REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CASE NO. 10885

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

- versus -

NOTICE OF DECISION

COMMISSIONER OF INTERNAL REVENUE and SECRETARY OF FINANCE,
Respondents.

To:

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GREETINGS:

You are hereby notified by these presents that on **April 30, 2025,** a Decision was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **May 5, 2025.**

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

REPUBLIC OF THE PHILIPPINES
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FIRST DIVISION

INDEPENDENT ELECTRICITY MARKET OPERATOR OF THE PHILIPPINES INC., *Petitioner,*	**CTA CASE NO. 10885** *Members:* **DEL ROSARIO**, *P.J., Chairperson,* **BACORRO-VILLENA**, *and* **CUI-DAVID**, *JJ.*
- versus -	
COMMISSIONER OF INTERNAL REVENUE & SECRETARY OF FINANCE, *Respondents.*	Promulgated: APR 30 2025 3:10PM

x- - - -

Respondent **Commissioner of Internal Revenue** ("CIR") is the duly appointed government officer vested with the authority to act as such and, pursuant to the National Internal Revenue Code ("NIRC") of 1997, as amended, is further vested with the exclusive and original jurisdiction to interpret provisions of the NIRC and other laws as well as to decide tax cases, subject only to the review by the Secretary of Finance.[5] The CIR holds office at the Bureau of Internal Revenue ("BIR") National Office Building, BIR Road, Diliman, Quezon City.[6]

Co-respondent **Secretary of Finance** ("SOF") is the duly appointed government officer vested with the authority to act as such, and further vested under the NIRC of 1997, as amended, with the power, among other things, to review rulings and interpretations of the NIRC and other tax laws rendered by the CIR.[7] His office is at the Department of Finance, Roxas Boulevard corner Pablo Ocampo Sr. Street, Manila.

THE FACTS AND THE PROCEEDINGS

The factual antecedents of the case, as culled from the record, are as follows:

In 2001, Republic Act (RA) No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001 ("EPIRA"), was enacted to ensure, among other things, the quality, reliability, security, and affordability of the supply of electric power and the transparency and reasonableness of electricity prices under a regime of free and fair competition and full public accountability.[8]

Among the reforms introduced under EPIRA was the establishment of the Wholesale Electricity Spot Market ("WESM"), intended to provide a mechanism for identifying and setting the price of actual variations from the quantities transacted under contracts between sellers and buyers of electricity.[9]

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5 *Id.* at par. 1.
6 Docket – Vol. II, pp. 872–873, Respondent's Pre-trial Brief, Summary of Admitted Facts, par. 1.
7 *Id.* at 924, Joint Stipulation of Facts and Issues (JSFI), par. 2.
8 Republic Act No. 9136 (EPIRA), Secs. 2(b) and (c).
9 Republic Act No. 9136 (EPIRA), Sec. 30.

Tasked under the EPIRA to establish the WESM, the Department of Energy ("DOE"), together with the electric power industry participants, formulated the WESM Rules and constituted the Autonomous Group Market Operator ("AGMO") which was tasked to "*undertake the preparatory work and initial operation of the WESM for a period of 12 months from the spot market commencement date, initially under the administrative supervision of the National Transmission Corporation (TRANSCO).*" The AGMO constituted by the DOE is the Philippine Electricity Market Corporation ("PEMC").

Accordingly, in November 2003, PEMC was incorporated as a non-stock, non-profit corporation with equitable representation from the electric power industry participants. As mandated, PEMC undertook the preparations for the implementation and initial operations of the WESM.

In 2018, in fulfillment of the mandates under Section 30[10] of EPIRA, the DOE, and the electric power industry participants endorsed the transition from the AGMO to an independent entity that would assume market operations functions (*i.e.*, Independent Market Operator or IMO). The transition was effected through:

(i) the issuance of DOE Department Circular (DC) No. DC2018-01-0002,[11] entitled "*Adopting Policies for the Effective and Efficient Transition to the Independent Market Operator for the Wholesale Electricity Spot Market*", on January 17, 2018; and

(ii) the adoption by PEMC general membership of the plan for transition to the IMO (IMO Transition Plan) on February 6, 2018.

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[10] Section 30. *Wholesale Electricity Spot Market.* ...

... ...

The wholesale electricity spot market shall be implemented by a market operator in accordance with the wholesale electricity spot market rules. The market operator shall be an autonomous group, to be constituted by DOE, with equitable representation from electric power industry participants, initially under the administrative supervision of the TRANSCO. The market operator shall undertake the preparatory work and initial operation of the wholesale electricity spot market. Not later than one (1) year after the implementation of the wholesale electricity spot market, an independent entity shall be formed and the functions, assets and liabilities of the market operator shall be transferred to such entity with the joint endorsement of the DOE and the electric power industry participants. Thereafter, the administrative supervision of the TRANSCO over such entity shall cease. xxx (*Underscoring supplied*)

[11] Docket – Vol. II, pp. 1103–1109, Exhibit P-11.

The DOE Department Circular and the IMO Transition Plan provide that the IMO shall be an independent entity, separate from PEMC, and incorporated as a private corporation. The IMO shall assume the market operator functions, assets, and liabilities of PEMC. Meanwhile, PEMC shall continue to serve as the governance arm of the WESM.

Petitioner was then organized as a non-stock, non-profit private corporation.[12] It was incorporated to become the IMO.

On September 19, 2018, PEMC and petitioner executed an Operating Agreement [13] to formalize the transfer and assumption of market operator functions, along with the assets, and liabilities, of PEMC, as AGMO, to petitioner, as IMO. The Agreement acknowledged and confirmed petitioner as the corporation duly incorporated to act as the IMO of the WESM.

On September 26, 2018, petitioner assumed its functions as Market Operator and commenced operations of the WESM, fully taking over market operations from PEMC.

On October 10, 2018, petitioner filed with the BIR a request[14] for ruling seeking confirmation of the following: (i) the tax status of petitioner; and (ii) the tax implications of the transfer to petitioner from PEMC of assets and liabilities relating to its Market Operator functions. Likewise on even date, petitioner filed a second request for ruling relative to the taxation of the transactions in the WESM.[15]

On September 17, 2021, petitioner received a copy of the BIR Ruling No. OT-323-021[16] dated August 21, 2021, in which respondent CIR allegedly ruled, among others, that:

a. Petitioner does not qualify for exemption from income taxation as a business league under Section 30 of the NIRC; it is thus subject to income tax under Section 27 and, consequently, to withholding tax under Section 57, both of the NIRC;

b. The market fees collected by the Petitioner from market participants and net settlement surplus calculated in the course of the settlements of transactions in the WESM

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12 *Id.* at 1110, Exhibit P-12.
13 *Id.* at 1144–1176, Exhibit P-15.
14 *Id.* at 995–1013, Exhibit P-4.
15 *Id.* at 1014–1024, Exhibit P-5.
16 *Id.* at 970–992, Exhibit P-2.

shall be part of the gross income of the Petitioner subject to taxation;

c. The payments received by the Petitioner which are earmarked for other entities are not part of its gross income; and,

d. The Customer/Buyer shall be the withholding tax agent for energy sold and paid through the WESM, while the Customer/Buyer and Generator/Seller shall be the withholding tax agents for the market fees collected by the Petitioner.[17]

Unable to agree with certain points in the said BIR Ruling, petitioner filed a *Request for Review* with the SOF on October 15, 2021.[18]

On May 12, 2022, petitioner received the assailed DOF Opinion dated May 11, 2022, which denied its *Request for Review*.

Still unable to agree, petitioner elevated its case before the Court *via* the present *Petition for Review* filed on June 13, 2022, praying that a judgment be rendered declaring that:

1. Petitioner IEMOP is exempt from income taxation under Section 30 of the NIRC, as amended;

2. Petitioner IEMOP's collection and remittance of the share of PEMC in the market fees that it collects from participants of the WESM is NOT subject to income tax, withholding tax, and value added tax; and

3. The net settlement surplus calculated in the WESM settlement processes and netted out from the settlement amounts of market participants do NOT form part of the revenues and gross receipts of the Petitioner or of any other market participant for taxation purposes, and that the same does not also constitute an expense that the Petitioner need to expense out.[19]

In his *Answer* filed on August 22, 2022,[20] respondent CIR submits that while Section 4 of the NIRC of 1997, as amended, provides that the CIR's interpretation of the provisions of the NIRC and other tax laws is subject to review by the SOF, neither

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17 Docket – Vol. I, p. 12, *Petition for Review*, pars. 18.1–18.4.
18 Docket – Vol. II, pp. 1073–1095, Exhibit P-8.
19 Docket – Vol. I, pp. 54–55, *Petition for Review*, Prayer.
20 Docket – Vol. II, pp. 800–825.

RA No. 1125[21] nor RA No. 9282[22] confers jurisdiction upon the Court of Tax Appeals (CTA) to review the decision of the SOF pertaining to the review of the CIR's interpretation. According to the CIR, the decision of the SOF contemplated under RA No. 9282 refers to those rendered in connection with customs cases. Nonetheless, respondent CIR maintains that: (i) petitioner is not exempt from income tax; (ii) petitioner's collection and remittances from the share of PEMC in the market fees are subject to income tax, withholding tax, and value-added tax; and (iii) petitioner's net settlement surplus should form part of petitioner's and other market participant's revenues and gross receipts, and expenses, for taxation purposes.

In his *Answer/Comment*[23] filed on September 21, 2022, respondent SOF interposed as a defense, the following arguments: (a) petitioner does not qualify as a business league under Section 30(F) of the NIRC; hence, it is not exempt from income tax; and (b) the market fees collected by petitioner from WESM participants and the net settlement surplus form part of its gross income as the market operator of the WESM.

After the *Pre-Trial Conference*, the parties filed their *Joint Stipulation of Facts and Issues*[24] on October 13, 2023 based on which the Court issued a *Pre-Trial Order*[25] on December 13, 2023.

Trial ensued, during which petitioner presented two (2) witnesses: 1) **Robinson P. Descanzo**,[26] its Chief Operating Officer; and 2) **Mary Ann T. Santiago**,[27] its Controllership Manager. Both testified on direct examination through their respective Judicial Affidavits.

On December 5, 2023, petitioner filed its *Formal Offer of Evidence*,[28] offering Exhibits P-1 to P-23, inclusive of sub-markings. In a Resolution[29] dated February 27, 2024, the Court

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21 An Act Creating the Court of Tax Appeals.
22 AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OR REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.
23 Docket – Vol. II, pp. 827–838.
24 *Id.* at 923–929.
25 Docket – Vol. III, pp. 1672-1683.
26 Docket – Vol. I, pp. 333–342, Exhibit P-17.
27 *Id.* at 264–275, Exhibit P-16.
28 Docket - Vol. II, pp. 951–960.
29 Docket – Vol. III, pp. 1726–1727.

admitted all the exhibits and reiterated its previous directive[30] for the parties to submit their memoranda within 30 days from notice, in view of respondents' manifestation that they would no longer present evidence.

On April 30, 2024, the instant case was deemed submitted for decision,[31] given the filing of petitioner's and respondent SOF's Memoranda, without respondent CIR's Memorandum. Subsequently, on May 3, 2024, the Court received the belatedly filed respondent CIR's Memorandum.

Hence, this Decision.

THE ISSUES

As stipulated by the parties, the following are the issues to be resolved:

I. WHETHER OR NOT RESPONDENTS COMMISSIONER OF INTERNAL REVENUE AND SECRETARY OF FINANCE ERRED IN RULING THAT PETITIONER, AS MARKET OPERATOR OF THE WESM, IS NOT AN EXEMPT CORPORATION UNDER SECTION 30(F) OF THE NIRC, AS AMENDED; AND,

II. WHETHER OR NOT THE MARKET FEES COLLECTED BY PETITIONER FROM WESM PARTICIPANTS AND REMITTED TO PEMC, AS WELL AS THE NET SETTLEMENT SURPLUS (NSS), IS [sic] SUBJECT TO TAX.

Petitioner's arguments:

At the outset, petitioner submits that the Court has jurisdiction over the instant case, citing the case of *Banco de Oro v. Republic of the Philippines*[32] *(Banco de Oro).* Petitioner claims that in *Banco de Oro*, the Supreme Court ruled that the determination of the validity of tax ruling clearly falls within the exclusive appellate jurisdiction of the CTA under Section 7(1) of RA No. 1125, as amended, subject to prior review of the SOF, as required under the Tax Code.

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30 Docket – Vol. II, pp. 943–945, Order dated November 16, 2023.
31 Docket - Vol. III, p. 1774, Minute Resolution.
32 G.R. No. 198756 (Resolution), August 16, 2016 [Per J. Leonen, *En Banc*].

In the instant case, petitioner avers that on September 17, 2021, it received BIR Ruling No. OT-323-021 dated August 21, 2021, to which it appealed before the SOF by way of its Request for Review dated October 14, 2021. Thereafter, on May 12, 2022, it received the appealed DOF Opinion No. 008-2022 dated May 11, 2022. Following Section 11 of RA No. 1125, as amended, petitioner submits that the present *Petition for Review* was timely filed on June 13, 2022 (June 11, 2022 being a Saturday), hence, the Court has jurisdiction to take cognizance of the same.

On the merits, petitioner avers that the issue submitted for consideration of the Court is whether petitioner, as Market Operator of the WESM, is exempt from income taxation under Section 30 of the NIRC of 1997, as amended. Petitioner submits that the resolution of the foregoing issue hinges on (i) whether petitioner may be considered as a business league as would exempt it from taxation under Section 30 of the NIRC, as amended; and (ii) whether petitioner shares common business interest with the members of the WESM as to qualify it as a business league.

According to petitioner, the assailed DOF Opinion, which sustained BIR Ruling No. OT-323-021, ruled that petitioner is not an income tax-exempt business league under Section 30(F) of the NIRC of 1997, as amended, in view of the nature and purpose of its incorporation. However, petitioner counters that as the Market Operator of the WESM, it possesses the characteristics and passes the tests as would make it akin to a business league that is exempt from income taxation under Section 30(F) of the NIRC of 1997, as amended.

Petitioner contends that it operates the WESM which can be considered as akin to a business league since it is composed of various electric power industry participants that include generation companies, distribution utilities, suppliers, and bulk users of electricity, as well as various service providers, all of which are mandated to transact in the WESM. According to petitioner, the WESM, which is being implemented by it, operates in furtherance of the common business interests of its participants. And more, its activities as Market Operator are limited to the operation of the WESM and the promotion of such common interest.

Petitioner also contends that it does not engage in a regular business of a kind that is ordinarily carried on for profit. According to petitioner, it is the only Market Operator of the WESM and the WESM is the only electricity spot market in the Philippines, both of which were formed and established pursuant to the EPIRA. Further, as Market Operator, its operation is mandated by government regulations to be non-profit in nature. As shown in its Articles of Incorporation, petitioner is organized as a non-stock, non-profit corporation.

Finally, petitioner contends that no part of its income or assets belong to or inures to the benefit of any member, organizer, officer or any specific person, as provided in its Articles of Incorporation and By-Laws. Hence, it meets all the requirements and tests for it to be considered as a business league exempt from income taxation under Section 30 of the NIRC of 1997, as amended.

Anent its remittance of PEMC's share of market fees, petitioner maintains that the same is not subject to income tax, expanded withholding tax, and/or final withholding tax. Petitioner explains that pursuant to DOE Circular No. DC2018-01-0002, PEMC was retained to be the governance arm of the WESM. As such, PEMC is entitled to share in the market fees collected from market participants to defray the cost of administering and operating the WESM. The entitlement and ownership of PEMC of its share in the market fees to cover its budgetary requirements was expressly recognized in the Operating Agreement dated September 19, 2018, executed into by petitioner and PEMC. In fact, according to petitioner, the said Agreement was made because the collection of the market fees from the market participants is done through the WESM settlement processes.

As currently implemented, petitioner automatically remits PEMC's share by way of electronic fund transfer immediately upon collection from the market participants. It does not retain any amount from PEMC's allocated share and neither does it charge any fee for performing the collection and remittance. For financial reporting purposes, petitioner does not include PEMC's share in market fees as part of its funds.

For petitioner, the market fees it collected on behalf of PEMC are not its own funds but are clearly funds allocated and earmarked for another entity. Hence, it does not form part of

petitioner's gross receipts or income for taxation purposes. Correspondingly, its remittance to PEMC is also not subject to withholding tax.

With regard to the treatment of the Net Settlement Surplus (NSS) that is calculated in the WESM settlements, petitioner asserts that the NSS calculated in the course of the WESM settlement processes and netted out from the trading amounts of customers or buyers of electricity through the WESM is not subject to taxation in the hands of the Market Operator or any other WESM member/participant as there is no flow of wealth or funds arising from or directly attributable to the calculation of NSS in the WESM settlement processes.

According to petitioner, the NSS is the difference between the total amounts payable to generation companies/sellers for electricity sold through the WESM and the total amounts collected from customers/buyers purchasing electricity through the WESM. While the NSS is calculated in the WESM settlements, they are not paid for by or to any entity – whether petitioner as the Market Operator or by any market participant. These amounts are calculated and reported for transparency purposes only. There are also no actual funds or money "surpluses" because of the application of the prevailing rules on the disposition of the NSS promulgated by the Energy Regulatory Commission (ERC).

Further, petitioner avers that the NSS does not form part of the market fees that it collects from market participants. The market fees that it collects specifically refers to the charge permitted by EPIRA to be collected to defray the cost of operation and administration of the WESM. The NSS, on the other hand, is not part of this charge but rather is associated with the calculation of the settlement amounts paid for the purchase and sale of electricity through the WESM.

As no actual "surplus funds" are collected, there is no actual flow of funds or wealth on the part of petitioner as the Market Operator. Thus, there being no funds received and paid for by petitioner, there are no expenses that can be recognized by it.

Respondents' counter-arguments:

For respondent CIR, the Court has no jurisdiction over the instant *Petition for Review*.

According to respondent CIR, the instant petition seeks to reverse and set aside BIR Ruling No. OT-323-021 and the Opinion of the Department of Finance in DOF Opinion No. 008-2022 affirming such BIR Ruling. However, the review of the BIR Ruling, which is a product of his exercise of his quasi-legislative functions, is not among those under the jurisdiction of the CTA. He explains that the BIR Ruling was issued pursuant to his exclusive power to interpret tax laws under Section 4 of the NIRC of 1997, as amended. While Section 4 of the NIRC of 1997, as amended, provides that his exercise of his power to interpret provisions of the NIRC and other tax laws is subject to review of the SOF, nothing in either RA No. 1125 or RA No. 9282 which confers jurisdiction on the CTA to review the decision of the SOF pertaining to his review of the CIR's interpretation. The decision of the SOF contemplated in RA No. 9282 is only that which was rendered pertaining to customs cases.

Respondent CIR also submits that petitioner is not exempt from income tax under Section 30(F) of the NIRC of 1997, as amended. According to him, following the definition of "business league" in Section 31 of Revenue Regulations (RR) No. 02-40, petitioner, as the Market Operator of the WESM, cannot qualify as such considering the nature and purpose of its incorporation. He explains that the various market participants, although registered as members of the WESM, cannot be said to be of common business interest with petitioner since the reason for their membership is to enable them to participate in the trading and not to further petitioner's purposes.

He adds that petitioner's activity as a market operator of WESM, for which it receives market/service fees from its trading participants for the availment of its services, is a regular business of a kind ordinarily carried on for profit.

Respondent CIR concludes that based on the foregoing, petitioner cannot be considered an exempt business league as construed by Section 30(F) of the NIRC of 1997, as amended. Hence, petitioner is subject to corporate income tax under Section 27 of the NIRC of 1997, as amended, and consequently to withholding tax under Section 57 of the same Code.

Thus, with respect to the Market Fees and/or NSS received by petitioner, respondent CIR submits that since these monies flow into petitioner as part of its operations, benefitting the corporation and having the discretion on how to apply the NSS, they shall be part of petitioner's gross income subject to income tax.

Like his co-respondent CIR, respondent SOF also maintains that petitioner does not qualify as a business league under Section 30(F) of the NIRC of 1997, as amended. According to respondent SOF, following the definition of business league under Section 31 of RR No. 02-40, and the characteristics of a business league provided under Revenue Memorandum Order (RMO) No. 38-2019, petitioner cannot be considered a tax-exempt business league since petitioner is not organized as a business league, which petitioner itself recognizes by claiming that it is simply "akin" to a business league.

As explained by his co-respondent CIR, the various market participants registered in the WESM cannot be said to share a common business interest with petitioner because their membership is to enable them to participate in the trading (*i.e.*, to inject or withdraw electricity from the grid) and not to promote a shared business interest with petitioner. Additionally, petitioner receives market fees from WESM participants for the availment of its services, which is a regular business of a kind ordinarily carried on for profit, akin not to a business league, but to online platforms whose income for the provision of online services are subject to applicable taxes under the NIRC.

Respondent SOF likewise submits that the market fees collected by petitioner from WESM participants, and the NSS, form part of petitioner's gross income as the market operator of the WESM. As defined in RR No. 02-40, income, in the broad sense, refers to all wealth which flows into the taxpayer other than as a mere return of capital. Following this definition, the market fees collected by petitioner, in exchange for its services, *i.e.*, the administration and operation of the WESM, form part of its gross income. However, as pointed out in the DOF Opinion No. 008-2022, petitioner's operation should not result to any taxable income following the pertinent provisions of the EPIRA, the WESM Rules, and the Operating Agreement between PEMC and petitioner.

Anent petitioner's claim that it has no discretion on the disposition of the NSS, respondent SOF disagrees. He avers that based on the WESM Rules, petitioner has the discretion on how to apply the NSS.

In closing, respondent SOF submits that petitioner, not being a tax-exempt entity under Section 30(F) of the NIRC of 1997, as amended, is subject to corporate income tax and withholding tax on its taxable income.

THE COURT'S RULING

Before delving into the merits of the case, the Court shall first determine whether it has jurisdiction over the present *Petition for Review.*

The Court holds that it has jurisdiction over the instant Petition for Review.

Respondent CIR claims that a BIR Ruling, being a product of the exercise of his quasi-legislative function, does not fall within the jurisdiction of the Court. He adds that while Section 4 of the NIRC of 1997, as amended, provides that his interpretation of the provisions of the NIRC and other tax laws is subject to review by the SOF, neither RA No. 1125 nor RA No. 9282 confers jurisdiction upon the Court to review such interpretation.

The CIR's position is misplaced.

The issue of the Court's jurisdiction over rulings issued by the CIR is not novel. In *Commissioner of Internal Revenue v. Court of Tax Appeals (Second Division) and Petron Corporation (Petron),*[33] the Supreme Court held:

> The CIR asserts that the interpretation of the subject tax provision, *i.e.*, Section 148(e) of the NIRC, embodied in CMC No. 164-2012, is an exercise of her quasi-legislative function which is reviewable by the Secretary of Finance, whose decision, in turn, is appealable to the Office of the President and, ultimately, to the regular courts, and that only her quasi-judicial functions or the authority to decide

[33] G.R. No. 207843, July 15, 2015 [Per J. Perlas-Bernabe, First Division].

disputed assessments, refunds, penalties and the like are subject to the exclusive appellate jurisdiction of the CTA. ...

. . . .

The CIR's position is well-grounded.

Section 4 of the NIRC confers upon the CIR both: (a) the power to interpret tax laws in the exercise of her quasi-legislative function; and (b) the power to decide tax cases in the exercise of her quasi-judicial function. It also delineates the jurisdictional authority to review the validity of the CIR's exercise of the said powers, thus:

> SEC. 4. *Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases.* — The power to interpret the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance.
>
> The power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under this Code or other laws or portions thereof administered by the Bureau of Internal Revenue is vested in the Commissioner, subject to the exclusive appellate jurisdiction of the Court of Tax Appeals.

The CTA is a court of special jurisdiction, with power to review by appeal decisions involving tax disputes rendered by either the CIR or the COC. Conversely, it has no jurisdiction to determine the validity of a ruling issued by the CIR or the COC in the exercise of their quasi-legislative powers to interpret tax laws. These observations may be deduced from a reading of Section 7 of RA 1125, as amended by RA 9282, entitled 'An Act Creating the Court of Tax Appeals,' enumerating the cases over which the CTA may exercise its jurisdiction:

> Sec. 7. Jurisdiction. — The CTA shall exercise:
>
> a. 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 in relation thereto, or other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue.
>
> ... ...

In this case, Petron's tax liability was premised on the COC's issuance of CMC No. 164-2012, which gave effect to the CIR's June 29, 2012 Letter interpreting Section 148 (e) of the NIRC as to include alkylate among the articles subject to customs duties, hence, Petron's petition before the CTA ultimately challenging the legality and constitutionality of the CIR's aforesaid interpretation of a tax provision. In line with the foregoing discussion, however, the CIR correctly argues that the CTA had no jurisdiction to take cognizance of the petition as its resolution would necessarily involve a declaration of the validity or constitutionality of the CIR's interpretation of Section 148 (e) of the NIRC, which is subject to the exclusive review by the Secretary of Finance and ultimately by the regular courts. In *British American Tobacco v. Camacho*, the Court ruled that the CTA's jurisdiction to resolve tax disputes excludes the power to rule on the constitutionality or validity of a law, rule or regulation, to wit:

> While the above statute confers on the CTA jurisdiction to resolve tax disputes in general, this does not include case where the constitutionality of a law or rule is challenged. Where what is assailed is the validity or constitutionality of a law, or a rule or regulation issued by the administrative agency in the performance of its quasi-legislative function, the regular courts have jurisdiction to pass upon the same. x x x.

In asserting its jurisdiction over the present case, the CTA explained that Petron's petition filed before it 'simply puts in question' the propriety or soundness of the CIR's interpretation and application of Section 148 (e) of the NIRC (as embodied in CMC No. 164-2012) 'in relation to' the imposition of excise tax on Petron's importation of alkylate; thus, the CTA posits that the case should be regarded as 'other matters arising under [the NIRC]' under the second paragraph of Section 4 of the NIRC, therefore falling within the CTA's jurisdiction:

... ...

The Court disagrees.

As the CIR aptly pointed out, the phrase 'other matters arising under this Code,' as stated in the second paragraph of Section 4 of the NIRC, should be understood as pertaining to those matters directly related to the preceding phrase 'disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto' and must therefore not be taken in isolation to invoke the jurisdiction of the CTA. In other words, the subject phrase should be used only in reference to cases that are, to begin with, subject to the exclusive appellate jurisdiction of the CTA,

> i.e., those controversies over which the CIR had exercised her quasi-judicial functions or her power to decide disputed assessments, refunds or internal revenue taxes, fees or other charges, penalties imposed in relation thereto, not to those that involved the CIR's exercise of quasi-legislative powers.
>
> In *Enrile v. Court of Appeals*, the Court, applying the statutory construction principle of ejusdem generis, explained the import of using the general clause 'other matters arising under the Customs Law or other law or part of law administered by the Bureau of Customs' in the enumeration of cases subject to the exclusive appellate jurisdiction of the CTA, saying that:
>
> > [T]he 'other matters' that may come under the general clause should be of the same nature as those that have preceded them applying the rule of construction known as ejusdem generis.
>
> Hence, as the CIR's interpretation of a tax provision involves an exercise of her quasi-legislative function, the proper recourse against the subject tax ruling expressed in CMC No. 164-2012 is a review by the Secretary of Finance and ultimately the regular courts. ... *(Citations omitted)*

In the above *Petron* case, the Supreme Court initially adopted the CIR's view, holding that "The CIR's position is well-grounded." It reiterated Section 4 of the NIRC, which confers upon the CIR two distinct powers:

> 1) The power to interpret tax laws, a **quasi-legislative** function, subject to review by the Secretary of Finance; and
>
> 2) The power to decide tax cases, a **quasi-judicial** function, subject to the exclusive appellate jurisdiction of the Court of Tax Appeals (CTA).

The Supreme Court held that the CTA, as a court of special jurisdiction, may review **only** decisions involving the CIR's quasi-judicial functions. It has no jurisdiction to determine the validity of a ruling issued by the CIR in the exercise of his quasi-legislative powers to interpret tax laws.

In that case, Petron's tax liability was based on Customs Memorandum Circular (CMC) No. 164-2012, which applied the CIR's June 29, 2012 letter interpreting Section 148(e) of the NIRC to include alkylate among the articles subject to customs duties. Petron challenged before the CTA the legality and constitutionality of the CIR's interpretation. The Supreme Court

concluded that Petron's challenge was beyond the CTA's jurisdiction, as it would involve a review of the CIR's quasi-legislative power, an action reviewable only by the SOF and, thereafter, by the regular courts.

Citing *British American Tobacco v. Camacho (British American Tobacco)*,[34] the Supreme Court emphasized that the CTA's jurisdiction to resolve tax disputes **does not extend** to resolving questions on the constitutionality or validity of a law, rule, or regulation, *viz.*:

> While the above statute confers on the CTA jurisdiction to resolve tax disputes in general, this does not include cases where the constitutionality of a law or rule is challenged. Where what is assailed is the validity or constitutionality of a law, or a rule or regulation issued by the administrative agency in the performance of its quasi-legislative function, the regular courts have jurisdiction to pass upon the same.

However, this interpretation in *British American Tobacco* did not remain unchallenged. In a Resolution dated February 14, 2018 in the same *Petron* case (*2018 Petron Resolution*), the Supreme Court **reconsidered its earlier position** and **recognized the CTA's jurisdiction**. It clarified:[35]

> At the onset, **Petron insists that the CTA has jurisdiction to pass upon the validity of the CIR's interpretative ruling on alkylate**, arguing that the CTA may rule on the validity of a revenue regulation, ruling, issuance or other matters arising under the NIRC and other tax laws administered by the Bureau of Internal Revenue (BIR). **As basis, Petron cites for the first time in its motion for reconsideration the Court's ruling in *The Philippine American Life and General Insurance v. The Secretary of Finance and the Commissioner of Internal Revenue* (*Philamlife*).**
>
> *Philamlife* is a 2014 case decided by a Division of the Court, which controversy arose from an unfavorable ruling by the Secretary of Finance that affirmed, through its power of review under Section 4 of the NIRC, the CIR's denial of a request to be cleared of liability for donor's tax. Noting the absence of an express provision in the law concerning further appeals from the Secretary of Finance, the issue framed for resolution was — *'where does one seek immediate recourse*

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34 G.R. No. 163583, August 20, 2008 [Per J. Ynares-Santiago, *En Banc*].

35 *Commissioner of Internal Revenue v. Court of Tax Appeals and Petron Corporation*, G.R. No. 207843 (Resolution), February 14, 2018 [Per J. Perlas-Bernabe, Special First Division].

from the adverse ruling of the Secretary of Finance in its exercise of its power of review under Sec. 4? Resolving this issue, the Court in *Philamlife* held that:

> **Admittedly, there is no provision of law that expressly provides where exactly the ruling of the Secretary of Finance under the adverted NIRC provision is appealable to. However, We find that Sec. 7(a)(1) of RA 1125, as amended, addresses the seeming gap in the law as it vests the CTA, albeit impliedly, with jurisdiction over the CA petition as 'other matters' arising under the NIRC or other laws administered by the BIR.** As stated:
>
> Sec. 7. Jurisdiction. — The CTA shall exercise:
>
> b. 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 in relation thereto, or other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue. x x x
>
> **Even though the provision suggests that it only covers rulings of the Commissioner, We hold that it is, nonetheless, sufficient enough to include appeals from the Secretary's review under Sec. 4 of the NIRC.**

Corollary to this disposition, however, the Court's Third Division extended its discussion on the issue regarding the CTA's jurisdiction over the rulings of the CIR, *viz.*:

> Evidently, *City of Manila* can be considered as a departure from *Ursal* in that in spite of there being no express grant in law, the CTA is deemed granted with powers of *certiorari* by implication. Moreover, *City of Manila* diametrically opposes *British American Tobacco* to the effect that it is now within the power of the CTA, through its power of *certiorari*, to rule on the validity of a particular administrative rule or regulation so long as it is within its appellate jurisdiction. Hence, it can now rule not only on the propriety of an assessment or tax treatment for a certain transaction, but also on the validity of the revenue regulation or revenue memorandum circular on which the said assessment is based.

The foregoing remarks appear to be in direct opposition to the ruling in *British American Tobacco v. Camacho, et al. (British American Tobacco)*, which is a 2008 case decided by the Court *En Banc*, cited as basis by the Court in its July 15, 2015 Decision in this case regarding the issue of jurisdiction.

The apparent conflicting jurisprudence on the matter involving Court's 2008 *En Banc* ruling in *British American Tobacco* and the Court's Third Division Ruling in *Philamlife* has been seemingly settled in the 2016 *En Banc* case of *Banco De Oro v. Republic of the Philippines (Banco De Oro)* wherein it was opined that:

> Section 7 of Republic Act No. 1125, as amended, is explicit that, except for local taxes, appeals from the decisions of quasi-judicial agencies (Commissioner of Internal Revenue, Commissioner of Customs, Secretary of Finance, Central Board of Assessment Appeals, Secretary of Trade and Industry) on tax-related problems must be brought exclusively to the Court of Tax Appeals.
>
> In other words, within the judicial system, the law intends the Court of Tax Appeals to have exclusive jurisdiction to resolve all tax problems. Petitions for writs of certiorari against the acts and omissions of the said quasi-judicial agencies should thus be filed before the Court of Tax Appeals.
>
> Republic Act No. 9282, a special and later law than Batas Pambansa Blg. 129 provides an exception to the original jurisdiction of the Regional Trial Courts over actions questioning the constitutionality or validity of tax laws or regulations. Except for local taxes, actions directly challenging the constitutionality or validity of a tax law or regulation or administrative issuance may be filed directly before the Court of Tax Appeals.
>
> **Furthermore, with respect to administrative issuances (revenue orders, revenue memorandum circulars, or rulings), these are issued by the Commissioner under its power to make rulings or opinions in connection with the implementation of the provisions of internal revenue laws. Tax rulings, on the other hand, are official positions of the Bureau on inquiries of taxpayers who request clarification on certain provisions of the National Internal Revenue Code, other tax laws, or their implementing regulations. Hence, the determination of the validity of these issuances clearly falls within the exclusive appellate jurisdiction of the Court of Tax Appeals under Section 7(1) of Republic Act No. 1125, as amended, subject to prior review by the Secretary of Finance, as required under Republic Act No. 8424.**

> The *En Banc* ruling in *Banco De Oro* has since not been overturned and thus, stands as the prevailing jurisprudence on the matter. Accordingly, the Court is prompted to reconsider its ruling in this case with respect to the issue of jurisdiction.
>
> . . . .
>
> ... in conjunction with the *Banco De Oro* ruling that the CTA has jurisdiction to resolve all tax matters (which includes the validity of the CIR's interpretation and consequent imposition of excise tax on *alkylate*), the Court finds it proper to reconsider its decision. (*Emphasis supplied; Citations omitted*)

In the *2018 Petron Resolution*, the Supreme Court cited *The Philippine American Life and General Insurance v. The Secretary of Finance and the Commissioner of Internal Revenue*[36] *(Philamlife),* where it held that Section 7(a)(1) of RA No. 1125, as amended, provides sufficient legal basis for the CTA to take cognizance of appeals from rulings issued under Section 4 of the NIRC, even in the absence of an express provision in the law. It stated:

> Even though the provision suggests that it only covers rulings of the Commissioner, we hold that it is sufficient to include appeals from the Secretary's review under Section 4 of the NIRC.

The *Philamlife* ruling was seen as a departure from the restrictive stance in *British American Tobacco*, with the Supreme Court recognizing that the CTA's appellate jurisdiction includes the authority to rule on the validity of administrative issuances, including revenue orders, revenue memorandum circulars, or rulings, where they form the basis of tax assessments or rulings.

The *2018 Petron Resolution* further held that the jurisprudential conflict between *Philamlife* and *British American Tobacco* had been seemingly settled in the 2016 *En Banc* decision in *Banco De Oro v. Republic of the Philippines (Banco De Oro),* where the Supreme Court emphasized:

> Section 7 of Republic Act No. 1125, as amended, is explicit that, except for local taxes, appeals from the decisions of quasi-judicial agencies [**Commissioner of Internal Revenue**, Commissioner of Customs, **Secretary of Finance**...]

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[36] G.R. No. 210987, November 24, 2018 [Per J. Velasco, Jr., Third Division].

> on tax-related problems must be brought exclusively to the Court of Tax Appeals.
>
> ... ...
>
> ...Except for local taxes, actions directly challenging the constitutionality or validity of a tax law or regulation or administrative issuance may be filed directly before the Court of Tax Appeals. (*Emphasis supplied*)

The Supreme Court further held that administrative issuances of the CIR, including revenue orders, memorandum circulars, or rulings, fall squarely within the CTA's exclusive appellate jurisdiction, provided that there is compliance with the requirement of prior review by the SOF, in accordance with RA No. 8424.

The *Banco De Oro* ruling, being an *En Banc* decision, remains the prevailing jurisprudence and has not been overturned. Accordingly, this Court is guided by the Supreme Court's clarification that jurisdiction over the validity or legality of a BIR ruling, once reviewed by the SOF, properly lies with the CTA.

In light of these developments and the Supreme Court's reconsideration in *Petron*, this Court finds that it has jurisdiction over the present *Petition for Review* challenging DOF Opinion No. 008-2022, which affirmed BIR Ruling No. OT-323-021.

Anent the timeliness of the instant *Petition for Review*, Section 11 of RA No. 1125, as amended, provides:

> SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* — **Any party adversely affected by a decision, ruling** or inaction **of the** Commissioner of Internal Revenue, the Commissioner of Customs, the **Secretary of Finance**, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts **may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling** or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein. (*Emphasis supplied*)

In this case, it is undisputed that petitioner received the assailed DOF Opinion No. 008-2022 on May 12, 2022. Counting thirty (30) days therefrom, petitioner had until June 11, 2022 to file the appeal. Since June 11, 2022 fell on a Saturday, the

filing of this *Petition for Review* on June 13, 2022 was on time, thereby giving the Court jurisdiction to take cognizance of the same.

Now, on the merits.

Petitioner is not a "business league" under Section 30(F) of the NIRC of 1997, as amended.

Petitioner contends that it is exempt from taxation as a "business league" under Section 30(F) of the NIRC of 1997, as amended. It argues that it operates the WESM, which it claims is "akin to a business league as it is composed of various electric power industry participants that include generation companies, distribution utilities, suppliers, and bulk users of electricity, as well as various service providers, all of which are mandated to transact in the WESM." It further claims that the operation of WESM, which falls under its primary purpose, is in furtherance of the common business interests of these participants, without which they would be unable to effectively deliver electricity to the grid or to the power system.

The Court is not convinced.

Section 30(F) of the NIRC of 1997, as amended, states:

> Sec. 30. *Exemption from Tax on Corporation.* — The following organizations shall not be taxed under this Title in respect to income received by them as such.
>
> ... ...
>
> (F) Business league, chamber of commerce, or board of trade, not organized for profit and no part of the net income of which inures to the benefit of any private stockholder or individual;

Relevantly, RMO No. 38-2019 [37] provides that in determining whether a corporation falls within the contemplation of the category of income tax-exempt "business league" under Section 30(F), reference shall be made to Section

[37] SUBJECT: Tax Exemption of Non-Stock, Non-Profit Corporations Under Section 30 of the National Internal Revenue Code of 1997, As Amended.

31 of RR No. 02-40,[38] which defines a "business league" as follows:

> SECTION 31. *Business Leagues.* — **A business league is an association of persons having some common business interest, which limits its activities to work for such common interest and does not engage in a regular business of a kind ordinarily carried on for profit**. Its work need not be similar to that of a chamber of commerce or board of trade. If it engages in a regular business of a kind ordinarily carried on for profit, the fact that the business is conducted on a cooperative basis or produces only sufficient income to be self-sustaining, is not ground for exemption. An association engaged in furnishing information to prospective investors, to enable them to make sound investments, is not exempt, since its members have no common business interest, even though all of its income is devoted to the purpose stated. A clearing house association, not organized for profit, no part of the net income of which inures to any private shareholder or individual, is exempt provided its activities are limited to the exchange of checks, and similar work for the common benefit of its members. An association of persons who are engaged in the transportation business, whether by land or water, which is designed to promote the legitimate objects of such business, and all of the income of which is derived from membership dues and is expended for office expenses is exempt from tax. (*Emphasis supplied*)

RMO No. 38-2019 reiterates the aforesaid definition and enumerates the characteristics of a tax-exempt business league under Section 30(F) of the NIRC of 1997, as amended, as follows:

1. Organized as a business league, chamber of commerce, or board of trade;

2. Operated as an association of persons having some common business interest, which limits its activities to work for such common interest;

3. It does not engage in a regular business of a kind ordinarily carried on for profit;

4. It is non-profit; and,

5. No part of its net income or asset shall belong to or inures to the benefit of any member, organizer, officer or any specific person.

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[38] Income Tax Regulations.

Applying these criteria, petitioner fails to qualify as a "business league" under Section 30(F) of the NIRC of 1997, as amended, for the following reasons:

First, as stated in its Amended Articles of Incorporation,[39] petitioner was primarily formed to:

> Manage and operate the market for the wholesale purchase of electricity and ancillary services in the Philippines (the Wholesale Electricity Spot Market of "WESM") and engage in services related to the same, in accordance with Republic Act No. 9136 including its implementing rules and regulations, the rules promulgated to govern the operations of the WESM (the "WESM Rules"), including their respective amendments and such other laws, rules and regulations which may be enacted hereafter that shall govern the WESM, and in an efficient, competitive, transparent and reliable manner, with the end view of improving the trading, delivery and provision of electricity and ancillary services to the Philippine Electric Power Industry Participants.

In *Independent Electricity Market Operator of the Philippines, Inc. v. Energy Regulatory Commission*, [40] the Supreme Court provided a brief background on the establishments of WESM and petitioner, to wit:

> In 2001, the EPIRA was enacted to ensure, among others, the quality, reliability, security, and affordability of the supply of electric power; and the transparent and reasonable prices of electricity in a regime of free and fair competition and full public accountability.
>
> One of the reforms introduced in the EPIRA is the **establishment of the Wholesale Electricity Spot Market (WESM)** to provide the mechanism for identifying and setting the price of actual variations from the quantities transacted under contracts between sellers and purchasers of electricity. **The WESM serves as a venue for trading electricity as a commodity, and as a clearing house to reflect the economic value of electricity for a particular period as indicated by the "spot" price**.
>
> . . . .
>
> **Petitioner Independent Electricity Market Operator of the Philippines, Inc. (IEMOP) was then organized as a non-stock, non-profit private corporation, separate from the PEMC, and incorporated by individuals who are**

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39 Docket – Vol. II, p.1114, Exhibit P-13.
40 G.R. No. 254440, March 23, 2022 [Per J. Zalameda, Second Division].

> **independent from the electric power industry participants and the government. It was incorporated to become the IMO**. (*Emphasis supplied*)

While petitioner claims that WESM is akin to a business league with various electric power industry participants, petitioner is not the WESM itself. WESM is the *Market* and petitioner is the *Market Operator.* Therefore, petitioner's assertion that it assumes the character of WESM simply by operating it is untenable, as they are distinct entities.

Second, a perusal of petitioner's Amended By-laws [41] reveals that petitioner fails to satisfy the requirement of being "*operated as an association of persons having some common business interest, which limits its activities to work for such common interest.*" The relevant provisions in the Amended By-laws on eligibility of membership are as follows:

> ARTICLE V
> **MEMBERS**
>
> Section 1. *Eligibility as a Member.* **Only individuals who are qualified to be nominated as directors** of the Corporation in accordance with the WESM Rules and these By-laws shall be eligible to become a Member. A Member must demonstrate high standards of ethics, integrity, and professionalism, independence, sound judgment, and meaningful experience in the relevant skill-set sought. In addition, the Members must be committed to representing long-term interests of the WESM. They must have an inquisitive and objective perspective, practical wisdom and mature judgment.
>
> ... ...
>
> ARTICLE VIII
> **BOARD OF DIRECTORS**
>
> ... ...
>
> Section 3. *Qualifications and Disqualifications of Directors.* The Directors shall be independent of the electric power industry and the government, which means that such director:
>
> a) is not a director, officer, employee, contractor, agent, manager or shareholder of WESM Member or the System Operator;

[41] Docket – Vol. II, pp. 1125–1142, Exhibit P-14.

b) is not a relative of a person within fourth (4th) degree of consanguinity or affinity of the of a director, officer, employee, contractor, agent, manager or shareholder of a WESM Member or System Operator;

c) is not an officer, manager, director or shareholder, agent, employee or contractor of, or is not a person who directly or indirectly, through one or more intermediaries control, is controlled by a company, affiliate or any other entity related or associated with a WESM Member or the System Operator, where:

1) A related company or body, is a parent, holding company, subsidiary or affiliate of the WESM Member or the System Operator

2) An associate is a person who is director, officer, manager or shareholder of that related company or entity or a relative of such a person within the fourth degree of affinity or consanguinity; and

3) An affiliate is any person that alone or together with any other person, directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with another person;

Provided, That the term shareholder shall exclude a member of an electric cooperative who is not involved in its operation and management and an end-user required to subscribe to or purchase a share in a distribution utility as an incident to the provision of service by the same distribution utility, and provided the interest of the end-user is not more than the minimum required to avail of the distribution utility's service.

4) Is not an official or employee of the Philippine Government, its agencies or instrumentalities, provided, this will not apply to members of the academe in public schools and universities;

5) Has not been employed as an officer, or in any supervisory or managerial capacity, by any electric power industry participant, or a company or body related to or associated with a WESM Member or the government within one (1) year prior to the nomination date; and

6) Agrees not to be employed by and does not accept any employment with a company, affiliate, or any other entity related to or associated with a WESM Member or the System Operator within one year after

> the person ceases to be a director. (*Emphasis supplied*)

Clear as a day that, as an IMO, petitioner's members are not comprised of the electric industry participants that make up the WESM. In fact, multiple restrictions are in place within its Amended By-laws which prohibit (1) continuing employment with a WESM Member, (2) immediate prior employment from a WESM Member, and (3) upon termination of membership, employment in WESM Member. These restrictions demonstrate that petitioner is not "operated as an association of persons having some common business interest, which limits its activities to work for such common interest."

Third, petitioner fails to comply with the prohibition against "inurement" under Section 30 of the NIRC of 1997, as amended. RMO No. 38-2019 elucidates more on the said restriction, to wit:

> IV. NON-PROFIT, INUREMENT PROHIBITION
>
> Corporations falling under Section 30 of the NIRC, as amended, must be non-profit. "Non-profit" means that "no net income or asset accrues to or benefits any member or specific person, with all the net income or assets devoted to the institution's purposes and all its activities conducted not for profit."
>
> Thus, in order for an entity to qualify as a non-profit corporation exempt from income tax, it must demonstrate that its earnings or assets do not inure to the benefit of any of its trustees, organizers, officers, members or any specific person. It must not be organized or operated for the benefit of private interests such as specific individuals, incorporators or his family, shareholders of the organization, or persons controlled directly or indirectly by such private interests. The organization must serve a public rather than a private purpose:
>
> A. The following are considered "inurements" of such nature:
>
> 1) The payment of compensation, salaries, or honorarium to its trustees or organizers;
>
> 2) The payment of exorbitant or unreasonable compensation to its employees;
>
> 3) The provision of welfare aid and financial assistance to its members. An organization is not

> exempt from income tax if its principal activity is to receive and manage funds associated with savings or investment programs, including pension or retirement programs. This does not cover a society, order, association, or non-stock corporation under Section 30 (C) of the NIRC providing for the payment of life, sickness, accident and other benefits exclusively to its members or their dependents;
>
> 4) Donation to any person or entity (except donations made to other entities formed for the purpose/purposes similar to its own);
>
> 5) The purchase of goods or services for amounts in excess of the fair market value of such goods or value of such services from an entity in which one or more of its trustees, officers or fiduciaries have an interest; and
>
> 6) When upon dissolution and satisfaction of all liabilities, its remaining assets are distributed to its trustees, organizers, officers or members. Its assets must be dedicated to its exempt purpose. Accordingly, its constitutive documents must expressly provide that in the event of dissolution, its assets shall be distributed to one or more entities formed for the purpose/purposes similar to its own, or to the Philippine government for public purpose.

Although Article V, Section 4[42] of petitioner's Amended By-laws[43] provides that its *Members* are not entitled to any dividends or other corporate income, the provision on *Compensation* under Article VIII, Section 15 of the Amended By-laws expressly authorizes such inurement. Specifically, it provides:

> Section 15. *Compensation*. No part of the net earnings of the Corporation shall inure to the benefit of, or be distributable to the Members, Directors, officers or third persons, except that the Corporation **may be authorized and empowered to (i) pay reasonable compensation for services rendered by such Directors, officers or third persons as may be allowed by the Members; and (ii) make payments and distributions in furtherance of the purposes set forth in its Articles of Incorporation. In no case shall**

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42 Section 4. *Non-vested Rights of Members and Non-Profit Nature of Corporation*. No Member shall have any vested right in or to the assets or franchise of the Corporation. The Corporation shall not pay dividends or other corporate income to its Members.

43 Docket – Vol. II, pp. 1125–1142, Exhibit P-14.

> **the total yearly compensation of Directors exceed ten percent (10%) of the net income before income tax of the corporation during the preceding year.** (*Emphasis supplied*)

The exception provided under the proviso contradicts the earlier statement that "*no part of the net earnings of the Corporation shall inure to the benefit of, or be distributable to the Members, Directors, officers or third persons.*" This is further supported by the fact that the By-laws provide for a limit on the total yearly compensation of Directors, which supports the inference that the Amended By-laws intended to provide for such compensation to the Directors of the non-stock, non-profit corporation, thereby undermining the non-profit status.

It must be emphasized that the "inurement" prohibition under Section 30 of the NIRC of 1997, as amended, was intended to ascertain that non-stock, non-profit organizations are not used as tax shelters through tax exemptions granted thereto or for their officers or organizers to gain or benefit from the income or assets of such organization, which should appropriately be devoted to the furtherance of the purpose/s for which it was organized. Here, the exception provided for the compensation of directors contravenes the intent of the law covering non-profit corporations.

Finally, as correctly pointed out by respondent SOF, mere registration as a non-stock, non-profit corporation does not automatically confer tax exemption under Section 30 of the NIRC of 1997, as amended. A corporation must still satisfy the conditions based on its stated purpose and actual operations under each item of the said Section 30 to be exempt. In the instant case, although petitioner is registered as a non-stock, non-profit entity, it failed to prove that it falls within the purview of a tax-exempt business league under Section 30(F) of the NIRC of 1997, as amended.

For failure to meet the statutory requirements and defining characteristics of a business league, petitioner cannot be considered as such and is not entitled to income tax exemption under Section 30(F) of the NIRC of 1997, as amended.

While petitioner may not qualify as a tax-exempt entity under Section 30(F) of the NIRC of 1997, as amended, the Market Fees it collects from WESM members are not subject to income tax.

Under the WESM Rules, Market Fees are charges imposed by the Market Operator on WESM Members to cover the **cost of administering and operating the WESM**, as approved by the ERC. The recovery of such costs is expressly allowed under Section 30 of the EPIRA, which pertinently states:

> Sec. 30. *Wholesale Electricity Spot Market.* — . . . .
>
> The **cost of administering and operating the wholesale electricity spot market shall be recovered by the market operator through a charge imposed to all market members**: *Provided,* That such charge shall be filed with and approved by the ERC. (*Emphasis supplied*)

The components of Market Fees are prescribed in the WESM Rules, as follows:

> 2.10.4 Components of Market Fees
>
> The components of the market fees shall include, but are not limited to:
>
> (a) Registration fees, comprising an annual fee payable by each WESM Member for the category or categories in which they are registered;
>
> (b) Metering fees to recover the Market Operator's budgeted revenue requirements for the collection, storage and processing of metering data;
>
> (c) Billing and settlement fees, to recover the Market Operator's budgeted revenue requirements for providing the billing and settlements service, as described in chapter 3;
>
> (d) Administration fees, to recover the remainder of the Market Operator's budgeted revenue requirements not covered by (a), (b), (c) and (d); and,

> (e) Costs reasonably incurred by the PEM Board and the committees and working groups that the PEM Board appoints under the WESM Rules.[44]

Thus, in line with the mandate of Section 30 of the EPIRA, PEMC and petitioner agreed, in their Operating Agreement dated September 19, 2018, that petitioner "*shall operate the WESM and perform the Market Operator Services on a non-profit basis.*"[45]

Section 36 of RR No. 2-40, otherwise known as the "Income Tax Regulations," defines income as follows:

> Section 36. *Meaning of Income.* - ...
>
> (a) Income in the broad sense, means all wealth which flows into the taxpayer other than mere return of capital. It includes the forms of income specifically described as gains derived from the sale or other disposition of assets....

In *Madrigal v. Rafferty*,[46] the Supreme Court clarified the distinction between income and capital:

> Income as contrasted with capital or property is to be the test. The essential difference between capital and income is that capital is a fund; income is a flow. A fund of property existing at an instant of time is called capital. A flow of services rendered by that capital by the payment of money from it or any other benefit rendered by a fund of capital in relation to such fund through a period of time is called an income. Capital is wealth, while income is the service of wealth.

Relatedly, in *Commissioner of Internal Revenue v. The Court of Appeals*,[47] the Supreme Court laid down the requisites for income to be subject to tax:

> The three elements in the imposition of income tax are: (1) **there must be gain or profit**, (2) **that the gain or profit is realized or received, actually or constructively**, and (3) **it is not exempted by law or treaty from income tax**. Any business purpose as to why or how the income was earned by the taxpayer is not a requirement. Income tax is assessed on income received from any property, activity or service that produces the income because the Tax Code stands as an indifferent neutral party on the matter of where income comes from. (*Citations omitted; Emphasis supplied*)

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44 Docket – Vol. I, pp. 34–35, *Petition for Review*, par. 51.
45 Article III, Section 3.02 of the Operating Agreement.
46 G.R. No. L-12287, August 7, 1918 [Per J. Malcolm, *En Banc*].
47 G.R. No. 108576, January 20, 1999 [Per J. Austria-Martinez, First Division].

In this case, the Market Fees imposed on WESM Members are intended **only to recover the actual cost of administering and operating the WESM**, in line with the objective of reducing electricity rates for end-users. As such, there is no gain or ***flow of wealth*** to petitioner that constitutes taxable income.

Consequently, since no income or profit is realized from Market Fees, they are not subject to income tax, and by extension, not subject to withholding tax. Withholding tax is simply a method of collecting income tax in advance; if no income tax is due, withholding tax does not apply.

Market Fees collected by petitioner on behalf of PEMC from WESM participants are likewise not subject to withholding tax.

As previously discussed, petitioner collects Market Fees from WESM Members to recover the cost of administering and operating the WESM. A portion of these fees is earmarked for PEMC, which now serves as WESM's governance arm. PEMC, which formerly served as the AGMO, is entitled to receive a portion of the Market Fees collected from WESM Members to defray governance-related costs.

Respondent argues that the Market Fees received by petitioner on behalf of entities such as PEMC should be subject to withholding tax, asserting that petitioner acts as a withholding agent.

The Court does not agree.

As earlier emphasized, Market Fees merely reimburse costs incurred in administering and operating the WESM. These fees do not constitute income, as they are not made for profit or gain. There is *no flow of wealth or realization of income* on the part of PEMC that would render such receipts subject to income tax, and consequently, to withholding tax.

The Net Settlement Surplus (NSS) is also not part of petitioner's gross income or receipt subject to tax.

Under the WESM Rules, **net settlement surplus or deficit** refers to "[the amount] remaining after all market transactions have been accounted for, including the assignment of transmission line rentals to Network Service Providers. The remainder is assumed to be attributable to economic rentals arising from other binding constraints and accounted for in accordance with Clause 3.13.12."[48]

Put simply, NSS is the difference between the total amount payable to generation companies/sellers for electricity sold and the total amount received from customers/buyers for electricity bought through WESM.[49] The difference arises as a result of the pricing method employed by WESM called Locational Marginal Pricing (LMP). LMP means that prices of electricity bought and sold are determined for each identified location in the power system which are called market trading nodes. All market participants (both buyer and seller) are assigned their market trading nodes depending on their geographical location. [50] Due to these different locational prices, a net settlement surplus occurs when a buyer at a higher LMP pays a generator at a lower LMP.[51]

Petitioner asserts that there is no income arising from NSS because "there is no flow of wealth or income to it and/or to any market member or participant," as automatic deductions or adjustments are made during settlement. [52] However, respondent CIR counters that under Clause 3.13.16.2 of the WESM Rules, petitioner has discretion over the application of funds arising from NSS. [53]

As laid down in *Commissioner of Internal Revenue v. The Court of Appeals,*[54] there are three (3) elements in the imposition of income tax, to wit: (1) **there must be gain or profit**, (2) **that the gain or profit is realized or received, actually or**

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48 Philippine Electricity Market Corporation, *Wholesale Electricity Spot Market Rules (WESM Rules), available at* https://www.wesm.ph/downloads/download/TWFya2V0lFJlcG9ydHM=/MjIzMA== (last accessed April 7, 2025).
49 Docket – Vol. I, p. 38, *Petition for Review*, par. 61.
50 *Id.* at 38, *Petition for Review*, pars. 61.1–61.2.
51 *Id.* at 385–394.
52 *Id.* at 47, *Petition for Review*, par. 73.2.
53 CIR's Memorandum dated May 3, 2024, p. 11.
54 G.R. No. 108576, January 20, 1999 [Per J. Austria-Martinez, First Division].

constructively, and (3) **it is not exempted by law or treaty from income tax.**

Applying the foregoing requisites, the Court finds that no gain or profit arises from NSS. While Clause 3.13.16.2 [55] seemingly provides leeway on the use of NSS, the actual utilization of NSS is governed by Clause 3.13.12.4, which outlines the Rules for the Distribution of Net Settlement Surplus.[56] In this regard, there are three (3) ERC Resolutions promulgated related to the distribution of NSS:

(1) ERC Resolution No. 06-09 dated 23 February 2009;
(2) ERC Resolution No. 01-08 dated 20 February 2018; and
(3) ERC Resolution No. 07-19 dated 23 October 2019.

The salient provisions of these ERC resolutions are presented below for easy reference:

ERC Resolution 06-09	**ERC Resolution 01-18**	**ERC Resolution 07-19**
ARTICLE 3, Section 3.1 The NSS remaining after replenishing the 10% retention under Article 6 hereof shall be allocated and distributed at the wholesale level by PEMC to the following WESM participants: 3.1.1. Distribution Utilities (DUs) which are Direct WESM Members; 3.1.2. Wholesale Aggregators (WA), Retail Electricity Suppliers (RES), including the Local RES and the Supplier of Last Resort (SoLR), and other	ARTICLE III, Section 1. The NSS shall be allocated to Direct WESM Members as follows: 1.1. Distribution Utilities (DUs) 1.2. Retail Electricity Suppliers (RES), including the Local RES and the Supplier of Last Resort (SoLR) 1.3. Generation Companies that acted as end-users or made withdrawal from the grid; 1.4. IPP Administrators who will be assigned Contracts for the	ARTICLE IV, Section 1. The Net Settlement Surplus (NSS) or Net Settlement Deficit (NSD) shall be billed to Direct WESM Members including, but not limited to, the following entities: 1.1. Distribution Utilities (Dus); 1.2. Retail Electricity Suppliers (RES), including the Local RES and the Supplier of Last Resort (SoLR) 1.3. Generation Companies 1.4. IPP Administrators; and

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[55] Clause 3.13.16.2 of the WESM Rules:
The net settlement surplus:
(a) May be retained by the Market Operator, or paid to the System Operator, according to a formula to be developed by the Market Operator subject to the approval of the PEM Board; and
(b) Shall be clearly accounted for and taken into account when setting the allowable charges under any regulatory instruments applying to the Market Operator and the System Operator.

[56] Clause 3.13.12.2 of WESM Rules:
The net settlement surplus or net settlement deficit:
(a) **May be flowed back to WESM Participants in accordance with the procedures to be developed under 3.13.12.3, or may be used by the Market Operator** to establish and support the market for financial transmission rights subject to the approval of the PEM Board; and
(b) Shall be clearly accounted for and taken into account when settling the allowable charges under any regulatory instruments applying to the Market Operator. (*Emphasis supplied.*)

While Clause 3.13.12.4 of WESM Rules states that:
The calculation and flow back mechanism of *net settlement surplus* or *net settlement deficit* shall be in accordance with the ERC's issuances as prescribed in its *Rules for the Distribution of Net Settlement Surplus.*

electricity suppliers that are Direct WESM Members; 3.1.3. National Power Corporation (NPC) and Power Sector Assets and Liabilities Management Corporation (PSALM) as the Default Wholesale Suppliers (DWS) of Indirect WESM Members and Non-WESM Members; 3.1.4. Generation Companies which are Direct WESM Members; 3.1.5. NPC Successor Generating Companies who have agreed to act as the DWS for the assigned Transition Supply Contracts with Indirect WESM 3.1.6. IPP Administrators who will be assigned Transition Supply Contracts and assume the default wholesale supply functions for the assigned TSC customers. 3.1.7. Other parties which have paid line loss and congestion charges. ARTICLE 4, Section 4.1. Upon effectivity of these Rules, PEMC **shall immediately include the NSS for distribution and reflect the same in the corresponding billing statement on the current billing period**, from the time of computation and determination of the NSS amount. The End-users are deemed to have received the re-distribution by virtue of the deduction in the billed amount for the DUs and DWS.	Supply of Electric Energy (CSEE) and assume the default wholesale supply functions for the assigned TSC customers; and 1.5. Other parties which have acted as end-users or made withdrawal from the grid ARTICLE IV Section 1. Upon effectivity of these Rules, PEMC shall **immediately include the NSS for allocation and reflect the same in the corresponding billing statement on the current billing period**, from the time of computation and determination of the NSS amount. The allocation shall be in the form of an immediate deduction from or an adjustment of the total settlement amount of the recipients of the NSS for their WESM transactions.	1.5. Other parties registered as Direct WESM Members ARTICLE IV, Section 2. **The total of the hourly NSS and/or NSD allocation for every billing month shall be reflected immediately as a deduction to or an adjustment to the total settlement amount of the Direct WESM Member**, whether for its own WESM transactions or on behalf of its Indirect WESM Member. This shall be correspondingly be re-distributed to the End-users at the retail level as part of the monthly generation rate pursuant to their corresponding power supply agreements as approved by the Commission.
ARTICLE 6, Sections 6.1 – 6.4 SECTION 6.1 PEMC shall be allowed to retain ten percent (10%) of the total NSS amount for the previous three (3) months	No retention permitted	No retention permitted

preceding the current WESM billing or invoice cycle to cover settlement adjustments. The 10% retention shall be reckoned per market participant. SECTION 6.2 Any Net Settlement Deficit shall be funded from the ten percent (10%) retention. SECTION 6.3 Any amount in excess of the allowed ten percent (10%) to be retained shall be returned as a deduction in the WESM Members' billing statement following the procedures in these Rules. Any deficit in the said allowed retention shall be taken from the NSS in the current billing month and the next billing months until the amount allowed to be retained is achieved. SECTION 6.4 The interest earned on the retained NSS amount shall be allocated on a pro-rata basis depending on each recipient's contribution to the total NSS for the current billing month. The amount to be returned to each recipient shall be equal to the total amount of interest earned, multiplied by the ratio of the recipient's NSS contribution for the current billing month to the total NSS contribution of all recipients for the current billing month.		

The three (3) ERC resolutions clearly demonstrate that neither PEMC nor petitioner, as its successor market operator, realizes any actual gain or profit from NSS. In plain accounting terms, net settlement surpluses and deficits are basically the result of reconciling receivables and payables among market participants. A net settlement deficit represents a receivable from a market participant, while a net settlement surplus represents a payable to a market participant that arise owing to the nature of the market having (1) multiple locational prices and (2) congestion, which causes major discrepancies in the said locational prices.

Given the absence of actual gain or profit, NSS cannot be subject to income tax.

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

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

WE CONCUR:

ROMAN G.DEL ROSARIO
Associate Justice

(On Leave)
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ROMAN G. DEL ROSARIO
Presiding Justice