REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB No. 3038** (CTA Case No. 10206)
- versus -	Present: **RINGPIS-LIBAN,** *P.J.,* **BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID, FERRER-FLORES,** *and* **ANGELES,** *JJ.*
MISAMIS ORIENTAL RURAL ELECTRIC SERVICE COOPERATIVE I, INC. (MORESCO-I), *Respondent.*	Promulgated: JUN 22 2026 3:46 p.m.

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DECISION

REYES-FAJARDO, *J.*:

This is a Petition for Review,[1] filed on December 17, 2024, by petitioner Commissioner of Internal Revenue (CIR), assailing the Decision dated July 16, 2024,[2] and Resolution dated November 11, 2024,[3] by the Court's Second Division (Court in Division) in CTA Case No. 10206. The assailed Decision and Resolution nullified petitioner's Final Decision on Disputed Assessment (FDDA) dated August 30, 2019, based on respondent Misamis Oriental Rural Electric Service Cooperative I, Inc. (MORESCO- I)'s tax exemption under Presidential Decree (PD) No. 269.

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1 *Rollo,* pp. 9 – 27.
2 *Id.*, pp. 35 – 47.
3 *Id.*, 49 – 50.

The facts follow.

CIR is the duly appointed authority with the power to administer and enforce all internal revenue laws of the Philippines.

MORESCO-I is allegedly a non-stock, non-profit electric cooperative existing pursuant to the laws of the Republic of the Philippines, including PD No. 269, with principal office address at Poblacion, Laguindingan, Misamis Oriental, duly registered with the National Electrification Administration.

On September 28, 2017, Bureau of Internal Revenue (BIR) Revenue Region No. 16-Cagayan de Oro City issued Letter of Authority (LOA) No. eLA201100012806/LOA-098-2017-00000371.

On August 15, 2018, petitioner then issued a Preliminary Assessment Notice (PAN). Respondent replied thereto through a Position Paper/Protest filed on October 4, 2018.

On October 22, 2018, petitioner issued a Formal Letter of Demand (FLD). Respondent filed a Protest against the FLD on December 19, 2018.

On August 30, 2019, petitioner issued an FDDA finding respondent liable for deficiency income tax for taxable year (TY) 2016 in the amount of ₱40,963,950.55.

On October 30, 2019, petitioner filed a Petition for Review before the Court in Division, docketed as CTA Case No. 10206.

In the assailed Decision dated July 15, 2024, the Court in Division found that the assessment for deficiency income tax for TY 2016 had no legal basis. The Court ruled that respondent, an electric cooperative duly registered with the National Electrification Administration (NEA), is permanently exempt from income tax under Section 39 of PD No. 269. It held that neither Executive Order No. 93 nor FIRB Resolution No. 24-87 effectively withdrew such exemption in light of the Cooperative Code.

For this reason, the Court in Division held that respondent cannot be held liable for deficiency income tax, and the FDDA dated August 30, 2019, was declared null and void:

> **ACCORDINGLY**, the instant Petition for Review, filed on October 30, 2019, is hereby **GRANTED**. The assailed FDDA, dated August 30, 2019, is declared **NULL** and **VOID**. Respondent and his agents are consequently **ENJOINED AND PROHIBITED** from collecting the assessed amount.
>
> **SO ORDERED.**

Respondent filed a Motion for Reconsideration (of the Decision dated July 16, 2024). Under Resolution dated November 11, 2024,[4] the Court in Division ruled in the following fashion:

> **ACCORDINGLY**, the instant *Motion for Reconsideration (of the Decision dated July 16, 2024)* filed on August 2, 2024, is hereby **DENIED** for lack of merit. The assailed Decision, dated July 16, 2024, is hereby **AFFIRMED**.
>
> **SO ORDERED.**

Hence, this Petition for Review.

ARGUMENTS

Petitioner faults the Court in Division in ruling that respondent is exempt from income tax under PD No. 269. He maintains that the exemption from income tax granted to electric cooperatives provided under Section 39 of PD No. 269 was withdrawn and has not yet been reinstated.

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4 *Supra* note 3.

Respondent failed to file its comment on petitioner's assertions.[5]

ISSUE

Did the Court in Division err in ruling that respondent is exempt from income tax?[6]

RULING

We deny the Petition.

The Court in Division correctly ruled on respondent's permanent exemption from income tax.

By way of background, on August 6, 1973, PD No. 269, otherwise known as the "National Electrification Administration Decree," was signed into law thereby creating the NEA, which is vested with the power to regulate electric cooperatives, among others.

Under Section 39 (a) of PD No. 269, electric cooperatives registered with the NEA are permanently exempted from paying income taxes, to wit:

> 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 cooperative is necessary and appropriate:
>
> > (a) Provided that it operates in conformity with the purposes and provisions of this Decree, **cooperative** (1) **shall be permanently exempt from paying income taxes**, and (2) for a period ending on December 31; of the thirtieth full calendar year after the date of a cooperative's organization or conversion hereunder, or until it

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5 Records Verification [Report], *Rollo*, p. 56.
6 Petition for Review, Assignment of Error, *Rollo*, p. 15.

> shall become completely free of indebtedness incurred by borrowing, whichever event first occurs, shall be exempt from the payment (A) of all National Government, local government and municipal taxes and fees, including 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. [7]

On October 10, 1984, however, PD No. 1955[8] was signed into law and withdrew all exemptions from or any preferential treatment in the payment granted to private business enterprises, including those granted to electric cooperatives under PD No. 269. Then on December 17, 1986,[9] Executive Order (EO) No. 93 was signed[10] and further affirmed the withdrawal of such fiscal incentives but authorized the Fiscal Incentives Review Board (FIRB) to restore tax and duty exemptions to affected industries.

Thus, on June 14, 1987, the FIRB issued Resolution No. 24-87 restoring the tax and duty exemptions of electric cooperatives granted by PD No. 269, except that on income tax, effective July 1, 1987, to wit:

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7 Emphasis ours.

8 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.

9 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,..."

10 WITHDRAWING ALL TAX AND DUTY INCENTIVES, SUBJECT TO CERTAIN EXCEPTIONS, EXPANDING THE POWERS OF THE FISCAL INCENTIVES REVIEW BOARD AND FOR OTHER PURPOSES.

> 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**. . ., 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.[11]

On March 10, 1990, RA No. 6938, otherwise known as the "Cooperative Code of the Philippines," was enacted, allowing electric cooperatives to register under the Cooperative Development Authority upon compliance with certain registration requirements and enjoy preferential tax treatments afforded to cooperatives. Subsequently, on February 17, 2009, the Cooperative Code was amended by RA No. 9520, otherwise known as the "Philippine Cooperative Code of 2008."

Article 127 of the Cooperative Code, as amended by RA No. 9520, categorically stated that it did not amend nor repeal any provision of PD No. 269, to wit:

> Article 127. Repeals. — Except as expressly provided by this Code, Presidential Decree No. 175 and **all other laws, or parts thereof, inconsistent with any provisions of this Code shall be deemed repealed**: Provided, however, That **nothing in this Code shall be interpreted to mean the amendment or repeal of any provision of Presidential Decree No. 269**: Provided, further, That the **electric cooperatives** which qualify as such under this Code shall fall under the coverage thereof.[12]

Thus, any other laws inconsistent with the Cooperative Code, as amended by RA No. 9520, are considered repealed except PD No. 269. In other words, the above provision repealed

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11 Emphasis ours.
12 Emphasis ours.

all previous laws inconsistent with the Cooperative Code, while leaving P.D. No. 269 untouched.[13]

Mecano v. Commission on Audit[14] discussed how implied repeal by irreconcilable inconsistency operates, *viz.*:

> There are two categories of repeal by implication. The first is where provisions in the two acts on the same subject matter are in an irreconcilable conflict. The later act to the extent of the conflict constitutes an implied repeal of the earlier one. The second is if the later act covers the whole subject of the earlier one and is clearly intended as a substitute, it will operate to repeal the earlier law.
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> **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.**[15]

Thus, EO No. 93, being inconsistent with the Cooperative Code, was therefore repealed. It follows that the tax exemptions provided under PD No. 269 remains or reinstituted.

Relatedly, on May 7, 2013, RA No. 10531,[16] otherwise known as the "National Electrification Administration Reform Act of 2013" was enacted. Section 4 thereof amended Section 3 of PD No. 269, and provided a definition for "electric cooperative" as follows:

> SEC. 3. Definitions. – As used in this Decree, the following words or terms shall have the following meanings, unless a different meaning clearly appears from the context:
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> ...

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13 *Commissioner of Internal Revenue v. Misamis Oriental II Rural Electric Service Cooperative, Inc.*, C.T.A. EB Case No. 2796 (C.T.A. Case No. 10145), February 28, 2025.

14 G.R. No. 103982, December 11, 1992.

15 Emphasis ours.

16 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."

> (u) **'Electric cooperative'** shall refer to an electric distribution utility organized and **registered pursuant to Presidential Decree No. 269, as amended**, Republic Act No. 9520, **and other related laws.**[17]

In fine, electric cooperatives registered with NEA remained permanently exempt from paying income tax by virtue of Section 39 (a) of PD No. 269.

Here, respondent's Certificate of Registration[18] proves that it is registered with NEA. *Ergo*, it is exempt from income tax under PD No. 269.

WHEREFORE, the Petition for Review, filed by the Commissioner of Internal Revenue in CTA EB No. 3038 is **DENIED.** The Decision dated July 16, 2024, and Resolution dated November 11, 2024, in CTA Case No. 10206 are **AFFIRMED**.

SO ORDERED.

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

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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17 Emphasis ours.

18 Exhibit "P-4," Docket - CTA Case No. 10206, p. 23.

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

Kindly see my Dissenting Opinion
HENRY S. ANGELES
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.

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice

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DISSENTING OPINION

ANGELES, *J.*:

With due respect to the *ponente*, I register my dissent to the denial of the *Petition for Review* filed by the Commissioner of Internal Revenue (CIR), effectively cancelling the subject Final Decision on Disputed Assessment (FDDA) dated August 30, 2019 which imposes upon MORESCO I deficiency income tax.

In particular, I disagree that MORESCO I, by virtue of its registration with the National Electrification Administration (NEA), and on the basis of a supposed harmonization of existing laws, is permanently exempt from income tax.

In the *ponencia*, it was held that the Court in Division correctly ruled on MORESCO I's permanent exemption from income tax, and that Executive Order (EO) No. 93, being inconsistent with Republic Act

(RA) No. 9520, otherwise known as the Cooperative Code of 2008, was therefore repealed; consequently, the tax exemptions provided under Presidential Decree (PD) No. 269 remains or was reinstituted.

Relatedly, in the assailed Decision of the Court in Division,[1] the following was stated, among others, to wit:

> We follow this line of reasoning here. While the bodies with which cooperatives must register differ, *P.D. No. 269* and the *Cooperative Code* share a similar principle: to grant tax exemptions to registered cooperatives. *E.O. No. 93* contradicts this by withdrawing such tax exemptions. The *Cooperative Code* thus repeals said Order while refraining from modifying *P.D. No. 269*. By extension, the *Cooperative Code* also repeals *FIRB Resolution No. 24-87*, insofar as said Resolution reiterates *E.O. No. 93*'s withdrawal of income tax exemptions for cooperatives. As such, the Code effectively reinstates the tax exemptions granted by *P.D. No. 269* to electric cooperatives that had registered with the NEA, without further requiring them to register with the CDA.
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> xxx xxx xxx
>
> Considering petitioner's exemption from income tax, the assessment against it for alleged deficiency income tax has no basis in law. An entity that is not required to pay any income tax in the first place obviously cannot accrue any deficiency income tax. The assessment must consequently be nullified.

On this matter, I offer a different view.

It is an established rule in statutory construction that in order that one law may operate to repeal another law, the two laws must be inconsistent and so repugnant as to be **irreconcilable** with the other.[2]

Moreover, repeals by implication are not favored and will not be decreed unless it is **manifest** that the legislature so intended. The legislature is presumed to know the existing laws so that **if repeal is intended, the proper step is to express it.** Failure to add a specific repealing clause indicates that the intent was not to repeal any existing law **unless there is a showing that a plain, unavoidable, and irreconcilable inconsistency and repugnancy exists in terms of the new and old laws.**[3]

Further, although a latter enactment may relate to the same subject matter as that of an earlier statute, such relation by itself is not

[1] CTA Case No. 10206, July 16, 2024.
[2] *Didipio Earth-Savers' Multi-Purpose Association, Inc. v. Gozun*, G.R. No. 157882, March 30, 2006.
[3] *People v. Mendez*, G.R. Nos. 208310-11 & 208662, March 28, 2023.

sufficient to cause an implied repeal of the latter, since the new law may be cumulative or a continuation of the old one.[4]

In any case, all doubts must be resolved **against** any implied repeal, and all efforts should be exerted in order to harmonize and give effect to all laws on the subject.[5]

In this case, the relevant laws are PD No. 269 (NEA Decree), EO No. 93, in relation to Fiscal Incentives Review Board (FIRB) Resolution No. 24-87, RA No. 6938, as amended by RA No. 9520 (Cooperative Code of 2008), and RA No. 10531 (NEA Reform Act of 2013).

For reference, **Section 39(a) of PD No. 269** provides:

> **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 cooperative is necessary and appropriate:
>
> (a) Provided that it operates in conformity with the purposes and provisions of this Decree, cooperative **(1) shall be permanently exempt from paying income taxes**, and (2) for a period ending on December 31; of the thirtieth full calendar year after the date of a cooperative's organization or conversion hereunder, or until it shall become completely free of indebtedness incurred by borrowing, whichever event first occurs, shall be exempt from the payment (a) of all National Government, local government and municipal taxes and fees, including 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 supplied)*

On the other hand, **Sections 1, 2 and 5 of EO No. 93** state:

> SECTION 1. **The provisions of any general or special law to the contrary notwithstanding, all tax and duty incentives**

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[4] *Supra*, note 80.
[5] *Hagad v. Gozo-Dadole*, G.R. No. 108072, December 25, 1995.

<u>granted to government and private entities are hereby withdrawn</u>, except:

a) those covered by the non-impairment clause of the Constitution;

b) those conferred by effective international agreements to which the Government of the Republic of the Philippines is a signatory;

c) those enjoyed by enterprises registered with:
(i) the Board of Investments pursuant to Presidential Decree No. 1789, as amended;
(ii) the Export Processing Zone Authority, pursuant to Presidential Decree No. 66, as amended;
(iii) the Philippine Veterans Investment Development Corporation Industrial Authority pursuant to Presidential Decree No. 538, as amended;

d) those enjoyed by the copper mining industry pursuant to the provisions of Letter of Instruction No. 1416;

e) those conferred under the four basic codes namely:
(i) the Tariff and Customs Code, as amended;
(ii) the National Internal Revenue Code, as amended;
(iii) the Local Tax Code, as amended;
(iv) the Real Property Tax Code, as amended;

f) those approved by the President upon the recommendation of the Fiscal Incentives Review Board.

SECTION 2. **<u>The Fiscal Incentives Review Board created under Presidential Decree No. 776, as amended, is hereby authorized to:</u>**

<u>a) restore tax and/or duty exemptions withdrawn hereunder in whole or in part;</u>

<u>b) revise the scope and coverage of tax and/or duty exemption that may be restored;</u>

<u>c) impose conditions for the restoration of tax and/or duty exemption;</u>

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.

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SECTION 5. All laws, orders, issuances, rules and regulations or parts thereof inconsistent with this Executive Order are hereby repealed or modified accordingly. *(Emphasis supplied)*

Relative thereto, **FIRB Resolution No. 24-87** reads:

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 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. *(Emphasis supplied)*

As previously mentioned, the Court in Division held that the Cooperative Code repealed EO No. 93, and by extension, FIRB Resolution No. 24-87, insofar as it reiterates EO No. 93's withdrawal of income tax exemptions for cooperatives. The Court in Division cited Section 127 of the Cooperative Code, which I reproduced below:

ARTICLE 127. *Repeals.* — Except as expressly provided by this Code, Presidential Decree No. 175 and **all other laws, or parts thereof, inconsistent with any provisions of this Code shall be deemed repealed: *Provided, however*, That nothing in this Code shall be interpreted to mean the amendment of repeal of any provision of Presidential Decree No. 269:** *Provided, further*, That the electric cooperatives which qualify as such under this Code shall fall under the coverage thereof. *(Emphasis supplied)*

However, I would also like to reproduce other relevant provisions of the Cooperative Code, as amended, specifically Articles 60, 61, 62, and 130, to wit:

> ART. 60. *Tax Treatment of Cooperatives.* — **Duly registered cooperatives under this Code** which do not transact any business with non-members or the general public shall not be subject to any taxes and fees imposed under the internal revenue laws and other tax laws. Cooperatives not falling under this article shall be governed by the succeeding section.
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> ART. 61. *Tax and Other Exemptions.* — Cooperatives transacting business with both members and non-members shall not be subject to tax on their transactions with members. In relation to this, the transactions of members with the cooperative shall not be subject to any taxes and fees, including but not limited to final taxes on members' deposits and documentary tax. Notwithstanding the provisions of any law or regulation to the contrary, such cooperatives dealing with nonmembers shall enjoy the following tax exemptions:
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> ART. 62. *Privileges of Cooperatives.* — **Cooperatives registered under this Code** shall, notwithstanding the provisions of any law to the contrary, be also accorded the following privileges:
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> xxx xxx xxx
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> ART. 130. *Registration Options of Electric Cooperatives.* — **Electric cooperatives registered with the National Electrification Administration (NEA) under Presidential Decree No. 269, as amended,** which opt not to register with the Authority are allowed to retain the word 'cooperative' in their registered names: ***Provided,* That they shall not be entitled to the benefits and privileges under this Code.**

I would also like to highlight that Section 127 of the Cooperative Code of 1990, cited by the Court in Division, was amended by RA No. 9520 or the Cooperative Code of 2008, and now reads as follows:

> ART. 143. *Repealing Clause.* — Except as expressly provided by this Code, Presidential Decree No. 175 and all other laws, or parts thereof, inconsistent with any provision of this Code shall be deemed repealed: *Provided,* That the provisions of Sections 3, 5, and 7 of Presidential Decree No. 1645, Executive Order No. 623, series of 2007, Revenue Regulations No. 20-2001, and all laws, decrees, executive orders, implementing rules and regulations, BIR circulars, memorandum orders, letters of instruction, local government ordinances, or parts thereof inconsistent with any of the provisions of this Act are hereby repealed, amended or modified accordingly.

Furthermore, I quote the relevant amendments under RA No. 10531 or the NEA Reform Act of 2013, *viz.*:

> SECTION 13. A new section, to be designated as Section 32-A, of Presidential Decree No. 269, as amended, is hereby inserted to read as follows:

"SEC. 32-A. *Incentives of Electric Cooperatives.* — Consistent with the declared policy of this Act, **electric cooperatives which comply with the financial and operational standards set by the NEA shall enjoy the following incentives:**

"(a) To be entitled to congressional allocations, grants, subsidies and other financial assistance for rural electrification;

"(b) To receive all subsidies, grants and other assistance which shall form part of the donated capital and funds of the electric cooperatives, and as such, it shall not be sold, traded nor divided into share holdings at any time. These donated capital and funds shall be appraised and valued for the sole purpose of determining the equity participation of the members: *Provided,* That in case of dissolution or conversion of the electric cooperative, said donated capital and funds shall be subject to escheat; and

"(c) To avail of the preferential rights granted to cooperatives under Republic Act No. 7160, otherwise known as the 'Local Government Code of 1991', and other related laws.

"As a further incentive, the NEA may prioritize the grant of incentives in favor of electric cooperatives that are managed effectively and efficiently and comply consistently with its mandates and directives."

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SECTION 18. *Repealing Clause.* — Article 132 (3) of Republic Act No. 9520 and Section 30 of Republic Act No. 9136 (EPIRA) on NEA's authorized capital stock are hereby repealed. Any other provision of law, presidential decree, executive order, or rules and regulations inconsistent with the provisions of this Act or with the rules and regulations issued pursuant thereto are hereby repealed or modified accordingly.

A thorough review of the above-cited laws ultimately reveals that while Section 39(a) of PD No. 269 indeed grants unto NEA cooperatives tax and duty exemption privileges, EO No. 93 eventually withdrew all such privileges, subject to exceptions, and vested in the FIRB the authority to restore such privileges, to revise the scope and coverage of the privileges to be restored, and to impose conditions for the restoration. **Clearly, then, Section 39(a) of PD No. 269 was effectively repealed by EO No. 93.**

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Although Memorandum Order No. 65[6] suspended the implementation of EO No. 93 on electric cooperatives, such suspension ended on June 30, 1987.

Thereafter, the FIRB, by virtue of the authority vested in it by EO No. 93, issued FIRB Resolution No. 24-87 which restored the tax and duty incentives of NEA cooperatives under Section 39(a) of PD No. 269, but revised the scope and coverage of such incentives by excluding income tax exemption on electric service operations and other sources.

Scrutiny of the above-cited laws undeniably shows that none of the provisions therein either expressly or impliedly amends EO No. 93, in relation to FIRB Resolution No. 24-87, which amended Section 39(a) of PD No. 269. There is really nothing in the Cooperative Code, as amended, nor in Section 32-A of RA No. 10531, nor in any other provision thereof, nor in its Implementing Rules and Regulations,[7] which states that the permanent income tax exemption of electric cooperatives under Section 39(a)(1) of PD No. 269, as amended, is retained or restored.

Furthermore, there is no irreconcilable inconsistency existing between or among any of the amended and additional provisions incorporated by RA No. 10531 to PD No. 269, and EO No. 93 in relation to FIRB Resolution No. 24-87, so as to warrant the construction of an implied repeal of the latter by the former. In fact, RA No. 10531 makes no modification whatsoever on Section 39(a) of PD No. 269 relative to income tax exemption on electric service operations and other sources.

Therefore, per Section 39(a) of PD No. 269 as it currently stands, income of electric cooperatives governed by PD No. 269 from 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, are subject to income tax.

There being no modification on Section 39(a) of PD No. 269 upon the enactment of RA No. 10531, **Section 39(a) of PD No. 269, as amended by EO No. 93 and further qualified by FIRB Resolution No. 24-87, remains in full force and effect.**

It bears stressing that it is a fundamental principle in taxation that tax exemptions must be expressed in the statute in clear language that leaves no doubt as to the intention of the legislature to grant such

[6] *Suspended Implementation of E.O. No. 93 for Certain Cooperatives*, January 21, 1987.
[7] DOE Department Circular No. DC2013-07-0015, July 26, 2013.

exemption.[8] Stated differently, tax exemptions should be granted only by clear and unequivocal provision of law on the basis of language too plain to be mistaken.[9] Even if it is granted, the exemption must be interpreted in *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority.[10]

As the right of taxation is inherent in the State and a prerogative essential to the perpetuity of the government, he who claims an exemption from the common burden must justify his claim by the clearest grant of organic or statute law.[11]

Here, a perusal of the records of the case shows that MORESCO I failed to show any clear and unequivocal provision of law that would justify an interpretation that *disregards* EO No. 93 in relation to FIRB Resolution No. 24-87, and *isolates* Section 39(a) of PD No. 269 from all other equally applicable laws.

It is perhaps worth mentioning that the imposition of conditions under FIRB Resolution No. 24-87 for the availment of preferential tax treatment cannot be construed as contravening the constitutional policy in favor of cooperatives, just because such conditions limit the State's grant of tax incentives to the same. There is no vested right in a tax exemption. Being a mere statutory privilege, a tax exemption may be modified or withdrawn at will by the granting authority.[12] Thus, as long as the conditions for the availment of tax benefits are imposed in accordance with the law and applicable rules, and as long as cooperatives comply with such conditions, there is nothing to stop them from enjoying tax benefits.

Incidentally, the Supreme Court in *Maceda v. Macaraig, Jr.* [13] categorically declared EO No. 93 as complete in itself and constitutive of a valid delegation of legislative power to the FIRB. Further, in *Davao Oriental Electric Cooperative, Inc. v. Province of Davao Oriental*,[14] the Supreme Court, in resolving the issue of retroactivity of FIRB Resolution No. 24-87, necessarily recognized the validity of the same.

Lastly, I am of the considered view that the remedy against a strict application of the laws and FIRB Resolution No. 24-87 is by amendment or curative legislation, and not by judicial decree.

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[8] *PLDT v. City of Davao*, G.R. No. 143867, August 22, 2001.
[9] *Philippine Long Distance Telephone Co. v. City of Davao*, G.R. No. 143867 (Resolution), March 25, 2003.
[10] *Id.*
[11] *Asiatic Petroleum Co., Ltd. v. Llanes*, G.R. No. 25386, October 20, 1926.
[12] *Republic v. Caguioa*, G.R. No. 168584, October 15, 2007.
[13] G.R. No. 88291, May 31, 1991.
[14] G.R. No. 170901, January 20, 2009.

v

For these reasons, I vote to **grant** the instant *Petition for Review.*

HENRY S. ANGELES
Associate Justice