interestingly, in two (2) cases,[6] involving the **same parties and issue, with substantially the same class/kind of evidence**, albeit

[6] Premiumleisure and Amusement, Inc. vs. Commissioner of Internal Revenue, **CTA Case No. 9572**, (Decision dated July 16, 2019 was **penned by Associate Justice Cielito N. Mindaro-Grulla and concurred by Presiding Justice Roman G. Del Rosario and Associate Justice Erlinda P. Uy**); and, Premiumleisure and Amusement, Inc. (PLAI) vs. Commissioner of Internal Revenue, **CTA Case No. 9798**, (Decision dated September 2, 2020 was **penned by Associate Justice Catherine T. Manahan and concurred by Presiding Justice Del Rosario**).

different taxable years, this Court (First Division) unanimously ruled on the entitlement of petitioner to its claim for refund of erroneously paid income tax on its gaming revenues, considering that petitioner has proven that it was a contractee and licensee of PAGCOR and that it remitted the licensee fee to PAGCOR, which is inclusive of the franchise tax. These decisions were likewise unanimously affirmed by the Court *En Banc*.[7]

As borne by the records, petitioner reported taxable gaming revenues in the amount of ₱702,027,461.00 for calendar year 2016. Petitioner is claiming refund of the amount of ₱115,384,991.00 representing its alleged erroneously paid income tax on said gaming revenues for calendar year 2016. Upon review of petitioner's Annual Income Tax Return (ITR) for calendar year 2016,[8] the amount of ₱115,384,911.00 pertains to the total tax credits earned and tax payments made by petitioner during the said calendar year, as shown below:

Item	Amount
Income Tax Payment under Regular/Normal Rate from Previous Quarter/s	₱ 84,517,225.00
Creditable Tax Withheld from Previous Quarter/s per BIR Form No. 2307	22,245,935.00
Creditable Tax Withheld per BIR Form No. 2307 for the 4th Quarter	8,621,751.00
Total Tax Credits/Payments	**₱ 115,384,911.00**

To prove the payment of income taxes for the first and second quarters of calendar 2016 amounting to ₱84,517,225.00, petitioner submitted as proof the payment confirmations from the BIR, as shown below:

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[7] Commissioner of Internal Revenue vs. Premiumleisure and Amusement, Inc. (PLAI), **CTA EB No. 2226** (CTA Case No. 9572) (Decision dated June 14, 2021 was penned by Associate Justice Ma. Belen M. Ringpis-Liban and concurred by Presiding Justice Roman G. Del Rosario and Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Catherine T. Manahan, Jean Marie A. Bacorro-Villena and Maria Rowena Modesto-San Pedro); and, Commissioner of Internal Revenue vs. Premiumleisure and Amusement, Inc. (PLAI), **CTA EB No. 2414** (CTA Case No. 9798) (Decision dated April 12, 2022 was penned by Associate Justice Ma. Belen M. Ringpis-Liban and concurred by Presiding Justice Roman G. Del Rosario and Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Catherine T. Manahan, Jean Marie A. Bacorro-Villena, Maria Rowena Modesto-San Pedro, Marian Ivy F. Reyes-Fajardo and Lanee S. Cui-David).

[8] Exhibit "P-14", CTA Docket, Vol. III, p. 1829.

Income Tax Payments in Previous Quarters	Exhibit	Amount
1st Quarter	"P-15-a"[9]	₱ 49,142,799.47
2nd Quarter	"P-16-a"[10]	35,374,424.64
Total Income Tax Payments		**₱ 84,517,224.11**

Anent the creditable withholding taxes, petitioner was able to substantiate its total tax credits amounting to ₱30,867,684.51 with Certificates of Creditable Tax Withheld at Source (BIR Form 2307). As held in *Commissioner of Internal Revenue vs. Philippine National Bank*,[11] the Certificate of Creditable Tax Withheld at Source is a competent proof to establish the fact that taxes were withheld. Thus, the creditable withholding taxes in the total amount of ₱30,867,684.51, supported by Certificates of Creditable Tax Withheld at Source issued by the Consortium through MCE Leisure (Philippines) Corporation, are refundable, as follows:

Period	Payor	Exhibit	Income Payment	CWT Amount
April 1, 2016 to June 30, 2016	MCE LEISURE (PHILIPPINES CORPORATION)	"P-18-a"[12]	₱ 716,701,935.50	₱ 14,334,038.71
July 1, 2016 to September 30, 2016	MCE LEISURE (PHILIPPINES CORPORATION)	"P-18-b"[13]	395,594,770.63	7,911,895.41
October 01, 2016 to December 31, 2016	MCE LEISURE (PHILIPPINES CORPORATION)	"P-18-c"[14]	431,087,519.54	8,621,750.39
TOTAL			**₱ 1,543,384,225.67**	**₱ 30,867,684.51**

In view of the foregoing, petitioner was able to prove that it paid income tax for the first and second quarters of calendar year 2016 amounting to ₱84,517,225.00 and it earned income tax credits amounting to ₱30,867,684.51 for calendar year 2016, or a total of ₱115,384,911.00. Petitioner is thus entitled to the refund of its erroneously paid income tax amounting to ₱115,384,911.00 for calendar year 2016.

[9] CTA Docket, Vol. III, pp. 1837-1839.
[10] CTA Docket, Vol. III, pp. 1845-1848.
[11] G.R. No. 180290, September 29, 2014.
[12] CTA Docket, Vol. III, p. 1858.
[13] CTA Docket, Vol. III, p. 1859.
[14] CTA Docket, Vol. III, p. 1860.

All told, I VOTE to GRANT the Petition for Review and ORDER respondent Commissioner of Internal Revenue to refund or issue a tax credit certificate in favor of petitioner Premiumleisure and Amusement, Inc. (PLAI) the amount of ₱115,384,911.00 representing its erroneously paid income tax for calendar year 2016.

ROMAN G. DEL ROSARIO
Presiding Justice