

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

SPECIAL FIRST DIVISION

**ZAMBALES ELECTRIC
COOPERATIVE I, INC.
(ZAMECO I) represented by
Sharon Q. Domacena and
Mary Grace R. Arandez,**

CTA Case No. 10165

Petitioner, Members:

-versus-

**DEL ROSARIO, P.J., Chairperson,
MANAHAN, and
REYES-FAJARDO, JJ.**

**BUREAU OF INTERNAL
REVENUE, REVENUE
REGION NO. 4, represented
by Edgar B. Tolentino,
Regional Director,**

Promulgated:

Respondent.

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D E C I S I O N

MANAHAN, J.:

Before this Court is a *Petition for Review*, praying that the *Formal Letter of Demand* (FLD) dated January 7, 2019 which respondent issued to petitioner be declared as null and void.

THE PARTIES

Petitioner Zambales Electric Cooperative, Inc. I (ZAMECO I) is an electric distribution utility duly organized, existing and registered with the National Electrification Administration (NEA), with principal office at San Vicente, Palauig, Zambales.¹

Respondent is the Bureau of Internal Revenue (BIR) Regional Director of Revenue Region 4 with office address at City of San Fernando, Pampanga. He is being sued in his capacity as the authorized representative of the Commissioner

¹ Par. 1, *Petition for Review*, Docket – Vol. I, p. 6. *cm*

of Internal Revenue (CIR) whose office denied the protest letter of petitioner.²

ANTECEDENTS (ADMINISTRATIVE LEVEL)

Respondent, through Atty. Jethro M. Sabariaga, then Regional Director of BIR Revenue Region 4 in the City of San Fernando, Pampanga, issued to petitioner the *Preliminary Assessment Notice* (PAN) dated November 8, 2018³ that assessed the latter a total deficiency income tax of ₱8,504,124.56, for taxable year 2016. The assessment was made pursuant to Assessment No. 018-E1704059513 and the *Letter of Authority* (LOA) No. 018-2017-00000140/eLA201500073121.⁴ Petitioner received the PAN on December 7, 2018.⁵

On December 21, 2018, petitioner filed with respondent the letter dated December 19, 2018,⁶ requesting for additional time to attend the matter involving the said PAN.

Respondent denied petitioner's request in the letter dated January 7, 2019,⁷ and informed petitioner that the FLD and *Final Assessment Notice* (FAN) shall be issued accordingly.⁸ On the same day, the assailed FLD with *Details of Discrepancy*, and *Assessment Notices* were issued,⁹ assessing petitioner of deficiency income tax for taxable year 2016, in the aggregate amount of ₱8,618,834.11, inclusive of surcharge, interests, and compromise penalty. Petitioner received the said FLD on January 23, 2019.¹⁰

Petitioner then filed its *Protest-Letter Request for Reconsideration* on February 21, 2019.¹¹ It enumerated in the

² Par. 1, Admitted Facts and Stipulation of Facts, Pre-Trial Order dated June 9, 2021, Docket – Vol. I, p. 414.

³ Exhibit “P-1”, Docket – Vol. II, pp. 436 to 440.

⁴ Exhibit “R-1”, BIR Records, Folder 1, p. 2.

⁵ Refer to Par. 2, Admitted Facts and Stipulation of Facts, Pre-Trial Order dated June 9, 2021, Docket – Vol. I, p. 414.

⁶ Exhibit “P-2”, Docket – Vol. II, p. 441.

⁷ Exhibit “P-3”, Docket – Vol. II, p. 442.

⁸ Par. 3, Admitted Facts and Stipulation of Facts, Pre-Trial Order dated June 9, 2021, Docket – Vol. I, p. 414.

⁹ Exhibit “P-4”, Docket – Vol. II, pp. 443 to 447.

¹⁰ *Id.*; Par. 2, Statement of Facts, *Petition for Review*, Docket – Vol. I, p. 7.

¹¹ Par. 3, Admitted Facts and Stipulation of Facts, Pre-Trial Order dated June 9, 2021, Docket – Vol. I, p. 414; Exhibit “P-5”, Docket – Vol. II, pp. 448 to 456. 

said protest the reasons why it must not be assessed with income tax.¹²

Respondent sent a letter to petitioner informing it that its protest has been denied,¹³ and that the *Final Decision on Disputed Assessment* (FDDA) will be issued accordingly.¹⁴ The FDDA dated August 9, 2019 was then issued.¹⁵

PROCEEDINGS BEFORE THIS COURT

Claiming failure on the part of respondent to act on petitioner's *Protest-Letter*, the present *Petition for Review* was filed on September 11, 2019.¹⁶

Respondent filed his *Motion to Admit Attached Answer* on November 11, 2019,¹⁷ to which petitioner filed its *Comment/Opposition to the Motion to Admit Attached Answer* on January 8, 2020.¹⁸ The Court granted the *Motion to Admit* of respondent and the latter's *Answer* in the Resolution dated February 6, 2020.¹⁹ Respondent's *Answer*²⁰ set forth its special and affirmative defenses. Respondent transmitted the *BIR Records* for this case on December 16, 2019.²¹

In the Resolution dated February 13, 2020,²² the Court referred the case to mediation in the Philippine Mediation Center - Court of Tax Appeals (PMC-CTA), pursuant to Section II of the *Interim Guidelines for Implementing Mediation in the Court of Tax Appeals*. However, on July 21, 2020, the PMC-CTA submitted a report stating that mediation was refused by petitioner.²³

¹² *Id.*

¹³ Par. 4, Admitted Facts and Stipulation of Facts, Pre-Trial Order dated June 9, 2021, Docket – Vol. I, p. 415.

¹⁴ Exhibit “P-6”, Docket – Vol. II, p. 464.

¹⁵ Exhibit “P-7”, Docket – Vol. II, pp. 465 to 467.

¹⁶ Docket – Vol. I, pp. 6 to 20.

¹⁷ Docket – Vol. I, pp. 117 to 122.

¹⁸ Docket – Vol. I, pp. 143 to 145.

¹⁹ Docket – Vol. I, pp. 153 to 156.

²⁰ Docket – Vol. I, pp. 123 to 132.

²¹ *Compliance* dated December 16, 2019, Docket – Vol. I, pp. 136 to 138.

²² Docket – Vol. I, p. 165.

²³ *Back To Court* issued by the PMC-CTA, Docket – Vol. I, p. 167. 

The Pre-Trial Conference was initially set on October 8, 2020.²⁴ However, in the Order dated October 5, 2020,²⁵ the Court cancelled the said scheduled Conference, and the same was reset to, and held on, December 10, 2020.²⁶ Prior thereto, *Respondent's Pre-Trial Brief* was filed on October 2, 2020,²⁷ while petitioner's *Pre-Trial Brief* was posted on December 1, 2020.²⁸

In its Resolution dated January 29, 2021,²⁹ for failure of the parties to file their *Joint Stipulation of Facts and Issues* despite the period granted, the Court ruled that the parties' right to file the same is deemed waived, and that the Pre-Trial is terminated.

On February 19, 2021, the parties filed a *Joint Motion for Reconsideration and to Admit Attached Joint Stipulation of Facts and Issues*,³⁰ which the Court denied in the Resolution dated March 4, 2021.³¹ Thereafter, the Pre-Trial Order dated June 9, 2021 was issued.³²

Trial proceeded.

The parties presented their respective documentary and testimonial evidence.

Petitioner offered the testimony of its Finance Services Department Manager, Ms. Sharon Q. Domacena.³³

Petitioner's *Formal Offer of Evidence* was posted on June 24, 2021,³⁴ while respondent filed its *Comment (Re: Petitioner's Formal Offer of Evidence)* on July 23, 2021.³⁵ In the Resolution

²⁴ Resolution dated July 30, 2020, Docket – Vol. I, pp. 176 to 177; Notice of Pre-Trial Conference dated August 25, 2020, Docket – Vol. I, pp. 178 to 180.

²⁵ Docket – Vol. I, pp. 210 to 211.

²⁶ Minutes of the hearing held on, and Order dated, December 10, 2020, Docket – Vol. I, pp. 270 to 272, and 274 to 276, respectively.

²⁷ Docket – Vol. I, pp. 197 to 200.

²⁸ Docket – Vol. I, pp. 306 to 311.

²⁹ Docket – Vol. I, p. 322.

³⁰ Docket – Vol. I, pp. 323 to 332.

³¹ Docket – Vol. I, pp. 335 to 336.

³² Docket – Vol. I, pp. 410 to 419.

³³ Exhibit "P-15", Docket – Vol. I, pp. 277 to 298; Minutes of the hearing held on, and Order dated, June 8, 2021, Docket – Vol. I, pp. 353 to 357.

³⁴ Docket – Vol. II, pp. 431 to 435.

³⁵ Docket – Vol. II, pp. 577 to 579. *cm*

dated February 11, 2022,³⁶ the Court admitted petitioner's offered exhibits, *except* for Exhibit "P-8", for failure of petitioner's witness to identify the document, and Exhibit "P-9", because the document may not be the subject of judicial notice.

For its part, respondent offered the testimony of Revenue Officer Jovelle V. Ignacio.³⁷

Respondent filed a *Motion to Admit Attached Formal Offer of Evidence* on April 25, 2022.³⁸ Petitioner's *Comments to the Respondent's Formal Offer of Evidence* was posted on April 29, 2022.³⁹ In the Resolution promulgated on June 20, 2022,⁴⁰ the Court granted the *Motion to Admit Attached Formal Offer of Evidence* filed by respondent, and admitted the latter's *Formal Offer of Evidence*,⁴¹ and all of respondent's offered exhibits.

Respondent's *Memorandum* was filed on July 21, 2022.⁴²

On July 28, 2022, petitioner posted a *Motion to Admit Memorandum*,⁴³ which the Court, in its Resolution dated August 18, 2022,⁴⁴ granted in the interest of justice, thereby admitting petitioner's *Memorandum*.⁴⁵

The present case was submitted for decision on August 18, 2022.⁴⁶

³⁶ Docket – Vol. II, pp. 587 to 590.

³⁷ Exhibit "R-14", Docket – Vol. I, pp. 366 to 374; Minutes of the hearing held on, and Order dated, April 5, 2022, Docket – Vol. II, pp. 621 to 622-A.

³⁸ Docket – Vol. II, pp. 623 to 626.

³⁹ Docket – Vol. II, pp. 640 to 642.

⁴⁰ Docket – Vol. II, pp. 654 to 656.

⁴¹ Docket – Vol. II, pp. 628 to 632.

⁴² Docket – Vol. II, pp. 657 to 668.

⁴³ Docket – Vol. II, pp. 671 to 672.

⁴⁴ Docket – Vol. II, p. 693.

⁴⁵ Docket – Vol. II, pp. 694 to 712.

⁴⁶ Resolution dated August 18, 2022, Docket – Vol. II, p. 693. 

THE ISSUES

The issues to be resolved by this Court are as follows:

- “1. Whether or not the Honorable Court has jurisdiction over the present case; and
2. Whether the petitioner is liable to pay the assessed deficiency income tax for taxable year 2016, plus surcharge, penalties and interests pursuant to Sections 248 and 249 of the National Internal Revenue Code of 1998 (*sic*), as amended by Republic Act No. 10963, otherwise known as the TRAIN Law.”⁴⁷

Petitioner’s arguments:

Petitioner argues that this Court has jurisdiction over the case and that petitioner is not liable for deficiency income tax.

Anent the latter argument, petitioner points out that Presidential Decree (PD) No. 269 provides the exemption; that BIR Revenue Memorandum Circular No. 74-2013 is not a sufficient legal basis to assess [petitioner] for income tax; that respondent failed to recognize that electric cooperatives, like petitioner, are non-stock and non-profit organizations, and hence, must be exempted from income tax; that respondent failed to recognize the rate methodology adopted by electric cooperatives which did not consider the collection from member-consumers of corporate income tax, since electric cooperatives are non-stock and non-profit; and that respondent did not cross examine petitioner’s witness, and the lone witness of respondent was not actually the one who conducted the revenue examination of the books of petitioner.

Respondent’s counter-arguments:

Respondent contends that this Court has no jurisdiction over the instant case; and that petitioner is liable for the assessed deficiency taxes.

⁴⁷ Issue/s to be Tried or Resolved, Pre-Trial Order dated June 9, 2021, Docket – Vol. I, p. 415. 

THE COURT'S RULING

The *Petition for Review* must be granted.

The Court has jurisdiction over the case.

Respondent opines that the Court has no jurisdiction over the present case and argues that the assessment against petitioner has already become final, executory and demandable. He points out that as admitted by petitioner in paragraph no. 3, under the caption, "Statement of Facts",⁴⁸ it received on July 25, 2019, the letter dated July 19, 2019, wherein petitioner was informed that its protest was denied. According to respondent, petitioner should have filed an appeal before this Court or the CIR on August 24, 2019 (the 30th day from July 25, 2019).

We disagree with respondent.

Indeed, the 30-day period for filing an appeal before this Court is provided under Section 11 of RA No. 1125⁴⁹, as amended by RA No. 9282⁵⁰, which states:

"SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* – **Any person adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue...may file an appeal with the CTA within thirty (30) days** after the receipt of such decision or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.

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xxx." (*Emphases added*)

The decision or ruling of the CIR appealable to this Court is usually in the form of an FDDA. However, the letter dated

⁴⁸ Par. 3, *Petition for Review*, Docket – Vol. I, pp. 7 to 8.

⁴⁹ AN ACT CREATING THE COURT OF TAX APPEALS.

⁵⁰ AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OF REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES. *cm*

July 19, 2019,⁵¹ which was received by petitioner on July 25, 2019, cannot be treated as such. For easy reference, the said letter states:

“This refers to your protest letter dated February 21, 2019 requesting for reconsideration regarding Formal Letter of Demand with Assessment Notice no. 018-E1704059513.

This is to inform you that as per memorandum issued by Regional Director – Revenue Region No. 4, Edgar B. Tolentino, your request for reconsideration is hereby **DENIED**. Thus, the Final Decision on a Disputed Assessment (FDDA) shall be issued accordingly.

Very truly yours,

(signed)

ATTY. MERCEDES R. ESTALILLA
Revenue District Officer”

It is clear from the foregoing letter that while petitioner is being informed about the denial of its request for reconsideration, it was not intended to be respondent’s FDDA. This is so because the letter continued to state that the FDDA shall still “*be issued accordingly*”. Moreover, the same letter is not one issued by the CIR, and there is no showing that the latter authorized Revenue District Officer, such as Atty. Mercedes R. Estalilla, to deny a taxpayer’s request for reconsideration or protest to a tax assessment. But even granting that the said letter dated July 19, 2019 may be treated as the action of the CIR on petitioner’s request for reconsideration, the same is void, pursuant to Revenue Regulations (RR) No. 12-99,⁵² as amended by RR No. 18-2013,⁵³ to wit:

“3.1.5 Final Decision on a Disputed Assessment (FDDA). — The decision of the Commissioner or his duly authorized representative shall state the (i) facts, the applicable law, rules and regulations, or jurisprudence on which such decision is based, otherwise, the decision

⁵¹ Exhibit “P-6”, Docket – Vol. II, p. 464.

⁵² SUBJECT: Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer’s Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty, September 6, 1996.

⁵³ SUBJECT: Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Delinquency Tax Assessment, November 28, 2013. 

shall be void (see illustration in ANNEX 'C' hereof), and (ii) ***that the same is his final decision.*** (Emphases added)

Notably, the said letter dated July 19, 2019 does not state the facts, the applicable law, rules and regulations, or jurisprudence on which the decision to deny petitioner's request for reconsideration was based. Furthermore, the same does not state that it is a "*final decision*". Such being the case, the inevitable conclusion is that the said letter is not valid and cannot be treated as an FDDA appealable to this Court.

Thus, there can be no merit in respondent's contention to the effect that the 30-day period to appeal before this Court should be reckoned from the date of receipt by petitioner of the letter dated July 19, 2019, i.e., on July 25, 2019.

In any event, it must be stated that the present *Petition for Review* was timely filed on September 11, 2019, due to the inaction of respondent.

Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, reads as follows:

"SEC. 228. *Protesting of Assessment.* – xxx

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If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable. (Emphases added)

Implementing the foregoing provision, Section 3.1.4 of RR No. 12-99, as amended by RR No. 18-2013, provides, in part, as follows:

"If the protest is not acted upon by the Commissioner's duly authorized representative within one hundred eighty (180) days counted from the date of filing of the protest in case of a request for

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reconsideration; or from date of submission by the taxpayer of the required documents within sixty (60) days from the date of filing of the protest in case of a request for reinvestigation, **the taxpayer may either: (i) appeal to the CTA within thirty (30) days after the expiration of the one hundred eighty (180)-day period; or (ii) await the final decision of the Commissioner's duly authorized representative on the disputed assessment.**

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It must be emphasized, however, that **in case of inaction** on protested assessment within the 180-day period, **the option of the taxpayer to either: (1) file a petition for review** with the CTA within 30 days after the expiration of the 180-day period; **or (2) await the final decision of the Commissioner or his duly authorized representative on the disputed assessment and appeal such final decision to the CTA within 30 days** after the receipt of a copy of such decision, **are mutually exclusive and the resort to one bars the application of the other."**
(Emphases and underscoring added)

Based on the foregoing, it is clear that the taxpayer adversely affected by the inaction of the CIR or his/her duly authorized representative on a request for reconsideration *may* appeal to this Court within 30 days after the expiration of the 180-day period from the filing of the said request for reconsideration.

Records show that petitioner received the subject FLD on January 23, 2019;⁵⁴ and that petitioner filed its *Protest-Letter Request for Reconsideration* on February 21, 2019.⁵⁵ Counting from this latter date, the 180th day therefrom is August 20, 2019. Such being the case, petitioner had the option to file an appeal on the inaction of respondent until September 20, 2019. Considering that the present *Petition for Review* was filed on September 11, 2019,⁵⁶ the same was timely made. Thus, there can be no doubt that the subject income tax assessment did not attain finality, and that this Court has jurisdiction to entertain the present case.

⁵⁴ Exhibit "P-4", Docket – Vol. II, pp. 443 to 447; Par. 2, Statement of Facts, *Petition for Review*, Docket – Vol. I, p. 7.

⁵⁵ Par. 3, Admitted Facts and Stipulation of Facts, Pre-Trial Order dated June 9, 2021, Docket – Vol. I, p. 414; Exhibit "P-5", Docket – Vol. II, 448 to 456.

⁵⁶ Docket – Vol. I, pp. 6 to 20. 

***As an electric cooperative,
petitioner is liable for
income tax.***

Petitioner claims that respondent failed to consider the provisions of Republic Act (RA) Nos. 6938⁵⁷ and 9520⁵⁸ *vis-à-vis* electric cooperatives. Particularly, petitioner argues that a plain reading of Article 127 of RA No. 6938 and Article 143 of RA No. 9520 shows that PD No. 269⁵⁹ has not been amended or repealed by the enactment of the Cooperative Code, and thus, the exemption from paying income taxes for electric cooperatives under Section 39 of PD No. 269 still applies.

This Court disagrees with petitioner.

Section 18 of RA No. 9520 inserted or added the following provisions, *inter alia*, to RA No. 6938 pertaining to electric cooperatives, to wit:

“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 Authority⁶⁰ 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.***

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ART. 132. *Effects of Registration with the Authority.* –
(1) **Upon the effectivity of this Code, electric cooperatives that are duly registered with the Authority, and issued a certificate of registration, shall no longer be covered by Presidential Decree No. 269, as amended by Presidential Decree No. 1645: *Provided, That electric***

⁵⁷ AN ACT TO ORDAIN A COOPERATIVE CODE OF THE PHILIPPINES.

⁵⁸ AN ACT AMENDING THE COOPERATIVE CODE OF THE PHILIPPINES TO BE KNOWN AS THE “PHILIPPINE COOPERATIVE CODE OF 2008”.

⁵⁹ CREATING THE “NATIONAL ELECTRIFICATION ADMINISTRATION” AS A CORPORATION, PRESCRIBING ITS POWERS AND ACTIVITIES, APPROPRIATING THE NECESSARY FUNDS THEREFOR AND DECLARING A NATIONAL POLICY OBJECTIVE FOR THE TOTAL ELECTRIFICATION OF THE PHILIPPINES ON AN AREA COVERAGE SERVICE BASIS, THE ORGANIZATION, PROMOTION AND DEVELOPMENT OF ELECTRIC COOPERATIVES TO ATTAIN THE SAID OBJECTIVE, PRESCRIBING TERMS AND CONDITIONS FOR THEIR OPERATIONS, THE REPEAL OF REPUBLIC ACT NO. 6038, AND FOR OTHER PURPOSES.

⁶⁰ The “Authority” referred to in RA No. 9520 is the Cooperative Development Authority [Article 5(8), RA No. 9520]. *am*

cooperatives registered with the Authority shall now be covered by the provisions of this Code as well as future rules and issuances of the Authority: xxx;

(2) The electric cooperatives registered with the Authority with existing loans obtained from the NEA after June 26, 2001 shall continue to observe the terms of such loans until full payment or settlement thereof;

(3) Except as provided in the immediately preceding paragraph, **the NEA shall no longer exercise regulatory or supervisory powers on electric cooperatives duly registered with the Authority;**” (*Emphases added*)

Based on the foregoing provisions, an electric cooperative registered with the NEA has the option to register with the Cooperative Development Authority (CDA), and in case it opts not to do so, **such electric cooperative shall not be entitled to the benefits and privileges under RA No. 9520.** In contrast, should an electric cooperative opt to register with the CDA, it shall **no longer be covered by PD No. 269**, as amended.

Thus, while a delineation was created between the coverage of PD No. 269, as amended, and RA Nos. 6938 and 9520, such a system is not indicative of the supposed continuation of the tax exemption privileges of electric cooperatives. In other words, the provisions of RA Nos. 6938 and 9520 are not sufficient for this Court to rule that the tax-exempt status of electric cooperatives remains. An examination of PD No. 269, and laws and issuances related thereto, must still be made, and not simply rely on the provisions of RA Nos. 6938 and 9520, as was substantially done in Revenue Memorandum Circular No. 74-2013⁶¹.

Pertinently, PD No. 269, otherwise known as the “*National Electrification Administration Decree*”, creating the NEA, was signed into law on August 6, 1973. Section 39(a) thereof reads:

“SECTION 39. *Assistance to Cooperatives; Exemption from Taxes, Imposts, Duties, Fees; Assistance from the*

⁶¹ SUBJECT: Circularizing the tax implications of Electric Cooperatives (EC) registered with the National Electrification Administration (NEA) pursuant to BIR Ruling No. 398-2013 dated November 4, 2013. *om*

National Power Corporation. — Pursuant to the national policy declared in Section 2, the **Congress hereby finds and declares that the following assistance to cooperatives is necessary and appropriate:**

(a) Provided that it operates in conformity with the purposes and provisions of this Decree, **a cooperative** (1) **shall be permanently exempt from paying income taxes**, and (2) for a period 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.” *(Emphases added)*

Based on the foregoing provision, electric cooperatives have been granted income tax exemption, provided they operate in conformity with the purposes and provisions of PD No. 269.

Subsequently, however, PD No. 1955,⁶² which was issued on October 10, 1984, withdrew all exemptions from or any preferential treatment in the payment of duties, taxes, fees, imposts and other charges granted to private business enterprises and/or persons engaged in any economic activity, *except* those enjoyed by certain entities, transactions, and industries (but not including electric cooperatives).

⁶² 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. *am*

Nevertheless, PD No. 2008,⁶³ which was promulgated on January 8, 1986, decreed that *“those cooperatives whose tax exemption privileges under this Decree have already expired shall continue to enjoy such privileges but in no case shall extension go beyond December 31, 1991”*.

Thereafter, Executive Order (EO) No. 93,⁶⁴ which was issued on December 17, 1986, again withdrew all tax and duty incentives granted to government and private entities, except those enjoyed by certain entities, transactions, and industries (but again not including electric cooperatives). Moreover, under Section 2 of the same EO, the Fiscal Incentive Revenue Board (FIRB) was given certain authority, to wit:

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

⁶³ FURTHER STRENGTHENING THE COOPERATIVE MOVEMENT BY AMENDING CERTAIN PROVISIONS OF PRESIDENTIAL DECREE NUMBERED ONE HUNDRED SEVENTY-FIVE, AS AMENDED BY PRESIDENTIAL DECREE NUMBERED NINETEEN HUNDRED AND FIFTY-FIVE.

⁶⁴ WITHDRAWING ALL TAX AND DUTY INCENTIVES, SUBJECT TO CERTAIN EXCEPTIONS, EXPANDING THE POWERS OF THE FISCAL INCENTIVES REVIEW BOARD AND FOR OTHER PURPOSES. 

However, the implementation of EO No. 93, insofar as all **electric, agricultural, irrigation and local waterworks cooperatives** are concerned, was suspended by Memorandum Order No. 65 dated January 21, 1987,⁶⁵ until June 30, 1987.

On June 14, 1987, the FIRB issued Resolution No. 24-87, which restored, with a qualification, the tax and duty exemption privileges of electric cooperatives under PD No. 269, effective July 1, 1987. Said FIRB Resolution 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 power and activities, appropriating the necessary funds therefore 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 the terms and conditions for their operations, the repeal of Republic Act No. 6038, and for other purposes), **as amended, are restored effective July 1, 1987:** Provided, however, **That income from their electric service operations and other sources** including the interest income from bank deposits and yield or any other monetary benefit from bank deposits and yield or any other similar arrangements **shall remain taxable**: Provided, further, That the electric cooperatives shall furnish the FIRB on an annual basis or as often as the FIRB may require them to do so, statistical and financial statements of their operations and other information as may be required, for purposes of effective and efficient tax and duty exemption availment.”
(Emphases and underscoring added)

Thus, pursuant to the authority granted to it under EO No. 93, the FIRB restored the tax and duty exemption privileges of electric cooperatives granted under the terms and conditions of PD No. 269, as amended, but revised the scope and coverage of the privileges that have been restored, by stating that the *“income from...electric service operations and other sources...shall remain taxable”*. In other words, while there was a restoration of the tax exemption privileges of electric cooperatives under PD No. 269, as amended, such

⁶⁵ SUSPENDING THE IMPLEMENTATION OF EXECUTIVE ORDER NO. 93 FOR ALL ELECTRIC, AGRICULTURAL, IRRIGATION AND LOCAL WATERWORKS COOPERATIVES. *am*

restoration **does not include** tax exemption from the taxation of income from electric service operations and other sources.

In *Davao Oriental Electric Cooperative, Inc. v. The Province of Davao Oriental*,⁶⁶ the Supreme Court recognized the validity of FIRB Resolution No. 24-87 and applied it to said case, albeit it involved an assessment for real property tax.

On May 7, 2013, Congress enacted RA No. 10531, which introduced amendments to PD No. 269, as amended.⁶⁷ There is nothing in RA No. 10531 which states that the income tax exemption of electric cooperatives under PD No. 269, as amended, has been totally reverted or restored. Thus, at present, electric cooperatives registered with the NEA are subject to income tax with respect to income derived from: (1) electric service operations; and (2) other sources such as interest income from bank deposits and yield or any other monetary benefit from bank deposits and yield or any other similar arrangements.

This interpretation was amplified by Revenue Memorandum Circular No. 74-2013, which circularized a BIR ruling regarding the income tax exemption of electric cooperatives registered with the NEA:

For the information and guidance of all internal revenue officials, employees and others concerned, quoted hereunder is the full text of the BIR Ruling No. 398-2013 dated November 4, 2013, addressed to R.M. Veluz Accounting Firm, as follows:

⁶⁶ G.R. No. 170901, January 20, 2009.

⁶⁷ Section 32-A of PD No. 269, as inserted by RA No. 10531, reads:

“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.” 

xxx

Inasmuch as the FIRB Resolution No. 24-87 issued on June 14, 1987, which, however, expressly provides 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", thus, restoring the duty and tax exemptions enjoyed by Electric Cooperatives established pursuant to PD 269 (Sec. 39) which were previously withdrawn, and that the said Resolution No. 24-87 was issued in compliance with the mandate of EO No. 93 which has been declared as a valid delegation of legislative power pursuant to the Maceda case, **there is no question that an electric cooperative established under PD 269 is entitled to tax exemption privileges subject to the conditions stated in the FIRB Resolution.**

Accordingly, this Office opines that MARELCO's income from its electric service operations is subject to income tax. xxx
(emphasis supplied)

Correspondingly, petitioner, being an electric cooperative registered with the NEA, cannot claim exemption from taxation on its income from electric service operations and other sources, pursuant to FIRB Resolution No. 24-87.

In any event, petitioner insists that respondent failed to consider what constitutes the gross receipts of petitioner given the nature of its business operation. Specifically, petitioner opines that the assessment of gross receipts should be based only on the "pass-on" charges, exclusive of "pass through" charges. For this purpose, petitioner invokes the provisions of RMC No. 62-2012⁶⁸, to wit:

"The amount collected by the Distribution Companies and Electric Cooperatives from the end-user for [generation] charges, including the VAT thereon, shall not form part of the gross receipts of the Distribution Companies and Electric Cooperatives. The Distribution Companies and Electric

⁶⁸ SUBJECT: Clarifying the Reporting of Gross Receipts Relative to Power Generation and Distribution. *am*

Cooperatives shall not claim an input tax on such pass-through charges. The amount collected from the end-user as payment for the generation and other VATable charges including the VAT thereon shall form part of the gross receipts and output VAT of the Generation Company or Transmission Company, accordingly.”

Petitioner is, in effect, saying that not all of its gross receipts for taxable year 2016 should be subjected to income tax, since part of it may not be treated as income. However, petitioner **has not shown or presented any evidence to show such fact**. It merely presented a “Sample electric bill of Petitioner ZAMECO”⁶⁹ purportedly issued to one of its clients for the period from January 29, 2021 to March 1, 2021. The said evidence, however, does not suffice, since it covers a different taxable period, and does not account for the BIR’s finding of the total amount of taxable income for taxable year 2016, on which income tax was imposed.

To be sure, without any clear and convincing showing that respondent’s determination of the amount of taxable income to which income tax was imposed was erroneous, the subject income tax assessment must perforce be sustained. Relative thereto, it must be emphasized that all presumptions are in favor of the correctness of tax assessments. The good faith of tax assessors and the validity of their actions are presumed.⁷⁰ And as a logical outgrowth of the presumption in favor of the validity of assessments, when such assessments are assailed, the burden of proof is upon the complaining party.⁷¹ Petitioner, however, failed to discharge the said burden, even when respondent did not cross examine petitioner’s witness.

In sum, the subject deficiency income tax assessment stands.

WHEREFORE, in light of the foregoing considerations, the present *Petition for Review* is **DENIED** for lack of merit.

⁶⁹ Exhibit “P-14”, Docket – Vol. II, p. 575.

⁷⁰ *Commissioner of Internal Revenue vs. Construction Resources of Asia, Inc., et al.*, G.R. No. L- 68230, November 25, 1986, citing *Collector of Internal Revenue vs. Bohol LandTrans. Co.*, 107 Phil. 965, at 974.

⁷¹ *Id.* 

Accordingly, petitioner is **ORDERED TO PAY** the total amount of **₱8,596,586.41** for taxable year 2016, inclusive of surcharge and deficiency interest imposed under Sections 248(A) and 249(B) of the NIRC of 1997, as amended, computed as follows:

	Amount
Basic income tax due	₱ 5,627,551.77
Add: 25% Surcharge	1,406,887.94
20% Deficiency Interest from April 16, 2017 to December 31, 2017 [₱5,627,551.77 x 20% x 260/365 days]	801,733.40
12% Deficiency Interest from January 1, 2018 to February 15, 2019 [₱5,627,551.77 x 12% x 411/365 days]	760,413.30
Total Amount Due, February 15, 2019	₱8,596,586.41

In addition, petitioner should be **ORDERED TO PAY** respondent delinquency interest at the rate of twelve percent (12%) per annum on the unpaid deficiency taxes due as of February 15, 2019 in the amount of ₱8,596,586.41, or equivalent to ₱2,826.27⁷² per day, computed from February 16, 2019 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended by RA No. 10963, also known as Tax Reform for Acceleration and Inclusion, as implemented by RR No. 21-2018.

Lastly, pursuant to Section 13 of RA No. 9282, this Court authorizes respondent to seize and distrain any goods, chattels, or effects, and the personal property, including stocks and other securities, debts, credits, bank accounts, and interests in and rights to personal property, and/or to levy the real property, of petitioner, in sufficient quantity to satisfy the taxes herein ordered to be paid, and the increments thereto incident to delinquency.

SO ORDERED.


CATHERINE T. MANAHAN
Associate Justice

⁷² ₱8,596,586.41 x 12% / 365 days.

DECISION

CTA Case No. 10165

Zambales Electric Cooperative I, Inc. (ZAMECO I) et al. vs. Bureau of Internal Revenue, et al.

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WE CONCUR:



ROMAN G. DEL ROSARIO

Presiding Justice

(on leave)

MARIAN IVY F. REYES-FAJARDO

Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.



ROMAN G. DEL ROSARIO

Presiding Justice

