REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

HON. HERBERT M. BAUTISTA and MR. EDGAR VILLANUEVA, respectively in their official capacity as Mayor and Treasurer, of Quezon City, Petitioners,	C.T.A. AC NO. 93 Members: UY, *Chairperson* *and* FABON-VICTORINO, *JJ*
- versus -	
PHILIPPINE AMUSEMENT AND GAMING CORPORATION (PAGCOR), represented by ATTY. CARLOS R. BAUTISTA, Respondent.	Promulgated: NOV 20 2013 ; 3:55 p.m.

x- x

DECISION

***Fabon-Victorino, J.*:**

In this *Petition for Review,*[1] petitioners Herbert M. Bautista and Edgar Villanueva, in their official capacity as Mayor and Treasurer of Quezon City, respectively, assail the Decision[2] dated December 29, 2011 and Order[3] dated May 30, 2011, both rendered by the Regional Trial Court (RTC), Branch 27 of Manila in Civil Case No. 10-122976 entitled "*Philippine Amusement and Gaming Corporation (PAGCOR), represented by Atty. Carlos R. Bautista, Jr. vs. Hon. Feliciano Belmonte, Dr. Victor B. Endriga and Mr. Edgar Villanueva in their respective official capacity as Mayor, City Treasurer and Assistant City Treasurer of Quezon City.*"

Petitioner Herbert M. Bautista is the Mayor of Quezon City, a municipal corporation organized and existing by

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[1] Docket, pp. 27-42.
[2] *Id.*, pp. 13-17.
[3] *Id.*, pp. 18-23.

virtue of Republic Act No. 537, otherwise known as the Revised Quezon City Charter. The other petitioner, Edgar T. Villanueva, is the Treasurer of Quezon City, who is primarily responsible for the imposition and collection of taxes within the territorial jurisdiction of Quezon City.[4] The petitioners were the respondents[5] in Civil Case No. 10-122976 filed by PAGCOR with the Regional Trial Court (RTC) of Manila, Branch 27.

Respondent PAGCOR is a government-owned and controlled corporation (GOCC) created pursuant to Presidential Decree No. (PD) 1869, as amended, with principal office at the 6th Floor, Hyatt Hotel and Casino-Manila, M.H. del Pilar corner P. Gil Streets Ermita, Manila. It was the petitioner in Civil Case No. 10-122976.

Petitioners aver that the instant case stemmed from a Petition for Prohibition with Prayer for the Issuance of a Writ of Temporary Restraining Order (TRO) and/or Preliminary Injunction filed by respondent with the RTC on February 15, 2010, to enjoin petitioners from assessing and collecting local/city tax from it and committing further acts which might result to the cessation of and/or closure of its PAGCOR e-Games Stations (PEGS).

The facts as found by the RTC based on the evidence presented are as follows:

> The Philippine Amusement and Gaming Corporation, through its authority, established twenty-four (24) PAGCOR e-Games Station (PEGS) at various locations in Quezon City. During the previous years according to petitioner, the Quezon City government, thru the respondents assessed and collected city tax from the PEGS operators based on the 28% commission. No tax was assessed on the petitioner's revenue. However, in the year of 2010's renewal of business permits

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[4] The Parties, Petition for Review, docket, p. 29.

[5] Hon. Feliciano Belmonte, Dr. Victor B. Endriga and Mr. Edgar Villanueva, respectively in their official capacity as Mayor, City Treasurer and Assistant City Treasurer of Quezon City.

where the city/business tax is based on the 2009 income, the PEGS operators were assessed additional business tax. The respondents taxed the operators on the ground that the latter's city tax should be based on the gross winnings of the PEGS and not on the commission revenue of the PEGS operators. They were told that their licenses will not be renewed unless they pay the deficiency business/city tax for C.Y. 2009, which were assessed on the basis of the gross winnings of the PEGS. The predicament of the petitioner was, the percentage base on the city government's taxation includes the petitioner's revenue share for 2008. Necessarily according to petitioner, this means that the PAGCOR is now being assessed local taxes. Petitioner's representatives explained to respondents its exemption from local tax, local permits, and local fees, and other privileges under the law, but nonetheless, it was agreed that the issue on local taxation and other related matters shall be elevated to the Department of Justice thru the Office of the Government Corporate Counsel (OGCC).

On May 19, 2009, OGCC rendered the Opinion No. 106 series of 2009 stating that local government units have no power to impose taxes on the petitioner and/or its licenses grantees, agents or other persons with contracts with the petitioner for the operation of gambling. Despite the aforesaid OGCC opinion and the various correspondence sent to herein respondents, they proceeded with the assessment and collection of taxes from one of the PEGS operators inclusive of petitioner's share as basis for their tax assessment and collection for the year 2010. According to petitioner, there are twenty-three (23) remaining PEGS stations which have not yet paid the annual local/city tax, which is a condition precedent for the issuance of Business Permits for CY 2010. To sum it all up, as contended by petitioner, even their income is now being taxed by the Quezon City government thru the respondents and that the same is not in accordance with law, jurisprudence, and issuances of competent authority.

In its "Comment" to the Petition for Prohibition, public respondents argued the basic taxation principle of the "Lifeblood Doctrine." The respondents stressed that the PEGS are independent private proprietors/corporations, and are the ones being imposed charges, not PAGCOR, the petitioner herein. This, according to respondents, is based on the special permits to operate granted to them by the City Council of Quezon City. Respondents insist that petitioner PAGCOR has a separate and distinct personality from these independent private proprietors/ corporations, and they cannot be considered agents of PAGCOR. Hence, this justifies the City Treasurer's action in taxing the PEGS. The issue, according to respondents, is not the liability of the petitioner from payment of charges imposed by the Office of the City Treasurer of Quezon City, but the liability of these independent private proprietors/corporations. In fact according to them, there is doubt on petitioner's exemption as provided under Section 13 of PD 1869, there being no declaration that the payment of national franchise prevents any city government to impose upon the petitioner's levies, fees, or assessment of any kind. Petitioner is likewise bereft of proof showing its contractual relation with PHILWEB and these independent private proprietors/ corporations, especially on financial considerations which would be their basis for recomputations, if necessary, on the liability of the latter. The petitioner likewise failed to prove its participation in the operation of the gaming stations. What is clear to them, according to respondents, is that PHILWEB, the game software provider, and these independent

> private proprietors/corporations, are the ones in control of the stations. Therefore, these independent private proprietors/ corporations are not agents and does not fall under Section 13 (2) (b) of PD 1869. Most importantly according to public respondents, the petition deserves an outright dismissal for failure of the petitioner to exhaust administrative remedies. The action taken by the petitioner is premature as there is still an adequate remedy in the ordinary course of law, which is an appeal to the Local Board and Assessment Appeals, which an aggrieved party may contest the assessment made by the public respondent treasurer. Therefore according to public respondents, the instant petition should be dismissed for lack of merit.[6]

On December 29, 2011, the RTC disposed the case in this wise:

> **WHEREFORE**, in view of all the foregoing, the Petition for Prohibition is hereby **GRANTED**. The public respondents, the City Mayor, City Treasurer and Assistant City Treasurer of Quezon City, their subordinates, agents and any or all other persons acting upon their instruction and/or behalf, individually and/or collectively, are hereby **prohibited** from assessing, collecting, and imposing, local city tax on petitioner PAGCOR, as the latter is exempt from payment thereof under the law, jurisprudence and issuances of competent authorities, and to limit the assessment/collection of the local city tax, to the 28% operator's/PAGCOR e-Games Stations' (PEGS) commission.
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> **SO ORDERED**.

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[6] RTC Decision December 29, 2011, Annex "A", Petition for Review, docket, pp. 52-53.

In finding for respondent, the RTC ratiocinated that taxing the PEGS on their gross income would adversely affect PAGCOR's share in the income. The sword of Damocles hangs over PAGCOR and its operators with the threat of possible distraint or levy on their personal property or real property for failure to pay city tax assessed by petitioners that could hamper the operation of their legal business activity. By imposing 3% city tax on the PEGS operators based on the respective gross revenue, the income share of PAGCOR would certainly be reduced.

The RTC likewise declared that PEGS and PHILWEB are operating under the franchise granted to them by PAGCOR. In view thereof, there is a principal and agent relationship between PAGCOR and the PEGS operators such that, if the agent is assessed by the local government, the assessment is effectively against PAGCOR.

In the Order[7] dated May 30, 2012, the RTC denied petitioners' Motion for Reconsideration[8] filed on February 17, 2012.

Hence, this *Petition for Review* with the following errors[9] allegedly committed by the RTC:

I. WHETHER OR NOT THE LOWER COURT ERRED IN GRANTING THE PETITION FOR PROHIBITION.

II. WHETHER OR NOT THE LOWER COURT ERRED IN RENDERING A DECISION WITHOUT TRIAL AND/OR DIRECTING THE PARTIES TO SUBMIT THEIR RESPECTIVE MEMORANDA.

Petitioners aver that before actual operation, the respective owners of e-Games stations (independent private proprietors/corporations) individually apply with the City

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[7] Annex "B", Petition for Review, docket, pp. 57-62.
[8] Annex "L", Petition for Review, docket, pp. 123-128.
[9] Docket, p. 34.

Council of Quezon City for a Special Permit to operate. By virtue of Council Resolution, the independent private proprietors/corporations were each granted a Special Permit to operate conditioned under certain terms.

For years, these independent private proprietors/corporations had been paying impositions to the local government of Quezon City on the basis of the Special Permits issued in their favor. However, upon review of certain required documents for the computation of the afore-mentioned imposition, it was discovered that the charges imposed upon the grantees were based on their declared sales and not on their gross revenue at the rate of three percent (3%) as stated in their Special Permits. Consequently, the petitioner Quezon City Treasurer issued the assailed assessment.

Petitioners claim that the RTC erred in enjoining them from assessing, collecting, and imposing charges on respondent and in limiting the imposition on the commission of the independent private proprietors/corporations. After all, these independent private proprietors/corporations have been diligently paying these legal impositions under the Special Permits for several years without crying foul. Under the obtaining circumstance, they are already estopped from questioning these impositions. And respondent, being not the proper party, cannot take the cudgels for them.

Petitioners also fault the RTC for allegedly violating Section 8 of Rule 65 of the Rules of Court as it did not conduct any trial neither did it require the parties to submit their respective memoranda.

In its *Comment*,[10] respondent finds no error on the part of the RTC in granting the petition for prohibition saying that it is exempt from local taxation under PD 1869, as amended by Republic Act No. (RA) 9487. Admittedly, prior to the operation of the PEGS, these independent private proprietors/corporations, who are actually its agents in Quezon City, individually applied with the Quezon City Council for Special Permits to operate said PEGS. However,

[10] Docket, pp. 152-174.

the application for a Special Permit was simply in compliance with Section 1 of RA 9487 which requires the "consent" of the local government of Quezon City for the operation of internet casino within its territorial jurisdiction.

Respondent further argues that the 3% franchise fee indicated in the Special Permit is intended to cover only the share of the operator in the gross revenue, and should not include PAGCOR's share as it would be violative of Section 13(2) of PD 1869, as amended, which provides for PAGCOR's exemption from local taxes. The application for Special Permit is simply a compliance with the "consent" requirement of the LGUs for the operation of internet casino within their territorial jurisdiction than a recognition of their authority to impose tax on respondent.

Petitioners' asseveration that they are not charging respondent for business/city tax but the independent private proprietors/corporations who own and operate the PEGS stations, is totally misleading for it is plain that the latter cannot own and operate the PEGS by themselves. These PEGS stations owe their existence from the franchise granted to respondent, to wit: P.D. No. 1869, as amended by Republic Act (R.A.) No. 9487. In other word, PEGS operators have no authority to operate internet casino stations without the authority granted to them by respondent - the only national government agency authorized to regulate gaming activities, save for some exceptions under the law. This authority emanates from the Certificate to Operate PAGCOR ICS which provides that operator of PEGS is duly the appointed <u>sales agent</u> of respondent with the authority to operate a PAGCOR accredited Internet Casino Station (ICS); and that said operator is <u>a mere extension of respondent and as such, covered by the provisions of PD 1869, as amended</u>. Significantly, the assessment notices are in the name of "PHILIPPINE AMUSEMENT AND GAMING CORPORATION" as the taxpayer.

Contrary to petitioners' contention, respondent is the proper party to question petitioner's imposition as its revenue share in the PEGS operations in Quezon City is now unlawfully being subject to local franchise tax. Thus, respondent is the "proper-party" as it will sustain or are in danger of sustaining immediate injury resulting from the acts or measures complained of.[11] When the local government of Quezon City, through petitioners, imposed the 3% city tax on the PEGS operators based on their respective gross revenue, they improperly and unlawfully included therein respondent's revenue share. Thus, both respondent and its PEGS operators face the imminent threat of distraint of their personal property or levy on their real property in case of failure to pay the invalidly assessed city tax which will hamper the operation of their legal business activity.

Respondent rejects as well petitioners' contention that it is estopped from assailing the assessment and collection of the local business/franchise tax. Estoppel will not work against it because petitioners' assessments are not based on the proper interpretation/application of law and jurisprudence. Citing the Supreme Court ruling in *Commissioner of Internal Revenue vs. Kudos Metal Corporation*,[12] it contends that the doctrine of estoppel cannot give validity to an act that is against the law.

In addition, the power of the local government to "impose taxes and fees" is always subject to "limitations" which Congress may provide by law. Since PD 1869, as amended, remains the "operative" law its "exemption clause" stays preventing the local government from exercising its power to impose taxes and fees against respondent and its agents. Besides, the imposition of the 3% local business/franchise tax via a Resolution is legally infirm. Section 132 of RA 7160 or the Local Government Code (LGC) of 1991, "[T]he power to impose a tax, fee, or charge or to generate revenue under this Code shall be exercised by the Sanggunian of the local government unit concerned through an <u>appropriate ordinance</u>." This is absolutely not obtaining in this case.

As to the alleged violation of Section 8, Rule 65 of the Rules of Court by the RTC, respondent counters that it is not mandatory for the court to conduct hearing and require the

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[11] *Phil. Association of Service Exporters, Inc., et al., vs. Ruben D. Torres, et al.*, G.R. No. 98472, August 19, 1993.
[12] G.R. No. 178087, May 5, 2010.

submission of memorandum. The parties have been amply heard through their pleadings. Trial means "a judicial examination and determination of issues between parties to action whether they be issues of law or of fact", which can be done not only through court hearings but submission of pleadings where the respective positions of both parties are more properly and clearly discussed. According to respondent, the provision in the Rules of Court uses the word "may" which, when used in adjective laws, such as remedial statutes which are construed liberally, is only permissive and not mandatory, and operates to confer discretion. There is nothing in the Rules of Court that commands the RTC to require the parties in a case to file their memoranda. As long as the parties have been amply heard through their pleadings, the requirement of due process is considered satisfied.

In *Reply,*[13] petitioners insist that trial is mandatory before a Petition for Prohibition may be resolved , otherwise, there would be a violation of due process.

Granting that respondent and its operators are considered as one, why the belatedly filing of the RTC Case assailing the imposition of the 3% franchise fee of the gross revenue of the independent private proprietors/corporations indicated in the Special Permits granted to them. At that time, respondent had long allowed petitioners to assess and collect taxes from the PEGS based on its 28% commission from the casino winnings.

RULING OF THE COURT

The lower court did not violate Section 8 of Rule 65 of the Rules of Court

Petitioners' contention that the RTC violated Section 8 of Rule 65 of the Rules of Court for failure to conduct trial

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[13] Docket, pp. 234-244.

and require the parties to file their respective memoranda is simply untenable.

Section 8 of Rule 65 of the Rules of Court provides:

> SEC. 8. *Proceedings after comment is filed.* - After the comment or other pleadings required by the court are filed, or the time for the filing thereof has expired, the court **may** hear the case or require the parties to submit memoranda. If, after such hearing or filing of memoranda or upon the expiration of the period for filing, the court finds that the allegations of the petition are true, it shall render judgment for such relief to which the petitioner is entitled.
>
> However, the court may dismiss the petition if it finds the same patently without merit or prosecuted manifestly for delay, or if the questions raised therein are too unsubstantial to require consideration. xxx *(Emphasis supplied)*

As correctly held by the RTC in its Order dated May 30, 2012, the word "may" is only permissive and not mandatory, and operates to confer discretion. Simply put, the RTC had the discretion – it may hear the case in open court or require the parties to submit their memoranda or any pleading that will aid in the determination of the case. This is specially so in cases when the issues raised are purely legal.

Trial is a "judicial examination and determination of facts and legal issues arising between parties to a civil or criminal action." Trial is not limited to courtroom hearings. It is also covers submission pleadings where the respective positions of the parties are discussed and elucidated. In the instant case, the RTC gave the parties ample opportunity to ventilate their respective stance through the pleadings they traded.

PAGCOR is the proper party to file the case

Before RA 9487, respondent had the sole and exclusive authority to manage gambling activities and it could not share or delegate the authority to operate gambling activities as held in several Supreme Court cases such as *Del Mar vs. Philippine Amusement and Gaming Corporation*[14] and *Jaworski vs. Philippine Amusement and Gaming Corporation, et al.*[15] It was only upon the enactment of RA 9487, which amended respondent's Charter that it gained authority to delegate or share its franchise to another. In the case of *Yun Kwan Byung vs. Philippine Amusement and Gaming Corporation,*[16] the Supreme Court extensively discussed the development of respondent's ability to share its franchise. The relevant portions of the ruling are as follows:

> After a circumspect consideration of the foregoing discussion and the contending positions of the parties, we hold that PAGCOR has acted beyond the limits of its authority when it passed on or shared its franchise to SAGE.
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> In the *Del Mar* case where a similar issue was raised when PAGCOR entered into a joint venture agreement with two other entities in the operation and management of jai alai games, the Court, in an *En Banc* Resolution dated 24 August 2001, partially granted the motions for clarification filed by respondents therein insofar as it prayed that PAGCOR has a valid franchise, but only by itself (*i.e.* not in association with any other person or entity), to operate, maintain and/or manage the game of jai-alai.

[14] G.R. No. 138298, November 29, 2000.
[15] G.R. No. 144463, January 14, 2004.
[16] G.R. No. 163553, December 11, 2009.

In the case at bar, PAGCOR executed an agreement with SAGE whereby the former grants the latter the authority to operate and maintain sports betting stations and Internet gaming operations. In essence, the grant of authority gives SAGE the privilege to actively participate, partake and share PAGCOR's franchise to operate a gambling activity. The grant of franchise is a special privilege that constitutes a right and a duty to be performed by the grantee. The grantee must not perform its activities arbitrarily and whimsically but must abide by the limits set by its franchise and strictly adhere to its terms and conditionalities. A corporation as a creature of the State is presumed to exist for the common good. Hence, the special privileges and franchises it receives are subject to the laws of the State and the limitations of its charter. There is therefore a reserved right of the State to inquire how these privileges had been employed, and whether they have been abused.

THUS, PAGCOR HAS THE SOLE AND EXCLUSIVE AUTHORITY TO OPERATE A GAMBLING ACTIVITY. WHILE PAGCOR IS ALLOWED UNDER ITS CHARTER TO ENTER INTO OPERATOR'S OR MANAGEMENT CONTRACTS, PAGCOR IS NOT ALLOWED UNDER THE SAME CHARTER TO RELINQUISH OR SHARE ITS FRANCHISE. PAGCOR CANNOT DELEGATE ITS POWER IN VIEW OF THE LEGAL PRINCIPLE OF *DELEGATA POTESTAS DELEGARE NON POTEST*, INASMUCH AS THERE IS NOTHING IN THE CHARTER TO SHOW THAT IT HAS BEEN EXPRESSLY AUTHORIZED TO DO SO.

Similarly, in this case, PAGCOR, by taking only a percentage of the earnings of ABS Corporation from its foreign currency collection, allowed ABS Corporation to operate gaming tables in the dollar pit. The Junket Agreement is in direct violation of PAGCOR's charter and is therefore void.

Since the Junket Agreement violates PAGCOR's charter, gambling between the junket player and the junket operator under such agreement is illegal and may not be enforced by the courts. Article 2014 of the Civil Code, which refers to illegal gambling, states that no action can be maintained by the winner for the collection of what he has won in a game of chance.

Although not raised as an issue by petitioner, we deem it necessary to discuss the applicability of Republic Act No. 9487 (RA 9487) to the present case.

RA 9487 amended the PAGCOR charter, granting PAGCOR the power to enter into special agreement with third parties to share the privileges under its franchise for the operation of gambling casinos:

> Section 1. The Philippine Amusement and Gaming Corporation (PAGCOR) franchise granted under Presidential Decree No. 1869 otherwise known as the PAGCOR Charter, is hereby further amended to read as follows:
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> xxx xxx xxx
>
> (2) SECTION 3(H) IS HEREBY AMENDED TO READ AS FOLLOWS:
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> "SEC. 3. *CORPORATE POWERS*. -
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> xxx xxx xxx
>
> "(h) **to enter into, make, conclude, perform, and carry out contracts of every kind and nature and for any lawful purpose which are**

> **necessary, appropriate, proper or incidental to any business or purpose of the PAGCOR, including but not limited to investment agreements, joint venture agreements, management agreements, agency agreements, whether as principal or as an agent, manpower supply agreements, or any other similar agreements or arrangements with any person, firm, association or corporation."**
>
> **PAGCOR sought the amendment of its charter precisely to address and remedy the legal impediment raised in *Senator Jaworski v. Phil. Amusement and Gaming Corp.*** (*Citations omitted and emphases supplied)*

Aside from the authority to enter into agreements with private corporations, respondent is also empowered to enter into agency agreements where it can designate a private individual or corporation as an agent to operate gambling activities.

Section 1(2) of R.A. No. 9487[17] states:

> (2) Section 3 (h) is hereby amended to read as follows:
>
> SEC. 3. *Corporate Powers*. -
> xxx xxx xxx

[17] An Act Further Amending Presidential Decree No. 1869, otherwise known as PAGCOR Charter.

> (h) to enter into, make, conclude, perform, and carry out contracts of every kind and nature and for any lawful purpose which are necessary, appropriate, proper or incidental to any business or purpose of the PAGCOR, including but not limited to investment agreements, joint venture agreements, management agreements, **agency agreements, whether as principal or as an agent,** manpower supply agreements, or any other similar agreements or arrangements with any person, firm, association or corporation. *(Emphasis supplied)*

Petitioners assert that there is no principal-agent relationship pursuant to Article 1868 of the Civil Code as PHILWEB and other independent private proprietors/corporations merely procure permit from PAGCOR and do not bind themselves to render service or to do something in representation or on behalf of PAGCOR.

Petitioners' assertion is bereft of merit.

Article 1868 of the Civil Code defines a contract of agency as follows:

> By the contract of agency a person binds himself to render some service or to do something in representation or on behalf of another, with the consent or authority of the latter.

In connection with above-stated definition, an "agency may be express, or implied from the acts of the principal, from his silence or lack of action, or his failure to repudiate the agency, knowing that another person is acting on his behalf without authority."[18] The basis of a contract of agency is one of representation. The case of *Spouses Viloria*

[18] Article 1869, Civil Code.

vs. Continental Airlines, Inc.[19] discussed the nature of an agency in the following manner:

> In *Rallos v. Felix Go Chan & Sons Realty Corporation,* this Court explained the nature of an agency and spelled out the essential elements thereof:
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> **Out of the above given principles, sprung the creation and acceptance of the *relationship of agency* whereby one party, called the principal (*mandante*), authorizes another, called the agent (*mandatario*), to act for and in his behalf in transactions with third persons. The essential elements of agency are: (1) there is consent, express or implied of the parties to establish the relationship; (2) the object is the execution of a juridical act in relation to a third person; (3) the agent acts as a representative and not for himself, and (4) the agent acts within the scope of his authority.**
>
> **Agency is basically *personal, representative,* and *derivative* in nature.** The authority of the agent to act emanates from the powers granted to him by his principal; his act is the act of the principal if done within the scope of the authority. *Qui facit per alium facit se*. "He who acts through another acts himself." *(Citations omitted; emphases supplied)*

In this case, respondent submitted Annex "9"[20] as an attachment to its Comment, which states:

[19] G.R. No. 188288, January 16, 2012.
[20] Docket, p. 199.

**CERTIFICATE TO OPERATE
PAGCOR ICS**

> This is to certify that *Mr. David G. Syjueco, Jr. (SBM Orient Pacific Management Services, Inc.)* <u>is a duly appointed sales agent of PAGCOR</u>, and is hereby authorized to operate a PAGCOR accredited Internet Casino Station (ICS) located at *Estuar Bldg., Quezon Ave., Brgy. Paligsahan, Quezon City*.
>
> The accredited ICS Operator is a mere extension of PAGCOR and as such, covered by the provisions of PD 1869 as amended. xxx *(Underscoring supplied)*

Plain from the document denominated as Annex "9" that the relationship between PAGCOR and PEGS is one of principal and agent. Respondent also submitted Annexes "11" to "19", representing tax bills paid to local government of Quezon City, which clearly bear the name of respondent. As stated earlier, the basis of agency is representation.

Significantly, petitioners did not submit any evidence to contradict the clear import of the pieces of evidence submitted by respondent. They only had unsubstantiated allegations, worse, speculations. "Bare allegations, unsubstantiated by evidence, are not equivalent to proof under our Rules of Court."[21] Also, petitioners impliedly admitted that certain assessment notices indicated the name of respondent as taxpayer.[22] More, respondent was able to establish that a principal-agent relationship exists in relation to PEGS operations.

Anent the question of whether PAGCOR is a party in interest, Section 2 of Rule 3 of the 1997 Rules of Court provides as follows:

[21] *Manzano vs. Perez, et al.*, G.R. No. 112485, August 9, 2001; *Coronel vs. Constantino*, G.R. No. 121069, February 7, 2003.
[22] Memorandum, docket, p. 288.

> SEC. 2. *Parties in interest.* — A real party in interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit. Unless otherwise authorized by law or these Rules, every action must be prosecuted or defended in the name of the real party in interest.

Contrary to petitioner's claim, respondent is a real party in interest as it will certainly stand to be injured or prejudiced by the assailed action of petitioners. The assessment and collection of the impositions it will definitely diminish its revenues which will eventually hamper if not adversely affect its operation. That being the case, respondent is the proper party to assail petitioners' action before the RTC and even before the CTA.

PAGCOR and its agents are exempt from paying local franchise tax

Petitioners contend that respondent's tax exemption does not apply to Quezon City citing Section 13(2)(a) of PD 1869 given that it is tellingly silent as regards prohibition against imposition of fees, or assessments of any kind upon respondent by the city government. For petitioner, respondent's tax exemption applies only to national, provincial and municipal taxes.

Petitioners also invoke the doctrine laid down in *National Power Corporation vs. City of Cabanatuan,*[23] where the Supreme Court ruled that the LGC removed the blanket exclusion of instrumentalities and agencies of the national government from the coverage of local taxation.

Again, the Court cannot subscribe to petitioners' contentions.

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[23] G.R. No. 149110, April 9, 2003.

Section 13(2) of PD 1869 provides:

> SECTION 13. *Exemptions.* —
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> xxx xxx xxx
>
> (2) *Income and Other Taxes.* - (a) Franchise Holder: **No tax of any kind or form, income or otherwise, as well as fees, charges or levies of whatever nature, whether National or <u>Local</u>, shall be assessed and collected under this Franchise from the Corporation; nor shall any form of tax or charge attach in any way to the earnings of the Corporation,** except a Franchise Tax of five (5%) percent of the gross revenue or earnings derived by the Corporation from its operation under this Franchise. Such tax shall be due and payable quarterly to the National Government and shall be in lieu of all kinds of taxes, levies, fees or assessments of any kind, nature or description, levied, established or collected by any municipal, provincial, or national government authority. xxx (*Emphases supplied)*

In the case of *Philippine Amusement and Gaming Corporation (PAGCOR) vs. The Bureau of Internal Revenue, et al.,*[24] the Supreme Court detailed the development of PAGCOR's tax exemption. The pertinent parts of the decision are quoted below:

> PAGCOR was created pursuant to Presidential Decree (P.D.) No. 1067-A on January 1, 1977. Simultaneous to its creation, P.D. No. 1067-B (supplementing P.D. No. 1067-A) was issued exempting PAGCOR from the payment of any type of tax, except a franchise tax of five percent (5%) of the gross revenue. Thereafter, on

[24] G.R. No. 172087, March 15, 2011.

June 2, 1978, P.D. No. 1399 was issued expanding the scope of PAGCOR's exemption.

To consolidate the laws pertaining to the franchise and powers of PAGCOR, P.D. No. 1869 was issued. Section 13 thereof reads as follows:

> Sec. 13. *Exemptions.* — x x x
>
> (1) Customs Duties, taxes and other imposts on importations. - All importations of equipment, vehicles, automobiles, boats, ships, barges, aircraft and such other gambling paraphernalia, including accessories or related facilities, for the sole and exclusive use of the casinos, the proper and efficient management and administration thereof and such other clubs, recreation or amusement places to be established under and by virtue of this Franchise shall be exempt from the payment of duties, taxes and other imposts, including all kinds of fees, levies, or charges of any kind or nature.
>
> Vessels and/or accessory ferry boats imported or to be imported by any corporation having existing contractual arrangements with the Corporation, for the sole and exclusive use of the casino or to be used to service the operations and requirements of the casino, shall likewise be totally exempt from the payment of all customs duties, taxes and other imposts, including all kinds of fees,

levies, assessments or charges of any kind or nature, whether National or Local.

(2) Income and other taxes. - (a) Franchise Holder: No tax of any kind or form, income or otherwise, as well as fees, charges, or levies of whatever nature, whether National or Local, shall be assessed and collected under this Franchise from the Corporation; nor shall any form of tax or charge attach in any way to the earnings of the Corporation, except a Franchise Tax of five percent (5%) of the gross revenue or earnings derived by the Corporation from its operation under this Franchise. Such tax shall be due and payable quarterly to the National Government and shall be in lieu of all kinds of taxes, levies, fees or assessments of any kind, nature or description, levied, established, or collected by any municipal, provincial or national government authority.

(b) Others: The exemption herein granted for earnings derived from the operations conducted under the franchise, specifically from the payment of any tax, income or otherwise, as well as any form of charges, fees or levies, shall inure to the benefit of and extend to corporation(s), association(s), agency(ies), or individual(s) with whom the Corporation or operator

has any contractual relationship in connection with the operations of the casino(s) authorized to be conducted under this Franchise and to those receiving compensation or other remuneration from the Corporation as a result of essential facilities furnished and/or technical services rendered to the Corporation or operator.

The fee or remuneration of foreign entertainers contracted by the Corporation or operator in pursuance of this provision shall be free of any tax.

(3) *Dividend Income.* – Notwithstanding any provision of law to the contrary, in the event the Corporation should declare a cash dividend income corresponding to the participation of the private sector shall, as an incentive to the beneficiaries, be subject only to a final flat income rate of ten percent (10%) of the regular income tax rates. The dividend income shall not in such case be considered as part of the beneficiaries' taxable income; provided, however, that such dividend income shall be totally exempted from income or other form of taxes if invested within six (6) months from the date the dividend income is received in the following:

(a) operation of the casino(s) or investments in any affiliate activity that will ultimately redound to the benefit of the Corporation; or

> any other corporation with whom the Corporation has any existing arrangements in connection with or related to the operations of the casino(s);
>
> (b) Government bonds, securities, treasury notes, or government debentures; or
>
> (c) BOI-registered or export-oriented corporation(s).

PAGCOR's tax exemption was removed in June 1984 through P.D. No. 1931, but it was later restored by Letter of Instruction No. 1430, which was issued in September 1984.

On January 1, 1998, R.A. No. 8424, otherwise known as the *National Internal Revenue Code of 1997*, took effect. Section 27 (c) of R.A. No. 8424 provides that government-owned and controlled corporations (GOCCs) shall pay corporate income tax, except petitioner PAGCOR, the Government Service and Insurance Corporation, the Social Security System, the Philippine Health Insurance Corporation, and the Philippine Charity Sweepstakes Office, thus:

> (c) *Government-owned or Controlled Corporations, Agencies or Instrumentalities*. - The provisions of existing special general laws to the contrary notwithstanding, all corporations, agencies or instrumentalities owned and controlled by the Government, **except** the Government Service and Insurance Corporation (GSIS), the Social Security System (SSS), the Philippine Health Insurance Corporation (PHIC), the Philippine Charity Sweepstakes Office (PCSO), and **the Philippine Amusement and Gaming Corporation (PAGCOR)**, shall pay

> such rate of tax upon their taxable income as are imposed by this Section upon corporations or associations engaged in similar business, industry, or activity.

With the enactment of R.A. No. 9337 on May 24, 2005, certain sections of the National Internal Revenue Code of 1997 were amended. The particular amendment that is at issue in this case is Section 1 of R.A. No. 9337, which amended Section 27 (c) of the National Internal Revenue Code of 1997 by excluding PAGCOR from the enumeration of GOCCs that are exempt from payment of corporate income tax, thus:

> (c) *Government-owned or Controlled Corporations, Agencies or Instrumentalities.* - The provisions of existing special general laws to the contrary notwithstanding, all corporations, agencies, or instrumentalities owned and controlled by the Government, **except the Government Service and Insurance Corporation (GSIS), the Social Security System (SSS), the Philippine Health Insurance Corporation (PHIC), and the Philippine Charity Sweepstakes Office (PCSO)**, shall pay such rate of tax upon their taxable income as are imposed by this Section upon corporations or associations engaged in similar business, industry, or activity. xxx *(Emphasis supplied)*

In the same case,[25] it was held that PAGCOR's tax exemption does not apply to corporate income tax, thus:

> In this case, PAGCOR failed to prove that it is still exempt from the payment of corporate income tax, considering that Section 1 of R.A. No. 9337 amended Section 27 (c) of the National Internal Revenue Code of 1997 by omitting PAGCOR from the exemption. The legislative intent, as shown by the discussions in the Bicameral Conference Meeting, is to require PAGCOR to pay corporate income tax; hence, the omission or removal of PAGCOR from exemption from the payment of corporate income tax. 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*. Thus, the express mention of the GOCCs exempted from payment of corporate income tax excludes all others. Not being excepted, petitioner PAGCOR must be regarded as coming within the purview of the general rule that GOCCs shall pay corporate income tax, expressed in the maxim: *exceptio firmat regulam in casibus non exceptis*.

In ruling out corporate income tax from respondent's tax exemption, the Supreme Court in the case of *The Commissioner of Internal Revenue vs. Acesite (Philippines) Hotel Corporation,*[26] categorically held that PAGCOR was given a blanket exemption from all taxes, to wit:

> A close scrutiny of the above provisos clearly gives PAGCOR a blanket exemption

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[25] G.R. No. 172087, *supra*.

[26] G.R. No. 147295, February 16, 2007.

> to taxes with no distinction on whether the taxes are direct or indirect. xxx

Evidently, PAGCOR's tax exemption extends to all taxes except corporate income tax as it was expressly removed by Congress from it. Stated otherwise, PAGCOR is exempt from being assessed and from paying local franchise tax.

But does this tax exemption extend to respondent's agents?

The answer is in the affirmative.

Section 13(b) of PD 1869 is clear. Respondent's tax exemption extends to whom it has contractual relationships in connection with the operation of its business activities, thus:

> SECTION 13. *Exemptions*. -
>
> xxx xxx xxx
>
> (b) *Others*: The exemptions herein granted for earnings derived from the operations conducted under the franchise specifically from the payment of any tax, income or otherwise, as well as any form of charges, fees or levies, shall inure to the benefit of and extend to corporation(s), association(s), agency(ies), or individual(s) with whom the Corporation or operator has any contractual relationship in connection with the operations of the casino(s) authorized to be conducted under this Franchise and to those receiving compensation or other remuneration from the Corporation or operator as a result of essential facilities furnished and/or technical services rendered to the Corporation or operator.

By imposing a franchise fee of 3% on the gross revenue of the PEGS, respondent's tax exemption is compromised as it stands to collect a specified percentage from the operations of its agents. This will indirectly violate respondent's tax exemption.

All said, respondent and its agents, in relation to the operation of PEGS, are exempt from the imposition of local business tax as contained in the Resolution implemented by petitioners.

At this juncture, the ruling of the Supreme Court in the case of *Magtajas, et al. vs. Pryce Properties Corporation, Inc., et al.*[27] that the LGC did not repeal or modify the Charter that created respondent must as well be considered, to wit:

> We hold that the power of PAGCOR to centralize and regulate all games of chance, including casinos on land and sea within the territorial jurisdiction of the Philippines, remains unimpaired. P.D. 1869 has not been modified by the Local Government Code, which empowers the local government units to prevent or suppress only those forms of gambling prohibited by law.

The assailed Resolution confers no rights.

The obtaining circumstances warrant a discussion on the distinction between a resolution and an ordinance. Note that it was by virtue of a resolution that petitioners made the impugned imposition of local taxes against respondent. In the case of *Spouses Yusay vs. Court of Appeals, City Mayor and City Council of Mandaluyong City*[28], the Highest Tribunal differentiated a resolution from an ordinance, in this fashion:

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[27] G.R. No. 111097, July 20, 1994.
[28] G.R. No. 156684, April 6, 2011.

> (I)t is well to differentiate between a resolution and an ordinance. The first is upon a specific matter of a temporary nature while the latter is a law that is permanent in character. No rights can be conferred by and be inferred from a resolution, which is nothing but an embodiment of what the lawmaking body has to say in the light of attendant circumstances. In simply expressing its sentiment or opinion through the resolution, therefore, the *Sangguniang Panglungsod* in no way abused its discretion, least of all gravely, for its expression of sentiment or opinion was a constitutionally protected right.

The foregoing declaration was echoed in the case of *Land Bank of the Philippines vs. Cacayuran.*[29] The Supreme Court held that "while ordinances are laws and possess a general and permanent character, resolutions are merely declarations of the sentiment or opinion of a lawmaking body on a specific matter and are temporary in nature. As opposed to ordinances, "no rights can be conferred by and be inferred from a resolution." The assailed Resolution by the city government does not confer any rights. The court *a quo* correctly ruled on this matter as no rights can emanate from an act against the law. Nothing is clearer than the foregoing pronouncement insofar as the right of petitioner to assess and impose additional business tax upon respondent is concern.

PAGCOR is not estopped from questioning the assailed assessment notices

Dead set in its stance, petitioners posit that respondent or the independent proprietors/corporations are already

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[29] G.R. No. 191667, April 17, 2013, citing *Spouses Yusay vs. Court of Appeals, et al., supra.*

estopped from questioning the 2009 assessment as they have been paying the local franchise tax since 2004.

The Court cannot take up petitioners' cause.

As ruled by the RTC, citing the case of *Commissioner of Internal Revenue vs. Kudos Metal Corporation*[30], estoppel will not apply. The principle of estoppel is based on justice and fair play. The principle cannot give birth to a valid act based on the improper or flawed interpretation and application of law and jurisprudence.

IN VIEW WHEREOF, the *Petition for Review* filed by petitioners Herbert M. Bautista and Edgar T. Villanueva, in their official capacity as Mayor and City Treasurer of Quezon City, respectively, is hereby **DENIED,** for utter lack of merit. Accordingly, the assailed Decision dated December 29, 2011 and the Order dated May 30, 2012 of the Regional Trial Court of Manila, Branch 27, in Civil Case No. 10-122976 entitled *"Philippine Amusement and Gaming Corporation (PAGCOR), represented by Atty. Carlos R. Bautista, Jr. vs. Hon. Feliciano Belmonte, Dr. Victor B. Endriga and Mr. Edgar Villanueva, respectively in their official capacity as Mayor, City Treasurer and Assistant City Treasurer of Quezon City"*, are **AFFIRMED**.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

I Concur:

ERLINDA P. UY
Associate Justice

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[30] G.R. No. 178087, May 5, 2010.

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.

ERLINDA P. UY
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 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.

ROMAN G. DEL ROSARIO
Presiding Justice