REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

PHILIPPINE AIRLINES, INC. (PAL),
Petitioner,

C.T.A. CASE NO. 7010

Members:

- versus -

CASTAÑEDA, JR., *Chairperson*
UY, *and*
PALANCA-ENRIQUEZ, *JJ.*

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

JUL 3 1 2006

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DECISION

CASTAÑEDA, JR., J.:

Is petitioner liable to pay the deficiency 2% Minimum Corporate Income Tax for the fiscal year ending March 31, 2001? This is the basic issue submitted for the Court's decision in petitioner's Petition for Review filed on June 22, 2004.

THE FACTS

The established facts, culled from the parties' Joint Stipulation of Facts and Issues and records of the case, are as follows:

Petitioner is a domestic corporation organized in accordance with the laws of the Republic of the Philippines with principal office at the 9th Floor,

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PAL Center, Legazpi St., Legazpi Village, Makati City while respondent is the Commissioner of Internal Revenue, charged with the duty to assess and collect all national internal revenue taxes, fees, and charges, among others, with principal office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Petitioner allegedly incurred a zero taxable income for fiscal year ending March 31, 2001 but had unapplied excess creditable withholding taxes. It did not pay the minimum corporate income tax (MCIT) for the same fiscal year.[1]

On July 16, 2002, petitioner filed with the office of the respondent a claim for refund of the unapplied expanded creditable withholding tax of ₱2,334,377.95 for fiscal year 2000-2001. Attached thereto were the: (1) Schedule of Creditable Tax Withheld at Source for fiscal year 2000-2001; (2) Certificates of Creditable Taxes Withheld; and (3) Audited Financial Statements.[2]

On September 13, 2002, petitioner received a Tax Verification Notice from the BIR Large Taxpayers Service, Large Taxpayers Audit and Investigation Division 1 ("LTAID I"), No. 00201448 dated August 16, 2002, authorizing Revenue Officer Jacinto Cueto, Jr. to verify the supporting documents and pertinent records relative to petitioner's claim for refund on Creditable Withholding Tax at Source for fiscal year 2000-2001.[3]

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1 Exhibits "B", "C" and "D".

2 Exhibit "F".

3 Exhibit "G".

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On January 13, 2003, petitioner received a letter from Chief Aida N. Florencio of the BIR Large Taxpayers Audit and Investigation Division ("BIR LTAID") dated January 10, 2003, requesting it to prepare and to submit for verification within 10 days from receipt thereof, the various documents listed in the said letter.[4]

On January 23, 2003, petitioner informed Chief Aida N. Florencio of the BIR LTAID, through a letter, that it submitted photocopies of the Financial Statements, Monthly Functional Income Statement and Quarterly Income Tax Returns with proofs of payments.[5]

In a letter dated August 19, 2003 and received on August 21, 2003, Chief Armit S. Linsangan of BIR LTAID informed petitioner of the results of the investigation and invited the latter to an informal conference.[6]

The informal conference was held on August 27, 2003 between petitioner's AVP-Financial Analysis and Services, Manager Tax Division and its counsel and BIR Assistant Division Chief Amparo Duque, Revenue Officer III Jacinto P. Cueto, Jr. and LTAID I Staff Member Hercules M. Catapia. The representatives of the petitioner were apprised that petitioner's claim for refund was being denied and that petitioner instead was being assessed of a deficiency minimum corporate income tax. Petitioner's representatives informed the aforementioned BIR Officers that it is not liable for the MCIT by virtue of its franchise. The BIR Officers then conveyed to petitioner's

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4 Exhibit "H".

5 Exhibit "I".

6 Exhibit "J".

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representatives that they would refer the matter to the BIR Legal Service for opinion.

On October 23, 2003, petitioner received a Preliminary Assessment Notice (PAN) dated September 3, 2003 and Details of Discrepancies issued by the Large Taxpayers Service assessing petitioner the amount of ₱262,474,732.54 representing deficiency minimum corporate income tax including interest and compromise penalty, the details of which are as follows:[7]

Revenue		P38,798,727,685.00
Less: Cost of services		
Direct Costs -	30,749,761,017.00	
Less: Non-deductible interest expense	433,082,004.00	30,316,679,013.00
Gross Income from Operation		8,482,042,672.00
Add: Non-operating Income		465,111,368.00
Total Gross Income for MCIT purposes		9,947,154,040.00*
MCIT tax due		178,943,080.80
Interest - 20% per annum - 7/16/01 to 11/15/03		83,506,651.74
Compromise Penalty		25,000.00
Total MCIT due and demandable		P 262,474,732.54

* Should be ₱8,947,154,040.00.

On November 5, 2003, petitioner filed a written protest against the PAN.[8]

On February 12, 2004, petitioner received from respondent Assessment Notice No. INC FY-3-31-01-000094, Formal Letter of Demand and Details of Discrepancies for the payment of ₱272,421,886.58, computed as follows:[9]

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7 Exhibits "K" and "K-1" to "K-3".

8 Exhibit "L".

9 Exhibit "M", "M-1" and "M-2".

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Revenue		P38,798,721,685.00
Less: Cost of services		
Direct Costs -	30,749,761,017.00	
Less: Non-deductible interest expense	433,082,004.00	30,316,679,013.00
Gross Income from Operation		8,482,042,672.00
Add: Non-operating Income		465,111,368.00
Total Gross Income for MCIT purposes		9,947,154,040.00*
MCIT tax due		178,943,080.80
Interest - 20% per annum - 7/16/01 to 11/15/03		92,453,805.78
Compromise Penalty		25,000.00
Total MCIT due and demandable		P 271,421,886.58

* Should be ₱8,947,154,040.00

On February 23, 2004, petitioner filed a formal written protest to the Final Assessment Notice and Formal Letter of Demand.[10]

On May 26, 2004, petitioner received from Deputy Commissioner Estelita C. Aguirre, OIC of the Large Taxpayers Service, BIR, the Final Decision on Disputed Assessment denying petitioner's protest and demanding immediate payment of the deficiency MCIT.[11]

Hence, this present petition.

In their Joint Stipulation of Facts and Issues, the parties agreed that the following are the issues to be resolved by this Court:

1. Whether or not petitioner is exempt by virtue of its franchise, P.D. No. 1590, from the 2% Minimum Corporate Income Tax imposed by Section 27(E) of the NIRC, and therefore, not liable for the ₱271,421,886.58 deficiency MCIT assessment issued against it by respondent for the fiscal year ending March 31, 2001;

2. Whether or not Revenue Memorandum Circular No. 66-2003, dated October 14, 2003, on the subject "Clarifying the Taxability of Philippine Airlines (PAL) for Income Tax Purposes As Well as Other Franchise Grantees Similarly

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10 Exhibit "N".

11 Exhibit "O".

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Situated", is an unauthorized modification of Section 13 of PAL's franchise in violation of Section 24 of the said franchise; and

3. Whether or not petitioner is liable for the MCIT as provided for under Section 27(E) of the Tax Code in relation to Revenue Regulations No. 9-98 and Revenue Memorandum Circular No. 66-2003.

Petitioner was granted a franchise to establish, operate, and maintain air-transport services within the Philippines and between the Philippines and other countries by virtue of Presidential Decree ("PD") No. 1590.[12] In consideration of said franchise and rights granted, petitioner shall undertake to pay the Government either the basic corporate income tax in accordance with the National Internal Revenue Code or the 2% franchise tax pursuant to Section 13 thereof.

It is an oft-repeated rule that the government has the obligation to afford the grantee of the franchise all the chances or opportunity to operate profitably, as long as public convenience is properly served,[13] and tax exemption is part of the inducement for the acceptance of the franchise.[14]

In the present petition, PAL was granted an exemption from "other taxes" by Section 13 of its franchise. The language used in Section 13 of P.D. No. 1590 is plain and unequivocal. It clearly defined and limited petitioner's tax liability. Petitioner shall choose whichever of the two

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12 "An Act Granting a New Franchise To Philippine Airlines, Inc. To Establish, Operate, And Maintain Air-Transport Services In the Philippines And Other Countries."

13 *The Director or Officer-In-Charge of the Bureau of Telecommunications, et al. vs. Aligaen*, 33 SCRA 368 [1970].

14 *The Province of Misamis Oriental vs. Cagayan Electric Power and Light Company, Inc.*, 181 SCRA 38 [1990].

alternatives will result in a lower tax, which shall be in lieu of all other taxes, duties, royalties, registration, license, and other fees and charges of any kind, nature, or description, imposed, levied, established, assessed, or collected by any municipal, city, provincial, or national authority or government agency.

For the fiscal year ending in March 31, 2001, petitioner opted to pay the corporate income tax pursuant to Section 13 (a) of its franchise as shown by its Annual Income Tax Return and two separate Amended Returns. Thus, the basic corporate income tax shall be based on petitioner's annual net taxable income computed pursuant to Sec. 27 of the 1997 National Internal Revenue Code (NIRC) which provides as follows:

> SEC. 27. *Rates of Income Tax on Domestic Corporations.* –
>
> (A) *In General.* – Except as otherwise provided in this Code, an income tax of thirty-five percent (35%) is hereby imposed upon the taxable income derived during each taxable year from all sources within and without the Philippines by every corporation, as defined in Section 22(B) of this Code and taxable under this Title as a corporation, organized in, or existing under the laws of the Philippines: *Provided*, That effective January 1, 1998, the rate of income tax shall be thirty-four percent (34%); effective January 1, 1999, the rate shall be thirty-three percent (33%); and effective January 1, 2000 and thereafter, the rate shall be thirty-two percent (32%).
>
> In the case of corporations adopting the fiscal-year accounting period, the taxable income shall be computed without regard to the specific date when specific sales, purchases and other transactions occur. Their income and expenses for the fiscal year shall be deemed to have been earned and spent equally for each month of the period.
>
> xxx xxx xxx
>
> For purposes of this Section, the term 'gross income' derived from business shall be equivalent to gross sales less sales returns, discounts and allowances and cost of goods sold. 'Cost of goods sold' shall include all business expenses directly incurred to produce the merchandise to bring them to their

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present location and use.

In the case of taxpayers engaged in the sale of service, *'gross income'* means gross receipts less sales returns, allowances and discounts. xxx xxx xxx"

Petitioner's amended Annual Income Tax Return shows that petitioner had no income tax liability (Exhibit "D-5") for its fiscal year ending March 31, 2001. Nevertheless, respondent assessed the petitioner for deficiency minimum corporate income tax (MCIT) for said year. So the controversy centers on whether petitioner is liable to pay MCIT. Is the MCIT considered as "other tax" in order that the "in lieu of all other taxes" clause under Section 13 of P.D. No. 1590 may be availed of by the petitioner?

THIS COURT'S RULING

The Petition for Review is meritorious.

Section 27 (E) of the 1997 NIRC imposes the 2% MCIT rate on the **gross income** of a corporation in a particular taxable year. It provides:

"(1) Imposition of tax. – A minimum corporate income tax of two percent **(2%) of the gross income** as of the end of the taxable year, as defined herein, is hereby imposed on a corporation taxable under this Title, beginning on the fourth taxable year immediately following the year in which such corporation commenced its business operations, when the minimum income tax is greater than the tax computed under subsection (A) of this Section for the taxable year.

(2) Carry Forward of Excess Minimum Tax. — Any excess of the minimum corporate income tax over the normal income tax as computed under Subsection (A) of this Section shall be carried forward and credited against the normal income tax for the three (3) immediately succeeding taxable years.

(3) Relief from the Minimum Corporate Income Tax Under Certain Conditions. — The Secretary of Finance is hereby authorized to suspend the imposition of the minimum

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> corporate income tax on any corporation which suffers losses on account of prolonged labor dispute, or because of force majeure, or because of legitimate business reverses.
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> The Secretary of Finance is hereby authorized to promulgate, upon recommendation of the Commissioner, the necessary rules and regulations that shall define the terms and conditions under which he may suspend the imposition of the minimum corporate income tax in a meritorious case.
>
> (4) Gross Income Defined – For purposes of applying the minimum corporate income tax provided under Subsection (E) hereof, the term *'gross income'* shall mean gross sales less sales returns, discount and allowances and cost of goods sold. x x x"

Although the MCIT is a component of the corporate income tax system in this jurisdiction, petitioner cannot be held liable to pay the P272,421,886.58 MCIT assessed by the respondent for its fiscal year ending March 31, 2001 because the MCIT is **not** the basic corporate income tax referred to in Section 13 of petitioner's franchise. This is clear from Section 13 of P.D. No. 1590 which provides as follows:

> SEC. 13. In consideration of the franchise and rights hereby granted, the grantee shall pay to the Philippine Government during the life of this franchise whichever of subsections (a) and (b) hereunder will result in a lower tax:
>
> > (a) The **basic corporate income tax based** on the grantee's **annual net taxable income** computed in accordance with the provisions of the National Internal Revenue Code; or
> >
> > b) A franchise tax of two per cent (2%) of the gross revenues derived by the grantee from all sources, without distinction as to transport or non-transport operations; provided, that with respect to international air-transport service, only the gross passenger, mail, and freight revenues from its outgoing flights shall be subject to this tax.

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The tax paid by the grantee under either of the above alternatives **shall be in lieu of all other taxes**, duties, royalties, registration, license, and other fees and charges of any kind, nature, or description, imposed, levied, established, assessed, or collected by any municipal, city, provincial, or national authority or government agency, now or in the future, including but not limited to the following:

(1) All taxes, duties, charges, royalties, or fees due on local purchases by the grantee of aviation gas, fuel, and oil, whether refined or in crude form, and whether such taxes, duties, charges, royalties, or fees are directly due from or imposable upon the purchaser or the seller, producer, manufacturer, or importer of said petroleum products but are billed or passed on the grantee either as part of the price or cost thereof or by mutual agreement or other arrangement; provided, that all such purchases by, sales or deliveries of aviation gas, fuel, and oil to the grantee shall be for exclusive use in its transport and non-transport operations and other activities incidental thereto;

(2) All taxes, including compensating taxes, duties, charges, royalties, or fees due on all importations by the grantee of aircraft, engines, equipment, machinery, spare parts, accessories, commissary and catering supplies, aviation gas, fuel, and oil, whether refined or in crude form and other articles, supplies, or materials; provided, that such articles or supplies or materials are imported for the use of the grantee in its transport and transport operations and other activities incidental thereto and are not locally available in reasonable quantity, quality, or price;

(3) All taxes on lease rentals, interest, fees, and other charges payable to lessors, whether foreign or domestic, of aircraft, engines, equipment, machinery, spare parts, and other property rented, leased, or chartered by the grantee where the payment of such taxes is assumed by the grantee;

(4) All taxes on interest, fees, and other charges on foreign loans obtained and other

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> obligations incurred by the grantee where the payment of such taxes is assumed by the grantee;
>
> (5) All taxes, fees, and other charges on the registration, licensing, acquisition, and transfer of aircraft, equipment, motor vehicles, and all other personal and real property of the grantee; and
>
> (6) The corporate development tax under Presidential Decree No. 1158-A.
>
> The grantee, shall, however, pay the tax on its real property in conformity with existing law.
>
> For purposes of computing the basic corporate income tax as provided herein, the grantee is authorized:
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> a. To depreciate its assets to the extent of not more than twice as fast the normal rate of depreciation; and
>
> b. To carry over as a deduction from taxable income any net loss incurred in any year up to five years following the year of such loss. *(Emphasis supplied)*

The **basic corporate income tax** mentioned in petitioner's franchise refers to the 35% income tax on the **taxable income** of domestic corporations under Section 27 (A) of the 1997 NIRC, as amended by Republic Act No. 9337. The tax base thereof, as expressly specified in Section 13 of petitioner's franchise, is petitioner's **annual net taxable income.** On the other hand, the **MCIT** under Section 27 (E) (1) is imposed on the **gross income** of a corporation. Therefore, the MCIT, imposed as it is upon gross income, cannot be made to apply to herein petitioner by virtue of the express provision in its franchise that its basic corporate income tax shall be based on its **annual net taxable income**. It is in this sense that the MCIT qualifies as "other taxes" from which the petitioner had been granted tax exemption by its franchise.

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The MCIT belongs to the category of "other taxes" in the same manner as the 20% final tax imposed on the amount of interest on currency bank deposit and yield on deposit substitutes likewise found in Section 27 of the 1997 NIRC. The Court of Appeals had likewise ruled that petitioner is exempt from the payment of the *20% final tax* on the amount of interest income from its bank deposits because it is, in contemplation of Sec. 13 of P.D. 1590, considered as "other taxes", thus:

> The evidence show, however, that after computation, the petitioner appears to have no corporate income tax liability, which reasonably explains why the petitioner need not pay any corporate tax as there was nothing at all to pay because there was in fact no tax due to the government during the taxable year involved, after computations in accordance with the NIRC. Since no tax payment was made, is petitioner required, as contended by the respondent, to pay the 2% franchise tax in order to be exempted from the payment of other taxes such as the 20% final withholding tax on interest income being claimed herein by the petitioner? We believe the law does not say so. The provision of Section 13 is explicit and unequivocal. The petitioner-grantee must choose between the two aforementioned alternatives in the payment of its tax liability to the government and its choice must be that which will result in a lower tax liability. Obviously, zero tax liability is lower than the 2% franchise tax; hence, the petitioner chose a better alternative in availing of the basic corporate income tax as basis for its tax liability to the government.
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> Moreover, **the law does not say that to avail of the exemption from payment of all other taxes, there must be, after computation, a tax due coupled with an "actual" payment thereof**. The law simply states that the petitioner-grantee must choose between the two alternatives and such choice must be that whichever will result in a lower tax liability. **Any tax paid under either of the two alternatives shall exempt the petitioner-grantee from the payment of the other taxes as the said tax payment is considered by law "in lieu of all other taxes."** In this case, as earlier stated, the petitioner availed of the right and privilege granted to it by law by opting to choose the basic corporate income tax as basis for its tax liability, which however, after considering the factors allowed by law, resulted in a zero tax liability. Such zero tax liability as a

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> result of the exercise of its lawful privilege should not be taken against the petitioner nor deprive it of availment of exemption granted by the law.[15] (Emphasis supplied)

In another case involving a claim for refund of the 10% overseas communications tax filed by the petitioner, the Court of Appeals categorically ruled that the "in lieu of all taxes" clause under Section 13 of petitioner's legislative franchise exempts PAL from all other taxes necessary in the conduct of its business covered by the franchise, except the tax on its real property. The Court of Appeals ruled:

> **It is likewise erroneous to conclude that "it is mandatory that (the petitioner) must pay its franchise tax of two percent (2%) or to pay its corporate income tax to avail of the incentives provided under the last paragraph** that the 'tax paid by the grantee under either of the above alternative shall be in lieu of all other taxes, duties, royalties, registration, license and other fees and charges x x x, regardless of whether or not it suffered a net loss during a particular taxable year." To repeat, the only qualification provided for in the law is the option given to PAL to choose between the tax which will yield the lesser liability. Nothing is said about exemption from other taxes if PAL, choosing the payment of corporate income tax, does not pay income tax at all if the lawmakers intended to provide such a condition, then they would have included such a provision. More importantly, **if We were to uphold this interpretation, this would effectively negate the rationale of the law, by stripping PAL of the right given to it by virtue of its franchise to avail of tax incentives, such as the 'in lieu of all other taxes' clause**.[16]

The aforementioned rulings are applicable by analogy to the present Petition for Review in view of the following considerations: *First,* Section 13 of its franchise expressly defined the income tax liabilities of the petitioner,

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[15] *Philippine Airlines, Inc. v. Hon. Court of Tax Appeals and The Commissioner of Internal Revenue,* CA-G.R. SP NO. 67970, September 30, 2003.

[16] *Philippine Airlines, Inc. v. Honorable Court of Tax Appeals and The Commissioner of Internal Revenue,* CA-G.R. SP NO. 69388, November 25, 2003.

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consequently, any other tax such as the 20% final tax, the 10% overseas communications tax or the MCIT are considered as "other taxes" from which it has been granted tax exemption.

Second, if petitioner chooses Section 13 (a) of its franchise and after computation, no income tax appears to be due from petitioner, it is not mandatory for petitioner to pay its franchise tax of 2% of its gross revenues under option (b) of Section 13 before it could avail of its tax exemption under the "in lieu of all other taxes" clause in its franchise. Otherwise, petitioner will be deprived of the right to choose the income tax option it desires, which right has been clearly granted to it by its franchise. Similarly, the imposition of the MCIT will also negate petitioner's right to choose the income tax option that will result to a lesser income tax liability thereby defeating the tax incentives expressed in petitioner's franchise.

Moreover, Section 27 (E) of the 1997 NIRC on MCIT did not repeal petitioner's franchise in view of the following reasons:

1. The 1997 NIRC is a general law whereas P.D. No. 1590 is a special law. There was neither an express nor an implied repeal of P.D. No. 1590. As a rule, a general law cannot impliedly alter, repeal, or amend a special law;

2. There is an express prohibition against implied repeal found in Section 24 of P.D. No. 1590.

A careful perusal of Section 27(E) of the 1997 NIRC reveals that it did not expressly provide that it modifies, amends or repeals the provisions of P.D. No. 1590 pertaining to the tax privileges of petitioner. As held by the Supreme Court, as far back as in the case of *The Manila Railroad Company* *vs. James J. Rafferty, as Collector of Internal Revenue,*[17] **a general law which does not expressly repeal a prior special law will not affect the provisions of the special law**, thus:

> "Repeals of laws by implication are not favored; and the mere repugnance between two statutes should be very clear in order to warrant the court in holding that the later in time repeals the other, when it does not in terms purport to do so. (Cooley's Constitutional Limitations [6th Ed.], p. 182, and cases cited; Sutherland Stat. Construction, Vol. 1, p. 465 [2d Ed.]; Kinney vs. Mallory, 3 Ala., 626; Banks vs. Yolo County, 104 Cal., 258; People vs. Pacific Import Co., 130 Cal., 442; Reese vs. Western Union etc. Co., 123 Ind., 294; 7 L. R. A., 583; Cope vs. Cope, 137 U. S., 682.)
>
> In the case of McKenna vs. Edmundstone (91 N. Y., 231) the court said: "It is well settled that a special and local statute, providing for a particular case or class of cases, is not repealed by a subsequent statute, general in its terms, provisions and application, unless the intent to repeal or alter is manifest, although the terms of the general act are broad enough to include the cases embraced in the special law." That rule is but the application of the larger rule that a statute is not to be deemed repealed, by implication, by a subsequent Act upon the same subject unless the two are manifestly inconsistent with, and repugnant to, each other, or unless a clear intention is disclosed on the face of the later statute to repeal the former one.
>
> It is a canon of statutory construction that a later statute, general in its terms and not expressly repealing a prior special statute, will ordinarily not affect the special provisions of such earlier statute. (Steamboat Company vs. Collector, 18 Wall. [U. S.], 478; Cass County vs. Gillett, 100 U. S., 585; Minnesota vs. Hitchcock, 185 U. S., 373, 396.)
>
> Where there are two statutes, the earlier special and the later general — the terms of the general broad enough to include the matter provided for in the special — the fact that one is special and the other is general creates a presumption that the special is to be considered as remaining an exception to the general, one as a general law of the laid, the other as the law of a particular case. (State vs. Stoll, 17 Wall. [U. S.], 425.)

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[17] G.R. No. 14205, September 30, 1919 (40 Phil 224).

> Said Act No. 1510 is a charter granted to the plaintiff company by the Government of the Philippine Islands. It is in the nature of a private contract. It is not a law constituting a part of the machinery of the general government. It was adopted after careful consideration of the private rights of the plaintiff in relation with the resultant benefits to the State. It stands upon a different footing from the general law. When a charter is granted, it constitutes a certain property right. Charters or special laws, such as Act No. 1510, stand upon a different footing from general laws. Once granted, a charter becomes a private contract and cannot be altered nor amended except by consent of all concerned, unless that right is expressly reserved. (Dartmouth College vs. Woodword, 4 Wheat., 578.) The reason for the rule is clear. The Legislature, in passing a special charter, have their attention directed to the special facts and circumstances which the Act or charter is intended to meet. The Legislature consider and make provision for all the circumstances of the particular case. The Legislature having specially considered all of the facts and circumstances in the particular case in granting a special charter, it will not be considered that the Legislature, by adopting a general law containing provisions repugnant to the provisions of the charter, and without making any mention of its intention to amend or modify the charter, intended to amend, repeal, or modify the special act. (Lewis vs. Cook County, 74 Ill. App., 151; Philippine Railway Co. vs. Nolting, 34 Phil., 401.)"

In addition to the foregoing, Section 24 of P.D. 1590 expressly provides that petitioner's franchise can only be modified, amended, or repealed *"**expressly by a special law or decree**"* that shall specifically modify any section or provision thereof. Therefore, repeal by implication is prohibited. Said section provides:

> "SEC. 24. This franchise, as amended, or any section or provision hereof may only be modified, amended, or repealed expressly by a special law or decree that shall specifically modify, amend, or repeal this franchise or any section or provision thereof."

Respondent, however, argues that petitioner is covered by Section

27(E) of the 1997 NIRC as implemented by Revenue Regulations No. 9-98. According to the respondent, *"it must be further stressed that both P.D. No. 1590 and R.A. No. 8424 are both special laws; hence, in case of conflict the later law must prevail".*[18] Respondent further avers that Revenue Memorandum Circular No. 66-2003 ("RMC No. 66-2003") dated October 14, 2003 clarifies the taxability of petitioner as well as other franchise grantees similarly situated because it provides that:

> Given that PAL has been operating at a loss for many years, it is evident that in applying the provisions of Section 13 of said Charter, for the computation of its income tax liability, it chose to use the normal corporate income taxation under Section 27(A) of the Code as basis thereof in order to exempt itself from tax liability. <u>This is without, however, considering the adjunct provision introduced by RA 8424 on the imposition of minimum corporate income tax (MCIT).</u>
>
> Section 27(E) of the Code, as implemented by Revenue Regulations No. 9-98, provides that MCIT of two percent (2%) of the gross income as of the end of the taxable year (whether calendar or fiscal year, depending on the accounting period employed) is imposed upon any domestic corporation beginning the 4th taxable year immediately following the taxable year in which such corporation commenced its business operations. <u>The MCIT shall be imposed whenever such corporation has zero or negative taxable income or whenever the amount of MCIT is greater than the normal income tax due from such corporation.</u>
>
> <u>With the advent of such provision beginning January 1, 1998, it is certain that domestic corporations subject to normal income tax as well as those who choose to be subject thereto, such as PAL, are bound to pay income tax regardless of whether they are operating at a profit or loss.</u>
>
> <u>Thus, in case of operating loss, PAL may either opt to subject itself to minimum corporate income tax or to the 2% franchise tax, whichever is lower.</u> On the other hand, if PAL is operating at a profit, the income tax liability shall be the lower amount between:

[18] CTA Records, MEMORANDUM (For the Respondent), p. 14.

(1) normal income tax or MCIT whichever is higher; and
(2) 2% franchise tax. *(Underscoring supplied.)*

We do not agree.

The National Internal Revenue Code is a general law,[19] therefore, it cannot impliedly repeal[20] petitioner's franchise which is a special law. In upholding the precedence of a special law over a general law, the Supreme Court ruled as follows:

> When there appears to be an inconsistency or conflict between two statutes and one of the statutes is a general law, while the other is a special law, then repeal by implication is not the primary rule applicable. The following rule should principally govern instead:
>
> Specific legislation upon a particular subject is not affected by a general law upon the same subject unless it clearly appears that the provisions of the two laws are so repugnant that the legislators must have intended by the later to modify or repeal the earlier legislation. The special act and the general law must stand together, the one as the law of the particular subject and the other as the general law of the land. (Ex Parte United States, 226 U. S., 420; 57 L. ed., 281; Ex Parte Crow Dog, 109 U. S., 556; 27 L. ed., 1030; Partee vs. St. Louis & S. F. R. Co., 204 Fed. Rep., 970.)
>
> Where there are two acts or provisions, one of which is special and particular, and certainly includes the matter in question, and the other general, which, if standing alone, would include the same matter and thus conflict with the special act or provision, the special must be taken as intended to constitute an exception to the general act or provision, especially when such general and special acts or provisions are contemporaneous, as the Legislature is not to be presumed to have intended a conflict. (Crane v. Reeder and Reeder, 22 Mich., 322, 334;

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[19] Commissioner of Internal Revenue vs. Central Luzon Drug Corporation, G.R. No. 159647, April 15, 2005 (456 SCRA 414).

[20] Philippine National Oil Company vs. The Hon. Court of Appeals, The Commissioner of Internal Revenue and Tirso Savellano, G.R. No. 109976, April 26, 2005 and Philippine National Bank vs. The Hon. Court of Appeals, Court of Tax Appeals, Tirso B. Savellano and Commissioner of Internal Revenue, G.R. No. 112800, April 26, 2005 (457 SCRA 32).

University of Utah vs. Richards, 77 Am. St. Rep., 928.) 60

It has, thus, become an established rule of statutory construction that between a general law and a special law, the special law prevails — *Generalia specialibus non derogant.* [21]

As previously discussed, Section 27(E) of the NIRC of 1997 did not modify, amend or repeal P.D. No. 1590, *a fortiori,* RMC No. 66-2003[22] cannot amend PAL's franchise. A scrutiny of the provisions of RMC No. 66-2003 shows that even if PAL suffers losses in its business operations, it is still liable to pay the 2% MCIT based on its gross income. Clearly, this is contrary to the intention of Section 13 of P.D. 1590 allowing petitioner to choose the income tax option that will result to a lesser tax liability as an incentive for undertaking a line of business impressed with public service. It went beyond interpreting the law it seeks to implement. "Although it is widely accepted that the interpretation placed upon a statute by the executive officers, whose duty is to enforce it, is entitled to great respect by the courts, this interpretation is not conclusive and will have to be ignored if judicially found to be erroneous and clearly absurd or improper. An administrative issuance that overrides the law it merely seeks to interpret, instead of remaining consistent and in harmony with it, will not be countenanced by this Court."[23] It is only the legislature that has the prerogative to alter or modify the terms of any previously granted

[21] *Ibid.*

[22] "Clarifying the Taxability of Philippine Airlines (PAL) for Income Tax Purposes As Well As Other Franchise Grantees Similarly Situated."

[23] *Commissioner of Internal Revenue v. American Express Int'l., Inc.,* G.R. No. 152609, June 29, 2005; *Philippine Bank of Communications v. Commissioner of Internal Revenue*, January 28, 1999 (462 SCRA 197).

franchise.[24]

WHEREFORE, premises considered, the instant Petition for Review is hereby **GRANTED**. Accordingly, Assessment Notice No. INC FY-3-31-01-000094 and Formal Letter of Demand for the payment of deficiency Minimum Corporate Income Tax in the amount of ₱272,421,886.58 are hereby **CANCELLED** and **WITHDRAWN**.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

[24] Article XII, Section 11 of the 1986 Constitution. See also *Cotobato Light & Power Co., Inc. v. The City of Cotobato*, 32 SCRA 231, 244 [1970].

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.

Juanito C. Castañeda Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairman

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Justice