

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL
REVENUE,

Petitioner,

CTA *EB* No. 868
(CTA Case No. 7976)

-versus-

PHILIPPINE AMUSEMENT AND
GAMING CORPORATION
(PAGCOR),

Respondent.

x ----- x

PHILIPPINE AMUSEMENT AND
GAMING CORPORATION

CTA *EB* NO. 869
(CTA Case No. 7976)

-versus-

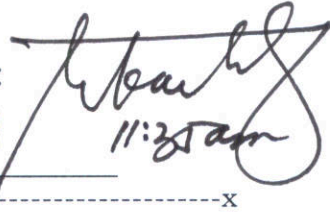
Present:
DEL ROSARIO, *P.J.*,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, *and*
ANGELES, *JJ.*

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.

x ----- x

Promulgated:
DEC 22 2023


11:35 am



AMENDED DECISION

CTA EB Nos. 868 & 869 (CTA Case No. 7976)

Commissioner of Internal Revenue vs. Philippine Amusement and Gaming Corporation (PAGCOR) / PAGCOR vs. 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

Page 2 of 22

x-----x

AMENDED DECISION

CUI-DAVID, J.:

Before the Court *En Banc* are the consolidated cases remanded by the Supreme Court pursuant to its Decision dated November 22, 2017, rendered in G.R. Nos. 210689-90 entitled *Philippine Amusement and Gaming Corporation (PAGCOR) v. 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* and G.R. Nos. 210704 and 210725, entitled *Commissioner of Internal Revenue v. Philippine Amusement and Gaming Corporation (PAGCOR)*, for determination of the final amount to be paid by PAGCOR for taxable years 2005 and 2006.

These consolidated cases stem from the *Formal Letter of Demand* (FLD) with attached *Assessment Notices*, all dated December 9, 2008, issued against PAGCOR for deficiency income tax (IT), value-added tax (VAT), and fringe benefit tax (FBT), inclusive of surcharges, interests, and compromise penalties for taxable years 2005 and 2006, in the aggregate amount of ₱5,927,542,547.76.¹

Based on the aforesaid Decision, PAGCOR was found liable to pay **only** the deficiency IT, including surcharges and interests, on its income derived from other related activities for taxable years 2005 and 2006, and the assessed deficiency FBT, including surcharges and interests, for the same taxable years. Hence, the **remand** to this Court for the determination of the final amount to be paid by PAGCOR.

THE FACTS AND THE PROCEEDINGS

The relevant facts, as culled from the Supreme Court's Decision, are as follows:

PAGCOR is a duly created government instrumentality by virtue of Presidential Decree (PD) No. 1869, issued on July 11, 1983. Under the said decree, specifically in Section 10, Title IV thereof, PAGCOR's franchise includes the "rights,

¹ Par. 5, *Summary of Admitted Facts by the Respondent, Pre-trial Order*, Division Docket, p. 350; Annexes "A" to "M" of *Petition for Review*, Division Docket, pp. 38-50.

AMENDED DECISION

CTA EB Nos. 868 & 869 (CTA Case No. 7976)

Commissioner of Internal Revenue vs. Philippine Amusement and Gaming Corporation (PAGCOR) / PAGCOR vs. 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

Page 3 of 22

X-----X

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 "[a]ll persons primarily engaged in gambling, together with their allied business."

Moreover, Section 13(2) of PD No. 1869 provides that "[n]o 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 [PAGCOR]; nor shall any form of tax or charge attach in any way to the earnings of [PAGCOR], except a Franchise Tax of five (5%) percent of the gross revenue or earnings derived by [PAGCOR] 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, assessments of any kind, nature, or description levied, established, or collected by any municipal, provincial, or national government authority."

Section 14(5) of PD No. 1869 also states that PAGCOR "is authorized to operate such necessary and related services, shows and entertainment;" and "[a]ny income that may be realized from these related services shall not be included as part of the income of [PAGCOR] for the purpose of applying the franchise tax, but the same shall be considered as a separate income of the [PAGCOR] and shall be subject to income tax."

On January 1, 1998, Republic Act (RA) No. 8424 or the National Internal Revenue Code of 1997 (1997 NIRC) took effect wherein PAGCOR, under Section 27(C) thereof, was included among the government-owned or -controlled corporations (GOCCs) exempt from the payment of income tax, to wit:

CHAPTER IV — Tax on Corporations

SEC. 27. *Rates of Income Tax on Domestic Corporations.* —

xxx

xxx

xxx



AMENDED DECISION

CTA EB Nos. 868 & 869 (CTA Case No. 7976)

Commissioner of Internal Revenue vs. Philippine Amusement and Gaming Corporation (PAGCOR) / PAGCOR vs. 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

Page 4 of 22

x-----x

(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.

Subsequently, on July 1, 2005, RA No. 9337 amended Section 27(C) of the 1997 NIRC, by removing PAGCOR from the list of the GOCCs exempt from payment of income tax.

On June 20, 2007, RA No. 9487 was enacted extending PAGCOR's franchise under PD No. 1869 for another period of 25 years, renewable for another 25 years.

On July 14, 2008, PAGCOR received a letter dated July 2, 2008 from the Head of Revenue Executive Assistant (HREA) of the Large Taxpayers Service, Bureau of Internal Revenue (BIR), requesting for an informal conference on the results of an investigation regarding all its internal revenue tax liabilities for the taxable years 2005 and 2006.

On August 11, 2008, PAGCOR received from the CIR a Preliminary Assessment Notice dated July 29, 2008 on its alleged deficiency income tax, Value-Added Tax (VAT), Fringe Benefit Tax (FBT), and documentary stamp tax for taxable years 2005 and 2006.

On February 3, 2009, PAGCOR received from the CIR a Formal Letter of Demand, with attached Assessment Notices all dated December 9, 2008, but 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:

M

AMENDED DECISIONCTA *EB* Nos. 868 & 869 (CTA Case No. 7976)

Commissioner of Internal Revenue vs. Philippine Amusement and Gaming Corporation (PAGCOR) / PAGCOR vs. 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

Page 5 of 22

x-----x

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 968,760,000.53	P 242,190,000.13	P 564,182,691.75	P 75,000.00	P 1,775,207,692.42

Taxable Year 2006

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	P 2,560,554,304.41	P 40,138,576.10	P 951,566,974.82	P 75,000.00	P 4,152,334,855.34

On March 3, 2009, PAGCOR filed a letter-protest dated February 16, 2009, addressed to the CIR.

On September 29, 2009, PAGCOR filed a petition for review with the CTA, alleging inaction on the part of the CIR.

On December 10, 2009, the CIR filed an Answer raising the following arguments, inter alia: (a) that PAGCOR is subject to ordinary corporate income tax; (b) that as an ordinary corporate taxpayer, PAGCOR is liable for payment of VAT on its income from casino operations and related services pursuant to the provisions of RA No. 7716 or the Expanded VAT Law; (c) that PAGCOR is liable for FBT under Section 33 of the 1997 NIRC in relation to Revenue Regulation (RR) No. 3-98; and, (d) that PAGCOR was duly assessed and informed of its deficiency tax liabilities for taxable years 2005 and 2006.

During the pre-trial conference on April 30, 2010, the parties submitted the case for decision without presentation of evidence on agreement that there are no factual issues involved and only legal issues are left for 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, within which to file their respective memoranda.

On September 5, 2011, the CTA Division rendered a Decision, the dispositive portion of which reads:

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

AMENDED DECISION

CTA EB Nos. 868 & 869 (CTA Case No. 7976)

Commissioner of Internal Revenue vs. Philippine Amusement and Gaming Corporation (PAGCOR) / PAGCOR vs. 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

Page 6 of 22

x-----x

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, [PAGCOR] is hereby **ORDERED** to **PAY** [the CIR] 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:

	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, [PAGCOR] 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

[PAGCOR] 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



AMENDED DECISION

CTA EB Nos. 868 & 869 (CTA Case No. 7976)

Commissioner of Internal Revenue vs. Philippine Amusement and Gaming Corporation (PAGCOR) / PAGCOR vs. 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

Page 7 of 22

x-----x

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.

The CTA Division held that PAGCOR is exempt from VAT pursuant to Section 7(k) of RA No. 9337 in relation to PD No. 1869, which grants PAGCOR a blanket exemption from taxes with no distinction on whether the taxes are direct or indirect.

However, with respect to the assessments for deficiency income tax, the CTA Division ruled that when RA No. 9337 took effect, PAGCOR was deleted from the list and ceased to be among those GOCCs exempt from paying income tax on their taxable income. In other words, RA No. 9337 effectively withdrew the income tax exemption granted to PAGCOR under its charter.

As regards the assessments for deficiency withholding tax on fringe benefits, the CTA Division ruled that the government's cause of action against PAGCOR is not for the collection of income tax but for the enforcement of the withholding tax provisions of the 1997 NIRC, and the compliance imposed upon PAGCOR as the withholding agent. The CTA Division found that PAGCOR admitted that it provided car plan benefits to its executives during taxable years 2005 and 2006 but it did not present any evidence to prove that said car plan benefits were required by the nature of or necessary to its business. Thus, pursuant to Section 33 of the 1997 NIRC, as amended, PAGCOR, as the employer-withholding agent, has the obligation to withhold the fringe benefit taxes due thereon; and non-compliance with said obligation renders it personally liable for the tax arising from the breach of a legal duty.

In a Resolution dated January 24, 2012, the CTA Division denied the parties' respective motions for partial reconsideration for lack of merit.



AMENDED DECISION

CTA EB Nos. 868 & 869 (CTA Case No. 7976)

Commissioner of Internal Revenue vs. Philippine Amusement and Gaming Corporation (PAGCOR) / PAGCOR vs. 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

Page 8 of 22

x-----x

PAGCOR filed an appeal to the CTA *En Banc* maintaining that its casino and other related operations are not subject to taxes. The case was docketed as CTA EB Case No. 869. The CIR also filed an appeal to the CTA *En Banc* insisting on PAGCOR's liability for deficiency VAT. The case was docketed as CTA EB Case No. 868.

In the consolidated Decision dated July 23, 2013, the CTA *En Banc* dismissed both appeals for lack of merit and affirmed the September 5, 2011 Decision and January 24, 2012 Resolution of the CTA Division.

The parties' respective Motions for Partial Reconsideration of the said Decision was likewise denied by the CTA *En Banc* in the Resolution dated December 18, 2013.

Unyielding, both parties elevated their respective cases before the Supreme Court under Rule 45 of the *Rules of Court*. In its *Petition for Review on Certiorari*, docketed as G.R. Nos 210689-90, PAGCOR submitted the following issues for resolution:

1. WHETHER THE CTA EN BANC SERIOUSLY ERRED IN FAILING TO CONSIDER THAT PAGCOR UNDER P.D. 1869, AS AMENDED BY R.A. 9487, IS LIABLE ONLY FOR THE 5% FRANCHISE TAX WHICH IS 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.
2. WHETHER THE CTA EN BANC GRAVELY ERRED WHEN IT FAILED TO CONSIDER THAT PAGCOR'S EXEMPTION FROM INCOME TAX AND FBT UNDER ITS CHARTER WAS NOT AMENDED OR REPEALED BY R.A. 8424 AND R.A. 9337.
3. ASSUMING THAT PAGCOR'S EXEMPTION FROM ALL FORMS AND KINDS OF TAXES PROVIDED UNDER SECTION 13 OF P.D. 1869, WAS AMENDED OR REPEALED BY R.A. 8424 AND R.A. 9337, WHETHER THE CTA EN BANC STILL SERIOUSLY ERRED WHEN IT FAILED TO CONSIDER THAT BY VIRTUE OF THE ENACTMENT OF R.A. 9487, PAGCOR'S AMENDED CHARTER, IT RESTORED THE RIGHTS, PRIVILEGES AND AUTHORITY GRANTED AND/OR ENJOYED BY IT UNDER P.D. 1869 BEFORE THE ENACTMENT OF R.A. 8424 AND R.A. 9337.

MW

AMENDED DECISION

CTA EB Nos. 868 & 869 (CTA Case No. 7976)

Commissioner of Internal Revenue vs. Philippine Amusement and Gaming Corporation (PAGCOR) / PAGCOR vs. 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

Page 9 of 22

x-----x

4. WHETHER THE CTA EN BANC ERRED WHEN IT DECLARED PAGCOR LIABLE FOR THE FBT AS A WITHHOLDING AGENT CONSIDERING THAT SUCH IMPOSITION OF LIABILITY VIOLATES PAGCOR'S RIGHT TO DUE PROCESS SINCE THE FBT WAS ASSESSED AGAINST IT AS A FINAL DIRECT TAX AS EMPLOYER AND NOT AS A WITHHOLDING TAX AGENT.
5. WHETHER THE CTA EN BANC ERRED WHEN IT FAILED TO CONSIDER THAT, EVEN ASSUMING THAT PAGCOR IS NOT EXEMPT FROM FBT UNDER ITS CHARTER, THE CAR PLAN BENEFIT EXTENDED TO PAGCOR'S OFFICERS WAS NECESSARY IN THE CONDUCT OF ITS BUSINESS AND ACTUALLY INURED TO ITS BENEFIT. IN SUCH CASE, SUCH BENEFIT IS NOT COVERED BY THE FBT.
6. ASSUMING THAT PAGCOR IS LIABLE FOR THE ALLEGED DEFICIENCIES IN INCOME TAX AND FBT TAX PAYMENTS, WHETHER THE CTA EN BANC ERRED WHEN IT FAILED TO CONSIDER THAT PAGCOR IS ONLY LIABLE FOR THE AMOUNT EQUIVALENT TO THE BASIC TAX EXCLUDING SURCHARGES, DEFICIENCY INTEREST AND DELINQUENCY INTEREST, AND OTHER SIMILAR CHARGES AND/OR PENALTIES.

On the other hand, the CIR's *Petition for Review on Certiorari*, docketed as G.R. Nos 210704 and 210725, raised the sole issue of:

WHETHER OR NOT PAGCOR IS EXEMPT FROM
THE PAYMENT OF VAT.

On November 22, 2017, the Supreme Court rendered a Decision, the dispositive portion of which reads:

WHEREFORE, in light of the foregoing considerations, the petition filed by the Commissioner of Internal Revenue in G.R. Nos. 210704 & 210725 is hereby **DENIED**; while the petition filed by the Philippine Amusement and Gaming Corporation (PAGCOR) in G.R. Nos 210689-90 is **PARTLY GRANTED**. The Decision dated July 23, 2013 and the Resolution dated December 18, 2013 of the CTA *En Banc* in CTA EB Case Nos. 868 and 869 are hereby **AFFIRMED** with **MODIFICATION** that the assessments representing deficiency income tax in so far as it assessed the Philippine Amusement and Gaming Corporation for deficiency income tax, including surcharges and interest, on its income derived from gaming operations for taxable years 2005 and 2006, are hereby

MV

AMENDED DECISION

CTA *EB* Nos. 868 & 869 (CTA Case No. 7976)

Commissioner of Internal Revenue vs. Philippine Amusement and Gaming Corporation (PAGCOR) / PAGCOR vs. 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

Page 10 of 22

x-----x

CANCELLED and **SET ASIDE**. The Philippine Amusement and Gaming Corporation is only liable to pay the deficiency income tax, including surcharges and interests, on its income derived from other related activities for taxable years 2005 and 2006, and the assessed deficiency fringe benefit taxes, including surcharges and interests, for the same taxable years.

Let this case be **REMANDED** to the Court of Tax Appeals for the determination of the final amount to be paid by the Philippine Amusement and Gaming Corporation.

SO ORDERED.

In partly granting PAGCOR's *petition*, the Supreme Court ratiocinated that Republic Act (RA) No. 9337 did not repeal the tax privilege granted to PAGCOR under Presidential Decree (PD) No. 1869 with respect to its income from gaming operations. According to the Supreme Court, RA No. 9337 withdrew PAGCOR's exemption from corporate income tax on its income derived from other related services, previously granted under Section 27(C) of RA No. 8424. Since the assessments for deficiency income tax cover PAGCOR's income derived from gaming operations and other related services, PAGCOR should only pay for deficiency income tax on its income derived from other related services for taxable years 2005 and 2006.

Regarding PAGCOR's assessed FBT deficiency, the Supreme Court ruled that FBT is not covered by the exemptions provided under PD No. 1869, echoing its previous ruling in *Commissioner of Internal Revenue v. Secretary of Justice*.² Hence, considering that PAGCOR failed to present any evidence showing that the fringe benefits granted to its officers were necessary to its business or for its convenience, the deficiency FBT assessments on PAGCOR's car benefit plan must be upheld, says the Supreme Court.

On March 31, 2022, the Court received from the Supreme Court's Judicial Records Office, Judgment Division, the following documents issued in relation to G.R. Nos. 210689-90, entitled "*Philippine Amusement and Gaming Corporation (PAGCOR) vs. Commissioner of Internal Revenue*" and G.R. Nos. 210704 & 210725, entitled "*Commissioner of Internal Revenue vs. Philippine Amusement and Gaming Corporation (PAGCOR)*":

² G.R. No. 177387, November 9, 2016.



AMENDED DECISION

CTA EB Nos. 868 & 869 (CTA Case No. 7976)

Commissioner of Internal Revenue vs. Philippine Amusement and Gaming Corporation (PAGCOR) / PAGCOR vs. 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

Page 11 of 22

x-----x

1. Letter Transmittal with attached photocopy of the Decision rendered by the Second Division of the Supreme Court on November 22, 2017, and photocopy of the entry of judgment made therein; and
2. Certified True Copy of the *Notice and Entry of Judgment* and *Entry of Judgment* dated August 24, 2018.

The *Entry of Judgment* states that the Decision rendered in G.R. Nos. 210689-90 and G.R. Nos. 210704 & 210725 have become final and executory and were recorded in the Books of Entries of Judgments on August 24, 2018.

In view thereof, and taking into consideration the period from the promulgation of this Court's Decision on July 23, 2013, and the remanding of the consolidated cases to this Court, this Court *En Banc* issued a Resolution on July 6, 2022, directing both parties to submit within fifteen (15) days from notice, a written manifestation essentially stating any supervening events that may have transpired in this case that the Court *En Banc* may consider in determining the final amount to be paid by PAGCOR.

In compliance with the Court's directive, the CIR filed his *Manifestation* on July 28, 2022. PAGCOR, on the other hand, filed a *Motion for Extension of Time to Comply with the Honorable Court of Tax Appeals' 6 July 2022 Resolution* on July 27, 2022, which the Court *En Banc* granted in the Resolution dated August 22, 2022.

With the filing of PAGCOR's *Manifestation and Compliance* through registered mail on August 5, 2022, and received by the Court *En Banc* on August 18, 2022, the instant consolidated cases are submitted anew for decision on November 11, 2022.

Hence, this Decision.



AMENDED DECISION

CTA EB Nos. 868 & 869 (CTA Case No. 7976)

Commissioner of Internal Revenue vs. Philippine Amusement and Gaming Corporation (PAGCOR) / PAGCOR vs. 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

Page 12 of 22

x-----x

THE ISSUE

Considering the directive of the Supreme Court, the only issue for determination of the Court is the final amount to be paid by PAGCOR for taxable years 2005 and 2006.

In his *Manifestation* filed on July 28, 2022, the CIR stated that PAGCOR availed of the *Tax Amnesty Program* (TAP) concerning its FBT liabilities for 2005 and 2006. In fact, according to the CIR, an *Authority to Cancel Assessment* dated January 22, 2020, was issued, and a *Notice of Issuance of Authority to Cancel Assessment* of even date was given and served to PAGCOR.

With regard to PAGCOR's income tax liabilities, the CIR stated that for the years 2005 and 2006, PAGCOR voluntarily paid on December 28, 2011, the amount of ₱13,119,847.38 and ₱104,198,801.87, respectively.

On the other hand, in its *Manifestation and Compliance*, PAGCOR stated that in a letter dated December 6, 2011, it informed then Commissioner Kim Jacinto-Henares that per its computation of the total tax due to the BIR for Corporate Income Tax (CIT) from November 1, 2005 to December 31, 2010 and the FBT on the Car Plan availments of PAGCOR officers from January 1, 2004 to December 21, 2010 amounted to ₱856,981,946.37, broken down as follows:

Period Covered	Corporate Income Tax	Fringe Benefits Tax	Total Taxes Due
CY2004	0	30,345,699.04	30,345,699.04
CY2005	13,119,847.38	35,129,632.93	48,249,480.31
CY2006	104,198,801.87	8,193,715.91	112,392,517.78
CY2007	112,447,541.24	16,362,990.69	128,810,531.93
CY2008	120,489,962.62	25,271,876.52	145,761,839.14
CY2009	136,363,800.62	33,108,205.01	169,472,005.63
CY2010	170,562,964.18	51,386,908.36	221,949,872.54
TOTAL	657,182,917.91	199,799,028.46	856,981,946.37

PAGCOR further stated that in his December 22, 2011 *Reply*, the CIR agreed to accept the computed amounts as partial settlement of PAGCOR's tax liability subject to the validation of the computation through the on-going audit investigation being conducted relative thereto. As such, in a

M

AMENDED DECISION

CTA EB Nos. 868 & 869 (CTA Case No. 7976)

Commissioner of Internal Revenue vs. Philippine Amusement and Gaming Corporation (PAGCOR) / PAGCOR vs. 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

Page 13 of 22

x-----x

December 22, 2011 *Memorandum*, PAGCOR's Assistant Vice President – Accounting Department recommended the payment of the CIT and FBT covering the taxable period mentioned in the December 11, 2011 letter. Then, on December 28, 2011, PAGCOR's payment for CIT amounting to ₱657,182,917.91 and FBT amounting to ₱199,799,028.46, covering the taxable years 2004 to 2010, was successfully debited to PAGCOR's account on December 28, 2011, as acknowledged by Union Bank of the Philippines through an electronic mail of even date.

Finally, PAGCOR stated that since the CIR offered no other computations, the payment made on December 28, 2011, shall be considered a full settlement of its tax liabilities covering the taxable years 2004 to 2010, which includes the subject matter of this case, that is, tax deficiency for taxable years 2005 and 2006.

THE COURT'S RULING

As ruled by the Supreme Court, PAGCOR is **only** liable to pay the deficiency IT, including surcharges and interests, on its income derived from other related activities for taxable years 2005 and 2006, and the assessed deficiency FBT, including surcharges and interests, for the same taxable years. Hence, the remand to this Court for the determination of the final amount to be paid by PAGCOR on its deficiency IT and FBT for taxable years 2005 and 2006.

Following the Supreme Court's directive, We now determine the final amount to be paid by PAGCOR.

In the FLD dated December 9, 2008, the BIR assessed PAGCOR of basic deficiency IT and FBT for taxable years 2005 and 2006, as follows:

INCOME TAX	TY 2005	TY 2006
	Assessment No. IT-05-000234	Assessment No. IT-06-000235
Winnings	₱20,274,893,157.40	₱20,461,208,552.70
Bingo - In House	105,778,364.69	107,749,320.50
Bingo - Franchisee	1,374,675,920.88	1,433,044,821.20
Other Business Income	1,455,655,844.89	3,275,860,681.62
Total Income	23,211,003,287.86	25,277,863,376.02
Less: Expenses		

AMENDED DECISION

CTA *EB* Nos. 868 & 869 (CTA Case No. 7976)
Commissioner of Internal Revenue vs. Philippine Amusement and Gaming Corporation (PAGCOR) / PAGCOR vs. 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
Page 14 of 22

x-----x

Personnel Services	5,224,572,117.12	5,778,832,235.84
Maintenance & Other Operating Expenses	4,338,108,146.88	4,979,751,269.44
Contributions to the Government	11,953,634,140.64	11,978,529,718.03
Total Expenses	21,516,314,404.64	22,737,113,223.31
Net Income	1,694,688,883.22	[2,540,750,152.71] ³
Tax Due	98,856,851.52 ⁴	[889,262,553.45] ⁵
Tax Paid	-	-
Basic Deficiency Income Tax	₱ 98,856,851.52	₱[889,262,553.45]⁶

FRINGE BENEFIT TAX	TY 2005	TY 2006
	Assessment No. FBT-05-000070	Assessment No. FBT-06-000071
PAGCOR's 60% share on CAR Plan	₱ 65,250,539.17	₱ 8,725,566.45
Officer 40% share (Interest-Free Loan)	3,380,858.41	4,060,813.50
Total Fringe Benefit	68,631,397.58	12,786,379.95
Divide by the Percentage for CY 2000 above	68%	68%
Gross Up Monetary Value	100,928,525.86	18,803,499.92
Multiply by: Fringe Benefit Tax Rate	32%	32%
Total Fringe Benefits Tax Due	32,297,128.28	6,017,119.97
Less: Fringe Benefits Tax Paid	-	-
Basic Fringe Benefits Tax Deficiency	₱ 32,297,128.28	₱ 6,017,119.97

PAGCOR's FBT liability.

As ruled by the Supreme Court in this case, this Court *En Banc* did not err in upholding PAGCOR's deficiency FBT liability for taxable years 2005 and 2006, to wit:

As regards PAGCOR's liability for FBT, the same had already been settled in the case of *Commissioner of Internal Revenue v. Secretary of Justice*, which involved assessments for deficiency VAT, FBT and expanded withholding tax against PAGCOR for the years 1996 to 2000. In said case, the Court ruled that FBT is not covered by the exemptions provided under PD No. 1869; and considering that PAGCOR failed to present any evidence showing that the fringe benefits granted to its officers were necessary to its business or for its convenience, the deficiency FBT assessments on PAGCOR's car benefit plan was upheld, *viz.*:

xxx xxx xxx

³ ₱2,540,771,780.61 per FLD, Docket – Vol. 1, p. 74.
⁴ This pertains to Tax Due for November and December 2005 only.
⁵ ₱889,270,123.21 per FLD, Docket – Vol. 1, p. 74.
⁶ ₱889,270,123.21 per FLD, Docket – Vol. 1, p. 74.



AMENDED DECISION

CTA *EB* Nos. 868 & 869 (CTA Case No. 7976)

Commissioner of Internal Revenue vs. Philippine Amusement and Gaming Corporation (PAGCOR) / PAGCOR vs. 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

Page 15 of 22

x-----x

In the same vein, PAGCOR, in this case, did not adduce any proof, other than bare allegations, that the car plan granted to its officers was ultimately for the benefit of its business or for its convenience or advantage. Basic is the rule that mere allegations are not evidence and are not equivalent to proof. **The CTA *En Banc*, therefore did not err in upholding PAGCOR's deficiency FBT liability for taxable years 2005 and 2006.** (*Citations omitted; boldfacing supplied*)

However, considering the *Manifestation* filed by the CIR on July 28, 2022, stating that PAGCOR availed of the TAP concerning its FBT liabilities for 2005 and 2006; and that an *Authority to Cancel Assessment* dated January 22, 2020, was issued, and a *Notice of Issuance of Authority of Authority to Cancel Assessment* of even date was given and served to PAGCOR, the deficiency FBT assessment against PAGCOR should now be CANCELLED and SET ASIDE.

PAGCOR's IT liability:

With regard to PAGCOR's deficiency IT, the Supreme Court referred to its *En Banc's* decision dated December 10, 2014,⁷ in settling the issue of PAGCOR's corporate income tax liability on its income from gaming operations and income from other related services, to wit:

"In fine, we uphold our earlier ruling that Section 1 of R.A. No. 9337, amending Section 27(c) of R.A. No. 8424, by excluding PAGCOR from the enumeration of GOCCs exempted from corporate income tax, is valid and constitutional. In addition, we hold that:

1. [PAGCOR's] tax privilege of paying five percent (5%) franchise tax *in lieu* of all other taxes with respect to its income from gaming operations, pursuant to P.D. 1869, as amended, is *not* repealed or amended by Section 1(c) of R.A. No. 9337;
2. [PAGCOR's] income from gaming operations is subject to the five percent (5%) franchise tax only; and
3. [PAGCOR's] income from other related services is subject to corporate income tax only."

⁷ G.R. No. 215427; 749 Phil. 1010 (2014).



AMENDED DECISION

CTA EB Nos. 868 & 869 (CTA Case No. 7976)

Commissioner of Internal Revenue vs. Philippine Amusement and Gaming Corporation (PAGCOR) / PAGCOR vs. 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

Page 16 of 22

x-----x

The Supreme Court also clarified in the said *En Banc* decision that PAGCOR's income under PD 1869 is classified into two (2) and that in RMC No. 33-2013, the BIR further classified PAGCOR's income, either subject to five percent (5%) franchise tax under P.D. 1869, as amended, or subject to corporate income tax pursuant to P.D. 1869, as amended, as well as RA No. 9337. The pertinent portion of the decision reads as follows:

"In our Decision dated March 15, 2011, we have already declared petitioner's income tax liability in view of the withdrawal of its tax privilege under R.A. No. 9337. However, we made no distinction as to which income is subject to corporate income tax, considering that the issue raised therein was only the constitutionality of Section 1 of R.A. No. 9337, which excluded petitioner from the enumeration of GOCCs exempted from corporate income tax.

For clarity, it is worthy to note that under P.D. 1869, as amended, PAGCOR's income is classified into two: (1) income from its operations conducted under its Franchise, pursuant to Section 13(2) (b) thereof (*income from gaming operations*); and (2) income from its operation of necessary and related services under Section 14(5) thereof (*income from other related services*). In RMC No. 33-2013, respondent further classified the aforesaid income as follows:

1. PAGCOR's income from its operations and licensing of gambling casinos, gaming clubs and other similar recreation or amusement places, gaming pools includes, among others:
 - (a) Income from its casino operations;
 - (b) Income from dollar pit operations;
 - (c) Income from regular bingo operations; and
 - (d) Income from mobile bingo operations operated by it, with agents on a commission basis. Provided, however, that the agents' commission income shall be subject to regular income tax and, consequently, to withholding tax under existing regulations.
2. Income from "other related operations" includes, but is not limited to:
 - (a) Income from licensed private casinos covered by authorities to operate issued to private operators;
 - (b) Income from traditional bingo, electronic bingo, and other bingo variations covered by authorities to operate issued to private operators;



AMENDED DECISION

CTA EB Nos. 868 & 869 (CTA Case No. 7976)

Commissioner of Internal Revenue vs. Philippine Amusement and Gaming Corporation (PAGCOR) / PAGCOR vs. 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

Page 17 of 22

x-----x

- (c) Income from private internet casino gaming, internet sports betting and private mobile gaming operations;
- (d) Income from private poker operations;
- (e) Income from junket operations;
- (f) Income from SM demo units; and
- (g) Income from other necessary and related services, shows and entertainment.

After a thorough study of the arguments and points raised by the parties, and in accordance with our Decision dated March 15, 2011, we sustain petitioner's contention that its income from gaming operations is subject only to five percent (5%) franchise tax under P.D. 1869, as amended, while its income from other related services is subject to corporate income tax pursuant to P.D. 1869, as amended, as well as R.A. No. 9337."

As gleaned above, both classifications cover "Bingo" operations. Income from regular bingo operations is exempt from income tax, while income from traditional bingo, electronic bingo, and other bingo variations covered by authorities to operate issued to private operators is subject to income tax.

In this case, however, there is no indication in the FLD and the accompanying *Details of Discrepancies* whether PAGCOR's income from bingo operations falls under regular casino/gaming or other related operations. The income from bingo operations merely stated as "Bingo – In House" and "Bingo – Franchisee," to wit:

	TY 2005	TY 2006
Winnings	₱ 20,274,893,157.40	₱ 20,461,208,552.70
Bingo - In House	105,778,364.69	107,749,320.50
Bingo - Franchisee	1,374,675,920.88	1,433,044,821.20
Other Business Income	1,455,655,844.89	3,275,860,681.62
Total Income	₱ 23,211,003,287.86	₱ 25,277,863,376.02

Thus, given the insufficiency of evidence, We are constrained to consider PAGCOR's income from both bingo operations and the winnings for taxable years 2005 and 2006 exempt from corporate income tax. On the other hand, we shall construe *Other Business Income* all-encompassing to include income from "other related operations" for the same taxable years and shall be assessed for deficiency IT. Accordingly,

AMENDED DECISION

CTA EB Nos. 868 & 869 (CTA Case No. 7976)

Commissioner of Internal Revenue vs. Philippine Amusement and Gaming Corporation (PAGCOR) / PAGCOR vs. 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

Page 18 of 22

X-----X

PAGCOR's net income and the corresponding basic deficiency IT are computed as follows:

INCOME TAX	TY 2005	TY 2006
Other Business Income	₱1,455,655,844.89	₱3,275,860,681.62
Less: Share on the Total Expenses		
Personnel Services	5,224,572,117.12	5,778,832,235.84
Maintenance & other Operating Expenses	4,338,108,146.88	4,979,751,269.44
Contributions to the Government	11,953,634,140.64	11,978,529,718.03
Total Expenses	21,516,314,404.64	22,737,113,223.31
Multiply by Other Business Income	1,455,655,844.89	3,275,860,681.62
÷ Total Income	23,211,003,287.86	25,277,863,376.02
Share on the Total Expenses	1,349,375,054.37	2,946,594,580.16
Net Income	₱ 106,280,790.52	₱ 329,266,101.46
Tax Due @ 35% Tax Rate	6,199,712.78 ⁸	115,243,135.51
Tax Paid	-	-
Basic Deficiency Income Tax	₱ 6,199,712.78	₱ 115,243,135.51

As shown in the above computation, since PAGCOR's expenses cannot be specifically identified as pertaining to gaming operations or *Other Business Income*, the total expenses are allocated between the percentage of income by the total gross income earned. Further, the total tax due of ₱6,199,712.78 for taxable year 2005 pertains only to November and December 2005, consistent with the respondent's assessment in the FLD.

WHEREFORE, premises considered, the Decision rendered by this Court in these consolidated cases on July 23, 2013, is **MODIFIED** to read as follows:

WHEREFORE, premises considered and following the directive of the Supreme Court in G.R. Nos. 210689-90, 210704, and 210725, the deficiency fringe benefits tax issued against PAGCOR for taxable years 2005 and 2006 are **CANCELLED** and **SET ASIDE**. PAGCOR, however, is **ORDERED TO PAY** the Commissioner of Internal Revenue the basic deficiency income tax for taxable years 2005 and 2006, inclusive of the 25% surcharge imposed under Section 248 (A)(3) of the NIRC of 1997, as amended, 20% deficiency interest and 20% delinquency interest imposed under Section 249(B) and (C) of the same Code, respectively, computed until

⁸ ₱106,280,790.52 x 2/12 months x 35%



AMENDED DECISION

CTA EB Nos. 868 & 869 (CTA Case No. 7976)

Commissioner of Internal Revenue vs. Philippine Amusement and Gaming Corporation (PAGCOR) / PAGCOR vs. 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

Page 19 of 22

x-----x

December 31, 2017, which is prior to its amendment under Republic Act (RA) No. 10963, also known as Tax Reform for Acceleration and Inclusion (TRAIN), taking into account the partial payments made by PAGCOR on December 28, 2011 in the amounts of ₱13,119,847.38 and ₱104,198,801.87, computed as follows:

	TY 2005	TY 2006	TOTAL
Basic Deficiency Income Tax	₱ 6,199,712.78	₱ 115,243,135.51	₱ 121,442,848.29
Surcharge	1,549,928.20	28,810,783.88	30,360,712.08
Deficiency Interest (20%) until December 31, 2008			
IT (TY 2005) 4/16/2006 to 12/31/2008 (₱6,199,712.78 x 20% x 991 days/365 days)	3,366,528.97		3,366,528.97
IT (TY 2006) 4/16/2007 to 12/31/2008 (₱115,243,135.51 x 20% x 626 days/365 days)		39,529,974.15	39,529,974.15
Total Amount Due - December 31, 2008	11,116,169.95	183,583,893.54	194,700,063.49
Deficiency Interest (20%) from January 1, 2009 to December 28, 2011			
IT (TY 2005) 1/1/2009 to 12/28/2011 (₱6,199,712.78 x 20% x 1,092 days/365 days)	3,709,636.36		3,709,636.36
IT (TY 2006) 1/1/2009 to 12/28/2011 (₱115,243,135.51 x 20% x 1,092 days/365 days)		68,956,440.54	68,956,440.54
Delinquency Interest (20%) from January 1, 2009 to December 28, 2011			
IT (TY 2005) 1/1/2009 to 12/28/2011 (₱11,116,169.94 x 20% x 1,092 days/365 days)	6,651,428.82		6,651,428.82
IT (TY 2006) 1/1/2009 to 12/28/2011 (₱183,583,893.54 x 20% x 1,092 days/365 days)		109,848,554.38	109,848,554.38
Total Amount Due as of December 28, 2011	21,477,235.13	362,388,888.46	383,866,123.59
Less: Payments on December 28, 2011	13,119,847.38	104,198,801.87	117,318,649.25
Total Amount Still Due as of December 28, 2011	8,357,387.75	258,190,086.59	266,547,474.34
Deficiency Interest (20%) from December 29, 2011 to December 31, 2017			
IT (TY 2006) 1/1/2009 to 12/28/2011 (₱115,243,135.51 - ₱104,198,801.87)=₱11,044,333.64 x 20% x 2,195 days/365 days)		13,283,458.82	13,283,458.82
Delinquency Interest (20%) from December 29, 2011 to December 31, 2017			
IT (TY 2006) 12/29/2011 to 12/31/2017 [(₱183,583,893.54 - ₱104,198,801.87)=₱79,385,091.67 x 20% x 2,195 days/365 days]		95,479,603.41	95,479,603.41
Total Amount Due as of December 31, 2017	₱ 8,357,387.75	₱ 366,953,148.82	₱375,310,536.57

AMENDED DECISION

CTA EB Nos. 868 & 869 (CTA Case No. 7976)

Commissioner of Internal Revenue vs. Philippine Amusement and Gaming Corporation (PAGCOR) / PAGCOR vs. 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

Page 20 of 22

x-----x

In addition, for taxable year 2006, PAGCOR is liable to pay delinquency interest at the rate of 12% on the total unpaid deficiency Income Tax as of December 31, 2008, net of payment, of ₱79,385,091.67, or equivalent to ₱26,099.21⁹ per day, computed from January 1, 2018 until full payment thereof, pursuant to Section 249(C) of the NIRC of 1997, as amended by Republic Act No. 10963 (TRAIN) and as implemented by RR No. 21-2018.

SO ORDERED.

SO ORDERED.


LANEE S. CUI-DAVID
Associate Justice

We Concur:

ON LEAVE
ROMAN G. DEL ROSARIO
Presiding Justice


MA. BELEN M. RINGPIS-LIBAN
Associate Justice


CATHERINE T. MANAHAN
Associate Justice


JEAN MARIE A. BACORRO-VILLENA
Associate Justice

⁹ ₱79,385,091.67 times 12% divided by 365 days.

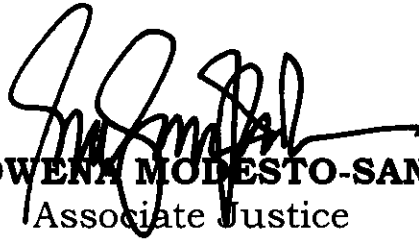
AMENDED DECISION

CTA EB Nos. 868 & 869 (CTA Case No. 7976)

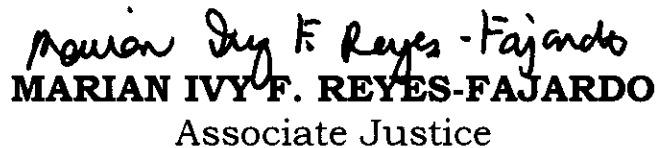
Commissioner of Internal Revenue vs. Philippine Amusement and Gaming Corporation (PAGCOR) / PAGCOR vs. The Commissioner of Internal Revenue and the Head Revenue Executive Assistant Large Taxpayer Service, in their official capacities as officers of the Bureau of Internal Revenue

Page 21 of 22

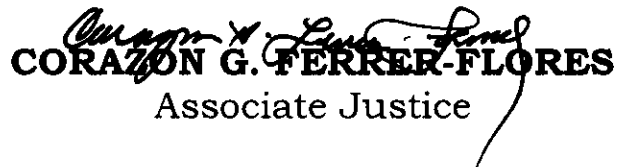
x-----x



MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice



MARIAN IVY F. REYES-FAJARDO
Associate Justice



CORAZON G. FERRER-FLORES
Associate Justice



HENRY S. ANGELES
Associate Justice



AMENDED DECISION

CTA *EB* Nos. 868 & 869 (CTA Case No. 7976)

Commissioner of Internal Revenue vs. Philippine Amusement and Gaming Corporation (PAGCOR) / PAGCOR vs. 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

Page 22 of 22

x-----x

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Amended Decision were reached in consultation before the consolidated cases were assigned to the writer of the opinion of the Court.


CATHERINE T. MANAHAN
Acting Presiding Justice

