REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

PROVINCIAL GOVERNMENT OF CAGAYAN, Represented by: Ms. EMILIA L. IRINGAN, Asst. Provincial Treasurer, OIC-Office of the Provincial Treasurer

Plaintiff,

- versus-

NATIONAL TRANSMISSION CORP.

Defendant,

C.T.A. OC Case No. 013

Members:

Bautista, *Chairperson*
Palanca-Enriquez,
Cotangco-Manalastas, *JJ.*

Promulgated:
JAN 27 2011
ABFernando 4:10 p.m.

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DECISION

COTANGCO-MANALASTAS, J.:

This case involves a Complaint filed on March 25, 2009 by the Provincial Government of Cagayan, represented by Assistant Provincial Treasurer Ms. Emilia L. Iringan, pursuant to Section 3(c)(1), Rule 4 of the Revised Rules of the Court of Tax Appeals, praying that the National Transmission Corporation be ordered to pay franchise tax for calendar years 2002 to 2007 in the amount of P4,735,886.24, surcharges and penalties to the franchise tax in the amount of P3,965,951.03, and Governor's fee in the amount of P20,000.00.

STATEMENT OF FACTS

The facts, based on joint stipulations and as culled from the records of this case, are as follows:

The Provincial Government of Cagayan (Plaintiff) is a local government unit organized and existing under the laws of the Philippines and in accordance with the Local Government Code of 1991. It has the capacity to sue and be sued with its consent. Its office address is at Capitol Hills, Tuguegarao City. Plaintiff is being represented by the Assistant Provincial Treasurer, Ms. Emilia L. Iringan, Officer-in-Charge (OIC) at the Office of the Provincial Treasurer.[1]

On the other hand, the defendant National Transmission Corporation (hereinafter referred to as "TRANSCO") is a government-owned and -controlled corporation/instrumentality.[2] It was created and existing by virtue of Republic Act (R.A.) No. 9136, with official address at the Power Center, EDSA corner Quezon Avenue, Diliman, Quezon City.[3]

Defendant transmits and sells electric power to CAGELCO I, situated at Solana, Cagayan and CAGELCO II situated at Aparri, Cagayan. Its substation is located in Tuguegarao City.[4]

Plaintiff, through the Sangguniang Panlalawigan enacted in 1992 Ordinance No. 04-92[5] (hereinafter referred to as the "Ordinance") entitled the "Provincial Tax Ordinance of 1992".

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[1] Pars. 1 and 2, Complaint, docket, p. 3
[2] Par. 1, Stipulated and Admitted Facts, Joint Stipulation of Facts And Issues (JSFI), docket, p. 77
[3] Par. 2, Answer, docket, p. 33
[4] Pars. 2 and 3, Stipulated and Admitted Facts, JSFI, docket, p. 77
[5] Annex "A", Complaint, docket, pp. 8 to 24

On March 18, 2008, plaintiff, through Ms. Emilia L. Iringan, OIC-Office of the Provincial Treasurer issued an Assessment Letter[6], together with a "Statement of Franchise Tax Due"[7] and a statement of "Franchise Tax Collectibles CY 2001 To CY 2007"[8]. In the said Assessment Letter, plaintiff assessed defendant for the payment of franchise tax covering the years 2002 to 2007 in the aggregate amount of P4,735,886.24 and for the payment of an annual fee of P20,000.00 as Governor's permit fee to power producers/distributors. The pertinent portions of the said letter are herein quoted, to wit:

> "This refers to Local Finance Circular No. 1-07 dated June 28, 2007 of the Department of Finance (xerox copy attached) wherein one of the salient matters taken up is the charges being remitted by Electric Cooperatives to NPC and Transco. These are considered as their gross receipts for taxation purposes. Under Section 193 of the Local Government Code, tax exemptions of Government-owned and Controlled Corporations have been withdrawn, therefore, local government units may now directly bill said corporations.
>
> In this connection, enclosed is the computation of your gross receipts based on the charges reflected on the Power Bills and Statement of Accounts billed by your corporation to Cagelco I and Cagelco II and the corresponding computation of your tax due amounting to **FOUR MILLION SEVEN HUNDRED THIRTY FIVE THOUSAND EIGHT HUNDRED EIGHTY SIX & 24/100 (Php 4,735,886.24)**. Section 3A.01, Article A, Chapter III of Cagayan Provincial Revenue Code (Xerox copy attached), imposed further an annual fee of **TWENTY THOUSAND PESOS (Php 20,000.00)** for the issuance of a Governor's permit fee to power producers/distributors.
>
> May we remind you that the tax shall be due on the first twenty (20) days following each quarter, and the first installment becomes due and payable on April 20, 2008."

On May 27, 2008, defendant filed thereto its formal protest[9] dated May 21, 2008. This was denied by plaintiff in a letter dated July 21, 2008. The said denial-letter states that:

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[6] Annex "B", Complaint, docket, p. 25
[7] Annex "C", Complaint, docket, p. 26
[8] Annex "D", Complaint, docket, p. 27
[9] Annex "E", Complaint, docket, pp. 28-29

"This refers to your letter dated May 21, 2008 protesting the assessment we made regarding the franchise tax and governor's fee liabilities of your corporation to the Provincial Government of Cagayan (PGC).

You are hereby informed that your protest is denied in its entirety. In the case of *Province of Isabela v. National Power Corporation*, GR. No. 165827, July 16, 2006 the Supreme Court made it very clear that in order for a taxpayer to be subject to a franchise tax under the Local Government Code of 1991, two requisites must be satisfied, to wit: 1) the taxpayer must have a special or secondary franchise, and 2) the taxpayer is exercising its rights or privileges under this franchise within the territory of the local government collecting the tax.

TRANSCO fulfills the first requisite. Under RA 9136 (Electric Power Industry Reform Act of 2001), the nationwide franchise of NPC for the operation of the transmission system was transferred to TRANSCO. The second requisite is likewise satisfied by TRANSCO as it is engaged in the transmission of electricity to CAGELCO I and II which are within the Province of Cagayan. Accordingly, TRANSCO is subject and liable to pay franchise tax with the PGC.

Likewise, your claim that you are not liable to payment of governor's fee is misplaced. The very case of Province of Isabela v. Napocor which you cited had put to rest questions as to the authority of local government to levy taxes, fees and charges against instrumentalities of the National Government. The High Court in the said case categorically upheld the power of local governments to impose taxes and fees against instrumentalities of the National Government by virtue of Section 193 of the LGC.

In this regard, you are ordered to immediately pay the franchise tax and governor permit fee within ten (10) days from receipt of this letter otherwise, we will be compelled to take the most expedient remedies under the law to enforce your tax liability and to protect the rights of the PGC.

This serves as our final demand." [10]

Defendant did not appeal the denial by the plaintiff of its protest on the tax assessment dated March 18, 2008.[11] As a result, on March 25, 2009, plaintiff filed the instant Complaint, praying that defendant TRANSCO be ordered to pay franchise tax for calendar years 2002 to 2007 in the amount of P4,735,886.24, surcharges and

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[10] Annex "F", Complaint, docket, p. 30
[11] Par. 4, Stipulated and Admitted Facts, JSFI, docket, p. 77

penalties in the amount of P3,965,951.03, and Governor's fee in the amount of P20,000.00.

On April 27, 2009, defendant filed its Answer (With Special And Affirmative Defenses)[12], interposing the following Special And Affirmative Defenses:

"SPECIAL AND AFFIRMATIVE DEFENSES

4. Defendant Transco re-pleads the foregoing allegations and further states, that:

4.1 In order for TransCo to be held liable to pay the corresponding Franchise Tax to the city or the province, Article 226 of the Rules and Regulations Implementing the Local Government Code (LGC) of 1997 provides for the guidelines to be followed to wit:

'Article 226. Franchise Tax. –

(a) Notwithstanding any emption (*sic*) granted by any law or other special law, the province may impose a tax on business enjoying a franchise, at a rate not exceeding (50%) of one percent (1%) of the gross annual receipts, which shall include both cash sales and sales on account realized during the preceding calendar year within its territorial jurisdiction, excluding the territorial limits of any city located in the province.

(b) The province shall not impose the tax on business enjoying franchise operating within the territorial jurisdiction of any city located within the province. (Underscoring supplied.)

4.2 By jurisprudence, the liability of TransCo shall only attach provided the following conditions concur, viz:

(a) TransCo's substation must be within the territorial jurisdiction of the province and must not be within the territorial jurisdiction of any city located within the said province, or vice versa, AND

(b) TransCo's customer must be operating within the territorial jurisdiction of the province and must not be within the territorial jurisdiction of any city located within the said province or vice versa.

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[12] Docket, pp. 33-39

4.3 Thus, in the case of TransCo's franchise liability to the Province of Cagayan, the two (2) requisites stated above were not complied. While TransCo's customers, CAGELCO I located at Solano, Cagayan and CAGELCO II located at Aparri, Cagayan are within the territorial jurisdiction of the Province of Cagayan, TransCo's Tuguegarao substation is not within the territorial jurisdiction of the province, but within the City of Tuguegarao.

Wanting of the foregoing mandatory requirements, it is befitting that plaintiff refrain from assessing TransCo of the assailed franchise tax.

5. Aside from that, the Province's power to create its own sources of revenue, levy taxes, fees, and charges is subject to the limitations enumerated under **Section 133 of the Local Government Code of 1991 (LGC)**, which reads in part:

'Section 133. Common Limitations on the Taxing Powers of the Local Government Units. – Unless otherwise provided herein, the exercise of the taxing powers of provinces, cities, municipalities, and barangays shall not extend to the levy of the following:

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(o) Taxes, fees or charges of any kind on the National Government, its agencies and instrumentalities, and local government units.'

By reason thereof, TransCo, as a government instrumentality created by virtue of Republic Act No. 9136 (RA 9136), is excluded from the coverage of Section 133 of the Local Government Code, including the payment of Governor's fee as provided for in Section 3A.01, Article A, Chapter III of the Provincial Ordinance 2005-07, being in a form of *charges of any kind* as contemplated in the above-provision.

The exemption is now amplified in a recent case decided by the Supreme Court on July 20, 2006, entitled **Manila International Airport Authority (MIAA) vs. Court of Appeals, et.al. (G.R. No. 155650)**, where it is held that:

'A government instrumentality like MIAA falls under Section 133(o) of the Local Government Code xxx xxx xxx. Section 133(o) recognizes the basic principle that local governments cannot tax the national government, which historically merely delegated to local governments the power to tax. While the 1987 Constitution now includes taxation as one of the powers of local governments, local governments may only exercise such power subject to such guidelines and limitations as the Congress may provide.'

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There is also no reason for local governments to tax national government instrumentalities for rendering essential public services to inhabitants of local governments. The only exception is when the legislature clearly intended to tax government instrumentalities for the delivery of essential public services for sound and compelling policy considerations. There must be express language in the law empowering local governments to tax national government instrumentalities. Any doubt whether such power exists is resolved against the local governments. (Underscoring supplied.)

TransCo, like MIAA, is a government instrumentality vested with corporate powers to perform efficiently the special functions vested upon it by law. TRANSCO, like MIAA, is not organized as a stock[13] or non-stock[14] corporation. TRANSCO is not a stock corporation because it has no capital stock divided into shares, has no stockholders or voting shares. TRANSCO is also not a non-stock corporation because it has no members.

This is consistent with **Department of Justice (DOJ) Opinion No. 063, s. 1993, dated 13 May 1993**, where it is opined that:

'True, Section 193 of the Code withdraws the tax exemption privileges presently enjoyed by any person, whether natural or juridical, including government-owned controlled corporations, save in those cases specifically enumerated therein. It bears emphasis, however, that said section is qualified by the phrase 'Unless otherwise provided in this Code'. This qualifying phrase should be interpreted as referring to Section 133 of the Code, which exempts, among others, national government instrumentalities from the taxing powers of local government units.' (Underscoring supplied.)

6. Finally, this case could be dismissed immediately pursuant to Republic Act 1125, as amended by RA No. 3457 entitled an "An Act Creating the Court of Tax Appeals, where Section 7 thereof specifically provides for the jurisdiction of this Honorable Court, viz:

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[13] Stock Corporation is one whose capital stock is divided into shares and is authorized to distribute to the holders of such shares dividends or allotments of the surplus profits on the basis of the shares held. (Section 3, Corporation Code)

[14] Non-stock Corporation is one where no part of its income is distributable as dividends to its members, trustees or officers. (Section 87, Ibid.)

> 'Section 7. Jurisdiction. – The Court of Tax Appeals shall exercise exclusive **appellate** jurisdiction to review by appeal, as herein provided.
>
> (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code or other law or part of law administered by the Bureau of Internal Revenue;
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> (2) Decisions of the Commissioner of Customs in cases involving liability for customs duties, fees or other money charges; seizure, detention or release of property affected fines, forfeitures or other penalties imposed in relation thereto; or other matters arising under the Customs Law or other law or part of law administered by the Bureau of Customs; and
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> (3) Decisions of provincial or city Boards of Assessment Appeals in cases involving the assessment and taxation of real property or other matters arising under the Assessment Law, including rules and regulations relative thereto.
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> Clearly, the Court of Tax Appeals could only entertain cases that are in the nature of an appeal and not ordinary action for collection, like the instant case. This is clearly shown in the preceding section where it is provided that the Tax Court exercises exclusive '**appellate**' jurisdiction to review by appeal '**decisions**' of the Commissioner of the Bureau of Internal Revenue, the Commissioner of Customs, and the Provincial or City Board of Assessments. Therefore, plaintiff's recourse to this Honorable Court is fatally flawed."

During the November 24, 2009 hearing, plaintiff's counsel manifested that this case involves legal issue; thus, in lieu of trial, this Court directed the parties to file their respective Memorandum within a period of thirty (30) days from November 24, 2009.[15]

In a Resolution[16] dated February 15, 2010, this case was submitted for decision, taking into consideration plaintiff's "Memorandum for Plaintiff"[17] filed by

[15] Docket, p. 97
[16] Docket, p. 156
[17] Docket, pp. 112 to 122

registered mail on December 23, 2009 and defendant's "Memorandum"[18] filed on December 23, 2009.

STATEMENT OF THE ISSUES

The following are parties' jointly stipulated issues[19] submitted for this Court's consideration:

> "I. Whether or not the Honorable Court has jurisdiction over the instant case?
>
> II. Whether or not defendant is liable to pay plaintiff payment of franchise tax for the privilege of transmitting and selling electric power to CAGELCO I and II situated in the province of Cagayan?"

The issue boils down to whether or not defendant TRANSCO can be held liable to pay plaintiff franchise tax for calendar years 2002 to 2007 in the amount of P4,735,886.24, surcharges and penalties to the franchise tax in the amount of P3,965,951.03, and Governor's fee in the amount of P20,000.00, for the privilege of transmitting and selling electric power to CAGELCO I and II situated in the province of Cagayan.

Before addressing the other substantive issue, this Court shall first resolve the issue pertaining to the jurisdiction of this Court over the instant case.

The jurisdiction of this Court is provided under Republic Act No. 1125, as amended by Republic Act No. 9282. Section 7 thereof states, in pertinent part:

> "SEC. 7. Jurisdiction. - The CTA shall exercise:
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> xxx xxx xxx
>
> (C) Jurisdiction over tax collection cases as herein provided:
>
> (1) **Exclusive original jurisdiction in tax collection cases involving final and executory assessments for taxes, fees, charges and penalties**: Provided, however, That collection cases where the principal amount of taxes and fees, exclusive of charges and penalties, claimed is less than One million pesos (P1,000,000.00) shall be tried by the proper Municipal

[18] Docket, pp. 98 to 111
[19] Docket, p. 77

Trial Court, Metropolitan Trial Court and Regional Trial Court. xxx" *(Emphasis supplied)*

Likewise, Section 3(c)(1), Rule 4 of the Revised Rules of the Court of Tax Appeals provides that:

"SEC. 3. *Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise:

xxx xxx xxx

(c) Exclusive jurisdiction over tax collection cases, to wit:

(1) **Original jurisdiction in tax collection cases involving final and executory assessments for taxes, fees, charges and penalties, where the principal amount of taxes and fees, exclusive of charges and penalties, claimed is one million pesos or more**; and" *(Emphasis supplied)*

Based on the foregoing, the Court in Division shall exercise original jurisdiction in tax collection cases involving **final and executory assessments** for taxes, fees, charges and penalties where the **principal amount of taxes** and fees, exclusive of charges and penalties **claimed is more than one million pesos**.

Here, the plaintiff assessed defendant for the payment of franchise tax covering the years 2002 to 2007 in the aggregate amount of P4,735,886.24 and for the payment of an annual fee of P20,000.00 as Governor's permit fee, the total of which is more than one million pesos.

Moreover, it has not been disputed that defendant received the letter-assessment dated March 18, 2008, which assessed defendant for the payment of franchise tax covering the years 2002 to 2007 in the aggregate amount of P4,735,886.24 and for the payment of an annual fee of P20,000.00 as Governor's permit fee imposed on power producers/distributors. Even though on May 27, 2008, defendant filed thereto its formal protest[20], defendant did not appeal plaintiff's denial

[20] Annex "E", Complaint, docket, pp. 28-29

letter dated July 21, 2008[21] denying the said protest letter. Consequently, the assessment had become conclusive and unappealable. Section 195 of the Local Government Code states:

> "SECTION 195. *Protest of Assessment.* - **When the local treasurer or his duly authorized representative finds that correct taxes, fees, or charges have not been paid, he shall issue a notice of assessment stating the nature of the tax, fee, or charge, the amount of deficiency, the surcharges, interests and penalties.** Within sixty (60) days from the receipt of the notice of assessment, the taxpayer may file a written protest with the local treasurer contesting the assessment; otherwise, the assessment shall become final and executory. The local treasurer shall decide the protest within sixty (60) days from the time of its filing. If the local treasurer finds the protest to be wholly or partly meritorious, he shall issue a notice cancelling wholly or partially the assessment. However, if the local treasurer finds the assessment to be wholly or partly correct, he shall deny the protest wholly or partly with notice to the taxpayer. **The taxpayer shall have thirty (30) days from the receipt of the denial of the protest or from the lapse of the sixty (60) day period prescribed herein within which to appeal with the court of competent jurisdiction otherwise the assessment becomes conclusive and unappealable.**" *(Emphasis supplied)*

The Assessment Letter dated March 18, 2008 of the Treasurer of the Provincial Government of Cagayan satisfies the requirement provided under Section 195 of the Local Government Code, particularly, by stating the nature of the tax, fee or charge, the amount of deficiency, the surcharges, interests and penalties.

Clearly, when plaintiff filed the instant Complaint on March 25, 2009, the assessment made by plaintiff against defendant TRANSCO had become final and executory. *Ergo*, this Court has jurisdiction over the instant Complaint.

This Court will now resolve the issue of whether or not defendant is liable to plaintiff for the payment of franchise tax in the amount of P4,735,886.24 covering calendar years 2002 to 2007, surcharges and penalties to the franchise tax in the amount of P3,965,951.03, and Governor's fee in the amount of P20,000.00 for the

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[21] Par. 4, Stipulated and Admitted Facts, JSFI, docket, p. 77

privilege of transmitting and selling electric power to CAGELCO I and II situated in the province of Cagayan.

Instead of presenting their respective evidence, plaintiff and defendant submitted their respective arguments in their Memoranda in support of their claims and defenses.

Plaintiff argues that it can legally impose and collect franchise tax against defendant TRANSCO pursuant to its Ordinance No. 04-92, in relation to Section 137 of the Local Government Code of 1991. Plaintiff also asserts that the claimed exemption of defendant from payment of taxes and fees imposed by LGUs has been withdrawn by Section 193 of the Local Government Code of 1991.

Defendant, on the other hand, alleges that the requisites for the tax liability to attach under Article 226 of the Rules and Regulations Implementing the Local Government Code of 1991 are not present; stating that "(w)hile TransCo's customers, CAGELCO I located at Solano, Cagayan and CAGELCO II located at Aparri, Cagayan are within the territorial jurisdiction of the Province of Cagayan, TransCo's Tuguegarao substation is not within the territorial jurisdiction of the province, but within the City of Tuguegarao"[22]. This would mean that the province should not impose a tax on business enjoying franchise operating within the territorial jurisdiction of any city located within the province.

Defendant also claims that it is exempt from subject franchise tax assessment considering that "TransCo, as a government instrumentality created by virtue of Republic Act No. 9136 (RA 9136), is excluded from the coverage of Section 133 of the Local Government Code, including the payment of Governor's fee as provided for in Section 3A.01, Article A, Chapter III of the Provincial Ordinance 2005-07, being in

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[22] Par. 4.3, Answer, docket, p. 34

form of *charges of any kind* as contemplated in the above-provision", citing the case of *Manila International Airport Authority vs. Court of Appeals, et. al.*[23]

Finally, defendant argues in its Memorandum (although not found in its Answer) that the Ordinance of the plaintiff does not cover franchise tax for transmission of electricity, which is the business of TRANSCO.[24]

This Court finds for plaintiff.

The authority of plaintiff to impose subject franchise tax through Ordinance No. 04-92[25] has not been disputed. Section 137 of R.A. No. 7160 or the Local Government Code of 1991 provides:

> "SECTION 137. *Franchise Tax.* - **Notwithstanding any exemption granted by any law or other special law, the province may impose a tax on businesses enjoying a franchise, at the rate not exceeding fifty percent (50%) of one percent (1%) of the gross annual receipts for the preceding calendar year based on the incoming receipt, or realized, within its territorial jurisdiction.**
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> In the case of a newly started business, the tax shall not exceed one-twentieth (1/20) of one percent (1%) of the capital investment. In the succeeding calendar year, regardless of when the business started to operate, the tax shall be based on the gross receipts for the preceding calendar year, or any fraction thereon, as provided herein." *(Emphasis supplied)*

In *National Power Corporation vs. City of Cabanatuan*[26], the Supreme Court upheld the authority of the local government unit to impose franchise tax against the National Power Corporation, stating thus:

> "(S)ection 137 of the LGC clearly states that the LGUs can impose franchise tax **'notwithstanding any exemption granted by any law or other special law.'** This particular provision of the LGC does not admit any exception. In **City Government of San Pablo, Laguna v. Reyes**, MERALCO's exemption from the payment of franchise taxes was brought as an issue before this Court. The same issue was involved in the subsequent case of **Manila Electric Company v. Province of Laguna**.

[23] G.R. No. 155650, July 20, 2006
[24] Docket, p. 103
[25] Annex "A", Complaint, docket, pp. 8 to 24
[26] G.R. No. 149110, April 9, 2003

Ruling in favor of the local government in both instances, we ruled that the franchise tax in question is imposable despite any exemption enjoyed by MERALCO under special laws, *viz*:

> 'It is our view that petitioners correctly rely on provisions of Sections 137 and 193 of the LGC to support their position that MERALCO's tax exemption has been withdrawn. The explicit language of section 137 which authorizes the province to impose franchise tax 'notwithstanding any exemption granted by any law or other special law' is all-encompassing and clear. **The franchise tax is imposable despite any exemption enjoyed under special laws.**
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> **Section 193 buttresses the withdrawal of extant tax exemption privileges.** By stating that unless otherwise provided in this Code, tax exemptions or incentives granted to or presently enjoyed by all persons, whether natural or juridical, including government-owned or controlled corporations except (1) local water districts, (2) cooperatives duly registered under R.A. 6938, (3) non-stock and non-profit hospitals and educational institutions, are withdrawn upon the effectivity of this code, the obvious import is to limit the exemptions to the three enumerated entities. It is a basic precept of statutory construction that the express mention of one person, thing, act, or consequence excludes all others as expressed in the familiar maxim *expressio unius est exclusio alterius*. In the absence of any provision of the Code to the contrary, and we find no other provision in point, any existing tax exemption or incentive enjoyed by MERALCO under existing law was clearly intended to be withdrawn.
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> **Reading together sections 137 and 193 of the LGC, we conclude that under the LGC the local government unit may now impose a local tax at a rate not exceeding 50% of 1% of the gross annual receipts for the preceding calendar based on the incoming receipts realized within its territorial jurisdiction. The legislative purpose to withdraw tax privileges enjoyed under existing law or charter is clearly manifested by the language used on (sic) Sections 137 and 193 categorically withdrawing such exemption subject only to the exceptions enumerated. Since it would be not only tedious and impractical to attempt to enumerate all the existing statutes providing for special tax exemptions or privileges, the LGC provided for an express, albeit general, withdrawal of such exemptions or privileges. No more unequivocal language could have been used.'** (Emphases supplied)"

The defendant's allegation that one of the conditions upon which the franchise tax liability under Article 226 of the Rules and Regulations Implementing the Local Government Code may be imposed is not present is devoid of factual and legal bases.

Defendant contends that "(W)hile TransCo's customers, CAGELCO I located at Solano, Cagayan and CAGELCO II located at Aparri, Cagayan are within the territorial jurisdiction of the Province of Cagayan, TransCo's Tuguegarao substation is not within the territorial jurisdiction of the province, but within the City of Tuguegarao". The law, however, does not provide an exemption from paying franchise tax merely because defendant's "Tuguegarao substation is not within the territorial jurisdiction of the province, but within the City of Tuguegarao". As provided in Section 137 of R.A. No. 7160, the province may impose a tax on businesses enjoying a franchise, at the rate not exceeding fifty percent (50%) of one percent (1%) of the gross annual receipts for the preceding calendar year **based on the incoming receipt, or realized, within its territorial jurisdiction**.

There is no showing that the presence of the said substation within the City of Tuguegarao deprives and/or negates the authority of the Province of Cagayan from exercising the *situs* of taxation. Defendant does not dispute that its customers are within the territorial jurisdiction of the province; and as a consequence, defendant necessarily receives or realizes gross annual receipts **within plaintiff's territorial jurisdiction**, which is what the law requires.

Defendant TRANSCO is the corporation organized to acquire all the transmission assets of the National Power Corporation (NPC).[27] Under Section 8 of R.A. No. 9136, the defendant had been created with the following purpose and guidelines:

> "SECTION 8. *Creation of the National Transmission Company.* - There is hereby created a National Transmission Corporation, hereinafter referred to as **TRANSCO, which shall assume the electrical transmission functions of the National Power Corporation (NPC)**, and have the powers and functions hereinafter granted. **The TRANSCO**

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[27] Section 4, R.A. No. 9136

> **shall assume the authority and responsibility of NPC for the planning, construction and centralized operation and maintenance of its high voltage transmission facilities, including grid interconnections and ancillary services**." *(Emphasis supplied)*

From the foregoing provision, it is clear that defendant TRANSCO **shall assume the authority and responsibility of NPC for the planning, construction and centralized operation and maintenance of its high voltage transmission facilities, including grid interconnections and ancillary services**. Even granting that the substation referred to by defendant is located in the City of Tuguegarao, there is nothing on record which shows that its high voltage transmission facilities, including grid interconnections and ancillary services in operating the business to its customers are not within the territory of the Province of Cagayan.

As regards defendant's allegation that it is exempt from subject franchise tax assessment being a government instrumentality created by virtue of Republic Act No. 9136, the same is not meritorious. As discussed above, Section 137 of the Local Government Code clearly states that LGUs can impose franchise tax 'notwithstanding any exemption granted by any law or other special law." This particular provision of the Local Government Code does not admit any exception. Moreover, defendant failed to show that it is exempt from subject franchise tax under the charter which created it.

Anent defendant's argument that the Ordinance of the plaintiff does not cover franchise tax for the business of transmission of electricity which is the business of TRANSCO, suffice it to say that defendant is a public utility covered under Section 2, Article 3, Chapter II of Ordinance No. 04-92. The said provision is herein quoted for easy reference, to wit:

> "SECTION 2. Coverage of Franchise Tax - **All public utilities** and business holding franchises from the national, provincial or other

> local government or their agencies shall pay the franchise tax based on their gross receipts obtained within the province. **Among others**, the following shall be subject to this tax:
>
> (a) Common Carriers – xxx
> (b) Electric Power Distribution;
> (c) Telephone and Telegraph Companies - xxx
> (d) Radio and television companies;
> (e) Community Antenna Television (CATV) - xxx *(Emphasis supplied)*

Evidently, the enumeration mentioned in Section 2 is not exclusive, but also includes those falling under the category of "among other(s)" public utilities covered by the franchise tax.

Laws granting exemption from tax are construed in *strictissimi juris* against the taxpayer and liberally in favor of the taxing power. And unless the taxpayer can prove the tax exemption by words too plain to be mistaken and too categorical to be misinterpreted, then the exemption will not apply.[28]

Assessments are *prima facie* presumed correct and made in good faith. It is an elementary rule that in the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed.[29]

WHEREFORE, premises considered, judgment is hereby rendered in favour of plaintiff Provincial Government of Cagayan and against defendant TRANSCO, ordering said defendant to pay the plaintiff the amount of P4,735,886.24, representing franchise tax for calendar years 2002 to 2007, and Governor's fee in the amount of P20,000.

In addition, defendant is also ORDERED TO PAY (a) surcharge of twenty five percent (25%) of the franchise tax due, and (b) interest of two percent (2%) per

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[28] Sea-Land Service Inc. vs. Court of Appeals, *et al.*, G.R. No. 122605, April 30, 2001
[29] Commissioner of Internal Revenue vs. Court of Appeals, *et al.*, G.R. No. 104151 March 10, 1995 and Atlas Consolidated Mining and Development Corporation vs. Court of Appeals, *et al.*, G.R. No. 105563 March 10, 1995

month of the unpaid franchise tax, including surcharges, until such amount is fully paid, but in no case shall the total interest on the unpaid amount or portion thereof exceed thirty-six (36) months, pursuant to Section 4, Article 2, Chapter III of Ordinance No. 04-92.

SO ORDERED.

AMELIA R. COTANGCO- MANALASTAS
Associate Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, 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.

ERNESTO D. ACOSTA
Presiding Justice