

**REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY**

SPECIAL THIRD DIVISION

**TARLAC I ELECTRIC
COOPERATIVE, INC.
(TARELCO),**

Petitioner,

CTA Case No. 10092

Members:

- versus -

**REYES-FAJARDO, Chairperson,
and
ANGELES, JJ.**

**COMMISSIONER OF
INTERNAL REVENUE,**

Respondent.

Promulgated:

SEP 14 2026

1:52 p.m.

X ----- X

D E C I S I O N

ANGELES, J.:

Before this Court is a *Petition for Review* filed on June 14, 2019¹ by Tarlac I Electric Cooperative, Inc. (TARELCO) (petitioner), praying for the cancellation and withdrawal of respondent's Final Decision on Disputed Assessment (FDDA) and Amended FDDA, issued for the alleged deficiency income tax (IT), value-added tax (VAT), expanded withholding tax (EWT), and withholding tax on compensation (WTC) for taxable year (TY) 2015, in the aggregate amount of ₱48,933,413.13.

During the pendency of the case, respondent likewise issued a Warrant of Dstraint and/or Levy No. WDL-2019-RR4-AMS-000218 (WDL)² and Warrants of Garnishment dated October 21, 2021 (WOGs)³ to enforce collection of the disputed assessments. Petitioner thereafter sought the lifting and cancellation of the same.

¹ *Petition for Review*, Docket — Vol. I, pp. 10 to 165.

² Exhibit "P-132," Docket — Vol. IV, p. 1786.

³ Exhibits "P-133" to "P-148," Docket — Vol. IV, pp. 1787 to 1802.

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PARTIES

Petitioner is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines with principal office at the Municipality of Paniqui, Province of Tarlac, pursuant to its Articles of Incorporation dated January 24, 1975, filed before the National Electrification Administration (NEA).⁴

Respondent is the duly appointed Commissioner of Internal Revenue (CIR) who is tasked to assess and collect all national internal revenue taxes, fees, and charges, and to enforce all forfeitures, penalties, and fines connected therewith. Respondent holds office at the Bureau of Internal Revenue (BIR) National Office Building, BIR Road, Diliman, Quezon City where he may be served with summonses, legal processes, orders and resolutions of the Honorable Court.⁵

FACTS

On July 20, 2017, petitioner received a Letter of Authority (LOA) No. 17B-2017-00000066 dated July 19, 2017⁶ authorizing Revenue Officer Camille Ann Gigante (RO Gigante) and Group Supervisor Clarita Beltran (GS Beltran) to examine the books of accounts and other accounting records of petitioner for all internal revenue taxes covering TY 2015.

On February 22, 2018, petitioner received a Notice for Informal Conference (NIC) dated February 19, 2018 recommending an assessment of deficiency taxes in the amount of ₱548,410,191.56 inclusive of statutory penalties for TY 2015.⁷ Petitioner sent its reply on March 20, 2018.⁸

On June 01, 2018, petitioner received a Preliminary Assessment Notice (PAN) with Assessment No. 17BE1604009602 dated May 21, 2018 issued by Atty. Jethro M. Sabariaga as Regional Director of Revenue Region No. 4, assessing petitioner for alleged deficiency internal revenue taxes for TY 2015, in the amount of ₱486,748,178.10, broken down as follows:⁹

⁴ *Supplemental Joint Stipulation of Facts and Issues*, Docket — Vol. II, pp. 736 to 740.

⁵ *Id.*

⁶ Exhibit "P-11," Docket — Vol. IV, p. 1725.

⁷ Exhibit "P-16," Docket — Vol. IV, p. 1730.

⁸ Exhibits "P-17" and "P-18," Docket — Vol. IV, pp. 1731 to 1744.

⁹ Exhibit "P-19," Docket — Vol. VII, pp. 2939 to 2945.

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Tax Type	Amount
IT	₱347,149,024.79
VAT	133,113,551.46
EWT	6,369,061.98
WTC	108,539.87
Administrative Penalties	8,000.00
Total	₱486,748,178.10

On June 14, 2018, petitioner filed its Reply to Preliminary Assessment,¹⁰ setting forth its defenses and explanations. Annexed thereto were supporting documents.

On July 17, 2018, petitioner received a Letter dated July 02, 2018,¹¹ as well as a Formal Letter of Demand (FLD), assessing it for alleged deficiency internal revenue taxes for TY 2015 in the amount of ₱492,312,208.89, as follows:¹²

Tax Type	Amount
IT	₱351,153,019.04
VAT	134,601,587.43
EWT	6,439,856.09
WTC	109,746.33
Administrative Penalties	8,000.00
Total	₱492,312,208.89

On August 15, 2018, petitioner filed its Protest dated August 14, 2018,¹³ and made a request for reconsideration therein. In its Protest, petitioner did not dispute certain deficiency tax assessments and findings in the FLD. Petitioner claims that on August 17, 2018, it paid the undisputed assessments on EWT, WTC, and administrative penalties in the amounts of ₱3,848,963.56, ₱97,074.55, and ₱8,000.00, respectively.

On May 15, 2019, petitioner received the FDDA dated May 14, 2019, signed by Regional Director Edgar B. Tolentino of Revenue Region No. 4 (RD Tolentino), ordering petitioner to pay deficiency

¹⁰ Exhibits "P-20" and "P-21," Docket — Vol. IV, pp. 1745 to 1755.

¹¹ Exhibit "P-22," Docket — Vol. IV, p. 1756.

¹² Exhibit "P-23," Docket — Vol. IV, pp. 1757 to 1767.

¹³ Exhibit "P-24," Docket — Vol. IV, pp. 1768 to 1776.

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internal revenue taxes for TY 2015 in the amount of ₱48,417,310.99, broken down as follows:¹⁴

Tax Type	Amount
IT	₱33,790,192.60
VAT	12,371,713.24
EWT	2,243,545.79
WTC	11,859.36
Total	₱48,417,310.99

Petitioner claims that on May 24, 2019, it paid the undisputed portions of the assessments for IT, VAT, WTC, and EWT in the amounts of ₱6,098,725.33, ₱984,567.37, ₱11,859.36, and ₱2,226,209.65, respectively.

On May 27, 2019, petitioner received an Amended FDDA dated May 17, 2019 signed by RD Tolentino, ordering petitioner to pay deficiency internal revenue taxes for TY 2015, in the amount of ₱48,933,413.13, broken down as follows:¹⁵

Tax Type	Amount
IT	₱33,790,192.60
VAT	12,371,713.24
EWT	2,759,647.93
WTC	11,859.36
Total	₱48,933,413.13

Petitioner claims that on June 13, 2019, it paid the amount of ₱516,102.14 representing the increase in the interest pertaining to the EWT assessment.

PROCEEDINGS BEFORE THIS COURT

On June 14, 2019, petitioner filed the instant *Petition for Review*.¹⁶ Respondent filed his *Answer*¹⁷ on September 16, 2019. On January 16, 2020, the BIR Records were transmitted to this Court.

¹⁴ Exhibit "P-35," Docket — Vol. IV, pp. 1778 to 1781.

¹⁵ Exhibit "P-48," Docket — Vol. IV, pp. 1782 to 1785.

¹⁶ *Petition For Review*, Docket — Vol. I, pp. 10 to 165.

¹⁷ *Answer*, Docket — Vol. I, pp. 180 to 190.

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On February 18¹⁸ and October 15,¹⁹ 2020, respondent and petitioner filed their respective pre-trial briefs. After attending the pre-trial conference, the parties filed a *Joint Stipulation of Facts and Issues* (JSFI),²⁰ as well as a *Supplemental JSFI*.²¹ Both parties also signed a *No Agreement to Mediate*²² form. Thereafter, on January 08, 2021, a Pre-Trial Order²³ was issued. Subsequently, an Amended Pre-Trial Order²⁴ was issued upon petitioner's motion.²⁵

On November 09, 2021, petitioner filed a *Motion to Avail the Provisions of Rule 13 of the Revised Rules of the Court of Tax Appeals*,²⁶ stating its intention to engage the services of an Independent Certified Public Accountant (ICPA). On February 22, 2022, Mr. Marco Fernando L. Ng (Mr. Ng) was commissioned as an ICPA.²⁷ Mr. Ng submitted his report,²⁸ supplemental report,²⁹ and second supplemental report³⁰ on March 24, April 22, and May 10, 2022, respectively. Petitioner presented Mr. Ng as its witness on May 12, 2022.³¹

On November 11, 2019, petitioner received a WDL with No. WDL-2019-RR4-AMS-000218.³² On October 29, 2021, petitioner was informed by its banks that WOGs had been served on them.³³ Thus, on November 29, 2021, petitioner filed an *Urgent Motion to Lift*

¹⁸ *Respondent's Pre-Trial Brief*, Docket — Vol. I, pp. 215 to 220.

¹⁹ *Pre-Trial Brief*, Docket — Vol. I, pp. 235 to 248.

²⁰ *Joint Stipulation of Facts and Issues*, Docket — Vol. II, pp. 730 to 735.

²¹ *Supplemental Joint Stipulation of Facts and Issues*, Docket — Vol. II, pp. 736 to 740.

²² *No Agreement to Mediate*, Docket — Vol. I, pp. 194 to 196.

²³ *Pre-Trial Order*, Docket — Vol. II, pp. 728 to 729.

²⁴ *Amended Pre-Trial Order*, Docket — Vol. II, pp. 783 to 792.

²⁵ *Motion to Amend (Re: Pre-Trial Order Dated January 8, 2021)*, Docket — Vol. II, pp. 771 to 774.

²⁶ *Motion to Avail the Provisions of Rule 13 of the Revised Rules of the Court of Tax Appeals*, Docket — Vol. IV, pp. 1490 to 1496.

²⁷ *Submission (With Attached Oath of Commission of Mr. Marco Fernando L. Ng)*, Docket — Vol. IV, pp. 1633 to 1638.

²⁸ *Letter Report dated March 24, 2022*, Docket — Vol. IV, pp. 1646 to 1683.

²⁹ *Motion for Leave to File Supplemental Independent CPA Report (With Attached Supplemental ICPA Report Dated April 22, 2022 and Supporting Documents)*, Docket — Vol. IV, pp. 1864 to 1869; and *Supplemental Report Dated April 22, 2022*, Docket — Vol. IV, pp. 1850 to 1862.

³⁰ *Motion for Leave to File Second Supplemental Independent Certified Public Accountant Report (With Attached Second Supplemental Independent Certified Public Accountant Report dated May 6, 2022 and Supporting Documents)*, Docket — Vol. V, pp. 2184 to 2190; and *Supplemental ICPA Report Dated May 6, 2022*, Docket — Vol. V, pp. 2191 to 2201.

³¹ *Submission (With Attached Judicial Affidavit of Marco Fernando L. Ng Dated January 31, 2022)*, Docket — Vol. IV, pp. 1570 to 1575; *Judicial Affidavit of Marco Fernando L. Ng dated January 31, 2022*, Docket — Vol. IV, pp. 1576 to 1587; *Submission (With Attached Judicial Affidavit of Marco Fernando Ng)*, Docket — Vol. IV, pp. 1811 to 1816; *Judicial Affidavit of Marco Fernando Ng*, Docket — Vol. IV, pp. 1817 to 1849; *Motion for Leave to File Supplemental Judicial Affidavit of Marco Fernando L. Ng*, Docket — Vol. V, pp. 2227 to 2232; *Submission (With Attached Judicial Affidavit of Marco Fernando L. Ng dated May 6, 2022)*, Docket — Vol. V, pp. 2202 to 2208; and *Supplemental Judicial Affidavit of Marco Fernando L. Ng*, Docket — Vol. V, pp. 2209 to 2226.

³² *Exhibit "P-132"*, Docket — Vol. IV, p. 1786.

³³ *Exhibits "P-133" to "P-148"*, Docket — Vol. IV, pp. 1787 to 1802.

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Warrant of Garnishment and Suspend the Collection of Taxes, and Dispense with Payment of Bond (Motion to Lift) before this Court.³⁴ On February 18, 2022, respondent filed his *Opposition [Re: Urgent Motion to Lift Warrant of Dstraint and/or Levy and Suspend Collection of Tax]*.³⁵

On March 17, and October 20, 2022, petitioner presented Ms. Mayvellene M. de Aquino (Ms. de Aquino) in support of its *Motion to Lift*³⁶ as well as the instant *Petition for Review*.³⁷ Afterwards, petitioner's evidence in support of its *Motion to Lift* were formally offered.³⁸ After the parties submitted their respective memoranda,³⁹ this Court granted petitioner's *Motion to Lift*.⁴⁰

On June 13, and November 25, 2022, petitioner filed its *Formal Offer of Evidence (with Motion to Set Additional Commissioner's Hearing)*,⁴¹ and *Supplemental Formal Offer of Evidence*,⁴² both in support of the main case. Upon receipt of this Court's Resolution⁴³ on its formal offer of evidence, petitioner filed its *Motion for*

³⁴ *Urgent Motion to Lift Warrant of Garnishment and Suspend the Collection of Taxes, and Dispense with Payment of Bond*, Docket – Vol. IV, pp. 1539 to 1563.

³⁵ *Opposition [Re: Urgent Motion to Lift Warrant of Dstraint and/or Levy and Suspend Collection of Tax]*, Docket – Vol. IV, pp. 1615 to 1622.

³⁶ *Submission (With Attached Supplemental Judicial Affidavit of Mayvellene M. De Aquino)*, Docket – Vol. IV, pp. 1464 to 1469; *Supplemental Judicial Affidavit of Mayvellene M. De Aquino*, Docket – Vol. IV, pp. 1470 to 1482; *Submission (With Attached Supplemental Judicial Affidavit of Mayvellene M. De Aquino dated November 26, 2021)*, Docket – Vol. IV, pp. 1500 to 1505; *Supplemental Judicial Affidavit of Mayvellene M. De Aquino*, Docket – Vol. IV, pp. 1506 to 1522; *Motion to Recall Mayvellene M. De Aquino and to Defer the Resolution of Petitioner's Formal Offer of Evidence*, Docket – Vol. IV, pp. 1870 to 1876; *Motion for Leave to File Supplemental Judicial Affidavit of Mayvellene M. De Aquino*, Docket – Vol. IV, pp. 1877 to 1886; *Submission (With Attached Supplemental Judicial Affidavit of Mayvellene M. De Aquino)*, Docket – Vol. IV, pp. 1887 to 1892; and *Supplemental Judicial Affidavit of Mayvellene M. De Aquino*, Docket – Vol. IV, pp. 1893 to 1908.

³⁷ *Urgent Motion to Defer Presentation of Witness with Omnibus Motion for Leave to File Supplemental Judicial Affidavit of Mayvellene M. De Aquino and to Adopt Her Testimony in Support of the Petition for Review*, Docket – Vol. VI, pp. 2849 to 2858; *Motion to Substitute Witness (With Attached Submission and Judicial Affidavit of Mayvellene M. De Aquino)*, Docket – Vol. II, pp. 802 to 806; *Judicial Affidavit of Mayvellene M. De Aquino*, Docket – Vol. II, pp. 806 to 856; *Submission (With Attached Supplemental Judicial Affidavit of Mayvellene M. De Aquino dated July 29, 2022)*, Docket – Vol. VI, pp. 2799 to 2804; and *Supplemental Judicial Affidavit of Mayvellene M. De Aquino*, Docket – Vol. VI, pp. 2805 to 2818.

³⁸ *Formal Offer of Evidence (With Motion to Set Additional Commissioner's Hearing)*, Docket – Vol. IV, pp. 1700 to 1716; and *Comment/Opposition Re: Petitioner's Formal Offer of Evidence*, Docket – Vol. IV, pp. 1804 to 1808.

³⁹ *Memorandum (For Petitioner's Urgent Motion to Lift Warrant of Garnishment, Suspend the Collection of Tax, and Dispense with the Payment of Bond)*, Docket – Vol. VII, pp. 2871 to 2922; and *Memorandum (Re: Urgent Motion to Lift Warrant of Dstraint and/or Levy and Suspend Collection of Tax)*, Docket – Vol. VII, pp. 3213 to 3225.

⁴⁰ Resolution dated March 07, 2023, Docket – Vol. VII, pp. 3236 to 3247.

⁴¹ *Formal Offer Of Evidence (With Motion To Set Additional Commissioner's Hearing)*, Docket – Vol. V, pp. 2233 to 2277.

⁴² *Supplemental Formal Offer of Evidence*, Docket – Vol. VII, pp. 2923 to 2938.

⁴³ Resolution dated November 15, 2023, Docket – Vol. VII, pp. 3265 to 3275.

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*Reconsideration (Re: Resolution dated November 15, 2023).*⁴⁴ On September 04, 2024, this Court partially granted the motion for reconsideration.⁴⁵

On November 14, 2024, respondent presented his witness, RO Gigante.⁴⁶ Thereafter, respondent filed his *Formal Offer of Evidence*,⁴⁷ and petitioner filed its comment⁴⁸ thereto. This Court admitted all of respondent's offered evidence.⁴⁹

On August 22,⁵⁰ and September 02, 2025,⁵¹ respondent and petitioner each submitted their respective memoranda. Thus, on September 15, 2025, the instant case was submitted for decision.⁵²

ISSUES

The issues, as stated in the Amended Pre-Trial Order,⁵³ are as follows:

- A. Whether petitioner is liable for alleged deficiency income tax, value-added tax, withholding tax on compensation and expanded withholding tax assessment including its increments and interest in the aggregate amount of ₱48,933,413.13 for taxable year 2015;
- B. Whether respondent can lawfully issue an Amended FDDA, *motu proprio*, by increasing the amount being demanded of petitioner; and
- C. Whether the Members' Capital Contribution (MCC) Reinvestment Fund for Sustainable CAPEX (RFSC) account of petitioner is subject to tax.

⁴⁴ *Motion for Reconsideration (Re: Resolution Dated November 15, 2023)*, Docket — Vol. VII, pp. 3277 to 3297.

⁴⁵ *Resolution Dated September 04, 2024*, Docket — Vol. VII, pp. 3353 to 3363.

⁴⁶ *Offer of Testimony of Camille Ann B. Gigante (With Attached Judicial Affidavit of Camille Ann B. Gigante)*, Docket — Vol. I, pp. 221 to 232.

⁴⁷ *Respondent's Formal Offer of Evidence*, Docket — Vol. VIII, pp. 3382 to 3388.

⁴⁸ *Comment (To Respondent's Formal Offer of Evidence dated December 4, 2024)*, Docket — Vol. VIII, pp. 3391 to 3395.

⁴⁹ *Resolution dated July 09, 2025*, Docket — Vol. VIII, pp. 3401 to 3402.

⁵⁰ *Memorandum*, Docket — Vol. VIII, pp. 3453 to 3485.

⁵¹ *Memorandum*, Docket — Vol. VIII, pp. 3403 to 3450.

⁵² *Resolution dated September 15, 2025*, Docket — Vol. VIII, p. 3487.

⁵³ *Amended Pre-Trial Order*, Docket — Vol. II, pp. 783 to 792.

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ARGUMENTS OF THE PARTIES

Petitioner's Arguments

Petitioner claims that it is not liable for the assessments, which are void for having been made in violation of its due process rights. Particularly, petitioner claims that: **(1)** the assessments are unenforceable for lack of a revalidated LOA; **(2)** ROs who are not named in the LOA participated in the audit of petitioner's books of accounts; **(3)** respondent may not *motu proprio* issue an amended FDDA; **(4)** petitioner was not sufficiently informed of the factual and legal bases for the assessments; and **(5)** the issuances of the WDL and WOGs are premature.

Petitioner also submits that out of the ₱48,933,413.13 deficiency tax reflected in the Amended FDDA, it has already paid an aggregated amount of ₱9,837,463.85 on May 24, and June 13, 2019.

With regard to the deficiency income tax assessment, petitioner claims that as an electric cooperative, it is permanently exempt from income tax during its existence. Petitioner cites the case of *Misamis Oriental II Rural Electric Service Cooperative, Inc. v. CIR (MORESCO-II)*,⁵⁴ decided by this Court's Second Division in 2023, which held that Section 12 of Republic Act (RA) No. 10531 gives an electric cooperative the option to remain as a non-stock, non-profit cooperative, and it will be governed by the provisions of Presidential Decree (PD) No. 269, as amended by RA No. 10531.

Petitioner states that the remaining income tax and VAT assessments arise from respondent's treatment of petitioner's Member's Capital Contribution (MCC)/Reinvestment Fund for Sustainable Capital Expenditure (RFSC) collections as taxable income and gross receipts. Petitioner submits that these are capital contributions collected pursuant to the Energy Regulatory Commission's (ERC) Resolution No. 20, series of 2009, and do not constitute income. Moreover, petitioner argues that these collections are not made pursuant to sales of goods and services, and are therefore not subject to VAT as well.

⁵⁴ CTA Case No. 10145, February 28, 2023.

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Respondent's Counter-arguments

Respondent denies any due process violation which nullifies the assessments. It claims that the ROs were duly authorized to audit petitioner's books, and that the effect of the non-revalidation of a LOA is merely that it gives rise to administrative liability or disciplinary sanctions for the BIR officers responsible. Moreover, respondent claims that petitioner's voluntary partial payment of the assessments prevents it from now questioning the validity of the FDDA and the Amended FDDA.

Respondent argues that petitioner's claimed tax exemption under PD No. 269 is qualified by Fiscal Incentives Review Board (FIRB) Resolution No. 24-87. Accordingly, petitioner's income tax exemption is not perpetual in nature and already ended thirty (30) years after its incorporation.

Additionally, respondent argues that MCC/RFSC is subject to income tax and VAT. Respondent claims that while patronage capital is an equity investment which may be withdrawn by member-consumers, the MCC/RFSC may not be withdrawn, and is therefore subject to income tax.

RULING

After careful consideration of the parties' arguments and the records, this Court finds for petitioner.

The Court has jurisdiction over the instant Petition for Review

Preliminarily, this Court deems it appropriate to determine whether it has jurisdiction over the present matter.

Section 7(a)(1) of RA No. 1125,⁵⁵ as amended by RA No. 9282,⁵⁶ confers upon the Court of Tax Appeals exclusive appellate jurisdiction

⁵⁵ Republic Act (RA) No. 1125, AN ACT CREATING THE COURT OF TAX APPEALS, June 16, 1954.

⁵⁶ RA No. 9282, AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL

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to review decisions of respondent in cases involving disputed assessments, to wit:

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; (Emphases supplied)

Similarly, Section 3 (a)(1), Rule 4 of the Revised Rules of the Court of Tax Appeals,⁵⁷ states:

SEC. 3. Cases within the jurisdiction of the Court in Division. — The Court in Division shall exercise:

(a) Exclusive original or appellate jurisdiction to review by appeal the following:

- (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 Code or other laws administered by the Bureau of Internal Revenue; (Emphasis and underscoring supplied)

Section 11 of RA No. 1125,⁵⁸ as amended by RA No. 9282,⁵⁹ provides for the period for filing an appeal, as follows:

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**

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, March 30, 2004.

⁵⁷ A.M. No. 05-11-07-CTA, September 16, 2008.

⁵⁸ RA No. 1125, *supra* note 53.

⁵⁹ RA No. 9282, *supra* note 54.

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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. (Emphases supplied)

Accordingly, this Court has exclusive appellate jurisdiction to review decisions of respondent involving disputed assessments, provided that an appeal is timely filed within thirty (30) days from the taxpayer's receipt thereof.

Here, petitioner received the FDDA on **May 15, 2019** and the Amended FDDA on **May 27, 2019**. The instant *Petition for Review* was filed on **June 14, 2019**. Thus, the same was filed within the thirty (30)-day period counted from the receipt of either the FDDA or the Amended FDDA.

The *Petition for Review* was therefore timely filed.

The assessments are void for having been issued in violation of petitioner's due process rights

Having settled the matter of jurisdiction, the Court now turns to the validity of the assessments.

Petitioner raises several grounds which it claims render the assessments void, namely: **(1)** the assessments are unenforceable for lack of a revalidated LOA; **(2)** ROs who are not named in the LOA participated in the audit of petitioner's books of accounts; **(3)** respondent may not *motu proprio* issue an Amended FDDA; **(5)** petitioner was not sufficiently informed of the factual and legal bases for the assessments; and **(5)** the issuances of the WDL and WOGs are premature.

After review of the records and the applicable law, the Court finds that the assessments cannot be sustained. As will be discussed, respondent violated petitioner's right to due process when he *motu proprio* reopened a final administrative determination and issued an Amended FDDA increasing petitioner's tax liability. Respondent likewise failed to accord petitioner due process in the issuance of the FLD by failing to meaningfully consider and address petitioner's timely Reply to Preliminary Assessment and the supporting evidence submitted therewith.

The Court discusses each ground in turn.

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***I. The revalidation of the
LOA was not required,
and the lack of
revalidation does not
void the assessments***

Petitioner assails the validity of the assessments on the ground that the audit was conducted beyond the one hundred twenty (120)-day period of validity of the LOA, without any revalidation thereof.

Petitioner cites Revenue Memorandum Order (RMO) No. 43-90,⁶⁰ which state that, “*revalidation of L/As which have already expired, shall require the issuance of a new L/A,*” and the BIR’s General Audit Procedures and Documentation, which provides:

6. *How much time does a Revenue Officer have to conduct an audit? A Revenue Officer is allowed only one hundred twenty (120) days from the date of receipt of a Letter of Authority by the Taxpayer to conduct the audit and submit the required report of investigation. If the Revenue Officer is unable to submit his final report of investigation within the 120-day period, he must then submit a Progress Report to his Head of Office, and surrender the Letter of Authority for revalidation.*

From the foregoing, petitioner concludes that RO Gigante’s examination of its books beyond the one hundred twenty (120)-day period was unauthorized, and the resulting tax assessments are void.

This Court disagrees.

As early as 1964, revenue officers were directed to conclude the audit and submit their report within one hundred twenty (120) days from the date of issuance of the LOA. Beyond this period, the authority became void. Thus, RMO No. 43-64⁶¹ provides:

2. Fieldmen are hereby enjoined to serve the authority to investigate within thirty (30) days from the date of the issuance and to conduct the investigation and submit the report thereon **within one hundred twenty (120) days from the date of the issuance of the authority.** Any authority to investigate which has

⁶⁰ Amendment of Revenue Memorandum Order No. 37-90 Prescribing Revised Policy Guidelines for Examination of Returns and Issuance of Letters of Authority to Audit, September 20, 1990.

⁶¹ Period of Limitation for Action on Cases Received, July 03, 1964.

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not been reported within the above-mentioned period is considered **void** and the examiner concerned is prohibited from further investigation or contact with the taxpayer after the said period **unless the authority is revalidated**. (Emphasis and underscoring supplied)

Similarly, RMO No. 28-1983⁶² reads:

8. Reports of investigation on a tax case shall be submitted **within one hundred twenty (120) days from the date of issuance of the letter of authority**. In case the final report cannot be completed within the required period, a progress report shall be submitted and the letter of authority shall be returned for revalidation. (Emphasis and underscoring supplied)

The requirement of revalidation of LOAs, however, was later superseded by RMO No. 44-2010,⁶³ which expressly provides:

8. Beginning June 1, 2010, **the rule on the need for revalidation of LAs for failure of the revenue officials to complete the audit within the prescribed period shall be withdrawn**. Accordingly, there is no need for revalidation of the LA even if the prescribed audit period has been exceeded. However, the failure of the RO to complete the audit within the prescribed period shall be subject to the applicable administrative sanctions. (Emphasis and underscoring supplied)

RMO No. 19-2015⁶⁴ reiterated the same, as follows:

29. As stated in Item Number IV.8 of RMO No. 44-2010, it is reiterated that **pending eLAs as of the effectivity of the said Order shall no longer be revalidated**. In case the report of investigation cannot be rendered within the prescribed period, the concerned RO shall prepare a monthly progress report starting from the time such audit report should have been rendered stating therein the reason for the delay in the submission of the report of investigation duly noted by his GS and approved by the RDO/LTD/LTAD. The said progress report/s shall be attached to the docket of the case (Emphasis and underscoring supplied)

Thus, beginning June 01, 2010, the failure to complete the audit within the one hundred twenty (120)-day period counted from the

⁶² Prescribing the Use of the Revised Letter of Authority Form (BIR Form 19.65) and the Issuance of a Termination Letter in Lieu of the Letter of Confirmation, September 12, 1983.

⁶³ Electronic Issuance of Letters of Authority, May 12, 2010.

⁶⁴ BIR Audit Program, September 15, 2015.

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issuance of the LOA merely subjects the revenue officer to liability for administrative sanctions.

In the present case, the LOA was issued on July 19, 2017, long after RMO No. 44-2010 began to take effect. Accordingly, the failure to revalidate the LOA after the expiry of the above-mentioned one hundred twenty (120)-day period did not nullify the LOA, nor did it, on this ground alone, cause the nullity of the assessments.

***II. RO Gigante's authority
under the LOA
sufficiently established
the validity of the audit
and resulting
assessments***

Petitioner further assails the validity of the assessments on the ground that the ROs who were not authorized under the LOA purportedly participated in the audit of its books and records, thereby allegedly violating its right to due process.

Petitioner draws this conclusion from the various signatures and initials appearing on the PAN, FLD, FDDA, and Amended FDDA, which it claims do not belong to either RO Gigante or GS Beltran.

The contention is unavailing.

The mere appearance of signatures or initials of BIR officials not named in the LOA on the assessment notices does not, without more, establish that they conducted the audit or examination of petitioner's books and records. The records, in fact, indicate otherwise.

The NIC,⁶⁵ signed by Revenue District Officer Simplicio V. Cabantac, Jr., expressly states: “[p]lease be informed that the report covering the subject was already submitted by Revenue Officer Camille Ann B. Gigante and is now under review by this office.” The notation confirms that RO Gigante had undertaken the examination and submitted her audit report for review.

⁶⁵ Exhibit “P-16,” Docket — Vol. IV, p. 1730.

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The BIR Records likewise show that the participation of the signatories in the issuance of the assessment notices was confined to their review and approval, rather than the actual performance of the audit.⁶⁶ More significantly, the records affirmatively establish that RO Gigante conducted the audit pursuant to the LOA. She prepared and submitted the audit report,⁶⁷ made the recommendations for the issuance of the PAN⁶⁸ and FLD/FANs,⁶⁹ and served the corresponding assessment notices.⁷⁰ These acts corroborate that she performed the substantive examination upon which the assessments were subsequently based.

These circumstances are decisive.

Section 13 of the National Internal Revenue Code (Tax Code), as amended,⁷¹ requires an LOA before an RO may examine a taxpayer's books of accounts and other accounting records. The requirement pertains to the authority to conduct the examination. It does not require that every BIR official who subsequently reviews, evaluates, approves, clears, or signs an assessment notice must likewise be named in the LOA.

The distinction is material. An **audit** consists of the examination of a taxpayer's books and records in sufficient depth to ascertain the correctness and validity of the entries therein, and the propriety of the application of tax laws, ultimately for the determination of the taxpayer's correct tax liability.⁷² Where the examination discloses a deficiency, the resulting **formal assessment** proceeds from that examination.⁷³ Thus, the

⁶⁶ BIR Records, p. 1071.

⁶⁷ BIR Records, pp. 714 to 722.

⁶⁸ Exhibit "R-2," BIR Records, pp. 723-730.

⁶⁹ Exhibit "R-6," BIR Records, pp. 1071 to 1078.

⁷⁰ BIR Records, pp. 740 and 774.

⁷¹ RA No. 8424, AN ACT AMENDING THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED, AND FOR OTHER PURPOSES (Tax Code, as amended), December 11, 1997, Title I, Section 13 provides:

Section 13. *Authority of a Revenue Officer.* - Subject to the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, a Revenue Officer assigned to perform assessment functions in any district may, pursuant to a Letter of Authority issued by the Revenue Regional Director, examine taxpayers within the jurisdiction of the district in order to collect the correct amount of tax, or to recommend the assessment of any deficiency tax due in the same manner that the said acts could have been performed by the Revenue Regional Director himself.

⁷² Updated Handbook on Audit Procedures and Techniques Volume I (Revision —Year 2000), Revenue Audit Memorandum Order No. 1-00, March 17, 2000.

⁷³ Tax Code, as amended, Section 228; *McDonald's Philippines Realty Corp. v. Commissioner of Internal Revenue*, G.R. No. 247737, August 08, 2023 [Per J. Inting, *En Banc*].

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subsequent review or approval of the audit findings does not, by itself, constitute a separate audit requiring a separate LOA.

Here, the audit upon which the assessments were founded was conducted by RO Gigante, an officer duly vested with the authority required by law.

The subsequent participation of other BIR officials in reviewing or approving the audit findings does not detract from the validity of the examination conducted by RO Gigante. The LOA requirement cannot reasonably be construed to mean that every official who performs a supervisory, evaluative, or approval function in the processing of an assessment must likewise be named therein. Such an interpretation would extend the statutory mandate beyond its purpose, which is to ensure that the taxpayer was informed that the RO knocking at its door has the proper authority to examine its books of accounts.⁷⁴

The alleged participation of other officials does not negate RO Gigante's authority under the LOA or, by itself, constitute a violation of petitioner's right to due process sufficient to invalidate the resulting assessments.

The statutory safeguard embodied in the LOA requirement was thus satisfied. Petitioner's challenge to the validity of the resulting assessments on this ground must necessarily fail.

***III. Respondent may not
motu proprio issue an
Amended FDDA
increasing petitioner's
tax liability***

Petitioner likewise questions respondent's authority to issue the Amended FDDA *motu proprio*, after the FDDA had already been served, thereby increasing the amount being demanded from petitioner.

The Court finds merit in petitioner's contention.

⁷⁴ *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.*, G.R. No. 242670, May 10, 2021 [Per J. J.Y. Lopez, Third Division].

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a. *The issuance and service of the FDDA in this case is the respondent's final decision on the taxpayer's protest*

Section 228 of the Tax Code, as amended, as implemented by RR 12-99, as amended, provides for the procedure by which a deficiency tax assessment may be disputed. Upon receipt of the FLD/FANs, the taxpayer may protest the assessment, and such protest is resolved by respondent or his duly authorized representative through the issuance of an FDDA. Thus, Section 3.1.5 of RR No. 12-99, as amended, provides:

3.1.5 Final Decision on a Disputed Assessment (FDDA). - The decision of the Commissioner or his duly authorized representative **shall state** the (i) facts, the applicable law, rules and regulations, or jurisprudence on which such decision is based, *otherwise, the decision shall be void* (see illustration in ANNEX "C"^[a] hereof), and **(ii) that the same is his final decision.** (Emphases and underscoring supplied; citation omitted)

The requirement that the decision be expressly denominated as "final" is significant. The FDDA marks the point when certain remedies provided by law become available to the taxpayer. Thus, under Section 11 of RA No. 1125, as amended by RA 9282, an aggrieved taxpayer may appeal to this Court within thirty (30) days from receipt of the decision of respondent or his duly authorized representative.

In *Commissioner of Internal Revenue v. Union Shipping Corporation (Union Shipping)*,⁷⁵ and *Surigao Electric Co., Inc. v. The Honorable Court of Tax Appeals*,⁷⁶ the Supreme Court explained the requirement of clearly identifying that the FDDA constitutes respondent's final determination of the assessment as follows:

*. . . we deem it appropriate to state that **the Commissioner of Internal Revenue should always indicate to the taxpayer in clear and unequivocal language whenever his action on an assessment questioned by a taxpayer constitutes his***

⁷⁵ *Commissioner of Internal Revenue v. Union Shipping Corporation*, G.R. No. 66160, May 21, 1990 [Per J. Paras, Second Division].

⁷⁶ *Surigao Electric Co., Inc., v. The Honorable Court of Tax Appeals and Commissioner of Internal Revenue*, G.R. No. L-25289, June 28, 1974 [Per J. Castro, First Division].

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final determination on the disputed assessment, as contemplated by sections 7 and 11 of Republic Act 1125, as amended. On the basis of this statement indubitably showing that the Commissioner's communicated action is his final decision on the contested assessment, the aggrieved taxpayer would then be able to take recourse to the tax court at the opportune time. Without needless difficulty, **the taxpayer would be able to determine when his right to appeal to the tax court accrues**. This rule of conduct would also obviate all desire and opportunity on the part of the taxpayer to continually delay the finality of the assessment — and, consequently, the collection of the amount demanded as taxes — by repeated requests for recomputation and reconsideration. **On the part of the Commissioner, this would encourage his office to conduct a careful and thorough study** of every questioned assessment and render a correct and definite decision thereon in the first instance. This would also deter the Commissioner from **unfairly making the taxpayer grope in the dark and speculate as to which action constitutes the decision appealable to the tax court**. Of greater import, this rule of conduct would meet a pressing need for fair play, regularity, and orderliness in administrative action. (Emphases and underscoring supplied)

From the foregoing, the final nature of the FDDA, and the requirement of stating the same serves three (3) important purposes:

- (1) such clarity serves the “pressing need for fair play, regularity and orderliness in administrative action,”⁷⁷ because it is what tells the taxpayer when his right to appeal accrues;
- (2) it deters respondent “from unfairly making the taxpayer grope in the dark and speculate as to which action constitutes the decision appealable to the tax court;”⁷⁸ and
- (3) it encourages respondent to conduct a careful and study of the disputed assessment.

With these principles in mind, the Court now examines respondent's authority to issue the Amended FDDA after the original FDDA had already been served.

⁷⁷ *Id.*

⁷⁸ *Id.*

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b. Respondent may not
re-open the FDDA
motu proprio and
issue an amended
FDDA thereafter

In *Philippine Amusement and Gaming Corporation v. Commissioner of Internal Revenue (PAGCOR)*,⁷⁹ the Supreme Court mapped out the taxpayer's remedies after the filing of a protest:

*Following the verba legis doctrine, the law must be applied exactly as worded since it is clear, plain, and unequivocal. A textual reading of Section 3.1.5 gives a protesting taxpayer like PAGCOR **only** three options:*

1. *If the protest is wholly or partially denied by the CIR or his authorized representative, then **the taxpayer may appeal to the CTA within 30 days from receipt of the whole or partial denial** of the protest.*
2. *If the protest is wholly or partially denied by the CIR's authorized representative, then **the taxpayer may appeal to the CIR within 30 days** from receipt of the whole or partial denial of the protest.*
3. *If the CIR or his authorized representative failed to act upon the protest within 180 days from submission of the required supporting documents, then the taxpayer may appeal to the CTA within 30 days from the lapse of the 180-day period.*

*To further clarify the three options: **A whole or partial denial by the CIR's authorized representative may be appealed to the CIR or the CTA.** A whole or partial denial by the CIR may be appealed to the CTA. The CIR or the CIR's authorized representative's failure to act may be appealed to the CTA. There is no mention of an appeal to the CIR from the failure to act by the CIR's authorized representative. (Emphases and underscoring supplied)*

Significantly, nothing in *PAGCOR*, in law, or regulation allows respondent, after issuing and serving its final decision, to reopen the same **on his own initiative** and replace the previous final decision with another one.

⁷⁹ *Philippine Amusement and Gaming Corporation v. Bureau of Internal Revenue, Commissioner of Internal Revenue, and Regional Director, Revenue Region No. 6*, G.R. No. 208731, January 27, 2016 [Per J. Carpio, Second Division].

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To allow respondent to unilaterally amend its FDDA effectively permits respondent to control the commencement of this Court's appellate jurisdiction by withdrawing, revising, or superseding what had previously been represented to the taxpayer as his final decision. Moreover, the same will encourage the uncertainty condemned in *Union Shipping* and the taxpayer would be made to "grope in the dark and speculate as to which action constitutes the decision appealable to the tax court."

The foregoing conclusion is also supported by jurisprudence governing administrative bodies exercising adjudicative functions. Respondent, in resolving disputed assessments, exercises administrative adjudicatory or quasi-judicial power in determining the rights and liabilities of taxpayers under the Tax Code, as amended.⁸⁰ As such, respondent's authority to revisit a final adjudicatory determination cannot be presumed, but must find basis in law or in the governing rules.

In *Tiblani, et al. v. Commission on Audit (COA)*,⁸¹ the Supreme Court addressed the power of an administrative adjudicative body to revisit its own decisions *motu proprio*. The Court reiterated that the COA's **power to exercise motu proprio review existed only in the particular instances authorized under the COA Rules of Procedure**. Thus, it was improper for COA to *motu proprio* rule upon a matter already settled in its original decision when the matter had not been properly placed before it for reconsideration.

Similarly, in *Incumbent and Former Employees of the National Economic and Development Authority Regional Office XIII v. Commission on Audit*,⁸² the Supreme Court explained that the COA's

⁸⁰ *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*, G.R. Nos. 201398-99, October 03, 2018 [Per J. Leonen, Third Division].

⁸¹ *Omercaliph M. Tiblani, Criselle S. Sune, Maria Genelin L. Licos, Quintin Dwight G. De Luna, Marie Christine G. Danao and other National Economic Development Authority Central Office Non-Managerial and/or Rank and File Employees Listed In Annex "A" [Of The Petition] v. Commission On Audit (COA)*, G.R. No. 263155, November 05, 2024, [Per J. Caguioa, En Banc].

⁸² *Incumbent and Former Employees of the National Economic and Development Authority (NEDA) Regional Office (RO) XIII: Dela Calzada, Michelle P., Cardona-Ato, Elvie, Batincila, Glenn B., Berido, Jazmin D., Caduyac, Fides Joy A., Calamba, Mary Jean G., Cariño, Mylah Faye Aurora B., Castillon, Mitchell C., Gidacan, Emmanuel Z., Harting, Graziella C., Jaquilmac, Ann B., Lariba, Elsie E., Maur, Melanie A., Mendez, Rhea Mae C., Miculob, Ian G., Mission, Naomi T., Neisler, Anna Loraine M., Olam, Gemima A., Paradiang, Eddie B. Tener, Renante O.; Torralba, April Kristine G., Torotoro, Shirley C., Verdun, Sherwin E., and Villanueva, Francisco Romulus C. v. Commission On Audit, Chairperson Michael G. Aguinaldo, Commissioner Rolando C. Pondoc, the Regional Director COA Regional Office Caraga, the Cluster Director, Cluster 2 – Legislative and Oversight, National Government Sector*, G.R. No. 261280, October 03, 2023 [Per J. Lopez, M., En Banc].

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unilateral review subsequent to its ruling had the effect of violating the due process rights of petitioners therein. Thus:

Here, the Court observes that all throughout the proceedings before the COA, from the auditors, the NGS, and the COA Proper, all pleadings were filed by the officers. Dela Calzada *et al.* were exonerated at the NGS level, which was affirmed by the COA Proper. For obvious reasons, Dela Calzada *et al.* no longer posed any objection and they were no longer parties before the forum. However, in the subsequent motion for reconsideration filed solely by the officers, **the COA Proper applied a new doctrine and unilaterally reinstated petitioners' liability. Such act clearly violated petitioners' right to due process since they were not given the opportunity to squarely and intelligently defend themselves from such new doctrine.** (Emphasis and underscoring supplied)

Thus, when an administrative body exercises adjudicatory authority, its power to reopen a matter already finally disposed of must find support in the law or rules governing its proceedings.

Here, respondent issued the FDDA dated May 14, 2019, which petitioner received on May 15, 2019. The FDDA categorically stated that it was the final decision on its protest, and expressly determined petitioner's deficiency tax liabilities in the aggregate amount of ₱48,417,310.99. Thus, the FDDA states:

This is our final decision. If you disagree, you may appeal this final decision to the Court of Tax Appeals or to the Commissioner of Internal Revenue through request for reconsideration within thirty (30) days from the date of receipt hereof, otherwise said deficiency tax assessments shall become final, executory and demandable.

EDGAR B. TOLENTINO
Regional Director⁸³

Upon receipt thereof, petitioner's administrative protest had been acted upon, and the thirty (30)-day period within which it could invoke the jurisdiction of this Court had commenced to run.

Nevertheless, without any request for reconsideration, or other pleading filed by petitioner, respondent *motu proprio* issued another purported final decision, the Amended FDDA dated May 17, 2019, received by petitioner on May 27, 2019. This time, respondent increased the amount demanded from ₱48,417,310.99 to

⁸³ Exhibit "P-35," Docket — Vol. IV, pp. 1778 to 1781.

✓

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₱48,933,413.13. The increase of ₱516,102.14 resulted from the recomputation of the interest pertaining to the EWT assessment, from ₱818,390.53 to ₱1,334,492.67.

The Court finds no basis under Section 228 of the Tax Code, as amended or RR No. 12-99, as amended, for respondent, after having issued and served his final decision on the taxpayer's protest, to reopen the same *motu proprio* and issue another "final" decision imposing an increased liability upon the taxpayer.

More importantly, the Amended FDDA did not merely correct a typographical or clerical error. It contained a substantive increase of ₱516,102.14 the amount that petitioner was being required to pay.

For the foregoing reasons, once an FDDA is issued, respondent should no longer be allowed to revise it *motu proprio* to increase the taxpayer's liability. Consequently, the Amended FDDA dated May 17, 2019 is void and without legal effect. It could neither supersede the FDDA dated May 14, 2019 nor increase petitioner's tax liability thereunder.

***IV. Respondent violated
petitioner's right to
due process when it
failed to address its
arguments in the Reply
to Preliminary
Assessment***

Petitioner claims that respondent's issuance of the FLD was in violation of its due process rights because the findings contained in the FLD merely reiterated the findings in the PAN, without any regard for petitioner's arguments raised in its Reply to Preliminary Assessment.

This Court find petitioner's contention impressed with merit.

The taxpayer's right to due process requires that he be afforded a meaningful opportunity to present his side during the assessment process, and the BIR must give due consideration to the explanations and evidence timely submitted by the taxpayer.

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In *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc., (Avon)*⁸⁴ the Supreme Court enjoined strict observance by the BIR of the prescribed process for issuance of assessment notices with due regard for the due process rights of taxpayers. There, the taxpayer submitted its protest to the PAN, supporting documents, and explanations to the BIR examiners. Nevertheless, the BIR issued the FLD/FAN merely reiterating the assessments in the PAN without addressing the matters raised by the taxpayer. The Supreme Court explained as follows:

Upon receipt of the Preliminary Assessment Notice, **Avon submitted its protest letter and supporting documents**, and even met with revenue examiners to explain. Nonetheless, the Bureau of Internal Revenue issued the Final Letter of Demand and Final Assessment Notices, merely reiterating the assessments in the Preliminary Assessment Notice. **There was no comment whatsoever on the matters raised by Avon, or discussion of the Bureau of Internal Revenue's findings in a manner that Avon may know the various issues involved and the reasons for the assessments.**

X X X

Had the Commissioner performed her functions properly and considered the explanations and pieces of evidence submitted by Avon, this case could have been settled at the earliest possible time. For instance, all the evidence needed to settle the issue on under-declared sales, which constituted the bulk of the deficiency tax assessments, have been submitted to the Bureau of Internal Revenue. Indeed, from these same submissions, the Court of Tax Appeals concluded that there was no under-declaration of sales. As aptly pointed out by Avon, "The [Commissioner could not] feign simple mistake or misappreciation of the evidence . . . because [the issue was] plain and simple.

X X X

It is true that the Commissioner is not obliged to accept the taxpayer's explanations, as explained by the Court of Tax Appeals. **However, when he or she rejects these explanations, he or she must give some reason for doing so. He or she must give the particular facts upon which his or her conclusions are based, and those facts must appear in the record.**

Indeed, the Commissioner's inaction and omission to give due consideration to the arguments and evidence submitted before her by Avon are deplorable transgressions of Avon's right to due process. The right to be heard, which includes **the right to present evidence, is meaningless if the Commissioner can simply**

⁸⁴ *Commissioner of Internal Revenue, v. Avon Products Manufacturing, Inc.*, G.R. Nos. 201398-99, October 03, 2018 [Per J. Leonen, Third Division].

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ignore the evidence without reason. (Emphases and underscoring supplied)

Based on the foregoing, it is clear that when respondent rejects or disagrees with the arguments and explanations raised by taxpayers, it must state the factual and legal bases for such conclusion.

Here, respondent failed to do so.

To recall, on June 01, 2018, petitioner received a PAN,⁸⁵ containing assessments in the aggregate amount of ₱486,748,178.10. On June 14, 2018, petitioner timely submitted a Reply to Preliminary Assessment⁸⁶ setting forth its explanations and defenses. Notably, petitioner also attached documents which had not previously been submitted to the BIR, namely:

1. NEA Legal Advisory No. 18;
2. Letter dated March 14, 2006 with reference No. DA-108-2006; and
3. NEA Loans Certification.

On July 17, 2018, petitioner received an FLD⁸⁷ which maintained the same substantive findings and basic deficiency tax assessments stated in the PAN, with updated interest, as well as a letter⁸⁸ stating merely that:

[c]onsidering that the protest to PAN is not mandatory, the factual and legal issues you have raised therein are hereby noted.

The statement that petitioner's arguments were merely "noted" does not show that they were meaningfully evaluated. Neither does it explain why they were rejected. Thus, neither the FLD nor the Details of Discrepancies attached thereto addressed petitioner's arguments.

That a reply to the PAN is not mandatory does not mean that respondent may disregard the taxpayer's reply. Once the taxpayer availed itself of the opportunity to respond to the PAN, due process

⁸⁵ Exhibit "P-19," Docket — Vol. VII, Pp. 2939 to 2945.

⁸⁶ Exhibits "P-20" And "P-21," Docket — Vol. IV, pp. 1745 to 1755.

⁸⁷ Exhibit "P-23," Docket — Vol. IV, pp. 1757 to 1767.

⁸⁸ Exhibit "P-22," Docket — Vol. IV, p. 1756.

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requires that those submissions be meaningfully considered before the FLD would be issued.

Consequently, pursuant to Section 228 of the Tax Code, as amended, and the ruling in *Avon*, the FLD and, necessarily, the assessments, are void for violation of petitioner's right to due process.

It follows that the WDL and WOGs issued to enforce the assessments are invalid and must be set aside.⁸⁹ Moreover, apart from being founded on assessments herein declared void, the collection measures were also prematurely issued. Petitioner had timely appealed the disputed assessments to this Court on June 14, 2019. Hence, when the WDL was issued and the WOGs were subsequently served, the disputed assessments were not final and executory so as to constitute delinquent accounts subject to collection.

Nevertheless, although the foregoing is sufficient to resolve the instant *Petition for Review*, the Court deems it proper to address petitioner's remaining substantive arguments. Assuming *arguendo* that the assessments had been validly issued, petitioner would still not be liable for the deficiency income tax and VAT assessments imposed on its MCC/RFSC collections.

***The deficiency Income Tax and
VAT assessments on
petitioner's MCC/RFSC
collections lack basis***

Preliminarily, We find merit in petitioner's claim that it paid portions of the deficiency assessments on May 24 and June 13, 2019, in the aggregate amount of **₱9,837,463.85**. The payments are supported by Payment Forms (BIR Form No. 0605),⁹⁰ Electronic Filing and Payment System (eFPS) Confirmations,⁹¹ and Bank Transfer Confirmations⁹² on record. Accordingly, assuming *arguendo*

⁸⁹ *Mannasoft Technology Corporation v. Commissioner of Internal Revenue*, G.R. No. 244202, July 10, 2023 [Per J. Dimaampao].

⁹⁰ Exhibit "P-25," Docket — Vol. V, p. 2358; Exhibit "P-28," Docket — Vol. V, p. 2361; Exhibit "P-31," Docket — Vol. V, p. 2364; Exhibit "P-36," Docket — Vol. V, p. 2372; Exhibit "P-39," Docket — Vol. V, p. 2375; Exhibit "P-42," Docket — Vol. V, p. 2378; Exhibit "P-45," Docket — Vol. V, p. 2381; and Exhibit "P-49," Docket — Vol. V, p. 2392.

⁹¹ Exhibit "P-26," Docket — Vol. V, p. 2359; Exhibit "P-29," Docket — Vol. V, p. 2362; Exhibit "P-32," Docket — Vol. V, p. 2365; Exhibit "P-37," Docket — Vol. V, p. 2373; Exhibit "P-40," Docket — Vol. V, p. 2376; Exhibit "P-43," Docket — Vol. V, p. 2379; Exhibit "P-46," Docket — Vol. V, p. 2382; and Exhibit "P-50," Docket — Vol. V, p. 2393.

⁹² Exhibit "P-27," Docket — Vol. V, p. 2360; Exhibit "P-30," Docket — Vol. V, p. 2363; Exhibit "P-33," Docket — Vol. V, p. 2366; Exhibit "P-38," Docket — Vol. V, p. 2374; Exhibit "P-41," Docket

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that the assessments were valid, the amounts paid must be credited against petitioner's assessed liabilities, leaving a balance of **₱39,095,949.28**.

Moreover, respondent's contention that these payments estop petitioner from questioning the validity of the assessments is unavailing. In *Avon*, the Supreme Court recognized that partial payment does not, by itself, constitute an admission of the validity of an assessment.

*Petitioner is not permanently
exempt from income taxation*

With regard to the assessment for deficiency income taxes, petitioner claims that as an electric cooperative organized under PD No. 269, it is permanently exempt from income tax.

Petitioner argues that Section 12 of RA No. 10531 allows an electric cooperative the option to remain as a non-stock, non-profit cooperative governed by PD No. 269, as amended by RA No. 10531. It also cites the decision of this Court's Second Division in *MORESCO-II*.⁹³

This argument fails to persuade.

- i. *The original income-tax exemption under PD No. 269 was subsequently withdrawn and only partially restored*

PD No. 269⁹⁴ was enacted in 1973, constituting the NEA as a corporation and promoting electrification of the nation and the development of electric cooperatives.

— Vol. V, p. 2377; Exhibit "P-44," Docket — Vol. V, p. 2380; Exhibit "P-47," Docket — Vol. V, p. 2383; and Exhibit "P-51," Docket — Vol. V, p. 2394.

⁹³ CTA Case No. 10145, February 28, 2023.

⁹⁴ Creating The "National Electrification Administration" as a Corporation, Prescribing its Powers and Activities, Appropriating the Necessary Funds Therefor and Declaring a National Policy Objective for the Total Electrification of the Philippines on an Area Coverage Service Basis, the Organization, Promotion and Development of Electric Cooperatives to Attain the Said Objective, Prescribing Terms and Conditions for Their Operations, the Repeal of Republic Act No. 6038, and for Other Purposes, August 06, 1973.

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Originally, Section 39(a) of PD No. 269 granted electric cooperatives two (2) distinct tax privileges. *First*, an electric cooperative operating under PD No. 269 was permanently exempt from income taxes. *Second*, for the period specified therein, it was exempt from other national and local government taxes, fees, duties, and imposts. Thus:

Section. 39. *Assistance to Cooperatives; Exemption from Taxes, Imposts, Duties,- Fees; Assistance from the National Power Corporation.* — Pursuant to the national policy declared in Section 2, the Congress hereby finds and declares that the following assistance to cooperatives is necessary and appropriate:

(a) *Provided* that it operates in conformity with the purposes and provisions of this Decree, a cooperative **(1) shall be permanently exempt from paying income taxes, and (2) for a period x x x, shall be exempt from the payment (A) of all National Government, local government and municipal taxes and fees, including any franchise, filing, recordation, license or permit fees or taxes and any fees, charges, or costs involved in any court or administrative proceeding in which it may be a party, and (B) of all duties or imposts on foreign goods acquired for its operations,** the period of such exemption for a new cooperative formed by consolidation, as *provided* for in Section 29, to begin from as of the date of the beginning of such period for the constituent consolidating cooperative which was most recently organized or converted under this Decree: *Provided*, That the Board of Administrators shall, after consultation with the Bureau of Internal Revenue, promulgate rules and regulations for the proper implementation of the tax exemptions *provided* for in this Decree. (Emphasis and underscoring supplied)

However, these tax privileges did not remain unchanged. In 1984, PD No. 1955⁹⁵ **withdrew**, subject to specified exceptions, all tax exemptions previously granted to private business enterprises and persons engaged in economic activity. Section 1 of PD No. 1955 reads:

Section 1. The provisions of any special or general law to the contrary notwithstanding, **all exemptions from or any preferential treatment in the payment of duties, taxes,** fees, imposts and other charges heretofore granted to private business enterprises and/or persons engaged in any economic activity **are hereby withdrawn**, except those enjoyed by the following:

- a. Those registered by the Board of Investments under Presidential Decree No.1789, as amended by Batas Pambansa Blg. 391, and those registered by the Export Processing Zone Authority under Presidential Decree No.

⁹⁵ Withdrawing, Subject to Certain Conditions, the Duty and Tax Privileges Granted to Private Business Enterprises and/or Persons Engaged in Any Economic Activity, and For Other Purposes, October 10, 1984.

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- 66, as amended by Presidential Decree Nos. 1449, 1776, 1776-A, and 1786;
- b. The copper mining industry in accordance with the provisions of LOI 1416;
 - c. Those covered by international agreements to which the Philippines is a signatory;
 - d. Those covered by the non-impairment clause of the Constitution; and
 - e. Those that will be approved by the President of the Philippines upon the recommendation of the Minister of Finance. (Emphases and underscoring supplied)

In January of 1986, PD No. 2008⁹⁶ **partially restored** the exemption as follows:

WHEREAS, cooperatives constitute institutional vehicles to enhance productivity and increase the income of the people through built-in-mechanisms of economics of scale, costs-sharing and risk-sharing;

WHEREAS, it is vital and necessary for the government to encourage people to organize cooperatives that will provide for their need at the lowest possible cost and at the same time increase their incomes and productivity;

WHEREAS, to strengthen the cooperatives, there is need to restore to them certain privileges which were suspended by PD 1955;

X X X

Section 2. Section 5 of the same Decree is amended to read as follows:

Sec. 5. Privileges of Cooperatives. — Cooperatives which are in good standing as certified by the BCOD/MAF shall enjoy the following privileges;

“(a) Exemption from income and sales taxes until December 31, 1991: Provided, That a substantial portion of the net income of the Cooperative is returned to members in the form of interests and/or patronage refunds: Provided, further, That those cooperatives whose tax exemption privileges under this Decree have already expired shall continue to enjoy such privileges but in no case shall extension go beyond December 31, 1991: Provided, finally, That the cooperative’s taxable income shall mean that portion of the Cooperative’s income after deducting the interest and patronage funds to its members; (Emphasis and underscoring supplied)

⁹⁶ Further Strengthening the Cooperative Movement by Amending Certain Provisions of Presidential Decree Numbered One Hundred Seventy-Five, as Amended By Presidential Decree Numbered Nineteen Hundred and Fifty-Five, January 03, 1986.

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Subsequently, EO No. 93⁹⁷ again **withdrew** tax and duty incentives granted to government and private entities, subject to the exceptions stated therein.

More importantly, Section 2 of EO No. 93 expressly **authorized the FIRB to restore withdrawn tax exemptions (in whole or in part), to revise the scope and coverage of the exemptions to be restored, to impose conditions upon their restoration, and to prescribe the date or period of their effectivity**, as follows:

Sec. 2. The Fiscal Incentives Review Board created under Presidential Decree No. 776, as amended, is hereby authorized to:

- a) restore tax and/or duty exemptions withdrawn hereunder in whole or in part;
- b) revise the scope and coverage of tax and/or duty exemption that may be restored;
- c) impose conditions for the restoration of tax and/or duty exemption;
- d) prescribe the date or period of effectivity of the restoration of tax and/or duty exemption;
- e) formulate and submit to the President for approval, a complete system for the grant of subsidies to deserving beneficiaries, in lieu of or in combination with the restoration of tax and duty exemptions or preferential treatment in taxation, indicating the source of funding therefor, eligible beneficiaries and the terms and conditions for the grant thereof taking into consideration the international commitments of the Philippines and the necessary precautions such that the grant of subsidies does not become the basis for countervailing action.

Pursuant to such authority, the FIRB issued Resolution No. 24-87,⁹⁸ effective July 01, 1987.

While Resolution No. 24-87 restored the tax and duty privileges of electric cooperatives under PD No. 269, it expressly qualified the restoration by providing that income from their electric service operations and other sources would remain taxable, to wit:

BE IT RESOLVED, AS IT IS HEREBY RESOLVED, That **the tax and duty exemption privileges of electric cooperatives granted under the terms and conditions of Presidential Decree No. 269** (Creating the National Electrification Administration as a corporation, prescribing its powers and activities, appropriating the necessary funds therefor and declaring a national policy objective for the total electrification of the Philippines

⁹⁷ Withdrawing All Tax and Duty Incentives, Subject to Certain Exceptions, Expanding The Powers of The Fiscal Incentives Review Board and For Other Purposes, December 17, 1986.

⁹⁸ FIRB Resolution No. 024-87, July 14, 1987.

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on an area coverage basis; the organization, promotion and development of electric cooperatives to attain the said objective, prescribing terms and conditions for their operations, the repeal of Republic Act No. 6038, and for other purposes), as amended, **are restored effective July 1, 1987**: Provided, however, That, **income from** their electric service operations and **other sources** including the interest income from bank deposits and yield or any other monetary benefit from bank deposits and yield or any other similar arrangements **shall remain taxable**; Provided, further, That the electric cooperatives shall furnish the FIRB on an annual basis or as often as the FIRB may require them to do so, statistical and financial statements of their operations and other information as may be required, for purposes of effective and efficient tax and duty exemption availment. (Emphases and underscoring supplied)

Thus, Section 39 of PD No. 269 did not cease to exist, but the tax exemption privilege originally embodied therein was withdrawn and subsequently restored subject to the limitations imposed under Resolution No. 24-87.

- ii. EO No. 93 and FIRB Resolution No. 24-87 have legal force and effect

The validity of the framework described above was settled in *Maceda v. Hon. Macaraig, Jr.*,⁹⁹ where the Supreme Court sustained EO No. 93 as a valid delegation of legislative power to the FIRB in matters concerning the restoration of tax exemptions. The Court therein recognized that EO No. 93 supplied sufficient standards for the exercise of the delegated authority, and upheld the authority to restore withdrawn exemptions subject to conditions.

Likewise, in *Davao Oriental Electric Cooperative, Inc. v. Province of Davao Oriental*,¹⁰⁰ the Supreme Court applied Resolution No. 24-87 according to its terms and held that the restoration of the tax privileges of electric cooperatives took effect prospectively starting July 01, 1987, as expressly provided therein. In doing so, the Supreme Court necessarily recognized the force and effect of Resolution No. 24-87 as an issuance made pursuant to EO No. 93.

⁹⁹ *Ernesto M. Maceda v. Hon. Catalino Macaraig, Jr., In His Capacity As Executive Secretary, Office Of The President; Hon. Vicente R. Jayme, In His Capacity As Secretary Of The Department Of Finance; Hon. Salvador Mison, In His Capacity As Commissioner, Bureau Of Customs; Hon. Jose U. Ong, In His Capacity As Commissioner Of Internal Revenue; National Power Corporation; The Fiscal Incentives Review Board; Caltex (Phils.) Inc.; Pilipinas Shell Petroleum Corporation; Philippine National Oil Corporation; and Petrophil Corporation*, G.R. No. 88291, May 31, 1991 [Per J. Gancayco, *En Banc*].

¹⁰⁰ *Davao Oriental Electric Cooperative, Inc. v. Province Of Davao Oriental*, G.R. No. 170901, January 20, 2009 [Per C.J. Puno, First Division].

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- iii. RA Nos. 6938, 9520, and 10531 did not restore the original permanent income tax exemption

The subsequent enactment of RA No. 6938,¹⁰¹ RA No. 9520,¹⁰² and RA No. 10531¹⁰³ did not displace the framework established under EO No. 93 and FIRB Resolution No. 24-87. There is nothing in these laws which restored the income tax exemption which had previously been withdrawn and only partially restored.

Section 127 of RA No. 6938 provided that **nothing therein** should be interpreted as amending or repealing PD No. 269. This provision, however, does not mean that PD No. 269 must forever be read according to its original 1973 text, to the exclusion of other subsequent laws affecting the tax privileges granted thereunder. By the time RA No. 6938 was enacted in 1990, the tax privileges originally granted under Section 39(a) of PD No. 269 had already been affected by EO No. 93, and the conditional restoration made under FIRB Resolution No. 24-87. **Clearly, RA No. 6938, which expressly states that it does not amend PD No. 269 cannot serve as the basis to resurrect it to its 1973 version.**

Neither does RA No. 10531 provide otherwise. Section 12 of RA No. 10531 indeed allows an electric cooperative to remain a non-stock, non-profit cooperative or to convert into a stock cooperative registered with the Cooperative Development Authority or a stock corporation registered with the Securities and Exchange Commission. However, it does not declare that an electric cooperative which elects to remain a non-stock, non-profit cooperative thereby reacquires the permanent income tax exemption originally stated in Section 39(a)(1) of PD No. 269. In fact, while RA No. 10531 amends numerous specific provisions of PD No. 269, nothing therein amends Section 39.

Nor can such restoration be inferred from the repealing clause of RA No. 10531. Section 18 thereof expressly repealed Article 132(3)

¹⁰¹ An Act To Ordain A Cooperative Code Of The Philippines, March 10, 1990.

¹⁰² An Act Amending The Cooperative Code Of The Philippines To Be Known As The "Philippine Cooperative Code Of 2008," February 17, 2009

¹⁰³ An Act Strengthening The National Electrification Administration, Further Amending For The Purpose Presidential Decree No. 269, As Amended, Otherwise Known As The "National Electrification Administration Decree," May 07, 2013.

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of RA No. 9520 and Section 30 of RA No. 9136,¹⁰⁴ and generally repealed or modified other laws and issuances only insofar as they are inconsistent with RA No. 10531. However, there is nothing in RA No. 10531 that is irreconcilably inconsistent with EO No. 93 or with the qualification contained in FIRB Resolution No. 24-87 that income from electric service operations and other sources remains taxable.

Implied repeals are not favored. More so where what is claimed to have been revived is an exemption from taxation. A tax exemption must rest on a clear and unequivocal grant and is construed *strictissimi juris* against the taxpayer. There is no clear and unequivocal provision in RA No. 10531, RA No. 9520, or any related law which warrants disregarding EO No. 93 and FIRB Resolution No. 24-87, and reading Section 39(a) of PD No. 269 in isolation.

*iv. RMC No. 72-2003 and
NEA Legal Advisory No. 18
do not establish petitioner's
exemption for TY 2015*

Petitioner's reliance on RMC No. 72-2003,¹⁰⁵ NEA Legal Advisory No. 18,¹⁰⁶ and *MORESCO-II*¹⁰⁷ in claiming that it is exempt from income taxes, is misplaced.

First, RMC No. 72-2003 reflects the BIR's earlier interpretation and was superseded by RMC No. 74-2013. The present case involves TY 2015. Thus, RMC No. 74-2013 is applicable and states:

Accordingly, this Office opines that MARELCO's income from its electric service operations is subject to income tax. Beginning January 1, 2004, however, MARELCO is subject to all other national government taxes and fees, including VAT, filing, recordation, license or permit fees or taxes as its exemption ended on December 31, 2003, the thirtieth full calendar year after the date of the cooperative's organization as stated in its registration papers or until it shall become completely free of indebtedness incurred by borrowing, whichever event comes first.

Moreover, all Electric Cooperatives registered with the NEA, shall be subject to the following:

¹⁰⁴ An Act Ordaining Reforms In The Electric Power Industry, Amending For The Purpose Certain Laws And For Other Purposes, June 08, 2001.

¹⁰⁵ Tax Implications of Electric Cooperatives Registered With The National Electrification Administration And Cooperative Development Authority, October 20, 2003.

¹⁰⁶ Income Tax Exemption of Electric Cooperatives Organized under P.O. 269, August 20, 2014.

¹⁰⁷ CTA Case No. 10145, February 28, 2023.

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1. 20% final income tax on interest from any currency bank deposit and yield or any other monetary benefit from deposit substitutes and from trust funds and similar arrangements and royalties derived from sources within the Philippines;
2. 7.5% final income tax on interest income derived from a depository bank under the expanded foreign currency deposit system;
3. Capital Gains Tax on sales or exchanges of real property classified as capital assets or shares of stock;
4. Documentary stamp taxes on transactions of cooperatives dealing with nonmembers, except transactions with banks and insurance companies, Provided that whenever one party to the taxable document enjoys the exemption from DST, the other party who is not exempt shall be the one directly liable for the tax;
5. VAT billed on purchases of goods and services;
6. Value-added tax, on sales relative to the generation and distribution of electricity as well as their importation of machineries and equipment, including spare parts, which shall be directly used in the generation and distribution of electricity; and
7. All other taxes for which the ECs are not otherwise expressly exempted by any law.

Second, a perusal of NEA Legal Advisory No. 18, reveals that it substantially relies upon RMC No. 72-2003 and a 2006 BIR letter.¹⁰⁸ However, as discussed above, by the time the NEA advisory was issued on August 20, 2014, the same RMC had already been superseded by RMC No. 74-2013.

Third, *MORESCO-II* does not persuade. The Court in Division therein reasoned that the subsequent enactment of RA No. 10531, while leaving Section 39 of PD No. 269 untouched, indicated the continued effectivity of the permanent income tax exemption originally granted therein. With due respect, the silence in RA No. 10531 cannot itself amount to a restoration of the tax exemption, especially in light of the intervening effect of EO No. 93 and FIRB Resolution No. 24-87. The above-mentioned laws should be read in harmony and not in isolation from one another.

Accordingly, petitioner cannot avoid income taxation solely on the ground that it is an electric cooperative organized and governed under PD No. 269. Its claim of a permanent exemption from income tax is without merit.

¹⁰⁸ BIR Letter with Reference No. DA-108-2006, March 14, 2006

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*Petitioner's MCC/RFSC collections
are capital contributions, and are
not subject to income tax or VAT*

As earlier stated, the remaining deficiency tax assessment of **₱39,095,949.28** substantially arises from respondent's treatment of petitioner's MCC/RFSC as "Undeclared Income-CAPEX."

The Court now turns to the nature and tax treatment of the collections.

In the Amended FDDA, respondent claims that while the subject amount purport to be collections for capital expenditures, they are actually in the nature of income because the collections could not be reimbursed by the consumers as they did not form part of petitioner's liability account. Moreover, they form part of petitioner's equity account when used. Thus, respondent states:

there were undeclared income amounting to P60,553,635.19 for the year 2015 arising from the collection of Reinvestment Fund for Sustainable CAPEX which is .2904 per kilowatt hour. Per verification, this were not reimbursable by the consumers as this didn't form part of your liability account, instead it forms part of the equity account when used.¹⁰⁹

Petitioner, on the other hand, claims that the collections of MCC/RFSC are in the nature of capital, and not income. Thus, income tax is inapplicable.

We rule for petitioner, and find that the collections of MCC/RFSC constitute capital contributions not subject to income tax or VAT.

Respondent assessed petitioner for income tax on its MCC/RFSC collections on the theory that these collections are not capital contributions because they are not refundable to the members.

However, the absence of a refund obligation does not convert capital contribution into income. "Income" is the inflow of wealth, other than a mere return on capital.¹¹⁰ The requisites under

¹⁰⁹ Exhibit "P-48," Docket — Vol. IV, pp. 1782 to 1785.

¹¹⁰ *Chamber of Real Estate And Builders' Associations, Inc. v. The Hon. Executive Secretary Alberto Romulo, The Hon. Acting Secretary of Finance Juanita D. Amatong, and The Hon.*

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jurisprudence are: **(1)** there must be gain; **(2)** the gain must be realized or received; and **(3)** the gain must not be excluded by law or treaty from taxation.¹¹¹

On the other hand, “capital” is a fund or property existing at one distinct point in time.¹¹² Petitioner claims that the MCC/RFSC, collected and used pursuant to ERC Resolution No. 20-2009,¹¹³ are in the nature of capital. The resolution describes it as follows:

ARTICLE 5

MEMBERS’ CONTRIBUTION FOR CAPITAL EXPENDITURES

5.1 Function of Members’ Contribution for Capital Expenditures

The Members’ Contribution for Capital Expenditures is envisioned to fund the amortization or debt service of its indebtedness associated with the expansion, rehabilitation or upgrading of the existing electric power system of the ECs in accordance with their ERG-approved Capital Expenditure Plan.

5.2. Utilization of Members’ Contribution for Capital Expenditures

Utilization of the Members’ Contribution fund shall be subject to the following conditions:

- a. It shall be used solely for capital expenditure or any other projects approved by the Commission and not for any other purpose, even on a temporary basis;
- b. The amounts collected for Members’ Contribution fund shall be recognized as contribution from member-consumers;
- c. The amounts collected for Members’ Contribution, including interest income, shall be placed in a separate account; and

X X X

5.4 Additional Members’ Contribution For Capital Expenditure

The actual capital expenditures may vary among ECs. In the event that the members’ contribution for capital expenditures rate caps herein authorized are insufficient for its purpose, the EC may collect such additional Members’ Contribution for Capital Expenditures by securing the consent of its member-consumers for such collection through existing legal procedures, provided the expenditure was approved by the Commission as part of such EC’s Capital Expenditure Plan. Provided further that the additional member

Commissioner of Internal Revenue Guillermo Parayno, Jr., G.R. No. 160756, March 09, 2010
[Per J. Corona, *En Banc*].

¹¹¹ *Id.*

¹¹² *In The Matter Of Declaratory Relief on the Validity of BIR Revenue Memorandum Circular No. 65-2012 “Clarifying the Taxability of Association Dues, Membership Fees and other Assessments/Charges Collected By Condominium Corporations,”* G.R. No. 215801, January 15, 2020 [Per J. Lazaro-Javier, First Division].

¹¹³ A Resolution Adopting the Rules for Setting the Electric Cooperatives’ Wheeling Rates Annex A, September 24, 2009.

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contribution is obtained prior to the incurrence of the indebtedness provided finally that the collection of said additional contribution shall be subject to the principles of fairness and equity, in accordance with the objective of the EPIRA for the elimination of cross-subsidy.

Collections made pursuant to this provision may be subject to the audit of the Commission at its discretion.

Moreover, in 2011, the ERC passed ERC Resolution No. 14, Series of 2011,¹¹⁴ which states that MCC collections are “recognized as contribution from members-consumers,” and shall be solely for capital expenditures or projects approved by the ERC. The Resolution also states that if a member-consumer terminates its contract with the electric cooperative, the contribution will not be withdrawn but shall be treated as “Contribution in Aid of Construction.”

In *Rosales*,¹¹⁵ the National Alliance of Electric Cooperatives filed a *certiorari* petition before the Supreme Court, seeking to declare the imposition unconstitutional. However, the Supreme Court dismissed the petition because they should have filed a petition for declaratory relief instead.

Nevertheless, in discussing the regulatory framework governing electric cooperatives, the Supreme Court described the nature and purpose of MCC as follows:

¹¹⁴ A Resolution Modifying The Terms Members' Contribution For Capital Expenditures (MCC) To Reinvestment Fund For Sustainable Capital Expenditures (RFSC) And MCC — Real Property Tax (RPT) To Provision For RPT As Provided In The Rules For Setting Electric Cooperatives' Wheeling Rates (RSEC-WR).

¹¹⁵ *Roberto G. Rosales, Nicanor M. Briones, Ponciano D. Payuyo, Jose R. Ping-Ay, Isidro Q. Lico, and Jose Tan Ramirez, in their capacity as members of the Board of Directors of National Alliance For Consumer Empowerment Of Electric Cooperatives and on behalf of the nine million (9,000,000) member consumers of NEA-Electric Cooperatives nationwide who have contributed the Members' Contributions for Capital Expenditures (MCC) or Reinvestment Fund for Sustainable Capital Expenditures (RFSC) v. ENERGY REGULATORY COMMISSION (ERC), ASELCO, AKELCO, ALECO, ANTECO, AURELCO, BATELEC I, BATELEC II, BENECO, BILECO, BOHECO I, BOHECO II, FIBECO, BUSECO, CAGELCO I, CAGELCO II, CASURECO I, CASURECO II, CASURECO III, CASURECO IV, CAMELCO, CAPELCO, CEBECO I, CEBECO II, CEBECO III, CENECO, CENPELCO, DORECO, DASURECO, ESAMELCO, FLECO, GUIMELCO, IFELCO, INEC, ISECO, ILECO I, ILECO II, ILECO III, ISELCO I, KANELCO, LUELCO, SORECO I, LANECO, LEYECO I/DORELCO, LEYECO II, LEYECO III, LEYECO IV, LEYECO V, PENELCO, MOELCO I, MOELCO II, MORESCO I, MORESCO II, MOPRECO, NORECO I, NORSAMELCO, NEECO I, NEECO II - Area I, NEECO II - Area II, PELCO I, PELCO II, CANORECO, PRESCO, QUEZELCO I, QUEZELCO II, SAMELCO I, SAMELCO II, SIARELCO, SOCOTECO I, SOCOTECO II, SOLECO, SUKELCO, SURNECO, SURSECO I, SURSECO II, TARELCO I, TARELCO II, VRESCO, ZAMECO I, ZAMECO II, ZAMCELCO, ZANECO, ZAMSURECO I, ZAMSURECO II, BAT ANELCO, LUBELCO, OMECO, ORMECO, MARELCO, TIELCO, ROMELCO, BISELCO, FICELCO, MACELCO, TISELCO, BANELCO, PROSIELCO, CELCO, COTELCO, TAWELCO, SIASELCO, SULECO, BASELCO, CASELCO, LASURECO, MAGELCO, DIELCO, and COTELCO-PALMA, G.R. No. 201852, April 05, 2016 [Per J. Peralta, En Banc].*

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With the enactment of R.A. No. 9136, the operating and the **capital costs** are unbundled. The DSM Charges represent only operating costs, while a separate charge, Members' Contribution for Capital Expenditures (MCC) represent the ECs debt service and capital expenditure requirements. In the new tariff structure under the RSEC-WR, the OPEX, Payroll and ORI are translated into DSM Charges, while the Reinvestment Fund and Debt Service are translated into MCC. x x x

The intent of the RSEC-WR in translating Reinvestment Fund into MCC is to recognize the fact that said MCC Charge indeed represents contributions from the member-consumers for the expansion, rehabilitation and upgrading of the ECs' distribution system which should be reflected in their bills for greater transparency. (Emphases and underscoring supplied)

Petitioner demonstrated the nature of the collections and proved its compliance with ERC Resolution No. 20-2009. It submitted into evidence, documents pertaining to the billing¹¹⁶ and collection¹¹⁷ of MCC/RFSC, movement¹¹⁸ and actual use¹¹⁹ of the funds in accordance with ERC regulations,¹²⁰ and as to the nature of the amounts collected,¹²¹ for the ICPA's verification and examination.

Accordingly, based on verification, petitioner actually only collected ₱57,875,454.38 in MCC/RFSC while respondent erroneously found ₱60,553,635.19 in collections. The discrepancy is due to errors in pick-up by respondent as well as errors in data entry by petitioner. The collections were pursuant to SOAs billed to member-consumers of petitioner, and were held in two (2) bank

¹¹⁶ Exhibits "P-52" to "P-63," Docket – Vol. V, pp. 2395 to 2406; Exhibits "P-201-1" to "P-201-12," Docket – USB containing documents in support of ICPA Report; Exhibits "P-220-A" to "P-220-F," USB containing documents in support of Supplement ICPA Report; Exhibits "P-205-1" to "P-205-6," Docket – USB containing documents in support of ICPA Report; Exhibits "P-202-1" to "P-202-1750927," Docket – USB containing documents in support of ICPA Report; Exhibits "P-203-1" to "P-203-12," Docket – USB containing documents in support of ICPA Report; Exhibits "P-204-1" to "P-204-12," Docket – USB containing documents in support of ICPA Report; and Exhibits "P-124-1" to "P-124-12," Docket – Vol. VI, pp. 2754 to 2777.

¹¹⁷ Exhibits "P-64" to "P-76," Docket – Vol. V, pp. 2407 to 2417; Exhibit "P-76," Docket – Vol. V, p. 2418; Exhibits "P-206-1" to "P-206-6," Docket – USB containing documents in support of ICPA Report; Exhibits "P-207-1" to "P-207-12," Docket – USB containing documents in support of ICPA Report; Exhibits "P-208-1" to "P-208-12," Docket – USB containing documents in support of ICPA Report; Exhibits "P-223-A" to "P-223-G," Docket – USB containing documents in support of Second Supplement ICPA Report; and Exhibits "P-224-A" to "P-224-G," Docket – USB containing documents in support of Second Supplement ICPA Report.

¹¹⁸ Exhibits "P-210-1" to "P-210-4," Docket – USB containing documents in support of ICPA Report; Exhibits "P-211-1" to "P-211-4," Docket – USB containing documents in support of ICPA Report.

¹¹⁹ Exhibit "P-215" to "P-219," Docket – USB containing documents in support of ICPA Report.

¹²⁰ Exhibit "P-212," Docket – USB containing documents in support of ICPA Report; Exhibit "P-213-1 to 213-18," Docket – USB containing documents in support of ICPA Report; and Exhibit "P-214-1 to 214-12," Docket – USB containing documents in support of ICPA Report.

¹²¹ Exhibits "P-209-1" to "P-209-2," Docket – USB containing documents in support of ICPA Report.

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accounts. All disbursements of these accounts were toward authorized and substantiated capital expenditures.

The non-refundability of the MCC/RFSC does not, by itself, determine its character for income-tax purposes. What is controlling is the **nature** and **purpose** of the collection. Under the framework of ERC Resolution No. 20, the amounts are expressly recognized as contributions from member-consumers, separately accounted for, and restricted to approved capital expenditures. Petitioner likewise established that the collections were segregated and actually applied to authorized capital projects. Thus, the amounts represent contributions to the cooperative's capital rather than realized gain derived from its operations.

Simply put, the MCC/RFSC collections were not amounts earned by petitioner in the course of its operations. They were contributions exacted from member-consumers for a specific and restricted purpose—to finance the expansion, rehabilitation, and upgrading of the cooperative's distribution system. The ERC itself characterizes them as such.

Based on the foregoing, this Court finds that the ERC framework governing the collection and utilization of the MCC/RFSC, together with petitioner's demonstrated procedures for its billing, collection, recording, segregation, and actual use, establish that **the collections are in the nature of capital contributions rather than income.**

Moreover, it bears noting that in *Association of Non-Profit Clubs, Inc. v. Bureau of Internal Revenue (Association of Non-Profit Clubs)*,¹²² the Supreme Court determined that amounts collected for a specific purpose such as capital expenditures, were in the nature of capital contribution and not income, the element of "gain" being absent. Thus:

Case law provides that in order to constitute "income," there must be realized "gain." Clearly, because of the nature of membership fees and assessment dues as funds inherently dedicated for the maintenance, preservation, and upkeep of the clubs' general operations and facilities, nothing is to be gained from their collection. This stands in contrast to the fees received by recreational clubs coming from their income-generating facilities, such as bars, restaurants, and food concessionaires, or from income-generating

¹²² *Association of Non-Profit Clubs, Inc. v. Bureau of Internal Revenue*, G.R. No. 228539, June 26, 2019 [Per J. Perlas-Bernabe, Second Division].

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activities, like the renting out of sports equipment, services, and other accommodations: In these latter examples, regardless of the purpose of the fees' eventual use, gain is already realized from the moment they are collected because capital maintenance, preservation, or upkeep is not their pre-determined purpose. As such, recreational clubs are generally free to use these fees for whatever purpose they desire and thus, considered as unencumbered "fruits" coming from a business transaction.

Further, given these recreational clubs' non-profit nature, membership fees and assessment dues cannot be considered as funds that would represent these clubs' interest or profit from any investment. In fact, these fees are paid by the clubs' members without any expectation of any yield or gain (unlike in stock subscriptions), but only for the above-stated purposes and in order to retain their membership therein.

In fine, for as long as these membership fees, assessment dues, and the like are treated as collections by recreational clubs from their members as an inherent consequence of their membership, and are, by nature, intended for the maintenance, preservation, and upkeep of the clubs' general operations and facilities, then these fees cannot be classified as "the income of recreational clubs from whatever source" that are "subject to income tax." Instead, they only form part of capital from which no income tax may be collected or imposed.
(Underscoring supplied)

While *Association of Non-Profit Clubs* involved a different type of organization and collection, the distinction between realized gain and funds contributed by members for a predetermined purpose is instructive.

Here, the MCC/RFSC collections were made pursuant to the ERC's requirements, and were separated from petitioner's unrestricted funds. Moreover, the collections were shown to be dedicated merely to capital expenditures. Thus, the element of realized gain necessary for the imposition of income tax is absent.

The MCC/RFSC collection is likewise not subject to VAT. Section 105 of the Tax Code, as amended, as applicable, provides that:

Section 105. Persons Liable. - Any person who, **in the course of trade or business, sells, barter, exchanges, leases goods or properties, renders services,** and any person who imports goods shall be subject to the value-added tax imposed in Sections 106 to 108 of this Code.

The value-added tax is an indirect tax and the amount of tax may be shifted or passed on to the buyer, transferee or lessee of the goods, properties or services. This rule shall likewise apply to existing

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contracts of sale or lease of goods, properties or services at the time of the effectivity of Republic Act No. 7716.

The phrase “in the course of trade or business” means the regular conduct or pursuit of a commercial or an economic activity, including transactions incidental thereto, by any person regardless of whether or not the person engaged therein is a nonstock, nonprofit private organization (irrespective of the disposition of its net income and whether or not it sells exclusively to members or their guests), or government entity.

The rule of regularity, to the contrary notwithstanding, services as defined in this Code rendered in the Philippines by nonresident foreign persons shall be considered as being course of trade or business. (Emphasis and underscoring supplied)

As determined earlier, it cannot be said that the MCC/RFSC collections were made in consideration of services rendered in the course of trade or business.

The collections are taken from members, and are earmarked and actually used solely for capital expenditures. In fact, *Rosales* recognizes that following the unbundling of rates under RA No. 9136, operating costs and capital costs of electric cooperatives are separately treated. The MCC/RFSC therefore do not form part of petitioner’s taxable gross receipts for VAT purposes. Thus, respondent erred in treating petitioner’s MCC/RFSC collections as “Undeclared Income-CAPEX” subject to income tax and VAT.

In sum, taken together, the assessments and the Amended FDDA nevertheless are void for violation of petitioner’s right to due process. The FLD/FANs were issued without meaningful consideration of petitioner’s timely Reply to Preliminary Assessment and supporting evidence, while the Amended FDDA was issued *motu proprio* after respondent had already served what he had represented to be his final decision on petitioner’s protest.

WHEREFORE, premises considered, the *Petition for Review* is hereby **GRANTED**.

Accordingly, the deficiency tax assessments against petitioner for taxable year 2015, as reflected in the Formal Letter of Demand/Final Assessment Notices, Final Decision on Disputed Assessment dated May 14, 2019, and Amended Final Decision on Disputed Assessment dated May 17, 2019, as well as the Warrant of Distraint and/or Levy No. WDL-2019-RR4-AMS-000218 and

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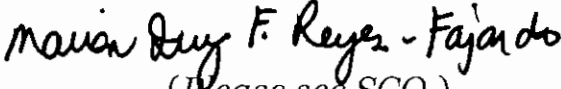
Warrants of Garnishment dated October 21, 2021, are **CANCELLED** and **SET ASIDE** for violation of petitioner's right to due process.

Respondent is likewise **ENJOINED** from collecting the deficiency taxes arising from the assessments herein declared void.

SO ORDERED.


HENRY S. ANGELES
Associate Justice

I CONCUR:


(Please see SCO.)
MARIAN IVY F. REYES-FAJARDO
Associate Justice

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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.

Marian Ivy F. Reyes - Fajardo
MARIAN IVY F. REYES-FAJARDO
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.


JEAN MARIE A. BACORRO-VILLENA
Acting Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL THIRD DIVISION

TARLAC I ELECTRIC
COOPERATIVE INC.
(TARELCO),

Petitioner,

CTA Case No. 10092

Members:

-versus-

REYES-FAJARDO, *Chairperson,*
and ANGELES, II.

COMMISSIONER OF
INTERNAL REVENUE,
Respondent.

Promulgated:

SEP 14 2026

1:52 p.m.

x-----x

SEPARATE CONCURRING OPINION

REYES-FAJARDO, J.:

I agree in cancelling petitioner's deficiency income tax, value-added tax, expanded withholding tax, and withholding tax on compensation assessments for taxable year 2015, as respondent's failure to duly consider petitioner's reply to the Preliminary Assessment Notice (PAN) violated its right to due process.

However, I write separately for in my view, petitioner is likewise permanently exempt from income tax.

To recall, Section 39(a) of Presidential Decree (PD) No. 269,¹ signed on August 6, 1973, granted electric cooperatives registered with the National Electrification Administration (NEA) permanent exemption from income tax, subject to their compliance with the Decree. This exemption was subsequently withdrawn under PD No.

¹ National Electrification Administration Decree.

1955,² issued on October 10, 1984, and Executive Order (EO) No. 93,³ issued on December 17, 1986. The Fiscal Incentives Review Board (FIRB) Resolution No. 24-87, as authorized under Section 2 of EO No. 93, restored their tax and duty exemptions effective July 1, 1987, but expressly retained the taxability of income from electric service operations and other sources.

Thereafter, RA No. 6938 or the Cooperative Code of the Philippines, was approved on March 10, 1990, and was amended by RA No. 9520, on February 17, 2009. Article 127 thereof repealed laws inconsistent with the Code while expressly providing that nothing therein should be interpreted as amending or repealing any provision of PD No. 269.

In my view, Cooperative Code of the Philippines impliedly repealed⁴ EO No. 93, insofar as it is irreconcilably inconsistent with said Code. Consequently, the income tax exemption granted to NEA-registered electric cooperatives under PD No. 269 was reinstated.

True, implied repeal is not favored, and requires a clear and manifest legislative intent to abrogate the old law.⁵ In my mind, this intent is discernible from the Cooperative Code of the Philippines' declared policy, read together with its express preservation of PD No. 269.

Article 2 of the Cooperative Code of the Philippines directs the Government to provide financial assistance and other services necessary to develop cooperatives into viable and responsive economic enterprises.⁶ Article 127 thereof, in turn, preserves

² WITHDRAWING SUBJECT TO CERTAIN CONDITIONS, THE DUTY AND TAX PRIVILEGES GRANTED TO PRIVATE BUSINESS ENTERPRISES AND/OR PERSONS ENGAGED IN ANY ECONOMIC ACTIVITY, AND FOR OTHER PURPOSES.

³ EO No. 93 provides in part: "SECTION 1. The provisions of any general or special law to the contrary notwithstanding, all tax and duty incentives granted to government and private entities are hereby withdrawn,..."

⁴ *Mecano v. Commission on Audit*, G.R. No. 103982, dated December 11, 1992, discussed how implied repeal by irreconcilable inconsistency operates:

Implied repeal by irreconcilable inconsistency takes place when the two statutes cover the same subject matter; they are so **clearly inconsistent and incompatible** with each other that they cannot be reconciled or harmonized; and both cannot be given effect, that is, **that one law cannot [be] enforced without nullifying the other.**

⁵ *Zambales II Electric Cooperative, Inc. Board of Directors, et al. v. Castillejos Consumers Association, Inc., et al.*, G.R. Nos. 176935-36, October 20, 2014.

⁶ ART. 2. Declaration of Policy.- ...

Toward this end, the Government and all its branches, subdivisions, instrumentalities and agencies shall ensure the provision of technical guidance, **financial assistance** and

provisions of PD No. 269. Read together, these provisions reflect legislative imprimatur to repeal EO No. 93, which withdraws statutory assistance afforded to electric cooperatives, including the income tax exemption under PD No. 269.

Since EO No. 93 was impliedly repealed to that extent, the permanent income tax exemption of electric cooperatives under PD No. 269 was reinstated. *As such*, electric cooperatives registered with NEA remained permanently exempt from paying income tax.

Here, respondent's Certificate of Registration⁷ proves that it is registered with NEA. Therefore, it is exempt from paying income tax under PD No. 269.

For these reasons, I **CONCUR** in granting petitioner's Petition for Review and cancelling assessed deficiency taxes for violation of petitioner's right to due process. I respectfully disagree, however, that petitioner is not permanently exempt from income tax.

Marian Ivy F. Reyes - Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

other services to enable said cooperatives to develop into **viable and responsive economic enterprises** and thereby bring about a strong cooperative movement that is free from any conditions that might infringe upon the autonomy or organizational integrity of cooperatives.

⁷ Exhibit "P-1," *Rollo*, p. 292.