REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

METROPOLITAN NAGA WATER DISTRICT (MNWD),
Petitioner,

CTA EB NO. 1079
(CTA AC NO. 91)

-versus-

Present:

Del Rosario, *P.J.*,
Castañeda, Jr.
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Cotangco-Manalastas,
and
Ringpis-Liban, *JJ.*

THE PROVINCIAL GOVERNMENT OF CAMARINES SUR,
Respondent.

Promulgated:
JUN 17 2015
8:15 p.m.

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DECISION

RINGPIS-LIBAN, J.

Before the Court *En Banc* is a Petition for Review filed on November 22, 2013, assailing the Decision dated July 17, 2013 and the Resolution dated October 23, 2013 of the Special Second Division of this Court in CTA AC No. 91. The said Decision, as upheld by the Resolution, dismissed for lack of merit the petitioner's appeal against the Decision dated December 20, 2011 and Order dated March 22, 2012 of the Regional Trial Court (RTC) of Naga City, Branch 21, in Civil Case No. RTC 2010-0138, denying Metropolitan Naga Water District's appeal against the assessment by the Provincial Government of

Camarines Sur for franchise tax in the amount of PhP1,039,100.10 for the years 2004 to 2009.

THE PARTIES

Petitioner Metropolitan Naga Water District (hereinafter, "MNWD," for brevity) is a government entity, organized and existing by virtue of Presidential Decree No. 198, as amended, holding office at 40 J. Miranda Avenue, Naga City, Camarines Sur, where it may be served with legal processes.

The respondent Provincial Government of Camarines Sur is a local government unit created and vested with local taxing power under R.A. No. 7160, the Local Government Code (LGC). It may be served with legal processes at the Capitol Complex, Pili, Camarines Sur.

JURISDICTIONAL FACTS

The petitioner received the assailed Resolution dated October 23, 2013 on October 24, 2013. On November 6, 2013,[1] petitioner filed a Motion for Extension of Time to File Petition for Review, seeking an extension of fifteen (15) days, or until November 23, 2013, within which to file its Petition for Review.

The instant Petition for Review was filed on November 22, 2013,[2] and was therefore timely filed.

FACTUAL ANTECEDENTS

On August 20, 2010, the respondent thru its Provincial Treasurer sent to MNWD an assessment letter with an attached Revised Franchise Tax Assessment for the years 2004 to 2009 in the amount of PhP1,039,100.10, inclusive of surcharges and interests. This was received by MNWD on September 6, 2010.

On November 3, 2010, MNWD, thru the Office of the Government Corporate Counsel (OGCC), filed a protest with the Office of the Provincial Treasurer against the assessment, invoking exemption under Section 193 of the Local Government Code (Republic Act No. 7160, hereinafter "LGC," for brevity).

[1] Rollo, CTA EB NO. 1079, pp. 1- 3.
[2] Ibid. pp. 5-33.

On November 8, 2010, MNWD's protest was denied by the respondent thru the Provincial Treasurer. This was received by MNWD on November 25, 2010. In denying the protest, the Office of the Provincial Treasurer explained:

> While it may be true that the tax exemption privileges of local water districts was not withdrawn with the passage of the Local Government Code by virtue of Section 193, R.A. No. 7109 itself that granted tax exemption to local water districts expressly provides that such privilege shall be enjoyed only for a period of five (5) years, that is, from August 14, 1991 – August 14, 1996. Simply put, Section 193 of the Local Government Code merely recognized exemption from local taxes of local water districts, but it did not grant a tax exemption. Thus, from August 15, 1996, local water districts created pursuant to PD 198 do not anymore enjoy exemption from local taxes.

On December 21, 2010, MNWD appealed the respondent's decision on the protest to the RTC, pursuant to Section 195 of the LGC.

On December 20, 2011, the RTC promulgated its Decision denying MNWD's appeal. MNWD received its copy of the Decision on January 24, 2012.

On February 8, 2012, MNWD moved for reconsideration of the RTC Decision.

On March 22, 2012, the RTC denied MNWD's Motion for Reconsideration. MNWD received its copy of this Order on April 11, 2012.

On May 8, 2012, MNWD appealed the RTC Decision and Order to this Court thru a petition for review. This was docketed as AC No. 91. MNWD argued that Section 46 of P.D. No. 198, as amended, grants local water districts (LWDs) the privilege of exemption from local taxes; that even granting that R.A. No. 7109 impliedly repealed P.D. No. 198, R.A. No. 7109 was in turn impliedly repealed by Section 193 of the LGC, resulting in the continuing exemption of LWDs from local taxation; that MNWD is a government instrumentality exempt from local government taxes, and against which the rule of strict interpretation of statutes granting tax exemption does not apply; and that in case of doubt regarding MNWD's continuing exemption from local taxes, such doubt shall be resolved liberally in MNWD's favor.[3]

CTA AC No. 91 was deemed submitted for decision on December 6, 2012. Subsequently, the Special Second Division of this Court promulgated its Decision on July 17, 2013, dismissing the petition for lack of merit. Then, on

[3] Petition for Review dated May 7, 2012.

October 23, 2013, the Special Second Division promulgated its Resolution denying MNWD's motion for reconsideration, also for lack of merit.

On November 6, 2013, MNWD filed with this Court a Motion for Extension of Time to File its Petition for Review, for fifteen (15) days or until November 23, 2013. This motion was granted on November 12, 2013.

On November 22, 2013 the instant Petition for Review was filed.

On December 26, 2013, the Court ordered the respondent to file its Comment within ten (10) days from receipt of notice.[4]

On May 12, 2014,[5] noting that respondent had not filed its Comment to the petition, this Court required the parties to submit their respective memoranda within thirty (30) days from receipt of the Resolution. MNWD filed its Memorandum on June 24, 2014, stating the lone issue to be "whether MNWD is exempt from the payment of provincial franchise tax."[6]

On September 3, 2014, noting that the respondent failed to file its memorandum within the prescribed period, the Court deemed the case submitted for decision.

ISSUES

This case presents a pure question of law, which can be synthesized as follows:

> DOES SECTION 46 OF P.D. NO. 198, AS AMENDED, GRANT LOCAL WATER DISTRICTS (LWDS) THE PRIVILEGE OF EXEMPTION FROM LOCAL TAXES, AND DOES THIS PRIVILEGE CONTINUE UNDER SECTION 193 OF THE LOCAL GOVERNMENT CODE?

To resolve this issue, the Court has to consider whether or not R.A. No. 7109 had impliedly repealed Section 46 of P.D. No. 198, as amended, and R.A. No. 7109 was in turn impliedly repealed by Section 193 of the LGC, resulting in the continuing exemption of LWDs from local taxation – by virtue of the "respected rule of statutory construction that "where a law which repeals a prior law, not expressly but by implication, is itself repealed, ... the repeal of the

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[4] Resolution, Rollo, CTA EB NO. 1079, pp. 61-62.
[5] Resolution, Rollo, CTA EB NO. 1079, pp. 65-66.
[6] Petitioner's Memorandum dated June 24, 2014, p. 4.

repealing law revives the prior law, unless the language of the repealing statute provides otherwise."[7]

APPLICABLE LAWS

The laws relevant to the resolution of the instant case are: (1) Section 46 of P.D. No. 198, as amended; (2) R.A. No. 7109; and (3) Section 193 of the Local Government Code of 1991 (R.A. No. 7160).

Presidential Decree No. 198, the Provincial Water Utilities Act of 1973, exempted LWDs from all local government taxes, as follows:

> **Section 45.** *Exemption from Taxes.* - A district shall (1) be exempt from paying income taxes, and (2) shall be exempt from the payment of (a) all National Government, local government and municipal taxes and fees, including any franchise, filing, recordation, license or permit fees or taxes and fees, charges or costs involved in any court of administrative proceeding in which it may be a party and (b) all duties or imposts on imported machinery, equipment and materials required for its operations.

On August 14, 1991, R.A. No. 7109 (An Act Granting Tax Exemption Privileges to Local Water Districts) granted tax exemption privileges to LWDs. Section 1 of this law provided:

> **Section 1.** ***Exemption from taxes.*** – A water district created pursuant to Presidential Decree No. 198, as amended, shall be exempted from the payment of (1) income taxes, except taxes on interest income from deposits and on investments that have no direct relation with water service operations; (2) franchise taxes; and (3) duties and taxes on imported machinery, equipment and materials required for its operations: provided, that such machinery, equipment and materials are not domestically manufactured at comparable and competitive prices and quality.

Entitlement to the tax exemptions granted by R.A. No. 7109, however, was premised on conditions laid down in Section 3, and was limited to a period of five (5) years from the effectivity of the law, or until August 13, 1996. Compliance with the conditions was to be monitored by the Bureau of Local Government Finance of the Department of Finance, to which the LWDs were required to furnish statistical data and financial statements.

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[7] ***Republic vs Sandiganbayan (Third Division) and Macario Asistio Jr.***, G.R. No. 90529, August 16, 1991, *en banc*, citing ***U.S. vs. Soliman***, 36 Phil. 5 (1917).

Section 193 of the Local Government Code of 1991 (R.A. No. 7160), which MNWD invokes as the legal basis of its "continuing" tax exemptions, states:

> **Section 193.** *Withdrawal of Tax Exemption Privileges.* - Unless otherwise provided in this Code, tax exemptions or incentives granted to, or presently enjoyed by all persons, whether natural or juridical, including government-owned or controlled corporations, except local water districts, cooperatives duly registered under R.A. No. 6938, non-stock and non-profit hospitals and educational institutions, are hereby withdrawn upon the effectivity of this Code.

DISCUSSION

There being no factual issue in dispute – and the respondent having filed neither a comment/opposition nor a memorandum, leaving the Court to rely on its previous pleadings in the record – the Court shall proceed directly to resolve the sole legal issue in this case: does Section 46 of P.D. No. 198, as amended, grant LWDs the continuing privilege of exemption from local taxes, in relation to Section 193 of the LGC?

In resolving this issue, as stated earlier, the Court has to consider whether or not R.A. No. 7109 on August 14, 1991 impliedly repealed Section 46 of P.D. No. 198, as amended, and R.A. No. 7109 was in turn impliedly repealed by Section 193 of the LGC (which took effect on January 1, 1992), resulting in the continuing exemption of LWDs from local taxation.

MNWD posits that R.A. No. 7109 applies only to national taxes, and thus did not affect the exemption from local taxes granted to LWDs by P.D. No. 198, which uninterrupted exemption was made continuing by Section 193 of the LGC.

The respondent counters that R.A. No. 7109 amended or repealed P.D. No. 198, and fixed a time limit, up to August 14, 1996, beyond which LWDs shall no longer enjoy the privilege of exemption from franchise tax and other local taxes. As to franchise tax, the expiration of the exemption made MNWD subject to assessment by virtue of Section 137 of the LGC, which provides:

> **Section 137.** *Franchise Tax.* - Notwithstanding any exemption granted by any law or other special law, the province may impose a tax on businesses enjoying a franchise, at a rate not exceeding fifty percent (50%) of one percent (1%) of the gross annual receipts for the preceding calendar year based on the incoming receipt, or realized, within its territorial jurisdiction. Xxx

The RTC and the Special Second Division of this Court both ruled in favor of the respondent. *We* affirm.

R.A. No. 7109 applies to both national and local taxes

Does R.A. No. 7109 exempt LWDs only from national taxes? Section 1 of this law states:

> **Section 1.** ***Exemption from taxes.*** – A water district created pursuant to Presidential Decree No. 198, as amended, shall be exempted from the payment of (1) income taxes, except taxes on interest income from deposits and on investments that have no direct relation with water service operations; (2) franchise taxes; and (3) duties and taxes on imported machinery, equipment and materials required for its operations: provided, that such machinery, equipment and materials are not domestically manufactured at comparable and competitive prices and quality.

There is no showing whatsoever in Section 1 or elsewhere in the relatively short text of R.A. No. 7109 that the exemptions granted thereunder to LWDs are limited to national taxes. Although income tax is a national internal revenue tax under Section 21(a) of the National Internal Revenue Code of 1997 (R.A. No. 8424), it does not follow that the franchise taxes mentioned in Section 1 of R.A. No. 7109 are necessarily and exclusively also national taxes. As it has been held, "obviously, we cannot read any distinction into the law where it is not obvious or even obviously intended."[8]

The rule is that laws granting tax exemptions are to be strictly construed against the taxpayer and in favor of the taxing authority. The Supreme Court *En Banc* reminded in 2003 in *Philippine Long Distance Telephone Company, Inc. vs City of Davao, et al.*:[9]

> Tax exemptions should be granted only by clear and unequivocal provision of law on the basis of language too plain to be mistaken.[10] They cannot be extended by mere implication or inference.

[8] *Mercedes U. de Guzman, et al. vs Court of Appeals, et al.*, G.R. No. L-47378, February 27, 1987, per Justice Isagani Cruz.
[9] G.R. No. 143867, March 25, 2003.
[10] Citing *Afisco Ins. Corp. vs Court of Appeals*, 302 SCRA 1 (1999).

MNWD could have easily proven that R.A. No. 7109 exempted LWDs only from national franchise taxes by showing that it was assessed, and in fact paid, local franchise taxes from August 14, 1991 to August 13, 1996.

Moreover, if MNWD's theory that R.A. No. 7109 pertained only to national taxes is correct, then it would be irrelevant and unnecessary for MNWD to argue that R.A. No. 7109 was subsequently repealed by Section 193 of the LGC. Why? Because it has been held that Section 193 of the LGC "is an express, albeit general, repeal of all statutes granting tax exemptions from <u>local</u> taxes."[11]

Otherwise said, if R.A. No. 7109 encompasses purely national taxes, then it would not have been repealed by R.A. No. 7160. And not having been repealed by R.A. No. 7160, the privilege granted to LWDs to enjoy tax exemptions under R.A. No. 7109 would have expired, as they did, after August 13, 1996.

Inasmuch as the exemption from franchise tax granted to LWDs by R.A. No. 7109 expired on August 13, 1996, per Revenue Memorandum Circular 63-2003 issued by the Bureau of Internal Revenue on October 10, 2003, MNWD became subject to franchise taxes effective that date.

In the instant case, MNWD assails the assessment by the Provincial Government of Camarines Sur for franchise tax in the amount of PhP1,039,100.10 for the years 2004 to 2009. What about the prior years, dating back to 1991-1996?

R.A. No. 7109 repealed or amended Section 46 of P.D. No. 198, as amended

Presidential Decree No. 198, the Provincial Water Utilities Act of 1973, exempted LWDs from all local government taxes, as follows:

> **Section 45.** *Exemption from Taxes.* - A district shall (1) be exempt from paying income taxes, and (2) shall be exempt from the payment of (a) all National Government, local government and municipal taxes and fees, including any franchise, filing, recordation, license or permit fees or taxes and fees, charges or costs involved in any court of administrative proceeding in which it may be a party and (b) all duties or imposts on imported machinery, equipment and materials required for its operations.

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[11] *National Power Corporation vs City of Cabanatuan*, G.R. No. 149110, April 9, 2003, citing *City Government of San Pablo, Laguna vs Reyes*, 305 SCRA 353 (1999). Underscoring added, for emphasis.

Section 45 of the original P.D. No. 198 became Section 46 when P.D. No. 198 was amended by P.D. No. 768 on August 15, 1975.

Section 1 of R.A. No. 7109 exempted LWDs created pursuant to P.D. No. 198 "from the payment of (1) income taxes, except taxes on interest income from deposits and on investments that have no direct relation with water service operations; (2) franchise taxes; and (3) duties and taxes on imported machinery, equipment and materials required for its operations: provided, that such machinery, equipment and materials are not domestically manufactured at comparable and competitive prices and quality." More significantly, R.A. No. 7109 in its Section 3 prescribed conditions, and limited the period, for an LWD to claim entitlement to the tax exemptions thereunder.

In its repealing clause (Section 7), R.A. No. 7109 repealed or modified "all other laws, decrees and orders or rules and regulations, or parts thereof, which are inconsistent with this Act."

MNWD argues that because implied repeals are not favored, R.A. No. 7109 cannot be given the effect of having repealed or amended P.D. No. 198.

While it is true that R.A. No. 7109 did not identify P.D. No. 198 as among the laws or decrees inconsistent with it, the very fact that the entirety of R.A. No. 7109 encompasses the same very specific subject matter – the exemption from taxes of LWDs – as covered by Section 46 of P.D. No. 198, as amended, and there is irreconcilable inconsistency between them insofar as Section 3 of R.A. No. 7109 limits the period for the enjoyment of the tax exemptions to only five (5) years from the effectivity of the law on August 14, 1991, necessarily results in an implied repeal or amendment of Section 45 of P.D. No. 198.

It is well to remember that although implied repeals are not favored, they are not absolutely prohibited either. Indeed, they should be given effect once it is clearly shown that the new law intends to replace the old one. Thus the Supreme Court *En Banc* held in *Antonio A. Mecano vs Commission on Audit*:[12]

> Repeal by implication proceeds on the premise that where a statute of later date clearly reveals an intention on the part of the legislature to abrogate a prior act on the subject, that intention must be given effect. Hence, before there can be a repeal, there must be a clear showing on the part of the lawmaker that the intent in enacting the new law was to abrogate the old one. The intention to repeal must be clear and manifest; otherwise, at least, as a general rule, the later act is to be construed as a continuation

[12] G.R. No. 103982, December 11, 1992, 216 SCRA 500. Citations omitted.

of, and not a substitute for, the first act and will continue so far as the two acts are the same from the time of the first enactment.

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.

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.

MNWD even cited, but misquoted, *Mecano vs COA* in the instant Petition for Review, but insisted that "there is no irreconcilable conflict that would constitute an implied repeal between the two laws – PD 198, as amended, and RA 7109."[13] MNWD argued that the five-year limit set by R.A. No. 7109 pertained only to *national* franchise taxes, and did not extend to the local franchise taxes included in P.D. No. 198.

MNWD pointed out that R.A. No. 7109 "does not clearly state if it involves local tax;"[14] the Court agrees with this observation, but adds that neither does R.A. No. 7109 categorically limit its scope to national taxes. In quoting part of a paragraph in *Mecano vs COA*, MNWD included a sentence that starts with the line: "As laws are presumed to be passed with deliberation with full knowledge of all existing ones on the subject xxx." Accordingly, the presumption is that the Congress fully knew, in enacting R.A. No. 7109, that the franchise taxes from which P.D. No. 198 exempted LWDs covered *both* national and local franchise taxes. In its Section 1, R.A. No. 7109 exempted LWDs from the payment of "franchise taxes," without qualifying whether this exemption applied only to national franchise tax or only to local franchise tax, or covered both. Inasmuch as the Congress presumably knew that the exemptions under P.D. No. 198 covered both national and local franchise taxes, if the Congress in enacting R.A. No. 7160 intended to limit the exemption to only either one of them, it would have explicitly stated so; by not distinguishing between them, it exempted both. Thus, the Court deems the five-year limit fixed by R.A. No. 7109 for the enjoyment of this franchise tax exemption as applicable to both national and local franchise taxes. In line with the rule that "tax exemptions are never presumed and are strictly construed

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[13] Petition for Review, p. 13.
[14] *Ibid.*, p. 8.

against the taxpayer and liberally in favor of the taxing authority,"[15] the five-year limit should apply to both.

In further pursuit of its theory that R.A. No. 7109 pertained only to national taxes, MNWD cited its Section 5, on the condonation by the Government of "all unpaid taxes and duties or any portion thereof due from local water districts for the period starting October 15, 1984," and Section 6, on the promulgation of implementing rules and regulations by the Secretary of Finance.

Because the condonation of unpaid taxes was by the Government, MNWD presumed that those taxes must be national taxes. This is ***non-sequitur.*** Even under the LGC (Section 277), the President of the Philippines may condone real property taxes anywhere in Metro Manila.

What MNWD should have known is that on October 14, 1984, tax exemptions on a broad front were withdrawn by P.D. No. 1955. Earlier, on June 11, 1984, P.D. No. 1931 withdrew "all exemptions from the payment of duties, taxes, fees, imposts and other charges heretofore granted" to GOCCs, including their subsidiaries.[16] The tax exemptions sweepingly withdrawn in 1984 apparently included those granted under P.D. No. 198 – which was why R.A. No. 7109 in 1991 made reference to "all unpaid taxes and duties or any portion thereof due from local water districts for the period starting October 15, 1984."

If P.D. No. 198 had truly continuously exempted LWDs from certain national and local taxes since 1973 until the LGC took effect on January 1, 1992, then what "unpaid taxes and duties" from October 15, 1984 up to August 14, 1991 were there to condone under Section 5 of R.A. No. 7109? Without such "unpaid taxes and duties," Section 5 of R.A. No. 7109, providing for their condonation, would be rendered absurd – and just as "the legislature certainly abhors absurdity," "courts should not give a statute a meaning that would lead to absurdity."[17]

It thus emerges that the subsisting law granting LWDs tax exemptions at the time of the taking effect of the LGC was R.A. No. 7109, and not Section 46 of P.D. No. 198, as amended. It was R.A. No. 7109 that restored, in amended form, the tax exemptions that LWDs once enjoyed under P.D. No. 198 but which were withdrawn in 1984. Consequently, when the tax exemption privileges granted to LWDs by R.A. No. 7109 expired on August 13, 1996, by operation of Section 3 of that law, LWDs thence became subject to the taxes

[15] *Smart Communications, Inc. vs City of Davao, et al.*, G.R. No. 155491, September 16, 2008, citing *Commissioner of Internal Revenue vs Visayan Electric Company*, 132 Phil. 203, 215 (1968).
[16] See *Philippine Ports Authority vs City of Iloilo*, G.R. No. 109791, July 14, 2003.
[17] *Mapulo Mining Association and E.V. Chavez & Associates vs Hon. Fernando Lopez, et al.*, G.R. No. L-30440, February 7, 1992, citing *Automotive Parts & Equipment Co. vs Lingad, et al.*, 30 SCRA 248; *Director of Lands vs Abaja, et al.* 63 Phil. 559.

and duties from which they were exempted by R.A. No. 7109, including local franchise taxes. It is noteworthy that when P.D. No. 198 was amended by R.A. No. 9286 on April 2, 2004, no tax exemptions, whether old or new, were granted. It was only when R.A. No. 10026 lapsed into law on March 11, 2010 that LWDs once more enjoyed a tax exemption, this time from income tax, thru an amendment to Section 27(c) of the National Internal Revenue Code of 1997.

As to the promulgation of R.A. No. 7109's IRR by the Secretary of Finance, that, by itself, did not make the tax exemptions granted under that law to LWDs exemptions from purely national taxes. Under the law, compliance by LWDs with the required submission of financial and statistical statements was placed under the Bureau of Local Government Finance of the Department of Finance. Were the taxes national taxes, then the BLGF's role would logically have been assigned instead to the Bureau of Internal Revenue, also under the DOF.

Section 193 of the LGC did not repeal R.A. No. 7109

Section 193 of the LGC withdrew, effective January 1, 1992, "tax exemptions or incentives granted to, or presently enjoyed by all persons, whether natural or juridical, including government-owned or controlled corporations, except local water districts xxx."

It is clear from the language of Section 193 that it did not withdraw tax exemptions enjoyed by LWDs that were subsisting as of January 1, 1992. These tax exemptions, at that time, were those enumerated under R.A. No. 7109. But because R.A. No. 7109 limited the enjoyment of the tax exemptions to five (5) years, the privilege expired by operation of law on August 13, 1996, without need of repeal by Section 193 of the LGC.

At the RTC, MNWD posited that "RA 7160 completely repealed RA 7109."[18] MNWD now wants this Court to believe and hold that Section 193 of the LGC repealed only the five-year-limit on the enjoyment of tax exemptions granted to LWDs by R.A. No. 7109. The Court, however, finds nothing in Section 193 that justifies either a total repeal or this selective repeal. *We* agree with the Decision of the Special Second Division of this Court in CTA AC No. 91 that Section 193 only excepted LWDs from the immediate withdrawal of tax exemptions they were enjoying when the LGC took effect on January 1, 1992. Section 193 did not expand the scope or extend the effectivity of the subsisting tax exemptions of LWDs.

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[18] Memorandum dated August 18, 2011, No. 26, p. 6.

The Court is perplexed by MNWD's logic. According to MNWD, Section 46 of P.D. No. 198 was not repealed by R.A. No. 7109; thus, the tax exemptions granted to LWDs by Section 46 of P.D. 198 are the tax exemptions granted perpetuity by Section 193 of the LGC. How then would MNWD, or this Court, reconcile the superfluities in the duplication of exemptions – from income taxes (except, in R.A. No. 7109, taxes on interest income from deposits and on investments that have no direct relation with water service operations); franchise taxes; and duties and taxes on imported machinery (except, under R.A. 7109, when these are domestically manufactured at comparable and competitive prices and quality) – during those years from 1991 to 1996 when Section 46 of P.D. No. 198 supposedly co-existed with R.A. No. 7109? We have heard of double taxation, but double tax exemption?

Finally, going back to the question of whether or not Section 46 of P.D. No. 198 was revived thru the repeal by the LGC of R.A. No. 7109, the law that impliedly repealed it, the Court finds the answer to be in the negative. The LGC did not repeal R.A. No. 7109, but merely allowed its tax exemptions to expire by operation of the latter law's Section 3, at the end of the five-year period.

MNWD is not a government instrumentality

The other arguments raised by the MNWD -- (1) that it is a *government instrumentality* exempt from local government taxes, and against which the rule of strict interpretation of statutes granting tax exemption allegedly does not apply; and (2) that in case of doubt regarding MNWD's continuing exemption from local taxes, such doubt allegedly shall be resolved liberally in MNWD's favor as a *government instrumentality* -- deserve scant attention.

It is settled that local water districts (LWDs) are government-owned and controlled corporations (GOCCs), rather than government instrumentalities. In 2004, the Supreme Court *En Banc* made this determination in *Engr. Ranulfo C. Feliciano, in his capacity as General Manager of the Leyte Metropolitan Water District, Tacloban City, vs Commission on Audit, et al.*[19]

> In *Feliciano*, the Court held that the Local Water Districts are government-owned or controlled corporations since they exist by virtue of Presidential Decree No. 198, which constitutes their special charter. The seed capital assets of the Local Water Districts, such as waterworks and sewerage facilities, were public property which were managed, operated by or under the control of the city, municipality or province before the assets were transferred to the Local Water Districts. The Local Water Districts also receive subsidies and loans from the Local Water

[19] G.R. No. 147402, January 14, 2004, 464 Phil. 439; 419 SCRA 363.

Utilities Administration (LWUA). In fact, under the 2009 General Appropriations Act, the LWUA has a budget amounting to ₱400,000,000 for its subsidy requirements. **There is no private capital invested in the Local Water Districts.** The capital assets and operating funds of the Local Water Districts all come from the government, either through transfer of assets, loans, subsidies or the income from such assets or funds.

The government also controls the Local Water Districts because the municipal or city mayor, or the provincial governor, appoints all the board directors of the Local Water Districts. Furthermore, the board directors and other personnel of the Local Water Districts are government employees subject to civil service laws and anti-graft laws. Clearly, the Local Water Districts are considered government-owned or controlled corporations not only because of their creation by special charter but also because the government in fact owns and controls the Local Water Districts.[20]

In contrast, a national government instrumentality "is defined as an 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. 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."[21]

A local water district cannot be a national government instrumentality because under the special charter of LWDs, the formation of an LWD is "on a local option basis."[22] Indeed, MNWD even cited the Supreme Court En Banc's decision in *Davao City Water District, et al. vs Civil Service Commission*,[23] declaring LWDs to be GOCCs, in its petition for review filed at the RTC in Civil Case No. 2010-0138; yet MNWD still insisted that LWDs are government instrumentalities "beyond the provincial local taxing power" by virtue of Section 133(o) of the LGC.[24]

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[20] *Dante V. Liban, et al. vs Richard J. Gordon*, G.R. No. 175352, July 15, 2009, 593 SCRA 68. Boldface in the original.
[21] *Philippine Fisheries Development Authority vs Court of Appeals*, G.R. No. 169836, July 31, 2007, 528 SCRA 706, at 710, 712-714, reiterated in *PFDA vs Central Board of Assessment Appeals, et al.*, G.R. No. 178030, December 15, 2010. Italics added for emphasis.
[22] Section 2, P.D. No. 198. See also Section 6 of the same law.
[23] Petition in Civil Case No. 2010-0138 dated December 10, 2010, No. 21, p. 8, cited as 201 SCRA 593. This was G.R. Nos. 95237-38, September 13, 1991.
[24] *Ibid.*, No. 22, p. 8.

The distinction is significant because under Section 133(o) of the LGC, LGUs have no power to tax instrumentalities of the national government.[25]

It is noteworthy that MNWD, while claiming to be a government instrumentality, anchors its entitlement to tax exemption from local taxation less on Section 133(o) of the LGC, than on Section 193, which applies to GOCCs "except local water districts." Thus, in its Memorandum filed on August 31, 2011 with the RTC of Naga City, Branch 21, MND declared that the lone issue in the case was "whether or not MNWD as a local water district is exempt from payment of the provincial franchise tax under Section 193 of RA 7160."[26]

SUMMARY AND CONCLUSION

To summarize, at the time that the LGC took effect on January 1, 1992, the tax exemptions enjoyed by LWDs, and which Section 193 of the LGC did not withdraw, were the exemptions granted by R.A. No. 7109. After the privilege to enjoy these exemptions expired by express provision of Section 3 of R.A. No. 7109 on August 13, 1996, LWDs had no more exemption from any tax, until R.A. No. 10026 lapsed into law on March 11, 2010 and granted LWDs exemption from income tax, thru an amendment to Section 27(c) of the National Internal Revenue Code of 1997.

The Court therefore concludes that MNWD was properly assessed franchise tax by the Provincial Government of Camarines Sur. MNWD utterly failed to persuade this Court otherwise.

> Tax exemptions must be clear and unequivocal. A taxpayer claiming a tax exemption must point to a specific provision of law conferring on the taxpayer, in clear and plain terms, exemption from a common burden. Any doubt whether a tax exemption exists is resolved against the taxpayer. Tax exemptions cannot arise by mere implication, much less by an implied re-enactment of a repealed tax exemption clause.[27]

WHEREFORE, the instant Petition for Review is **DISMISSED** for lack of merit. The Resolution dated October 23, 2013 of the Special Second Division of this Court in CTA AC No. 91, upholding its Decision dated July 17, 2013, is **AFFIRMED**. Petitioner Metropolitan Naga Water District in hereby **ORDERED** to pay to the Provincial Government of Camarines Sur

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[25] *PFDA vs Central Board of Assessment Appeals, et al.*, G.R. No. 178030, December 15, 2010; *Republic of the Philippines, represented by the Philippine Reclamation Authority, vs City of Paranaque*, G.R. No. 191109, July 18, 2012.

[26] Memorandum dated August 18, 2011, p. 3.

[27] *Cagayan Electric Power and Light Co., Inc. vs City of Cagayan de Oro*, G.R. No. 191761, November 14, 2012.

franchise tax in the amount of PhP1,039,100.10, inclusive of surcharges and interests, for the years 2004 to 2009.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

(with Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

(Concur with PJ Del Rosario)
JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

(Concur with PJ Del Rosario)
ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO – MANALASTAS
Associate Justice

CERTIFICATION

Pursuant to Section 13 of 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 case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

METROPOLITAN NAGA WATER DISTRICT,
Petitioner,

-versus-

THE PROVINCIAL GOVERNMENT OF CAMARINES SUR,
Respondent.

CTA EB NO. 1079
(CTA AC No. 91)

Present:

DEL ROSARIO, *PJ,*
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
COTANGCO-MANALASTAS, *and*
RINGPIS-LIBAN, *JJ.*

Promulgated:

JUN 17 2015
4:15 p.m.

x -- x

CONCURRING OPINION

DEL ROSARIO, PJ.:

In her *ponencia,* my esteemed and learned colleague, the Honorable Associate Justice Ma. Belen M. Ringpis-Liban, dismissed the present Petition for Review and affirmed the Decision of the Special Second Division in CTA AC No. 91.

While I concur with the dismissal of the present Petition for Review, I believe that the *Court En Banc* must nevertheless impose an interest of 6% *per annum* on the amount of P1,039,100.10, representing franchise tax due from petitioner, from the finality of the Decision until its satisfaction.

OM

In *Dario Nacar vs. Gallery Frames and/or Felipe Bordey, Jr.,*[1] the Supreme Court laid down the guidelines regarding the manner of computing legal interest, *viz:*

> "To recapitulate and for future guidance, the guidelines laid down in the case of Eastern Shipping Lines are accordingly modified to embody BSP-MB Circular No. 799, as follows:
>
> I. When an obligation, regardless of its source, i.e., law, contracts, quasi-contracts, delicts or quasi-delicts is breached, the contravenor can be held liable for damages. The provisions under Title XVIII on "Damages" of the Civil Code govern in determining the measure of recoverable damages.
>
> II. With regard particularly to an award of interest in the concept of actual and compensatory damages, the rate of interest, as well as the accrual thereof, is imposed, as follows:
>
> When the obligation is breached, and it consists in the payment of a sum of money, i.e., a loan or forbearance of money, the interest due should be that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. In the absence of stipulation, the rate of interest shall be 6% per annum to be computed from default, i.e., from judicial or extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code.
>
> When an obligation, not constituting a loan or forbearance of money, is breached, an interest on the amount of damages awarded may be imposed at the discretion of the court at the rate of 6% per annum. No interest, however, shall be adjudged on unliquidated claims or damages, except when or until the demand can be established with reasonable certainty. **Accordingly, where the demand is established with reasonable certainty, the interest shall begin to run from the time the claim is made judicially or extrajudicially (Art. 1169, Civil Code), but when such certainty cannot be so reasonably established at the time the demand is made, the interest shall begin to run only from the date the judgment of the court is made (at which time the quantification of damages may be deemed to have been reasonably ascertained).** The actual base for the computation of legal interest shall, in any case, be on the amount finally adjudged.
>
> **When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest, whether the case falls under paragraph 1 or paragraph 2, above, shall be 6% per annum from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit.**"

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[1] G.R. No. 189871, August 13, 2013.

om

In fine, when the judgment of the court awarding a sum of money becomes final and executory, the legal interest shall be 6% *per annum* from such finality until its satisfaction.

For all the foregoing, I **VOTE** to **DISMISS** the present Petition for Review and **ORDER** Metropolitan Naga Water District to pay the Provincial Government of Camarines Sur franchise tax in the amount of P1,039,100.10, inclusive of surcharges and interests, for the years 2004 and 2009. A six percent (6%) *per annum* interest shall be imposed on such amount upon finality of this decision until the payment thereof.

ROMAN G. DEL ROSARIO
Presiding Justice