REPUBLIC OF THE PHILIPPINES
*Court Of Tax Appeals*
QUEZON CITY

# ***EN BANC***

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| PHILIPPINE PORTS AUTHORITY (PPA), *Petitioner,* | **C.T.A. EB CASE NO. 183** **(CBAA Case No. "M-20")** **(LBAA Case No. "01-04")** |
| -versus- | Members: ACOSTA, Presiding Justice, CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, and PALANCA-ENRIQUEZ, JJ. |
| CENTRAL BOARD OF ASSESSMENT APPEALS (CBAA), LOCAL BOARD OF ASSESSMENT APPEALS, and CITY ASSESSOR OF DAVAO CITY, ***Respondents,*** | **Promulgated:** |
| REPUBLIC OF THE PHILIPPINES, represented by the Solicitor General, ***Indispensable Party.*** | JUL 3 0 2007 Apolinario |

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# DECISION

**PALANCA-ENRIQUEZ, J.:**

Is the Philippine Ports Authority liable for real estate tax of the Sasa Port, Davao City, and its buildings?

## THE CASE

This is the issue raised in this Petition for Review filed by the Philippine Ports Authority (hereafter "PPA") *under Section 9 of R.A. No.*

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*9282 (An Act Expanding the Jurisdiction of the Court of Tax Appeals),* in relation to *Rule 43 of the 1997 Rules of Civil Procedure, as amended,* which seeks the reversal of the Decision dated April 7, 2005 rendered by the Central Board of Assessment Appeals (hereafter "CBAA") in CBAA Case No. M-20, entitled "Philippine Ports Authority vs. Local Board of Assessment Appeals of Davao City and City Assessor of Davao City", the dispositive portion of which reads as follows:

> "WHEREFORE, premises considered, the instant appeal is hereby DENIED for lack of merit.
>
> SO ORDERED."

and the Resolution dated November 8, 2005, denying petitioner's Motion for Reconsideration, the dispositive portion of which reads as follows:

> "WHEREFORE, the instant Motion For Reconsideration is hereby DENIED for lack of merit.
>
> SO ORDERED."

## THE FACTS

The facts of the case, as culled from the records, are as follows:

Petitioner is a body corporate created under *P.D. No. 857*, as amended, with office address at Marsman Building, Muelle de San

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Francisco, South Harbor, Port Area, Manila and the Legal Affairs Division, PDO-Southern Mindanao, Sasa Wharf, Sasa, Davao City.

Respondent Local Government of Davao City, represented by the City Assessor, is a public corporation created under Commonwealth Act No. 51.

The Republic of the Philippines, represented by the Solicitor General, was impleaded by petitioner as an indispensable party.

On July 17, 2004, petitioner received from the City Treasurer of Davao City a written assessment for the collection of real estate taxes in the total amount of P65,261,833.15 against all its real properties, located at Sasa Port Area, Davao City.

On August 2, 2004, petitioner filed through registered mail an Appeal on said Assessment to the Local Board of Assessment Appeals (hereafter "LBAA"), coursed through the City Treasurer of Davao City, in accordance with Provincial Form No. 139-A. The Appeal on Assessment was received by the City Treasurer on August 11, 2004, and was received by the LBAA on September 6, 2004 only.

Subsequently, respondent City Assessor of Davao filed a "Motion to Dismiss the Appeal on Assessment".

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On January 20, 2005, petitioner filed a "Manifestation and Motion to Implead the Republic of the Philippines as Party Respondent-Appellant" on the ground that the Republic of the Philippines is the alleged owner of the properties in question.

On January 25, 2005, the LBAA issued an Order dismissing petitioner's appeal on assessment for being filed out of time.

On March 3, 2005, petitioner appealed said Order dated January 25, 2005 of the LBAA to the CBAA, which rendered judgment on April 7, 2005, dismissing the appeal.

On September 21, 2005, petitioner filed a "Manifestation and Motion for Reconsideration", which was denied by CBAA in its Resolution dated November 8, 2005.

Hence, the instant Petition for Review raising the following:

**<u>ISSUES</u>**

I

WHETHER OR NOT THE CENTRAL BOARD OF ASSESSMENT APPEALS GRAVELY ERRED IN AFFIRMING THE LOCAL BOARD OF ASSESSMENT APPEALS IN HOLDING THAT THE APPEAL ON ASSESSMENT OF PETITIONER WAS FILED OUT OF TIME.

II

WHETHER OR NOT THE CENTRAL BOARD OF ASSESSMENT APPEALS GRAVELY ERRED IN CONCLUDING THAT PPA IS THE OWNER OF THE PROPERTIES IN QUESTION AND NOT AN ADMINISTRATOR AND THAT EVEN IF ADMINISTRATOR, PPA SHOULD FILE A SWORN STATEMENT DECLARING THE TRUE VALUE OF THE PROPERTY.

III

WHETHER OR NOT THE CBAA GRAVELY ERRED IN CONCLUDING THAT IT IS PPA WHO PROFIT AND THAT HE WHO PROFITS HAS THE USE THEREFORE PPA IS THE USER OF THE PORTS AND TERMINAL FACILITIES OF DAVAO CITY, THE SUBJECT MATTER OF THIS PETITION.

IV

WHETHER OR NOT THE CBAA GRAVELY ERRED IN CONCLUDING THAT THE REPUBLIC OF THE PHILIPPINES IS NOT AN INDISPENSABLE PARTY.

V

WHETHER OR NOT THE PETITIONER PARTLY QUOTED A PARAGRAPH OF THIS BOARD DECISION CITING RULE 10.2 OF CANON 10 OF THE CODE OF PROFESSIONAL RESPONSIBILITY, WHICH MANDATES THAT A LAWYER SHALL NOT KNOWINGLY MISQUOTE OR MISREPRESENT THE TEXT OF A DECISION OR AUTHORITY.

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On September 18, 2006, We ordered the respondents and the Republic of the Philippines as an indispensable party, represented by the Solicitor General, to file their comment on the Petition for Review, within ten (10) days from notice.

On November 17, 2006, We ordered the petitioner to submit a certified true copy of the CBAA Decision dated April 07, 2005 and granted the Office of Solicitor General a non-extensible period of thirty (30) days from October 21, 2006 or until November 20, 2006 to file its comment on the petition.

On December 6, 2006, We denied the "Motion For Additional Extension of Time to File Comment" filed by the Office of the Solicitor General on November 15, 2006 considering that our Resolution dated November 17, 2006 was with express warning that the thirty (30) days extension granted is non-extendible.

Thereafter, We ordered both parties to file their simultaneous memoranda, within thirty (30) days from notice; afterwhich, the case shall be deemed submitted for decision.

On January 31, 2007, petitioner filed its "Memorandum", while the Republic of the Philippines filed its "Memorandum" on February 09,

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2007. On March 16, 2007, respondent City Assessor of Davao City filed its "Memorandum (For Respondent City Assessor of Davao City)".

The parties having filed their respective memoranda, the case was deemed submitted for decision.

## THE COURT EN BANC'S RULING

The petition is meritorious.

*Procedural Issue*

Before We delve into the substantive issue, We will first resolve the procedural issue of whether or not the appeal on assessment of petitioner was filed within the reglementary period.

*Petitioner's Theory*

Invoking the provision of *Section 3, Rule 13 of the 1997 Rules of Civil Procedure, as amended*, petitioner argues that its appeal on assessment was filed on time considering that the same was filed through registered mail on August 02, 2004, which is within the sixty (60) day reglementary period, and the same was drafted and patterned in accordance with the Provincial Form No. 139-A, entitled "Real Property Taxation – Appeal on Assessment", addressed to the LBAA of Davao City and coursed through the City Treasurer.

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*Respondents' Theory*

Respondents, on the other hand, counter-argue that when petitioner filed its appeal on assessment with the Office of the City Treasurer and not with the LBAA, said appeal was considered to have been filed only on September 11, 2004, when the same was actually received by the LBAA.

*Section 226 of R.A. No. 7160*, otherwise known as "The Local Government Code" provides:

> "SEC. 226. Local Board of Assessment Appeals – Any owner or person having legal interest in the property who is not satisfied with the action of the provincial, city or municipal assessor in the assessment of his property may, within sixty (60) days from the date of receipt of the written notice of assessment, appeal to the Board of Assessment Appeals of the province or city by filing a petition under oath in the form prescribed for the purpose, together with copies of the tax declarations and such affidavits or documents submitted in support of the appeal."

Pursuant to the above-quoted provision, petitioner has sixty (60) days from the date of receipt of the written notice of assessment within which to appeal to the Board of Assessment Appeals of the province or city.

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Records show that petitioner received a copy of the notice of assessment on June 17, 2004. Petitioner, therefore, had sixty (60) days from June 17, 2004 or until August 16, 2004, within which to file its appeal to the Local Board of Assessment Appeals. Petitioner filed its Appeal on Assessment, through registered mail, on August 2, 2004.

Pursuant to *Section 3, Rule 13 of the 1997 Rules of Civil Procedure, as amended,* the date of mailing by registered mail is considered the date of filing.

Since in the instant case, petitioner filed by registered mail the Appeal on Assessment on August 2, 2004, it is clear that the appeal was filed within the sixty (60) days reglementary period.

Moreover, *Section 226 of the Local Government Code* provides that the appeal on assessment shall be made "xxx in the form prescribed for the purpose xxx". The prescribed form in the City of Davao is the Provincial Form No. 139-A, entitled "Real Property Taxation – Appeal on Assessment". The said form instructs the appellant to address the Appeal on Assessment as follows:

"(To the Board of Assessment Appeals, Province/City of ____________________)

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(Thru the Municipal/City Treasurer of ____________________)"

Petitioner, in coursing through the City Treasurer of Davao City its appeal on assessment, only complied with the foregoing prescribed form. Although the City Treasurer transmitted the Appeal on Assessment to the LBAA only on September 6, 2004, the fact is that petitioner filed its Appeal on Assessment with the LBAA within the sixty (60) day reglementary period.

Having passed upon the procedural issue, We will now discuss the substantive issues in the case at bar.

*Decisive Issue*

The second and third issues boil down to the decisive issue of whether petitioner Philippine Ports Authority is liable for real estate tax of the Sasa Port, Davao City, and its buildings.

*Petitioner's Theory*

Invoking the provision of *Article 420 of the Civil Code*, *Batas Pambansa Blg. 13*, *R.A. No. 670*, *R. A. No. 920*, *P.D. No. 475*, *P.D. No. 759*, *P.D. No. 1062*, *Sections 6 and 10 of P.D. No. 857*, *Proclamation No. 881*, *Commonwealth Act No. 141*, and *Section 2, Article XII of the*

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*Philippine Constitution*, petitioner posits that it is not the owner of the subject properties, but only its administrator. PPA is not the beneficial user of the subject properties, but the public or the Republic of the Philippines. Finally, invoking the recent case of *Manila International Airport Authority vs. Court of Appeals, 495 SCRA 591,* petitioner argues that the present case has became moot and academic as petitioner is now allegedly exempt from all local taxes, fees and charges and not only the real estate taxes, which are the subject matter of the instant petition.

*Respondents' Theory*

Respondents, on the other hand, averred that the provisions of *Sections 193 and 234 of the Local Government Code* had withdrawn the tax exemptions previously granted to government-owned or controlled corporations; it is a fundamental precept in real property taxation that real properties shall be classified, valued and assessed on the basis of the actual use and not ownership thereof; the transfer by the Republic of the Philippines of the properties and assets in favor of petitioner for administration are deemed absolute conveyance of ownership; the warehouse and other improvements by the petitioner are not devoted for public use as to bring them within the meaning of properties of public domain; lastly, petitioner's reliance on the case of *Manila International Airport Authority vs. Court of Appeals, supra,* to justify its exemption from payment of realty tax is misplaced.

*<u>Decisive Issue Had already Been Resolved In The Affirmative By the Supreme Court</u>*

There is nothing novel in this case as the decisive issue raised herein had already been resolved in the affirmative by the Supreme Court.

In the case of *Manila International Airport Authority vs. Court of Appeals, 495 SCRA 614-630* (hereafter "MIAA" case), the Supreme Court ruled:

> "We rule that MIAA's Airport Lands and Buildings are exempt from real estate tax imposed by local governments.
>
> First, MIAA is not a government-owned or controlled corporation but an instrumentality of the National Government and thus exempt from local taxation. Second, the real properties of MIAA are owned by the Republic of the Philippines and thus exempt from real estate tax.
>
> 1. MIAA is Not a Government-Owned or Controlled Corporation
>
> Respondents argue that MIAA, being a government-owned or controlled corporation, is not exempt from real estate tax. Respondents claim that the deletion of the phrase

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'any government-owned or controlled so exempt by its charter' in Section 234 (e) of the Local Government Code withdrew the real estate tax exemption of government-owned or controlled corporations. The deleted phrase appeared in Section 40(a) of the 1974 Real Property Tax Code enumerating the entities exempt from real estate tax.

There is no dispute that a government-owned or controlled corporation is not exempt from real estate tax. However, MIAA is not a government-owned or controlled corporation. Section 213 of the Introductory Provisions of the Administrative Code of 1987 defines a government-owned or controlled corporation as follows:

SEC. 2. *General Terms Defined.* – x x x x

(13) Government-owned or controlled corporation refers to any agency organized as a stock or non-stock corporation, vested with functions relating to public needs whether governmental or proprietary in nature, and owned by the Government directly or through its instrumentalities either wholly, or, where applicable as in the case of stock corporations, to the extent of at least fifty-one (51) percent of its capital stock: x x x.

A government-owned or controlled corporation must be 'organized as a stock or non-stock corporation.' MIAA is not organized as a stock or non-stock corporation. MIAA is not a stock corporation because it has no capital stock divided into shares. MIAA has no stockholders or voting shares. Section 10 of the MIAA Charter provides:

SECTION 10. Capital. – The capital of the Authority to be contributed by the National Government shall be increased from Two and One-half Billion (P2,500,000,000.00) Pesos to Ten Billion (P10,000,000,000.00) Pesos to consist of:

(a) The value of fixed assets including airport facilities, runways and equipment and such other properties, movable and immovable which may be contributed by the National Government or

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transferred by it from any of its agencies, the valuation of which shall be determined jointly with the Department of Budget and Management and the Commission on Audit on the date of such contribution or transfer after making due allowances for depreciation and other deductions taking into account the loans and other liabilities of the Authority at the time of the takeover of the assets and other properties;

(b) That the amount of P605 million as of December 31, 1986 representing about seventy per centum (70%) of the unremitted share of the National Government from 1983 to 1986 to be remitted to the National Treasury as provided for in Section 11 of E.O. No. 903 as amended, shall be converted into the equity of the National Government in the Authority. Thereafter, the Government contribution to the capital of the Authority shall be provided in the General Appropriations Act.

Clearly, under its Charter, MIAA does not have capital stock that is divided into shares.

Section 3 of the Corporation Code defines a stock corporation as one whose 'capital stock is divided into shares and xxx authorized to distribute to the holders of such shares dividends xxx.' MIAA has capital but it is not divided into shares of stock. MIAA has no stockholders or voting shares. Hence, MIAA is not a stock corporation.

MIAA is also a non-stock corporation because it has no members. Section 87 of the Corporation Code defines a non-stock corporation as 'one where no part of its income is distributable as dividends to its members, trustees or officers.' A non-stock corporation must have members. Even if we assume that the Government is considered as the sole member of MIAA, this will not make MIAA a non-stock corporation. Non-stock corporations cannot distribute any part of their income to their members. Section 11 of the MIAA Charter mandates MIAA to remit 20% of its annual gross operating income to the National Treasury. This prevents MIAA from qualifying as a non-stock corporation.

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Section 88 of the Corporation Code provides that non-stock corporations are 'organized for charitable, religious, educational, professional, cultural, recreational, fraternal, literary, scientific, social, civil service, or similar purposes, like trade, industry, agriculture and like chambers.' MIAA is not organized for any of these purposes. MIAA, a public utility, is organized to operate an international and domestic airport for public use.

Since MIAA is neither a stock nor a non-stock corporation, MIAA does not qualify as a government-owned or controlled corporation. What then is the legal status of MIAA within the National Government?

MIAA is a government instrumentality vested with corporate powers to perform efficiently its governmental functions. MIAA is like any other government instrumentality, the only difference is that MIAA is vested with corporate powers. Section 2(10) of the Introductory Provisions of the Administrative Code defines a government 'instrumentality' as follows:

> SEC. 2. General Terms Defined. – xxxx
>
> (10) Instrumentality refers to any agency of the National Government, not integrated within the department framework, vested with special functions or jurisdiction by law, endowed with some if not all corporate powers, administering special funds, and enjoying operational autonomy, usually through a charter. xxx

When the law vests in a government instrumentality corporate powers, the instrumentality does not become a corporation. Unless the government instrumentality is organized as a stock or non-stock corporation, it remains a government instrumentality exercising not only governmental but also corporate powers. Thus, MIAA exercises the governmental powers of eminent domain, police authority and the levying of fees and charges. At the

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same time, MIAA exercises 'all the powers of a corporation under the Corporation Law, insofar as these powers are not inconsistent with the provisions of this Executive Order.

Likewise, when the law makes a government instrumentality operationally autonomous, the instrumentality remains part of the National Government machinery although not integrated with the department framework. The MIAA Charter expressly states that transforming MIAA into a 'separate and autonomous body' will make its operation more 'financially viable.'

Many government instrumentalities are vested with corporate powers but they do not become stock or non-stock corporations, which is a necessary condition before an agency or instrumentality is deemed a government-owned or controlled corporation. Examples are the Mactan International Airport Authority, the **Philippine Ports Authority**, the University of the Philippines and Bangko Sentral ng Pilipinas. All these government instrumentalities exercise corporate powers but they are not organized as stock or non-stock corporations as required by Section 2(13) of the Introductory Provisions of the Administrative Code. These government instrumentalities are sometimes loosely called government corporate entities. However, they are not government-owned or controlled corporations in the strict sense as understood under the Administrative Code, which is the governing law defining the legal relationship and status of government entities.

A government instrumentality like MIAA falls under Section 133 (o) of the Local Government Code, which states:

SEC. 133. Common Limitations on the Taxing Powers of Local Government Units. – Unless otherwise provided herein, the

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exercise of the taxing powers of provinces, cities, municipalities, and barangays shall not extend to the levy of the following:

x x x x

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

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

When local governments invoke the power to tax on national government instrumentalities, such power is construed strictly against local governments. The rule is that a tax is never presumed and there must be clear language in the law imposing the tax. Any doubt whether a person, article or activity is taxable is resolved against taxation. This rule applies with greater force when local governments seek to tax national government instrumentalities.

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2. Airport Lands and Buildings of MIAA are Owned by the Republic

a. Airport Lands and Buildings are of Public Dominion

The Airport Lands and Buildings of MIAA are property of public dominion and therefore owned by the State or the Republic of the Philippines. The Civil Code provides:

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ARTICLE 419. Property is either of public dominion or of private ownership.

ARTICLE 420. The following things are property of public dominion:

(1) Those intended for public use, such as roads, canals, rivers, torrents, ports and bridges constructed by the State, banks, shores, roadsteads, and others of similar character;

(2) Those which belong to the State, without being for public use, and are intended for some public service or for the development of the national wealth.

ARTICLE 421. All other property of the State, which is not of the character stated in the preceding article, is patrimonial property.

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No one can dispute that properties of public dominion mentioned in Article 420 of the Civil Code, like 'roads, canals, rivers, torrents, ports and bridges constructed by the State,' are owned by the State. The term 'ports' includes seaports and airports. The MIAA Airport Lands and Buildings constitute a 'port' constructed by the State. Under Article 420 of the Civil Code, the MIAA Airport Lands and Buildings are properties of public dominion and thus owned by the State or the Republic of the Philippines.

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The terminal fees MIAA charges to passengers, as well as the landing fees MIAA charges to airlines, constitute the bulk of the income that maintains the operations of MIAA. The collection of such fees does not change the

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character of MIAA as an airport for public use. Such fees are often termed user's tax. This means taxing those among the public who actually use a public facility instead of taxing all the public including those who never use the particular public facility. A user's tax is more equitable — a principle of taxation mandated in the 1987 Constitution.

The Airport Lands and Buildings of MIAA, which its Charter calls the 'principal airport of the Philippines for both international and domestic air traffic,' are properties of public dominion because they are intended for public use. As properties of public dominion, they indisputably belong to the State or the Republic of the Philippines.

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d. Transfer to MIAA was Meant to Implement a Reorganization

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The MIAA Charter transferred the Airport Lands and Buildings to MIAA without the Republic receiving cash, promissory notes or even stock since MIAA is not a stock corporation.

The whereas clauses of the MIAA Charter explain the rationale for the transfer of the Airport Lands and Buildings to MIAA, xxx.

xxx xxx

The transfer of the Airport Lands and Buildings from the Bureau of Air Transportation to MIAA was not meant to transfer beneficial ownership of these assets from the Republic to MIAA. The purpose was merely to reorganize a division in the Bureau of Air Transportation into a separate

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and autonomous body. The Republic remains the beneficial owner of the Airport Lands and Buildings. MIAA itself is owned solely by the Republic. No party claims any ownership rights over MIAA's assets adverse to the Republic.

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e. Real Property Owned by the Republic is Not Taxable

Section 234(a) of the Local Government Code exempts from real estate tax any 'real property owned by the Republic of the Philippines.' Section 234(a) provides:

> SEC. 234. Exemptions from Real Property Tax. — The following are exempted from payment of the real property tax:
>
> (a) Real property owned by the Republic of the Philippines or any of its political subdivisions except when the beneficial use thereof has been granted, for consideration or otherwise, to a taxable person;
>
> x x x.

This exemption should be read in relation with Section 133(o) of the same Code, which prohibits local governments from imposing 'taxes, fees or charges of any kind on the National Government, its agencies and instrumentalities x x x.' The real properties owned by the Republic are titled either in the name of the Republic itself or in the name of agencies or instrumentalities of the National Government. The Administrative Code allows real property owned by the Republic to be titled in the name of agencies or instrumentalities of the national government. Such real properties remain owned by the Republic and continue to be exempt from real estate tax.

The Republic may grant the beneficial use of its real property to an agency or instrumentality of the national government. This happens when title of the real property is transferred to an agency or instrumentality even as the Republic remains the owner of the real property. Such arrangement does not result in the loss of the tax exemption. Section 234(a) of the Local Government Code states that real property owned by the Republic loses its tax exemption only if the 'beneficial use thereof has been granted, for consideration or otherwise, to a taxable person.' MIAA, as a government instrumentality, is not a taxable person under Section 133(o) of the Local Government Code. Thus, even if we assume that the Republic has granted to MIAA the beneficial use of the Airport Lands and Buildings, such fact does not make these real properties subject to real estate tax. However, portions of the Airport Lands and Buildings that MIAA leases to private entities are not exempt from real estate tax. For example, the land area occupied by hangars that MIAA leases to private corporations is subject to real estate tax. In such a case, MIAA has granted the beneficial use of such land area for a consideration to a taxable person and therefore such land area is subject to real estate tax. In *Lung Center of the Philippines v. Quezon City*, the Court ruled:

> 'Accordingly, we hold that the portions of the land leased to private entities as well as those parts of the hospital leased to private individuals are not exempt from such taxes. On the other hand, the portions of the land occupied by the hospital and portions of the hospital used for its patients, whether paying or non-paying, are exempt from real property taxes.'

xxx xxx." (emphasis supplied)

*PPA, Akin To MIAA, Is Not A Government-Owned Or Controlled Corporation, But*

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*An Instrumentality Of The National Government*

Pursuant to the aforecited Supreme Court decision, MIAA's Airport Lands and Buildings are exempt from real estate tax imposed by local governments since it is not a government-owned or controlled corporation, but an instrumentality of the National Government. A government-owned or controlled corporation is an agency organized as a stock or a non-stock corporation. While an instrumentality refers to any agency of the National Government that is not integrated within the department framework, but vested with special functions or jurisdiction by law, endowed with some, if not all corporate powers, administering special funds, and enjoying operational autonomy, usually through a charter.

In the same manner, PPA is not a government-owned or controlled corporation, but an instrumentality of the National Government, as categorically pronounced by the Supreme Court in the MIAA case. PPA is not organized as a stock or a non-stock corporation. It is not organized as a stock corporation since it has no capital stock divided into shares. PPA has no stockholders or voting shares. *Section 10 of P.D. No. 857*, otherwise known as the *Revised Charter of the Philippine Ports Authority*, provides:

> "SEC 10. Capital. — The capital of the Authority to be contributed by the National Government shall be increased from Two and One-half Billion (P2,500,000,000.00) Pesos to Ten Billion (P10,000,000,000.00) Pesos to consist of:
>
> (a) The value of fixed assets including airport facilities, runways and equipment and such other properties, movable and immovable, which may be contributed by the National Government or transferred by it from any of its agencies, the valuation of which shall be determined jointly with the Department of Budget and Management and the Commission on Audit on the date of such contribution or transfer after making due allowances for depreciation and other deductions taking into account the loans and other liabilities of the Authority at the time of the takeover of the assets and other properties;
>
> (b) That the amount of P605 million as of December 31, 1986 representing about seventy percentum (70%) of the unremitted share of the National Government from 1983 to 1986 to be remitted to the National Treasury as provided for in Section 11 of E.O. No. 903 as amended, shall be converted into the equity of the National Government in the Authority. Thereafter, the Government contribution to the capital of the Authority shall be provided in the General Appropriations Act."

Clearly, under its Charter, PPA does not have capital stock that is divided into shares.

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PPA is also not a non-stock corporation. *Sections 87 and 88 of the Corporation Code* define a non-stock corporation as one organized for charitable, religious, educational, professional, cultural, recreational, fraternal, literary, scientific, social, civil service, or similar purposes, like trade, industry, agriculture and like chambers, no part of its income is distributable as dividends to its members, trustees or officers. PPA, is a public utility, organized to implement an integrated program for the planning, development, financing, and operation of Ports or Port Districts for the entire country *(Section 2 of P.D. No. 857)*. It has no members and no trustees, only board of directors *(Section 7 of P.D. No. 857)*, officials and employees who are to be selected and appointed on the basis of merit and fitness consistent with the Civil Service rules and regulations *(Section 8 of P.D. No. 857)*. Thus, it is clear that PPA is not a non-stock corporation.

Considering that PPA is not government owned or controlled corporation, but a government instrumentality, like MIAA, PPA is therefore exempt from payment of real estate taxes under *Section 133 (o) of the Local Government Code*.

*The Port Of Sasa And Its Buildings, Like MIAA's Airport Lands and*

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*Buildings, Are Properties of Public Dominion*

Pursuant further to the MIAA case, the Republic owns the airport lands and buildings of MIAA since they are properties of public dominion under *Article 420 of the Civil Code*. The collection of terminal fees and other charges from the public does not remove the character of said properties from being properties for public use, as those fees partake of the nature of user's tax.

Similarly, the Port of Sasa and its buildings are properties of public dominion pursuant to *Article 420 of the Civil Code*, notwithstanding that PPA also collects fees from those who actually use said properties. Being properties of public dominion, the Sasa Ports and its buildings indisputably belong to the State or the Republic of the Philippines.

*The Transfer of Assets And/Or Liabilities To PPA, Like In The Case of MIAA, Is Not A Transfer Of Beneficial Ownership*

Finally, pursuant to the MIAA case, the Supreme Court declared that the transfer of the airport lands and buildings from the Bureau of Air Transportation ("BAT") to MIAA was not meant to transfer the beneficial

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ownership, but merely for the purpose of reorganizing a division in the BAT into a separate autonomous body.

In the same vein, the transfer of the assets and liabilities of the Bureau of Customs, Bureau of Public Works and other agencies of the government to PPA was not a transfer of the beneficial ownership of those assets and liabilities, but for the purpose of promoting the growth of regional port bodies that are responsive to the needs of their individual localities *(Last phrase of the 1st Whereas clause, P.D. 857)* in order to attain the port's fuller utilization and development as a spur of regional growth *(3rd Whereas clause, P.D. No. 857)*. The Republic remains the beneficial owner of PPA's properties. The PPA itself is owned solely by the Republic and no party claims any ownership rights over PPA's properties adverse to the Republic.

Accordingly, the Sasa Port and its buildings are exempt from the payment of real estate tax.

Having definitively disposed of the case through the resolution of the principal issue, We find no need to pass upon the other incidental issues raised in the Petition.

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**WHEREFORE**, premises considered, the present Petition for Review is hereby **GRANTED.** Accordingly, the Decision dated April 7, 2005 of the Central Board of Assessment Appeals in CBAA Case No. M-20 and the Order dated January 25, 2005 of the LBAA in LBAA Case No. 01-04 dismissing the appeal are hereby **SET ASIDE**. We declare the Sasa Port, Davao City and its buildings **EXEMPT** from the real estate tax imposed by Davao City. We declare **VOID** all the real estate tax assessments issued by Davao City on the Sasa Port and its buildings.

SO ORDERED.

**OLGA PALANCA-ENRIQUEZ**
Associate Justice

**WE CONCUR:**

**ERNESTO D. ACOSTA**
Presiding Justice

**JUANITO C. CASTAÑEDA, JR.**
Associate Justice

**LOVELL R. BAUTISTA**
Associate Justice

**ERLINDA P. UY**
Associate Justice

**CAESAR A. CASANOVA**
Associate Justice

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# CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the cases was assigned to the writer of the opinion of the Court.

**ERNESTO D. ACOSTA**
Presiding Justice

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