

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

GMA NETWORK, INC.,
Petitioner,

CTA EB No. 618
(CBAA CASE No. M-27)

Present:

- versus -

SOLEDAD L. LI, IN HER
CAPACITY AS CITY TREASURER,
ZAMBOANGA CITY,
Respondent.

ACOSTA, P.J.
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
PALANCA-ENRIQUEZ,
FABON-VICTORINO,
MINDARO-GRULLA, *and*
COTANGCO-MANALASTAS, JJ.

Promulgated:

JUL 21 2011

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D E C I S I O N

UY, J.:

In this Petition for Review filed pursuant to Sections 3(c), Rule 8 of the Revised Rules of the Court of Tax Appeals,¹ petitioner GMA Network, Inc., challenges the Decision dated August 13, 2009² and Resolution dated March 1, 2010³ of the Central Board of Assessment Appeals (CBAA) in CBAA Case No. M-27 entitled “GMA Network, Inc., Petitioner-Appellant, versus The Local Board of Assessment Appeals of the City of Zamboanga, Appellee, and Soledad L. Li, in

¹ A.M. No. 05-11-07-CTA dated November 22, 2005.

² Docket, pp. 44 to 66.

³ Docket, pp. 67 to 76.

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her capacity as City Treasurer of the City of Zamboanga, Respondent-Appellee”,
the dispositive portions of which respectively read as follows:

Decision dated August 13, 2009:

“WHEREFORE, premises considered, the instant Appeal is hereby DENIED.

SO ORDERED.”

Resolution dated March 1, 2010:

“WHEREFORE, premises considered, the instant Motion for Reconsideration is hereby DENIED.

SO ORDERED.”

THE FACTS

From the records, it appears that petitioner, GMA Network, Inc. (formerly known as “Republic Broadcasting System, Inc.”, and hereinafter referred to as “GMA”), is a private corporation duly organized and existing under Philippine laws with principal office at GMA Network Center, EDSA corner Timog Ave., Diliman, Quezon City. It is a grantee of the legislative franchise to operate a radio and television broadcasting stations in the country under Republic Act No. (RA) 7252, otherwise known as “*An Act Granting the Republic Broadcasting System, Inc. A Franchise To Construct, Install, Operate and Maintain Radio and Television Broadcasting Stations in the Philippines*”, which took effect on March 2, 1992.

On the other hand, respondent Soledad L. Li is the City Treasurer of Zamboanga City.

Believing that it is subject to real property tax, GMA diligently paid to respondent City Treasurer real property taxes for taxable periods 2006 and 2007 on its lot situated in Barangay Cabatangan, Zamboanga City and described



under TCT No. T-142964 and declared for taxation purposes under Tax Declaration No. 050101701629.

On the strength of the Supreme Court decisions in *The City Government of Quezon City, et al. vs. Bayan Telecommunications, Inc.* (March 6, 2006, 484 SCRA 169)⁴ and *Digital Communications Philippines, Inc. vs. Province of Pangasinan, et al.* (February 23, 2007, 516 SCRA 541)⁵, GMA filed on February 1, 2008 with respondent's Office a letter dated January 25, 2008, claiming a refund of the real property taxes it paid on the subject land for the years 2006 and 2007, in the total amount of ₱ 15,960.51.

Due to respondent City Treasurer's failure to act on petitioner's claim for refund or tax credit within sixty (60) days from her receipt thereof, GMA appealed such failure or "denial by inaction" of said respondent to the Local Board of Assessment Appeals (LBAA) or the City of Zamboanga on April 1, 2008.

Proceedings before the LBAA

On July 4, 2008, GMA received a copy of respondent City Treasurer's Reply/Comment dated July 1, 2008 alleging that GMA failed to declare exemption of the subject land pursuant to the provisions of Section 206 of the Local Government Code (LGC) of 1991 (Republic Act No. 7160), and that the City Treasurer did not receive a notice or finding by a competent authority that the assessment of real property tax is illegal or erroneous. Respondent City Treasurer did not pray for the denial of the petition or the claim for refund, but rather, that the LBAA should "*resolve the issue of whether or not the subject real property of [GMA] is actually, directly and exclusively used for the operation of*

⁴ G.R. No. 162015.

⁵ G.R. No. 152534.



radio and television broadcasting stations and whether or not the [City Treasurer] can validly refund real property taxes in the principal amount of ₱ 15,960.51 if indeed such property is also exempt.”

On July 21, 2008, within fifteen (15) days from receipt of respondent City Treasurer's Reply/Comment, GMA filed, by registered mail, its Rejoinder dated July 15, 2008 refuting the City Treasurer's allegations in her Reply/Comment. GMA maintained that (1) Sections 206 and 253 of the LGC of 1991 prescribe different remedies – the former provision is for exclusion or delisting by the assessor of the taxpayer's properties from the assessment roll while the latter provision is for refund of erroneously or illegally collected taxes by the Treasurer; (2) that Section 253, which is the operative provision on claims for refund, directs the City Treasurer to decide GMA's claim for refund based on evidence presented by GMA; (3) that the authority of the City Treasurer to decide a claim for refund does not depend on a court action or the issuance by the City Assessor of a new or revised assessment valuation.

On August 13, 2008, GMA received a copy of the Decision dated July 18, 2008 which completely sustained the arguments of respondent City Treasurer in her Reply/Comment and denied the appeal of GMA.

Proceedings before the CBAA

On September 12, 2008, GMA filed a Notice of Appeal, and Appeal Memorandum with the CBAA, praying that the Decision dated July 18, 2008 of the LBAA be reversed and set aside, and that the principal amount of ₱ 15,960.51, corresponding to the erroneous collection of real property taxes on petitioner GMA's real property in Zamboanga City for the period 2006 to 2007



with interest thereon at 12% per annum from 1 February 2008 be refunded to petitioner GMA.

Through a letter dated September 23, 2008, the CBAA requested respondent City Treasurer to file her answer to or comment on the appeal of petitioner GMA, within ten (10) days from receipt of said letter. On October 29, 2008, respondent filed a Motion For Extension of Time To Submit her Answer/Comment. It appears that the CBAA did not act on said Motion. However, sometime later, respondent filed such Answer/Comment⁶, arguing, *inter alia*, that GMA failed to declare its supposed tax exemption to the Office of the City Assessor under Section 206 of the LGC of 1991, thus, its inclusion in the assessment roll as taxable; and that respondent did not receive any finding and/or new or revised assessment valuation from a competent authority, the City Assessor or the proper court, that the assessment of the real property is illegal or erroneous to qualify the refund.

On October 24, 2008, GMA filed its Reply to respondent's Answer/Comment, contending, among others, that the decision of the City Treasurer on a claim for refund is not contingent or subject to the action by a court or by the City Assessor finding GMA's real properties exempt from real property tax; instead, the City Treasurer shall decide the claim based on the tax declarations, affidavits, documents and other documentary evidence to be presented.

In the assailed Decision, the CBAA initially ruled that the LBAA was "a little bit hasty" in issuing its Decision. However, the CBAA, as it denied GMA's petition, virtually attacked the rulings of the Supreme Court in the cases of *City*

⁶ Annex "Q", Petition for Review, Docket, pp. 190-198.



*Government of Quezon City, et al. vs. Bayan Telecommunications, Inc.*⁷ (the *Bayantel* case) and *Digital Telecommunications Philippines, Inc. vs. Province of Pangasinan, et al.*⁸ (the earlier *Digital* case), declaring that the said Court “practically changed [Section 8 of RA 7252] by substituting the phrase ‘exclusive of’ with another which says ‘NOT actually, directly and exclusively used in’”. Nevertheless, the CBAA upheld, and relied on, the case of *Digital Telecommunications Philippines, Inc. vs. City Government of Batangas, et al.*⁹ (the recent *Digital* case).

On September 25, 2009, GMA filed a Motion for Reconsideration of the CBAA’s Decision, arguing that the CBAA erred when it denied the petition: (1) by holding that RA 7252 does not categorically grant GMA exemption from real property tax, and (2) based on the recent *Digital* case. Respondent filed her Opposition thereto on November 5, 2009. Through the assailed Resolution, the CBAA denied GMA’s Motion for Reconsideration and sustained its Decision.

Appeal to the Court En Banc

Because of the adverse ruling of the CBAA, GMA went to this Court *En Banc* via the instant Petition for Review, praying for the reversal and setting aside of the said Decision and Resolution of the CBAA; that the instant petition be granted and that judgment be rendered ordering the refund of ₱ 15,960.51 corresponding to the erroneous collection of real property taxes on GMA’s real property in the City of Zamboanga for the years 2006 to 2007 with interest thereon at 12 percent (12%) per annum from February 1, 2008.

⁷ G.R. No. 162015, March 6, 2006.

⁸ G.R. No. 152534, February 23, 2007.

⁹ G.R. No. 156040, December 11, 2008.



In the Resolution dated April 26, 2010,¹⁰ the Court *En Banc* directed respondent to file her comment to the instant Petition for Review within ten (10) days from notice. On June 11, 2010, respondent filed the required Comment. . Thereafter, this Court resolved¹¹ to give due course to the instant petition and granted the parties a period of thirty (30) days from notice to file their respective memorandum. On September 6, 2010, respondent filed a Motion for Extension To File Memorandum.

However, the Court *En Banc* issued the Resolution dated September 29, 2010¹² considering the case submitted for decision, due to failure of the parties to file their respective memorandum. It appears however that prior thereto, respondent filed her Memorandum on September 20, 2010. In its Resolution dated October 26, 2010,¹³ the Court *En Banc* admitted respondent's Memorandum, and considered the case submitted for decision. Correspondingly, the Resolution dated September 29, 2010 was recalled and set aside.

On November 15, 2010, GMA filed a Motion For Leave To File and Admit Attached Memorandum. In the interest of substantial justice and considering that respondent was accorded the same leniency, the Court *En Banc* granted said Motion and admitted GMA's Memorandum as attached thereto. Accordingly, the Resolution dated October 26, 2010 was recalled and set aside. The case then was considered submitted for decision as of December 17, 2010.¹⁴

Hence, this Decision.

¹⁰ Docket, pp. 236 to 237.

¹¹ Resolution dated July 1, 2010, Docket, pp. 256 to 257

¹² Docket, pp. 264 to 265.

¹³ Docket, pp. 277 to 278.

¹⁴ Resolution dated December 17, 2010.



THE ISSUES

The issues presented for the resolution of the Court *En Banc* are as follows:

- “A. DID THE CBAA COMMIT REVERSIBLE ERROR IN RULING THAT PETITIONER GMA’S FRANCHISE (REPUBLIC ACT NO. 7252) DOES NOT CATEGORICALLY GRANT EXEMPTION FROM REAL PROPERTY TAX?
- B. DID THE CBAA COMMIT REVERSIBLE ERROR IN APPLYING RETROACTIVELY THE SUPREME COURT RULING IN THE CASE ENTITLED ‘DIGITAL ELECOMMUNICATIONS PHILIPPINES, INC. VS. CITY GOVERNMENT OF BATANGAS’ (G.R. NO. 156040, DECEMBER 11, 2008)?”

Considering that the foregoing issues are interrelated, We shall address them jointly.

Petitioner’s arguments

Petitioner argues that the CBAA’s interpretation of the phrase “*exclusive of this franchise*” cannot prevail over the rulings of the Supreme Court in the *Bayantel* and earlier *Digitel* cases. Moreover, petitioner likewise submits that its real properties that are actually, exclusively and directly used in pursuit of its franchise are exempt from real property taxes, and that CBAA’s reliance on the case of *RCPI vs. Provincial Assessor of South Cotabato*¹⁵ in declaring petitioner’s real properties as taxable is misplaced.

Finally, petitioner contends that the recent *Digitel* case was decided in December 2008, after it had served its claim for refund and filed the petition with the LBAA of Zamboanga City. Hence, it cannot be applied retrospectively.

Respondent’s counter-arguments

Respondent counter-argues that RA 7252 does not categorically grant GMA exemption from real property tax, as held in the recent *Digitel* case, which

¹⁵ G.R. No. 144486, April 13, 2005.

was decided by the Supreme Court *En Banc* reversing unequivocally the earlier decisions of its Second and Third Divisions in the *Bayantel* and earlier *Digitel* cases, respectively.

Furthermore, according to respondent, nowhere in the language of the first sentence of Section 8 of RA 7252 does it expressly, or even impliedly, provide that GMA's real properties that are actually, directly and exclusively used in its telecommunications business are exempt from payment of realty tax. On the contrary, said first sentence of Section 8 states that GMA, as the franchisee, shall pay "the same taxes on its real estate, buildings, and personal property exclusive of this franchise as other persons or corporations are now or hereafter may be required by law to pay." Additionally, respondent points out that the Supreme Court, in the recent *Digitel* case, merely corrected its previous interpretation of the phrase "exclusive of this franchise". Thus, no doctrine was overruled.

Lastly, respondents contend that GMA has not acquired any right by relying on the doctrine enunciated in the *Bayantel* and earlier *Digitel* cases, and that it is bound by the doctrine of *stare decisis et non quieta movere*.

THE COURT EN BANC'S RULING

Prospective or retroactive application of doctrines laid down by the Supreme Court.

For easy reference, We quote Section 8 of RA 7252¹⁶, to wit:

"SECTION 8. Tax Provisions. —The grantee, its successors or assigns shall be liable to pay the same taxes on their real estate, buildings and personal property, **exclusive of this franchise**, as other persons or corporations are now or hereafter may be required by law to pay. In addition thereto, the grantee, its successors or assigns shall pay a franchise tax equivalent to three percent (3%)

¹⁶ An Act Granting the Republic Broadcasting System, Inc. A Franchise To Construct, Install, Operate and Maintain Radio and Television Broadcasting Stations In the Philippines.



of all gross receipts of the radio/television business transacted under this franchise by the grantee, its successors or assigns and the said percentage shall be in lieu of all taxes on this franchise or earnings thereof: Provided, That the grantee, its successors or assigns shall continue to be liable for income taxes payable under Title II of the National Internal Revenue Code pursuant to Section 2 of Executive Order No. 72 unless the latter enactment is amended or repealed, in which case the amendment or repeal shall be applicable thereto.

The grantee shall file the return with and pay the tax due thereon to the Commissioner of Internal Revenue or his duly authorized representative in accordance with the National Internal Revenue Code and the return shall be subject to audit by the Bureau of Internal Revenue.” (*Emphasis supplied*)

The first sentence of the foregoing Section 8 is the same provision found in almost all legislative franchises, most especially those in the telecommunications industry. Thus, any previous interpretation of the Supreme Court of any provision of law which is worded the same, albeit pertaining to a different franchisee, must perforce be within the scope of the said Section 8.

In the *Bayantel* case, which was promulgated on March 6, 2006, the Second Division of the Supreme Court interpreted the phrase “exclusive of this franchise”, to wit:

“As we see it, then, the issue in this case no longer dwells on whether Congress has the power to exempt Bayantel’s properties from realty taxes by its enactment of Rep. Act No. 7633 which amended Bayantel’s original franchise. **The more decisive question turns on whether Congress actually did exempt Bayantel’s properties at all by virtue of Section 11 of Rep. Act No. 7633.**

Admittedly, Rep. Act No. 7633 was enacted subsequent to the LGC. Perfectly aware that the LGC has already withdrawn Bayantel’s former exemption from realty taxes, Congress opted to pass Rep. Act No. 7633 using, under Section 11 thereof, exactly the same defining phrase ‘**exclusive of this franchise**’ which was the basis for Bayantel’s exemption from realty taxes prior to the LGC. In plain language, Section 11 of Rep. Act No. 7633 states that ‘the grantee, its successors or assigns shall be liable to pay the same taxes on their real estate, buildings and personal property, exclusive of this franchise, as other persons or corporations are

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now or hereafter may be required by law to pay.’ The Court views this subsequent piece of legislation as an **express and real intention on the part of Congress to once again remove from the LGC’s delegated taxing power**, all of the franchisee’s (Bayantel’s) properties that are actually, directly and exclusively used in the pursuit of its franchise.”

The said interpretation of the phrase “exclusive of this franchise” was again applied in the earlier *Digital* case, which was promulgated on February 23, 2007. Said the Third Division of the High Court, viz:

“As to the issue relating to the claim of payment of real property taxes, of particular import is Section 5 of Republic Act No. 7678, the legislative franchise of petitioner DIGITEL. Sec. 5 of said law again states that:

‘SECTION 5. Tax Provisions. – The grantee shall be liable to pay the same taxes on its real estate, buildings, and personal property **exclusive of this franchise** as other persons or corporations are now or hereafter may be required by law to pay x x x. (Emphasis supplied.)

Owing to the phrase ‘*exclusive of this franchise*,’ petitioner DIGITEL stands firm in its position that it is equally exempt from the payment of real property tax. It maintains that said phrase found in Section 5 above-quoted qualifies or delimits the scope of its liability respecting real property tax –that real property tax should only be imposed on its assets that are actually, directly and exclusively used in the conduct of its business pursuant to its franchise.

According to respondent Province of Pangasinan, however, ‘the phrase ‘exclusive (of this) franchise’ in the legislative franchise of Petitioner Digital did not specifically or categorically express that such franchise grant intended to provide privilege to the extent of impliedly repealing Republic Act No. 7160.’

Thus, the question is, whether or not petitioner DIGITEL’s real properties located within the territorial jurisdiction of respondent Province of Pangasinan are exempt from real property taxes by virtue of Section 5 of Republic Act No. 7678.

We rule in the affirmative. However, it is with the *caveat* that such exemption solely applies to those real properties actually, directly and exclusively used by the grantee in its franchise.

The present issue actually boils down to a dispute between the inherent taxing power of Congress and the delegated authority to tax of the local government borne by the 1987 Constitution. In the afore-quoted case of *PLDT v. City of Davao*, we already sustained the power of



Congress to grant exemptions over and above the power of the local government's delegated taxing authority notwithstanding the source of such power. And fairly recently, in the case of *The City Government of Quezon City v. Bayan Telecommunications, Inc.*, we again had the opportunity to echo the *ponencia* of Mr. Justice Vicente V. Mendoza that:

'Indeed, **the grant of taxing powers to local government units under the Constitution and the LGC does not affect the power of Congress to grant exemptions to certain persons, pursuant to a declared national policy.** The legal effect of the constitutional grant to local governments simply means that in interpreting statutory provisions on municipal taxing powers, doubts must be resolved in favor of municipal corporations.' [Emphasis supplied.]

Succinctly put, had the Congress of the Philippines intended to tax each and every real property of petitioner DIGITEL, regardless of whether or not it is used in the business or operation of its franchise, it would not have incorporated a qualifying phrase, which such manifestation admittedly is. And, to our minds, 'the issue in this case no longer dwells on whether Congress has the power to exempt' petitioner DIGITEL's properties from realty taxes by its enactment of Republic Act No. 7678 which contains the phrase '*exclusive of this franchise*,' in the face of the mandate of the Local Government Code. The more pertinent issue to consider is whether or not, by passing Republic Act No. 7678, Congress intended to exempt petitioner DIGITEL's real properties actually, directly and exclusively used by the grantee in its franchise.

The fact that Republic Act No. 7678 was a later piece of legislation can be taken to mean that Congress, knowing fully well that the Local Government Code had already withdrawn exemptions from real property taxes, chose to restore such immunity even to a limited degree. Accordingly:

'The Court views this subsequent piece of legislation as an express and real intention on the part of Congress to once again remove from the LGC's delegated taxing power, all of the franchisee's x x x properties that are actually, directly and exclusively used in the pursuit of its franchise.'

In view of the unequivocal intent of Congress to exempt from real property tax those real properties actually, directly and exclusively used by petitioner DIGITEL in the pursuit of its franchise, respondent Province of Pangasinan can only levy real property tax on the remaining real properties of the grantee located within its territorial jurisdiction not part of the above-stated classification. Said exemption, however, merely applies from the time of the effectivity of petitioner DIGITEL's legislative franchise and not a moment sooner."



However, in the recent *Digital* case, the Supreme Court *En Banc* took a different a view and effectively reversed the said *Bayantel* and *Digital* cases. It ruled:

“The issue in this case involves the interpretation of the phrase ‘**exclusive of this franchise**’ in the first sentence of Section 5 of RA 7678.

Section 5 of RA 7678 states:

‘Sec. 5. *Tax Provisions.* - **The grantee shall be liable to pay the same taxes on its real estate, buildings, and personal property exclusive of this franchise as other persons or corporations are now or hereafter may be required by law to pay.** In addition thereto, the grantee shall pay to the Bureau of Internal Revenue each year, within thirty (30) days after the audit and approval of the accounts, a franchise tax as may be prescribed by law of all gross receipts of the telephone or other telecommunications businesses transacted under this franchise by the grantee; *Provided*, That the grantee shall continue to be liable for income taxes payable under Title II of the National Internal Revenue Code pursuant to Section 2 of Executive Order No. 72 unless the latter enactment is amended or repealed, in which case the amendment or repeal shall be applicable thereto.

The grantee shall file the return with and pay the tax due thereon to the Commissioner of Internal Revenue or his duly authorized representative in accordance with the National Internal Revenue Code and the return shall be subject to audit by the Bureau of Internal Revenue.’ (Boldfacing and underscoring supplied)

The first sentence of Section 5 of RA 7678 is the same provision found in almost all legislative franchises in the telecommunications industry dating back to 1905. It is also the same provision that appears in the legislative franchises of other telecommunications companies like Philippine Long Distance Telephone Company, Smart Information Technologies, Inc., and Globe Telecom. Since 1905, no telecommunications company has claimed exemption from realty tax based on the phrase ‘exclusive of this franchise,’ until petitioner filed the present case on 3 July 1999.

The first sentence of Section 5 clearly states that the legislative franchisee shall be liable to pay the following taxes: (1) ‘the same taxes on its real estate, buildings, **and personal property exclusive of this franchise** as other persons or corporations are now or hereafter may be required by law to pay’; (2) ‘franchise tax as may be prescribed by law of all gross receipts of the telephone or other telecommunications



businesses transacted under this franchise'; and (3) 'income taxes payable under Title II of the National Internal Revenue Code.'

The crux of the controversy lies in the interpretation of the phrase 'exclusive of this franchise' in the first sentence of Section 5. Petitioner interprets the phrase to mean that its real properties that are used in its telecommunications business shall not be subject to realty tax. Respondent interprets the same phrase to mean that the term 'personal property' shall not include petitioner's franchise, which is an intangible personal property.

We rule that the phrase 'exclusive of this franchise' simply means that petitioner's franchise shall not be subject to the taxes imposed in the first sentence of Section 5. The first sentence lists the properties that are subject to taxes, and **the list excludes the franchise**. Thus, the first sentence provides:

'The grantee shall be liable to pay the same taxes on its real estate, buildings, and personal property **exclusive of this franchise** as other persons or corporations are now or hereafter may be required by law to pay.' (Emphasis supplied)

A plain reading shows that the phrase 'exclusive of this franchise' is meant to **exclude** the legislative franchise from the properties subject to taxes under the first sentence. In effect, petitioner's franchise, which is a personal property, is not subject to the taxes imposed on properties under the first sentence of Section 5.

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The first sentence of Section 5 imposes on the franchisee the '**same taxes**' that non-franchisees are subject to with respect to real and personal properties. The clear intent is to put the franchisees and non-franchisees **in parity** in the taxation of their real and personal properties. Since non-franchisees have obviously no franchises, the franchise must be excluded from the list of properties subject to tax to maintain the parity between the franchisees and non-franchisees. However, the franchisee is taxable separately from its franchise. Thus, the second sentence of Section 5 imposes the 'franchise tax' on gross receipts, which under Republic Act No. 7716 has been replaced by the 10% Valued Added Tax effective 1 January 1996.

Section 5 can be divided into three parts. *First* is the first sentence which imposes taxes on real and personal properties, excluding one property, that is, the franchise. This puts in parity the franchisees and non-franchisees in the taxation of real and personal properties. *Second* is the second sentence which imposes the franchise tax, which is applicable solely to the franchisee. And *third* is the proviso in the second sentence that imposes the income tax on the franchisee, the same income tax payable by non-franchisees.



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A tax exemption cannot arise from vague inference. The first sentence of Section 5 does not grant any express or even implied exemption from realty tax. On the contrary, the first sentence categorically states that the franchisee is subject to the '**same taxes** currently imposed, and those taxes that may be subsequently imposed, on other persons or corporations,' taxpayers that admittedly are all subject to realty tax. The first sentence does not limit the imposition of the 'same taxes' to realty tax only but even to 'those taxes' that may in the future be imposed on other taxpayers, which future taxes shall also be imposed on petitioner. Thus, the first sentence of Section 5 imposes on petitioner not only realty tax but also other taxes.

The phrase 'personal property exclusive of this franchise' merely means that 'personal property' does not include the franchise even if the franchise is an intangible personal property. Stated differently, the first sentence of Section 5 provides that petitioner shall pay tax on its real properties as well as on its personal properties but the franchise, which is an intangible personal property, shall not be deemed personal property.

The historical usage of the phrase 'exclusive of this franchise' in franchise laws enacted by Congress indubitably shows that the phrase is not a grant of tax exemption, but an exclusion of one type of personal property subject to taxes, and the excluded personal property is the franchise.

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Nowhere in the language of the first sentence of Section 5 of RA 7678 does it expressly or even impliedly provide that petitioner's real properties that are actually, directly and exclusively used in its telecommunications business are exempt from payment of realty tax. On the contrary, the first sentence of Section 5 specifically states that the petitioner, as the franchisee, shall pay the 'same taxes on its real estate, buildings, and personal property exclusive of this franchise as other persons or corporations are now or hereafter may be required by law to pay.'

The heading of Section 5 is 'Tax Provisions,' not Tax Exemptions. To reiterate, the phrase 'exemption from real estate tax' or other words conveying exemption from realty tax do not appear in the first sentence of Section 5. The phrase 'exclusive of this franchise' in the first sentence of Section 5 merely qualifies the phrase 'personal property' to exclude petitioner's legislative franchise, which is an intangible personal property. Petitioner's franchise is subject to tax in the second sentence of Section 5 which imposes the 'franchise tax.' Thus, there is no grant of tax exemption in the first sentence of Section 5.

The interpretation of the phrase 'exclusive of this franchise' in the Bayantel and Digitel cases goes against the basic principle in construing



tax exemptions. In *PLDT v. City of Davao*, the Court held that ‘tax exemptions should be granted only by clear and unequivocal provision of law on the basis of language too plain to be mistaken. They cannot be extended by mere implication or inference.’

Tax exemptions must be clear and unequivocal. A taxpayer claiming a tax exemption must point to a specific provision of law conferring on the taxpayer, in clear and plain terms, exemption from a common burden. Any doubt whether a tax exemption exists is resolved against the taxpayer.” (*Underscoring supplied*)

The core of the disagreement of the parties herein lies on which of the said cases should be applied in the case of GMA. Is it the *Bayantel* and earlier *Digitel* cases, which were the prevailing doctrine when GMA filed its claim for refund? Or is it the recent *Digitel* case, which came only during the pendency of the said claim?

To answer these questions, We are guided by the ruling enunciated in *Benzonan vs. Court of Appeals, et al.*,¹⁷ to wit:

“At that time, the prevailing jurisprudence interpreting section 119 of R.A. 141 as amended was that enunciated in *Monge* and *Tupas* cited above. The petitioners Benzonan and respondent Pe and the DBP are bound by these decisions for pursuant to Article 8 of the Civil Code ‘judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines.’ But while our decisions form part of the law of the land, they are also subject to Article 4 of the Civil Code which provides that ‘laws shall have no retroactive effect unless the contrary is provided.’ This is expressed in the familiar legal maxim *lex prospicit, non respicit*, the law looks forward not backward. The rationale against retroactivity is easy to perceive. **The retroactive application of a law usually divests rights that have already become vested or impairs the obligations of contract and hence, is unconstitutional** (*Francisco v. Certeza*, 3 SCRA 565 [1961]).

The same consideration underlies our rulings giving only prospective effect to decisions enunciating new doctrines. Thus, we emphasized in *People v. Jabinal*, 55 SCRA 607 [1974] ‘... **when a doctrine of this Court is overruled and a different view is adopted, the new doctrine should be applied prospectively and should not apply to parties who had relied on the old doctrine and acted on the faith thereof.**’ (*Emphases supplied*)



¹⁷ G.R. No. 97973, January 27, 1992.

A careful reading of the foregoing pronouncement would reveal that what the Supreme Court is saying is that a new doctrine, like laws, should only be applied prospectively, upon the reason that the retroactive application would *“usually divests rights that have already become vested or impairs the obligations of contract and hence, is unconstitutional.”* Thus, the implication would be is that a new doctrine may be applied retroactively when no divestiture is effected on any vested rights or no impairment is had on any obligation of contract.

The pertinent question then is this: While the *Bayantel* and earlier *Digitel* cases were still operative, did GMA acquire a vested right to an exemption on the payment of real property tax for the years 2006 and 2007?

The answer is in the negative.

A vested right is one which is absolute, complete, and unconditional, to the exercise of which no obstacle exists, and which is immediate and perfect in itself and not dependent upon a contingency. To be vested in its accurate legal sense, a right must be complete and consummated, and one of which the person to whom it belongs cannot be divested without his consent.¹⁸

Relative thereto, We must remember that tax exemptions are never presumed, the burden is on the claimant to establish clearly his right to the exemption and cannot be made out of inference or implications but must be laid beyond reasonable doubt.¹⁹ If such is the case, the grant of tax exemption under the *Bayantel* and *Digitel* cases cannot be claimed by GMA as already being vested to it, since it is still dependent upon a contingency of proving its entitlement thereto, and failing to do so would mean the denial of the claim.

¹⁸ *Development Bank of the Philippines vs. Court of Appeals, et al.*, G.R. No. L-28774, February 28, 1980.

¹⁹ *Quezon City, et al. vs. ABS-CBN Broadcasting Corp.*, G.R. No. 166408, October 6, 2008.



More importantly, it must be emphasized that **there is no vested right in a tax exemption**, more so when the latest expression of legislative intent renders its continuance doubtful.²⁰

Anent the question on whether there would be a violation of the non-impairment clause of the Constitution, the case of *Manila Electric Company vs. Province of Laguna, et al.*²¹ is instructive, viz:

“While the Court has, not too infrequently, referred to tax exemptions contained in special franchises as being in the nature of **contracts** and a part of the inducement for carrying on the franchise, these exemptions, nevertheless, are far from being strictly contractual in nature. **Contractual tax exemptions, in the real sense of the term and where the non-impairment clause of the Constitution can rightly be invoked, are those agreed to by the taxing authority in contracts, such as those contained in government bonds or debentures, lawfully entered into by them under enabling laws in which the government, acting in its private capacity, sheds its cloak of authority and waives its governmental immunity.** Truly, tax exemptions of this kind may not be revoked without impairing the obligations of contracts. These contractual tax exemptions, however, are not to be confused with tax exemptions granted under franchises. A franchise partakes the nature of a grant which is beyond the purview of the non-impairment clause of the Constitution. xxx.” (*Underscoring supplied*)

Hence, the application of the recent *Digitel* case, particularly the interpretation of the phrase “exclusive of this franchise”, may be made as well with Section 8 of RA 7252. Accordingly, the GMA cannot claim any tax exemption from the payment of real property tax for the years 2006 and 2007.

Even granting that the Bayantel and earlier Digitel cases ought to be followed, the tax exemption was never established so as to be applicable to GMA.

With the application of the recent *Digitel* case to GMA’s claim, We can already cease from proceeding any further. However, We are inclined to show

²⁰ *Republic of the Philippines vs. Hon. Ramon S. Caguioa, et al.*, G.R. No. 168584, October 15, 2007.

²¹ G.R. No. 131359, May 5, 1999.

that even if the earlier *Digitel* case would be followed, the denial of the claim for tax refund is still warranted under the premises.

In the earlier *Digitel* case, the High Court said:

“Thus, the question is, whether or not petitioner DIGITEL’s real properties located within the territorial jurisdiction of respondent Province of Pangasinan are exempt from real property taxes by virtue of Section 5 of Republic Act No. 7678.

We rule in the affirmative. **However, it is with the caveat that such exemption solely applies to those real properties actually, directly and exclusively used by the grantee in its franchise.**” (*Emphasis supplied*)

In this connection, GMA, as it relied on the foregoing case, must have convincingly shown that the subject real property were indeed actually, directly and exclusively used in its franchise for the period 2006 to 2007. GMA, however, miserably failed to establish such fact.

In its letter dated January 25, 2008 filed before respondent on February 1, 2008, GMA attached five (5) Annexes, consisting of photocopies of the official receipts covering the payments of real property taxes for the years 2006 to 2007 in the total amount of ₱ 15,960.51 (marked as Annexes “A” to “A-3”), and a copy of RA 7252 (marked as Annex “B”).

These supposed evidence do not persuade Us that the subject property is actually, directly and exclusively used by GMA in its franchise. If at all, said Annexes “A” to “A-3” will only tend to prove the circumstances of payment of the real property taxes by GMA for the years 2006 to 2007, but not as to the use of the said property.

Such being the case, the tax exemption claimed by GMA cannot be granted, not only because of the retroactive application of the recent *Digitel* case, but also because its entitlement thereto remains unproven and unsubstantiated.



We reiterate our consistent ruling that actions for tax refund, as in the present case, are in the nature of a claim for exemption and the law is not only construed in *strictissimi juris* against the taxpayer, but also the pieces of evidence presented entitling a taxpayer to an exemption is *strictissimi* scrutinized and must be duly proven.²²

GMA further failed to show that the assessment was illegal or erroneous.

Section 253 of the LGC of 1991 provides:

“SEC. 253. Repayment of Excessive Collections.— When an assessment of basic real property tax, or any other tax levied under this Title, is found to be illegal or erroneous and the tax is accordingly reduced or adjusted, the taxpayer may file a written claim for refund or credit for taxes and interests with the provincial or city treasurer within two (2) years from the date the taxpayer is entitled to such reduction or adjustment.

The provincial or city treasurer shall decide the claim for tax refund or credit within sixty (60) days from receipt thereof. In case the claim for tax refund or credit is denied for tax refund, the taxpayer may avail of the remedies as provided in Chapter 3, Title Two, Book II of this Code.”
(*Emphasis supplied*)

Based on the foregoing, the basis upon which the taxpayer must rely to in filing a written claim for refund or credit of real property tax is that there must be a finding that the assessment is illegal or erroneous.

The term “assessment” is defined in the law as “the act or process of determining the value of property, or proportion thereof subject to tax, including the discovery, listing, classification, and appraisal of properties”.²³ On the other hand, jurisprudence tells Us that an assessment is illegal and void when the

²² *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*, G.R. No. 159490, February 18, 2008.

²³ Section 199(f), LGC of 1991 (RA 7160).



assessor has no power to act at all, and it is erroneous when the assessor has the power but errs in the exercise of that power.²⁴

Without doubt, the City Assessor of Zamboanga City has the power to make assessments, pursuant to Sections 472(b)(7) and 220 of the LGC of 1991.²⁵ Thus, the assessment in this case cannot be said to be illegal and void. Neither can We say that the same is erroneous, since GMA never presented any evidence to show that said City Assessor erred in making the assessment, and the records of this case is bereft of any indication of the commission of such error. Hence, the basis of the refund claim of GMA was never established in this case.

WHEREFORE, all the foregoing considered, the instant Petition for Review is hereby **DENIED**. The CBAA's Decision dated August 13, 2009 and Resolution dated March 1, 2010 are hereby **AFFIRMED**.

SO ORDERED.


ERLINDA P. UY
Associate Justice

²⁴ *Victorias Milling Co., Inc. vs. Court of Tax Appeals, et al.*, G.R. No. L-24213, March 13, 1968.

²⁵ "SEC. 472. *Qualifications, Powers and Duties.* (a) xxx

(b) The assessor shall take charge of the assessor's office, perform the duties provided for under Book II of this Code, and shall:

xxx

xxx

xxx

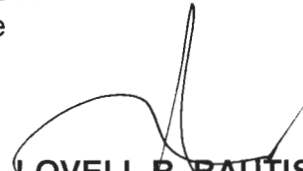
(7) **Exercise the functions of appraisal and assessment primarily for taxation purposes of all real properties in the local government unit concerned;**" (*Emphasis supplied*)

"SEC. 220. *Valuation of Real Property.* In cases where (a) real property is declared and listed for taxation purposes for the first time; (b) there is an ongoing general revision of property classification and assessment; or (c) a request is made by the person in whose name the property is declared, the provincial, city or municipal assessor or his duly authorized deputy shall, in accordance with the provisions of this Chapter, **make a classification, appraisal and assessment of real property** listed and described in the declaration irrespective of any previous assessment or taxpayer's valuation thereon: xxx." (*Emphasis supplied*)

WE CONCUR:

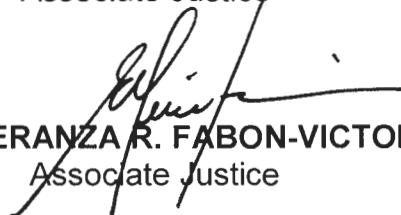

ERNESTO D. ACOSTA
Presiding Justice


JUANITO C. CASTANEDA, JR.
Associate Justice


LOVELL R. BAUTISTA
Associate Justice


CAESAR A. CASANOVA
Associate Justice


OLGA PALANCA-ENRIQUEZ
Associate Justice

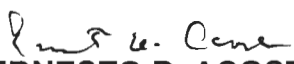

ESPERANZA R. FABON-VICTORINO
Associate Justice


CIELITO N. MINDARO-GRULLA
Associate Justice

(On Leave)
AMELIA R. COTANGCO-MANALASTAS
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII 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 *En Banc*.


ERNESTO D. ACOSTA
Presiding Justice