REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

BB INTERNATIONAL LEISURE AND RESORT DEVELOPMENT CORPORATION, HANN INTERNATIONAL LEISURE, INC. (formerly WIDUS INTERNATIONAL LEISURE, INC.), and **HANN PHILIPPINES, INC.** (formerly WIDUS PHILIPPINES, INC.), *Petitioners,*	**CTA Case No. 10841** Members: **DEL ROSARIO**, *P.J., Chairperson,* **MANAHAN**, *and* **REYES-FAJARDO**, *JJ.*
-versus-	
BUREAU OF INTERNAL REVENUE, HON. CAESAR R. DULAY, in his capacity as the COMMISSIONER OF INTERNAL REVENUE, AND JOHN DOES AND JANE DOES, AS PERSONS ACTING FOR IN BEHALF, OR UNDER THE AUTHORITY OF THE BUREAU OF INTERNAL REVENUE AND THE COMMISSIONER OF INTERNAL REVENUE, *Respondents.*	Promulgated: OCT 27 2023; 10:30AM

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D E C I S I O N

MANAHAN, *J.:*

This resolves petitioners' *Petition for Certiorari and Prohibition [With Application for Temporary Restraining Order and/or Writ of Preliminary Injunction]*[1] filed on April 20, 2022 seeking for: (1) the Suspension of Collection and/or an Issuance of a Temporary Restraining Order (TRO) and/or a Writ of Preliminary Injunction against respondents from

[1] Docket, CTA Case No. 10841, Vol. I, pp. 7-46.

enforcing or implementing Revenue Memorandum Circular (RMC) No. 32-2022;[2] (2) the instant Petition for Certiorari and Prohibition be given due course; (3) RMC No. 32-2022 be declared unconstitutional and null and void; and (4) the TRO and/or writ of preliminary injunction be issued permanently.

THE PARTIES

Petitioner BB International Leisure and Resort Development Corporation (BBI for brevity) is a corporation registered under the laws of the Republic of the Philippines.[3] It is engaged in the general business of developing, constructing, establishing, leasing, sub-leasing, operating and/or managing an Integrated Resort Leisure and Water Theme Park Facility, residential condominiums, casino/hotel, outlet mall, shopping center, plaza, central business district, institutional establishments, transport terminal and other allied business, as well as any and all services and facilities thereto.[4] Its principal office address is located at J.P. Rizal Avenue, J.P. Laurel, and Prince Balagtas Avenue, Clark Freeport Zone (CFZ), Pampanga.[5] It is a holder of a Regular Casino Gaming License from Philippine Amusement and Gaming Corporation (PAGCOR) under the name of "Midori Clark Casino."[6]

Petitioner Hann International Leisure, Inc. (HILI for brevity), formerly operating under the name Widus International Leisure, Inc.,[7] is a corporation registered under the laws of the Republic of the Philippines.[8] It is engaged in the business of establishing, operating, maintaining, and/or managing resorts, golf courses, social athletic or country clubs, lodges, hotels, inns, sports and entertainment including but not limited to amusement centers and other forms of gaming activities not otherwise prohibited by law, and other allied business, as well as any services and facilities incident thereto, and to lease and sublease any real and personal property deemed necessary or convenient for the conduct of its business.[9] Its principal office address is located at Manuel A.

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[2] Clarifying the Tax Treatment of the Philippine Amusement and Gaming Corporation (PAGCOR), Its Licensees and Contractees.
[3] Docket, Vol. I, Petition for Certiorari and Prohibition, p. 14.
[4] *Id.*, Vol. III, Exhibit "P-14", Amended Articles of Incorporation, p. 1047.
[5] *Id.* at p. 1049.
[6] *Id.*, Vol. III, Exhibit "P-26", Gaming License, p. 1211.
[7] *Id.*, Vol. II, Exhibit "P-6", Certificate of Filing of Amended Articles of Incorporation, p. 984.
[8] *Id.*, Vol. I, Petition for Certiorari and Prohibition, p. 14.
[9] *Id.*, Vol. II, Exhibit "P-6", Amended Articles of Incorporation, p. 987.

Roxas Highway, Clarkfield, Pampanga.[10] It is a holder of a Provisional License from PAGCOR to operate a casino.[11]

Petitioner Hann Philippines, Inc. (HPI), formerly operating under the name Widus Philippines, Inc.,[12] is a corporation registered under the laws of the Republic of the Philippines.[13] It is engaged in the business of establishing, operating, maintaining, and/or managing resorts, golf courses, social athletic or country clubs, lodges, hotels, inns, sports and entertainment including but not limited to amusement centers and other forms of gaming activities not otherwise prohibited by law, and other allied business, as well as any services and facilities incident thereto, and to lease and sublease any real and personal property deemed necessary or convenient for the conduct of its business.[14] Its principal office address is located at Bldg. 5400 Manuel A. Roxas Highway, Clark Freeport Zone, Pampanga.

Respondent Bureau of Internal Revenue (BIR) is an attached agency of the Department of Finance and tasked to assess and collect all national internal revenue taxes, fees, charges, and to enforce all forfeitures, penalties, and fines connected therewith. Respondent Hon. Caesar R. Dulay, on the other hand, is the Commissioner of the BIR. Respondents John Does and Jane Does are those acting for, in behalf, or under the authority of the other respondents.[15]

THE FACTS

On March 29, 2022, respondent BIR issued RMC No. 32-2022 which clarifies the tax treatment of the PAGCOR, its licensees and contractees.

On April 11, 2022, respondent BIR, through its Revenue District Office (RDO) No. 21C Clark Freeport Zone, Revenue Region No. 4, issued a letter which informed and reminded petitioner BBI on the filing of Percentage Tax Return (BIR Form No. 2553) and to upgrade its registration to include

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[10] Docket, Vol. III, Exhibit "P-6", Amended Articles of Incorporation, p. 988.
[11] *Id.*, Vol. III, Exhibit "P-27", pp. 1212-1238.
[12] *Id.*, Vol. II, Exhibit "P-7", Certificate of Filing of Amended Articles of Incorporation, p. 996.
[13] *Id.*, Vol. I, Petition for Certiorari and Prohibition, p. 14.
[14] *Id.*, Vol. II, Exhibit "P-7", Amended Articles of Incorporation, p. 999.
[15] *Id.*, Vol. I, Petition for Certiorari and Prohibition, pp. 14-15.

percentage tax in petitioner's tax type pursuant to RMC No. 32-2022.[16]

On April 20, 2022, petitioners filed the instant petition. However, the Court noted a deficiency in the said petition, hence, petitioners were directed to address the same.[17]

On May 26, 2022, petitioners filed their *Compliance [to the Honorable Court's Resolution dated 12 May 2022]*[18] submitting the *Motion to File and Admit Herein Supplemental Petition for Certiorari and Prohibition [With Application for Temporary Restraining Order and/or Writ of Preliminary Injunction]*,[19] where they named their witnesses and documentary evidence. Thus, the Court set a hearing on petitioner's *Application for Temporary Restraining Order and/or Writ of Preliminary Injunction* on June 14, 2022 and directed respondents to file their comment on the said petition.[20]

After said hearing, petitioners were directed to file their *Formal Offer of Evidence* (FOE)[21] and respondents to file their comment thereon.[22]

On June 27, 2022, petitioners filed their FOE while respondents filed their *Comment (On Petitioner's Formal Offer of Evidence)*[23] on July 5, 2022. Petitioners submitted the following exhibits:

Exhibit No.	Document
P-1[24]	Judicial Affidavit of Morris Harland Chen
P-1-a[25]	Signature of Morris Harland Chen appearing on page 14 of his Judicial Affidavit
P-2[26]	Judicial Affidavit of Mitchell Amador-Estacio
P-2-a[27]	Signature of Mitchell Amador-Estacio appearing on page 13 of her Judicial Affidavit

[16] Docket, Vol. II, Exhibit "P-9", Letter dated April 11, 2022, pp. 1008-1009.
[17] *Id.*, Vol. I, Resolution dated May 12, 2022, pp. 486-487.
[18] *Id.*, Vol. II, pp. 488-490.
[19] *Id.*, Vol. I, pp. 491-503.
[20] *Id.*, Vol. II, Resolution dated June 6, 2022, pp. 943-945.
[21] *Id.*, Vol. II, pp. 959-977.
[22] *Id.*, Vol. II, Order dated June 14, 2022, pp. 954-956
[23] *Id.*, Vol. III, pp. 1276-1278.
[24] *Id.*, Vol. I, pp. 385-399.
[25] *Id.*, Vol. I, p. 398.
[26] *Id.*, Vol. I, pp. 267-279.
[27] *Id.*, Vol. I, p. 279.

P-3[28]	Secretary's Certificate (HILI)
P-4[29]	Secretary's Certificate (HPI)
P-5[30]	Secretary's Certificate (BBI)
P-6[31]	HILI's Certificate of Filing of Amended Articles of Incorporation dated 07 December 2021 issued by the Securities and Exchange Commission (SEC)
P-7[32]	HPI's Certificate of Filing of Amended Articles of Incorporation dated 09 September 2021 issued by SEC
P-8	RMC No. 32-2022 dated 29 March 2022
P-9[33]	BIR Reminder Letter addressed to BBI dated 11 April 2022
P-10[34]	BIR Reminder Letter addressed to HILI dated 11 April 2022
P-11[35]	Request for Clarification and/or Reconsideration of RMC No. 32-2022 dated 13 April 2022 addressed to the Department of Finance
P-12[36]	Screenshot copy of the email from the Department of Finance (DOF) acknowledging receipt
P-13[37]	Letter Request of BBI addressed to the Department of Finance dated 19 April 2022
P-14[38]	BBI's Certificate of Incorporation issued by the SEC
P-15[39]	Lease Agreement between BBI and Clark Development Corporation (CDC) dated 29 September 2006
P-16[40]	Sub-Lease Agreement dated 13 June 2016
P-17[41]	CDC Approval of Sub-Lease Agreement dated 26 August 2016
P-18[42]	Certificate of Incorporation of Bridges of Benevolent Initiative Foundation Inc.

[28] *Id.*, Vol. II, pp. 978-979.
[29] Docket, Vol. II, pp. 980-981.
[30] *Id.*, Vol. II, pp. 982-983.
[31] *Id.*, Vol. II, pp. 984-995.
[32] *Id.*, Vol. II, pp. 996-1007.
[33] *Supra*, Note 15.
[34] Docket, Vol. II, pp. 1015-1016.
[35] *Id.*, Vol. II, pp. 1022-1028.
[36] *Id.*, Vol. II, pp. 1029-1033.
[37] *Id.*, Vol. II, pp. 1035-1037.
[38] *Supra*, Note 3.
[39] Docket, Vol. III, pp. 1057-1074.
[40] *Id.*, Vol. III, pp. 1075-1078.
[41] *Id.*, Vol. III, pp. 1079-1080.
[42] *Id.*, Vol. III, pp. 1081-1090.

P-19[43]	Lease Agreement between Eaglesky and CDC dated 05 March 2012
P-20[44]	Lease Agreement dated 30 October 2006
P-21[45]	Consolidated Lease Agreement between CDC and HILI dated 06 May 2019
P-22[46]	Certificate of Registration & Tax Exemption (CRTE) No. 2019-425.
P-23[47]	CRTE No. 2022-058 effective from 17 February 2022 until 05 May 2022
P-24[48]	CRTE No. 2022-092 effective from 03 March 2022 until 30 April 2024
P-25[49]	Provisional License 08 April 2016
P-26[50]	Certificate of Gaming License issued to BBI under the brand name "Midori Clark Casino"
P-27[51]	Provisional License granted to HILI
P-28[52]	Final Reminder Letter dated 26 April 2022 addressed to BBI
P-29[53]	Final Reminder Letter dated 25 April 2022 addressed to HILI
P-30[54]	Notice of Discrepancy dated 05 May 2022

On June 29, 2022, respondent BIR filed a *Comment/ Opposition Re: Petitioners' Petition for Certiorari and Prohibition (With Application for Temporary Restraining Order and or Writ of Preliminary Injunction).*[55] Hence, petitioners' FOE was submitted for resolution.[56]

On July 29, 2022, acting on petitioners' FOE, this Court admitted petitioners' Exhibits "P-1", "P-1-a", "P-2", "P-2-a", "P-3", "P-4", "P-5", "P-6", "P-7", "P-8", "P-9", "P-14", "P-16", "P-17", "P-18", "P-19", "P-20", "P-21", "P-22", "P-24", "P-25", "P-26", and "P-27".[57]

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[43] *Id.*, Vol. III, pp. 1091-1110.
[44] Docket, Vol. III, pp. 1111-1126.
[45] *Id.*, Vol. III, pp. 1137-1180.
[46] *Id.*, Vol. III, p. 1181.
[47] *Id.*, Vol. III, p. 1182.
[48] *Id.*, Vol. III, p. 1183.
[49] *Id.*, Vol. III, pp. 1184-1210.
[50] *Supra*, Note 5.
[51] *Supra*, Note 10.
[52] Docket, Vol. III, p. 1241.
[53] *Id.*, Vol. III, p. 1242.
[54] *Id.*, Vol. III, p. 1243-1247.
[55] *Id.*, Vol. III, pp. 1248-1274.
[56] *Id.*, Vol. III, Resolution dated July 13, 2022, p. 1281.
[57] *Id.*, Vol. III, Resolution dated July 29, 2022, pp. 1283-1285.

On the other hand, petitioners' Exhibits "P-10", "P-11", "P-12", "P-13", "P-15", "P-23", "P-28", "P-29", and "P-30" were not admitted due to petitioners' failure to identify the same or the document described in the FOE was different from the actually marked exhibit.[58]

On August 17, 2022, petitioners filed an *Omnibus Motion for Reconsideration, to Admit Attached Document and to Tender Excluded Evidence [Re: Resolution dated 03 August 2022]* which prayed that Exhibit "P-23" be corrected and admitted while Exhibits "P-10", "P-11", "P-12", "P-13", "P-15", "P-28", "P-29", and "P-30" be tendered, attached and made part of the records of the case.[59] The Court admitted Exhibit "P-23" and noted the tender of excluded evidence.[60]

On September 6, 2022, respondent BIR file a *Manifestation*[61] stating that it will adopt the arguments raised in their Comment/Opposition Re: Petitioners' Petition for Certiorari and Prohibition (With Application for Temporary Restraining Order and or Writ of Preliminary Injunction, and Prayer to Declare Unconstitutional RMC No. 32-2022) as its Memorandum.

On September 7, 2022, petitioners filed their *Memorandum.*[62] Thus, on October 28, 2022, the case was submitted for decision.[63]

ISSUES

The issue to be resolved in the instant case is:

> Whether or not respondents acted with grave abuse of discretion amounting to lack or excess of jurisdiction in issuing RMC No. 32-2022 on the ground that such is contrary to law, in violation of constitutional right to due process, equal protection of law, non-impairment of contract, and that the imposition of 5% Franchise Tax (FT) is arbitrary, unconscionable, and unjust.

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[58] Docket, Vol. III, Resolution dated July 29, 2022, pp. 1283-1285.
[59] *Id.,* Vol. III, at pp. 1286-1292.
[60] *Id.,* Vol. III, Resolution dated October 28, 2022, pp. 1346-1348.
[61] *Id.,* Vol. III, at pp. 1294-1296.
[62] *Id.,* Vol. III, at pp. 1301-1336.
[63] *Supra,* Note 29.

Petitioners' Arguments[64]

Petitioners argue that this Court has jurisdiction over the instant petition. Petitioners insist that RMC No. 32-2022 is void and contrary to law as it violates the constitutional right to equal protection of law and non-impairment of contract, and that the imposition of the 5% FT is arbitrary, unconscionable, and unjust.

Respondents' Arguments[65]

Respondents argue that this Court has no jurisdiction over the instant case and that the petitioners failed to exhaust their administrative remedies before elevating the case to this Court.

Respondents insist that RMC No. 32-2022 is valid and not contrary to law, it does not violate the constitutional right to equal protection and non-impairment of contract, and that the imposition of the 5% FT is not arbitrary, unconscionable and unjust. Hence, petitioner's prayer for temporary restraining order and/or preliminary injunction should not be upheld.

RULING OF THE COURT

The CTA has jurisdiction over the instant case.

The Court shall determine first whether it has jurisdiction over the case at hand, and the propriety of the filing of the instant Petition for Certiorari and Prohibition.

The issue of whether this Court has jurisdiction over petitions for *certiorari* has already been settled by the Supreme Court. In *The Philippine American Life and General Insurance Company vs. The Secretary of Finance, et al.*,[66] the High Court said:

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[64] *Supra,* Note 1.
[65] *Supra,* Note 54.
[66] G.R. No. 210987, November 24, 2014.

"In the recent case of *City of Manila v. Grecia-Cuerdo*, the Court *en banc* has ruled that **the CTA now has the power of certiorari in cases within its appellate jurisdiction**. To elucidate:

> The prevailing doctrine is that the authority to issue writs of certiorari involves the exercise of original jurisdiction which must be expressly conferred by the Constitution or by law and cannot be implied from the mere existence of appellate jurisdiction. Thus, x x x this Court has ruled against the jurisdiction of courts or tribunals over petitions for certiorari on the ground that there is no law which expressly gives these tribunals such power. It must be observed, however, that x x x these rulings pertain not to regular courts but to tribunals exercising quasi-judicial powers. With respect to the Sandiganbayan, Republic Act No. 8429 now provides that the special criminal court has exclusive original jurisdiction over petitions for the issuance of the writs of mandamus, prohibition, certiorari, habeas corpus, injunctions, and other ancillary writs and processes in aid of its appellate jurisdiction.
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> In the same manner, Section 5 (1), Article VIII of the 1987 Constitution grants power to the Supreme Court, in the exercise of its original jurisdiction, to issue writs of certiorari, prohibition and mandamus. With respect to the Court of Appeals, Section 9 (1) of Batas Pambansa Blg. 129 (BP 129) gives appellate court, also in the exercise of its original jurisdiction, the power to issue, among others, a writ of certiorari, whether or not in aid of its appellate jurisdiction. As to Regional Trial Courts, the power to issue a writ of certiorari, in the exercise of their original jurisdiction, is provided under Section 21 of BP 129.
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> The foregoing notwithstanding, while there is no express grant of such power, with respect to the CTA, Section 1, Article VIII of the 1987 Constitution provides, nonetheless, that judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law and that judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of

> jurisdiction on the part of any branch or instrumentality of the Government.
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> On the strength of the above constitutional provisions, it can be fairly interpreted that **the power of the CTA includes that of determining whether or not there has been grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the RTC in issuing an interlocutory order in cases falling within the exclusive appellate jurisdiction of the tax court. It, thus, follows that the CTA, by constitutional mandate, is vested with jurisdiction to issue writs of certiorari in these cases.**
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> **Indeed, in order for any appellate court to effectively exercise its appellate jurisdiction, it must have the authority to issue, among others, a writ of certiorari. In transferring exclusive jurisdiction over appealed tax cases to the CTA, it can reasonably be assumed that the law intended to transfer also such power as is deemed necessary, if not indispensable, in aid of such appellate jurisdiction. There is no perceivable reason why the transfer should only be considered a partial, not total.**" (*Emphasis and underscoring added*)

Subsequently, in *Banco De Oro, et al. vs. Republic of the Philippines, et al.*,[67] the Supreme Court likewise held:

> "Section 7 of Republic Act No. 1125, as amended, is explicit that, except for local taxes, appeals from the decisions of **quasi-judicial agencies (Commissioner of Internal Revenue**, Commissioner of Customs, Secretary of Finance, Central Board of Assessment Appeals, Secretary of Trade and Industry) on tax-related problems must be brought exclusively to the Court of Tax Appeals.
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> In other words, within the judicial system, the law intends the Court of Tax Appeals to have exclusive jurisdiction to resolve all tax problems. **Petitions for writs of certiorari against the acts and omissions of the said quasi-judicial agencies should, thus, be filed before the Court of Tax Appeals.**" *(Emphases added)*

It is very clear from the preceding jurisprudence that this Court has jurisdiction over certiorari cases under Rule 65 of

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[67] G.R. No. 198756, August 16, 2016. *om*

the Rules of Court, as amended. In the same vein, the petition for prohibition is also within the jurisdiction of this Court as such is covered under Rule 65.

Thus, this Court has jurisdiction over the instant *Petition for Certiorari and Prohibition [With Application for Temporary Restraining Order and/or Writ of Preliminary Injunction].*

Petitioner BBI only has the cause of action to file the instant petition.

Sections 1, 2, and 4, Rule 65 of the Rules of Court, as amended, provides:

> "Section 1. *Petition for certiorari.* – When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.
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> The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of section 3, Rule 46.
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> Sec. 2. *Petition for prohibition.* – When the proceedings of any tribunal, corporation, board, officer or person, whether exercising judicial, quasi-judicial or ministerial functions, are without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent to desist from further proceedings in the action or matter specified therein, or otherwise granting such incidental reliefs as law and justice may require.
>
> The petition shall likewise be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of

> non-forum shopping as provided in the third paragraph of section 3, Rule 46.
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> xxx xxx xxx
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> Sec. 4. *When and where to file the petition.* The petition shall be filed not later than sixty (60) days from notice of the judgment, order or resolution. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the petition shall be filed not later than sixty (60) days counted from the notice of the denial of the motion.
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> If the petition relates to an act or an omission of a municipal trial court or of a corporation, a board, an officer or a person, it shall be filed with the Regional Trial Court exercising jurisdiction over the territorial area as defined by the Supreme Court. It may also be filed with the Court of Appeals or with the Sandiganbayan, whether or not the same is in aid of the courts appellate jurisdiction. If the petition involves an act or an omission of a quasi-judicial agency, unless otherwise provided by law or these rules, the petition shall be filed with and be cognizable only by the Court of Appeals.
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> In election cases involving an act or an omission of a municipal or a regional trial court, the petition shall be filed exclusively with the Commission on Elections, in aid of its appellate jurisdiction."

The following elements must precede the filing of the petition for *certiorari* or prohibition:

1. In *certiorari*, the tribunal, board or officer must be exercising a judicial or quasi-judicial functions which resulted such judgment, order or resolution while, on the other hand, in *prohibition*, the tribunal, corporation, board, officer or person, must be exercising judicial, quasi-judicial or ministerial functions which resulted such judgment, order or resolution;

2. That the above persons or entities have acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction; and

3. There is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law. *cm*

Further, in Section 4 of said Rule, petitioners have sixty (60) days from notice of judgment, order or resolution to file a petition for *certiorari* or prohibition.

Petitioners BBI and HILI grounded their petitions on the issuance by respondents of the Reminder Letters (**Exhibits P-9 and P-10**), Final Reminder Letters (**Exhibits P-28 and P-29**), and Notice of Discrepancy (**Exhibit P-30**). However, all such notice, except the Reminder Letter to BBI (**Exhibit P-9**), were not admitted by this Court. Hence, only petitioner BBI has the cause of action[68] to file the instant petition for *certiorari* and prohibition.

Considering that petitioner BBI received said BIR Reminder Letter on April 11, 2022, petitioner had 60 days or until June 10, 2022 to a petition for *certiorari* and/or prohibition. Thus, the filing of the instant petition on April 20, 2022 was on time.

Respondents had acted with grave abuse of discretion amounting to lack or excess of jurisdiction.

The bone of contention in this case pertains to Item IV of RMC No. 32-2022 dated March 29, 2022 particularly on the imposition of 5% FT, which provides:

> "IV. TAX TREATMENT OF PAGCOR's LICENSEES LOCATED IN ECOZONES/FREEPORTS
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> For Licensees that are located in Ecozones/Freeports, their income realized from other related services/operations shall be subject to the tax regime applicable to said Licensees, that is, 5% Gross Income Tax (GIT) or Income Tax Holiday (ITH), as the case may be, provided that said other related services/operations are covered by their registered activity with the concerned Investment Promotion Agency (IPA). If they are under 5% GIT, then, they are exempt from regular corporate income tax and VAT. On the other hand, if they are under ITH, then, they are also exempt from the regular corporate income tax. They are, however, subject to VAT. On their income realized from related services/operations which are not covered with their registered activity or activities with the concerned IPA, the

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[68] A cause of action is the act or omission by which a party violates a right of another. (Section 2, Rule 2 of the Rules of Court, as amended).

> same shall be subject to the regular corporate income tax, VAT and other applicable taxes under the NIRC. **Their income from gaming operations, however, shall not be subject to the GIT, ITH or corporate income tax but remains subject to the 5% Franchise Tax in accordance with P.D. No. 1869, as amended, and the aforecited jurisprudence**.
>
> As above-mentioned, for VAT purposes, Licencees' revenues from gaming operations, involving sale of goods and/or services in the course of trade or business, are generally subject to VAT. If, however, they have also contracted with PAGCOR in connection with the latter's gaming operations, then, the goods they provided and/or services performed to PAGCOR in relation to such gaming operations are subject to zero percent (0%) VAT pursuant to Sections 106(A)(2)(b) and 108(B)(3) of the 1997 NIRC, as amended." (*Emphasis supplied*)

A scrutiny of the first paragraph, particularly its first four sentences, shall reveal that they are in accordance with Section 24, Chapter III of Republic Act (RA) No. 7916,[69] as amended by RA No. 8748, otherwise known as the "The Special Economic Zone Act of 1995", which provides:

> "SEC. 24. *Exemption from National and Local Taxes.*- Except for real property taxes on land owned by developers, no taxes, local and national, shall be imposed on business establishments operating within the ECOZONE. In lieu thereof, five percent (5%) of the gross income earned by all business enterprises within the ECOZONE shall be paid and remitted as follows:
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> a. Three percent (3%) to the National Government;
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> b. Two percent (2%) which shall be directly remitted by the business establishments to the treasurer's office of the municipality or city where the enterprise is located."

Further, Section 15 of RA No. 7227,[70] as amended by RA No. 9400,[71] otherwise known as the "Bases Conversion and Development Act of 1992", also provides for the imposition of

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[69] AN ACT PROVIDING FOR THE LEGAL FRAMEWORK AND MECHANISMS FOR THE CREATION, OPERATION, ADMINISTRATION, AND COORDINATION OF SPECIAL ECONOMIC ZONES IN THE PHILIPPINES, CREATING FOR THIS PURPOSE, THE PHILIPPINE ECONOMIC ZONE AUTHORITY (PEZA), AND FOR OTHER PURPOSES.

[70] AN ACT ACCELERATING THE CONVERSION OF MILITARY RESERVATIONS INTO OTHER PRODUCTIVE USES, CREATING THE BASES CONVERSION AND DEVELOPMENT AUTHORITY FOR THIS PURPOSE, PROVIDING FUNDS THEREFOR AND FOR OTHER PURPOSES.

[71] AN ACT AMENDING REPUBLIC ACT NO. 7227, AS AMENDED, OTHERWISE KNOWN AS THE BASES CONVERSION AND DEVELOPMENT ACT OF 1992, AND FOR OTHER PURPOSES.

five percent (5%) tax on gross income in lieu of national and local taxes supposed to be paid by those registered business enterprises within the CFZ. Such imposition of 5% tax on gross income in lieu of national and local taxes is categorically stated in petitioner BBI's CRTE No. 2019-425.[72]

In the fifth sentence of the first paragraph of Item IV of RMC No. 32-2022, it stated that the imposition of 5% FT is in accordance with Presidential Decree (PD) No. 1869 and jurisprudence cited in the subject rules and regulations.

In *Bloomberry Resorts and Hotels, Inc. v. Bureau of Internal Revenue, represented by Commissioner Kim S. Jacinto-Henares*[73], the Supreme Court made a categorical ruling that the tax privilege of paying 5% FT inures also to the benefit of PAGCOR's contractees and **licensees**, to wit:

> "As the PAGCOR Charter states in unequivocal terms that exemptions granted for earnings derived from the operations conducted under the franchise specifically from the payment of any tax, income or otherwise, as well as any form of charges, fees or levies, ***shall inure to the benefit of and extend to*** corporation(s), association(s), agency(ies), or individual(s) with whom the PAGCOR or operator has any contractual relationship in connection with the operations of the casino(s) authorized to be conducted under this Franchise, so it must be that all *contractees and licensees* of PAGCOR, upon payment of the 5% franchise tax, shall likewise be exempted from all other taxes, including corporate income tax realized from the operation of casinos.
>
> For the same reasons that made us conclude in the 10 December 2014 Decision of the Court sitting En Banc in G.R. No. 215427 that PAGCOR is subject to corporate income tax for "other related services", we find it logical that its *contractees and licensees* shall likewise pay corporate income tax for income derived from such "related services."
>
> Simply then, in this case, we adhere to the principle that since the statute is clear and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. This is the plain meaning rule or *verba legis*, as expressed in the maxim index *animi sermo* or speech is the index of intention.
>
> Plainly, too, upon payment of the 5% franchise tax, petitioner's income from its gaming operations of gambling casinos, gaming clubs and other similar recreation or

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[72] *Supra*, Note 45.
[73] G.R. No. 212530, August 10, 2016.

amusement places, and gaming pools, defined within the purview of the aforesaid section, is not subject to corporate income tax." (*Underscore ours*)

However, in the recent case of *Thunderbird Pilipinas Hotels and Resorts, Inc. v. Commissioner of Internal Revenue*,[74] the Supreme Court clarified that the tax privilege under Section 13(2)(b) of PD No. 1869, as to the payment of 5% FT, does not extend to PAGCOR's licensees, to wit:

> "There, this Court construed Section 13(2) of Presidential Decree No. 1869 to resolve the issue of "whether PAGCOR's tax exemption privilege includes the indirect tax of VAT to entitle Acesite to zero percent (0%) [value-added tax] rate." Upon examining Section 13(2), this Court ruled that PAGCOR is exempt from both direct taxes (under paragraph a) and indirect taxes (under paragraph b). It categorically explained that "*the proviso in [Presidential Decree No.] 1869, extending the exemption to entities or individuals dealing with PAGCOR in casino operations, is clearly to proscribe any indirect tax, like [value-added tax], that may be shifted to PAGCOR.*" Ultimately, the tax exemptions granted under Section 13 were primarily meant to favor only PAGCOR, and not any other entity.
>
> Thus, following this Court's pronouncement in *Acesite*, we construe Section 13(2)(b) of Presidential Decree No. 1869 to mean that ***the tax exemption of PAGCOR extends only to those individuals or entities that have contracted with PAGCOR in connection with PAGCOR's casino operations. <u>The exemption does not include private entities that were licensed to operate their own casinos</u>.***" (*Underscore ours*)

Thus, the fifth sentence of the first paragraph of Item IV of RMC No. 32-2022 which contains the phrase "*Their income from gaming operations, however, shall not be subject to the GIT, ITH or corporate income tax but remains subject to the 5% Franchise Tax in accordance with P.D. No. 1869, as amended, and the aforecited jurisprudence*" has no legal basis as Section 13(2)(b) of PD No. 1869, as to the payment of 5% FT, does not extend to PAGCOR's licensees.

Moreso, as to PAGCOR's licensees within the Special Economic Zone (SEZ), which includes the CFZ, where the taxes imposed on those registered business enterprises are

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[74] G.R. No. 211327, November 11, 2020.

covered by RA No. 7916, as amended by RA No. 8748, and RA No. 7227, as amended by RA No. 9400.

It is very clear that the inclusion of 5% FT among taxes imposed on PAGCOR's licensees within the SEZ is beyond the jurisdiction of respondents as it is bereft of legal basis and not guided by jurisprudence.

Thus, respondents indeed acted with grave abuse of discretion amounting to lack or excess of jurisdiction in inserting the 5% FT as among the taxes imposed to PAGCOR's licensees within the SEZ.

However, since the fifth sentence of the first paragraph of Item IV of RMC No. 32-2022 is the only issue in the instant case and found invalid, all the other parts of said rules and regulations remain valid.

Petitioner BBI has no other plain, speedy, and adequate remedy in the ordinary course of law.

Another element of a petition for *certiorari* or prohibition is that petitioner or the aggrieved party cannot file an appeal or has no other plain, speedy, and adequate remedy in the ordinary course of law as held in *Editha S. Medina, et al. v. Sps. Nicomedes and Brigida Lozada,*[75] to wit:

> "Where appeal is available to the aggrieved party, the action for *certiorari* will not be entertained. Remedies of appeal (including petitions for review) and *certiorari* are mutually exclusive, not alternative or successive. Hence, *certiorari* is not and cannot be a substitute for an appeal, especially if one's own negligence or error in one's choice of remedy occasioned such loss or lapse. One of the requisites of *certiorari* is that there be no available appeal or any plain, speedy and adequate remedy. The special civil action for certiorari is a limited form of review and is a remedy of last recourse. Where an appeal is available, certiorari will not prosper, even if the ground therefor is grave abuse of discretion.
>
> It bears emphasis that the general rule is that a writ of *certiorari* will not issue where the remedy of appeal is available to the aggrieved party. The remedies of appeal in

[75] Resolution, G.R. No. 185303, August 01, 2018.

> the ordinary course of law and that of *certiorari* under Rule 65 are mutually exclusive and not alternative or cumulative. Time and again, the High Court has reminded members of the bench and bar that the special civil action of *Certiorari* cannot be used as a substitute for a lost appeal."

In the instant case, the subject Letter dated April 11, 2022 is neither an assessment nor collection letter issued by respondents that may be appealed under Section 228 of the 1997 NIRC, as amended.

Further, petitioner BBI's action of not heeding the subject Letter dated April 11, 2022 is definitely a violation of the said RMC as the registration is in preparation for the payment of said FT. The filing of a petition for declaratory relief is not anymore available. Hence, petitioner BBI has no other remedy in ordinary course of law.

There is no necessity to issue a temporary or permanent injunctive order

Petitioner BBI prays, *inter alia,* that this Court issue a temporary or a permanent restraining order against respondents.

Petitioner BBI should be reminded that for an injunction order to be issued, there must be a clear and well-established facts that there is a necessity for the issuance of such injunctive order as held in *Bank of the Philippine Islands v. Hon. Judge Agapito L. Hontanosas, Jr., et al.,*[76] to wit:

> **"It is also basic that the power to issue a writ of injunction is to be exercised only where the reason and necessity therefor are clearly established, and only in cases reasonably free from doubt**. For, truly, a preliminary injunction should not determine the merits of a case, or decide controverted facts. As a preventive remedy, injunction only seeks to prevent threatened wrong, further injury, and irreparable harm or injustice until the rights of the parties can be settled. As an ancillary and preventive remedy, it may be resorted to by a party to protect or preserve his rights during the pendency of the principal action, and for no other purpose. Such relief will accordingly protect the ability of the court to render a meaningful decision; it will further serve to guard against a change of circumstances that will hamper or

[76] G.R. No. 157163, June 25, 2014.

> prevent the granting of proper relief after a trial on the merits. Verily, its essential function is to preserve the *status quo* between the parties until the merits of the case can be heard." (*Emphasis supplied*)

As shown above, the Letter dated April 11, 2022, is neither an assessment nor a collection letter which may expose petitioner BBI's property to any injury. Thus, there is no necessity for the issuance of any injunction order.

WHEREFORE, premises considered, petitioners' *Petition for Certiorari and Prohibition [With Application for Temporary Restraining Order and/or Writ of Preliminary Injunction]* is hereby **PARTIALLY GRANTED**.

Accordingly, the fifth sentence of the first paragraph of Item IV of RMC No. 32-2022 is **DECLARED** null and void.

SO ORDERED.

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

see Separate Opinion
ROMAN G. DEL ROSARIO
Presiding Justice

Marian Ivy F. Reyes-Fajardo
(See Concurring and Dissenting Opinion)
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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice

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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

BB INTERNATIONAL LEISURE AND RESORT DEVELOPMENT CORPORATION, HANN INTERNATIONAL LEISURE, INC. (formerly WIDUS INTERNATIONAL LEISURE, INC.), and HANN PHILIPPINES, INC. (formerly WIDUS PHILIPPINES, INC.),
Petitioners,

CTA CASE NO. 10841

- versus -

Members:

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

BUREAU OF INTERNAL REVENUE, HON. CAESAR R. DULAY, in his capacity as the COMMISSIONER OF INTERNAL REVENUE, AND JOHN DOES AND JANE DOES, AS PERSONS ACTING FOR, IN BEHALF, OR UNDER THE AUTHORITY OF THE BUREAU OF INTERNAL REVENUE AND THE COMMISSIONER OF INTERNAL REVENUE,
Respondents.

Promulgated:

OCT 2 7 2023 10:30AM

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SEPARATE OPINION

***DEL ROSARIO, P.J.*:**

After a thorough examination of the facts and applicable laws and jurisprudence, I agree that the provision in Item No. IV of Revenue Memorandum Circular (RMC) No. 32-2022, stating that the gaming operations of licensees of the Philippine Amusement and Gaming Corporation (PAGCOR) located in economic zones (ecozones) are subject to the five percent (5%) Franchise Tax under Section 13(2)(b) of Presidential Decree No. 1869, as amended, or the PAGCOR Charter, is null and void.

I write this Separate Opinion to discuss further the propriety of filing the present Petition for *Certiorari* and Prohibition to assail the validity of RMC No. 32-2022, and to elucidate on a different legal reasoning behind the abovementioned position I have taken.

The Court has jurisdiction over petitions for* certiorari *and prohibition questioning the validity of tax issuances

I concur with the *ponencia* that the Court can take cognizance of special civil actions for *certiorari* and prohibition to question administrative issuances by the Commissioner of Internal Revenue (CIR), such as RMC No. 32-2022. As held by the Supreme Court in *St. Mary's Academy Caloocan City, Inc. vs. Hon. Kim Jacinto S. Henares, et al.*:[1]

> "This Court has previously applied [Section 7(a)(1) of RA No. 1125, as amended] to emphasize that **it is the Court of Tax Appeals**, and not the regional trial courts, **that has jurisdiction over questions on the validity of tax issuances by the Commissioner of Internal Revenue**.
>
> x x x
>
> > The **Court of Tax Appeals has exclusive jurisdiction to determine the constitutionality or validity of** tax laws, rules and regulations, and other **administrative issuances of the Commissioner of Internal Revenue**.
>
> **This is now the prevailing rule**, as affirmed in *COURAGE v. Commissioner of Internal Revenue*." (*Boldfacing supplied*)

All petitioners possess the same cause of action in assailing the validity of RMC No. 32-2022

Contrary to the *ponencia*, however, I am of the view that all petitioners in this case possess the requisite cause of action to file the present suit.

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[1] G.R. No. 230138, January 13, 2021.

A "cause of action" is defined as "the act or omission by which a party violates a right of another."[2] The three (3) elements of a cause of action are:

(1) A legal right accruing to the plaintiff;

(2) A duty on the defendant's part to respect such right; and,

(3) An act or omission by the defendant violative of the right of the plaintiff or constituting a breach of the obligation of defendant to the plaintiff.[3]

Here, perusal of the Petition shows that all petitioners have a similar cause of action, and that all of the elements enumerated above were met, *i.e.*, (1) that as PAGCOR-licensed gaming operators located in the Clark Special Economic Zone/Clark Freeport Zone (CSEZ/CFZ), they have the legal right of enjoying the tax exemptions provided for under Republic Act (RA) No. 7227, as amended by RA No. 9400, or the Bases Conversion and Development Act (BCD Act); (2) respondents have the correlative duty of respecting the tax exemption privileges enjoyed by petitioners; and (3) the issuance of RMC No. 32-2022 violates the tax exemption privileges of petitioners under the aforementioned laws.

Verily, it is the not the issuance of the Reminder Letters which gave rise to the cause of action of petitioners, but the issuance of RMC No. 32-2022, which is the legal basis of the said Reminder Letters.

Accordingly, pursuant to Section 4, Rule 65 of the Rules of Court, as amended, petitioners have sixty (60) days from issuance of RMC No. 32-2022 on March 29, 2022, or until **May 28, 2022**, within which to file before the Court the petition to question the validity of the said administrative issuance. Thus, petitioners timely filed the present Petition on **April 20, 2022**, thereby vesting jurisdiction with the Court.

Exhaustion of administrative remedies is not applicable in this case

In addition, I am of the view that, contrary to respondents' contention, the doctrine of exhaustion of administrative remedies,

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[2] Sec. 2, Rule 2, Rules of Court, as amended.
[3] *Tocoms Philippines, Inc. vs. Philips Electronics and Lighting, Inc.*, G.R. No. 214046, February 5, 2020.

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which provides that before a party may seek the intervention of the court, he or she should first avail of all the means afforded him by administrative processes,[4] is not applicable in this case.

RMC No. 32-2022 was issued by the CIR in view of his power to interpret the provisions of the Tax Code and other tax laws pursuant to Section 4 of the National Internal Revenue Code of 1997, as amended. This authority has been characterized as a rule-making or quasi-legislative power delegated by Congress to the CIR.[5]

As held by the Supreme Court in *Alliance of Non-Life Insurance Workers of the Philippines, et al. vs. Hon. Leandro R. Mendoza, et al.*,[6] the doctrine does not apply when the questioned act is quasi-legislative in character, *viz*.:

> "However, it is settled that **the doctrine of exhaustion of administrative remedies finds no application when a questioned act was done in the exercise of quasi-legislative powers**:
>
> > **In questioning the validity or constitutionality of a rule or regulation issued by an administrative agency, a party need not exhaust administrative remedies before going to court**. This principle applies only where the act of the administrative agency concerned was performed pursuant to its quasi-judicial function, and not when the assailed act pertained to its rule-making or quasi-legislative power. x x x" (*Boldfacing supplied*)

Verily, petitioners need not file an appeal before the Secretary of Finance seeking reconsideration of RMC No. 32-2022, as their recourse to this Court to seek judicial redress is proper.

PAGCOR licensees located in ecozones are subject to the 5% Tax on Gross Income Earned and not the 5% Franchise Tax

As much as I agree that the fifth sentence of the first paragraph of Item No. IV of RMC No. 32-2022 is invalid, this is where my primary divergence with the *ponencia* commences. Contrary to the

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[4] *Professional Regulation Commission vs. Dayamon Didato Alo*, G.R. No. 214435, February 14, 2022.
[5] *Commissioner of Internal Revenue vs. Court of Tax Appeals (Second Division) and Petron Corporation*, G.R. No. 207843, July 15, 2015.
[6] G.R. No. 206159, August 26, 2020.

interpretation that PAGCOR licensees are not subject to the 5% Franchise Tax under the PAGCOR Charter, I submit that such licensees are entitled to such privilege as provided for under prevailing laws and jurisprudence. However, when a PAGCOR licensee is located inside an ecozone, such as the CSEZ/CFZ, said licensee becomes subject to the 5% Tax on Gross Income Earned (GIE) under Section 15 of the BCD Act, instead of the 5% Franchise Tax.

I explain.

In *The Commissioner of Internal Revenue vs. Acesite (Philippines) Hotel Corporation* ("*Acesite*"),[7] the Supreme Court held that the tax exemption privilege of PAGCOR under Section 13 of its charter extends to entities or individuals dealing with it.

The ruling in *Acesite*, as reiterated in *Bloomberry Resorts and Hotels, Inc. vs. Bureau of Internal Revenue, Represented by Commissioner Kim S. Jacinto-Henares* ("*Bloomberry*"),[8] teaches that:

> "As the PAGCOR Charter states in unequivocal terms that exemptions granted for earnings derived from the operations conducted under the franchise specifically from the payment of any tax, income or otherwise, as well as any form of charges, fees or levies, shall inure to the benefit of and extend to corporation(s), association(s), agency(ies), or individual(s) with whom the PAGCOR or operator has any contractual relationship in connection with the operations of the casino(s) authorized to be conducted under this Franchise, **so it must be that all contractees and <u>licensees</u> of PAGCOR, upon payment of the 5% franchise tax, shall likewise be exempted from all other taxes**, including corporate income tax realized from the operation of casinos." (*Boldfacing and underscoring supplied*)

Bloomberry would again be applied by the Supreme Court in the case of *Commissioner of Internal Revenue vs. Travellers International Hotel Group, Inc.*,[9] where the said Court held that the Court of Tax Appeals committed no reversible error when it ruled that the taxpayer, as a PAGCOR licensee, is exempt from payment of regular corporate income tax after payment of the 5% Franchise Tax under the PAGCOR Charter.

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[7] G.R. No. 147295, February 16, 2007.
[8] G.R. No. 212530, August 10, 2016.
[9] G.R. No. 255487, May 3, 2021.

Then, in the more recent case of *Saint Wealth Ltd., et al. vs. Bureau of Internal Revenue, et al.* ("*Saint Wealth*"),[10] the Supreme Court *En Banc* echoed the ruling in *Bloomberry* that the tax exemption of the PAGCOR, upon payment of the 5% Franchise Tax, inures to the benefit of **PAGCOR licensees**, *viz.*:

> "Under Section 13(2)(a) of the PAGCOR Charter, PAGCOR is exempt from the payment of any and all taxes on its income derived from gaming operations, except for a five percent (5%) franchise tax on its gross revenues or earning:
>
> x x x
>
> Considering the above-cited provisions, this Court clarified in *Bloomberry Resorts and Hotels, Inc. v. Bureau of Internal Revenue (Bloomberry)*, **that PAGCOR's tax privilege of paying only a five percent (5%) franchise tax for income generated from its gaming operations, in lieu of all other taxes, <u>inures to the benefit of PAGCOR's licensees</u>**:
>
> x x x
>
> Clearly, **both law and jurisprudence mandate that PAGCOR's licensees are only liable to pay a five percent (5%) franchise tax for income derived from its gaming operations**. However, a plain reading of the PAGCOR Charter and the ruling in *Bloomberry* shows that the liability of paying the five percent (5%) franchise tax only applies to PAGCOR's licensees which are connected to the operations of casinos and other related amusement places." (*Boldfacing and underscoring supplied*)

The *ponencia*'s invocation of the Supreme Court's ruling in *Thunderbird Pilipinas Hotels and Resorts, Inc. vs. Commissioner of Internal Revenue* ("*Thunderbird*")[11] is misplaced, considering the difference in the factual milieu. The facts in *Thunderbird* all happened prior to the effectivity of RA No. 9487, which amended the PAGCOR Charter, *i.e.,* the entity there operated a casino by virtue of a memorandum of agreement with PAGCOR, and not a license. Before the enactment of this amendatory law in 2007, PAGCOR was not permitted to issue licenses to private casino operators. However, Section 10 of the current PAGCOR Charter now authorizes PAGCOR to do so.

Here, petitioners' licenses were issued by PAGCOR by virtue of the latter's authority under the PAGCOR Charter, *i.e.*, petitioner BB International Leisure and Resort Development Corporation's Gaming

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[10] G.R. Nos. 252965 and 254102, December 7, 2021.
[11] G.R. No. 211327, November 11, 2020.

License was issued on July 9, 2020,[12] and petitioner Hann International Leisure, Inc.'s Provisional License was executed on December 15, 2014,[13] all after the effectivity of RA No. 9487; thus, the precedent in *Thunderbird* is not applicable.

As provided for in *Bloomberry, Travellers* and *Saint Wealth*, PAGCOR licensees enjoy the privilege of paying the 5% Franchise Tax in lieu of all other taxes.

Now, the complication arises—is a PAGCOR licensee located in an ecozone, specifically the CSEZ/CFZ, subject to the 5% Franchise Tax under the PAGCOR Charter, or the 5% Tax on GIE under the BCD Act?

In *Department of Energy vs. Court of Tax Appeals*,[14] the Supreme Court elucidated on the difference between a special law and general law, and the interpretative rule when faced with such statutes, *viz.*:

> "The Court has defined a general law as 'a law which applies to all of the people of the state or to all of a particular class of persons in the state, with equal force and obligation.' x x x [I]t was also described as 'one which embraces a class of subjects or places and does not omit any subject or place naturally belonging to such class.' On the other hand, a special law is one which 'applies to particular individuals in the state or to a particular section or portion of the state only' and which 'relates to particular persons or things of a class.' As the Court has consistently held, **where there are two laws which appear to apply to the same subject and where one law is general and the other special, the law specially designed for the particular subject must prevail over the other. Stated more simply, the special law prevails over the general law**. *Generalia specialibus non derogant*." (*Boldfacing supplied*)

As between Section 13(2)(b) of the PAGCOR Charter which provides for the 5% Franchise Tax, and Section 15 of the BCD Act which provides for the 5% Tax on GIE, the former is the general law and the latter is the special law. The 5% Franchise Tax applies to all licensees of PAGCOR, wherever they are located, while the 5% Tax on GIE applies only to those located in the CSEZ/CFZ. There is thus a reasonable distinction between a regular PAGCOR licensee, and a PAGCOR licensee located inside an ecozone as the latter must comply with the additional requirements set forth by the ecozone's governing

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[12] Exhibit "P-26", Docket, Vol. III, p. 1211.
[13] Exhibit "P-27", Docket, Vol. III, pp. 121-1238.
[14] G.R. No. 260192, August 17, 2022.

body, which in this case is the Clark Development Corporation, a subsidiary of the Bases Conversion and Development Authority (BCDA).

Moreover, in the plenary proceedings in the House of Representatives for consideration of House Bill No. 5064, which eventually became RA No. 9400 or the amendatory law to the BCD Act, it was stated that the intent of the bill was to provide for a uniform tax rate for business entities located in all ecozones in the country, including Clark, thus:

> "REP. LAPUS. Honorable Speaker, my esteemed colleagues, I stand again before you today to sponsor an amendment to Republic Act 7227 or the Bases Conversion and Development Act to once and for all cure an infirmity in Republic Act 7227 by providing the **same fiscal and non-fiscal incentives** under Republic Act 7916 or the Special Economic Zone Act of 1995 to **duly registered business enterprises located at the Clark**, John Hay, Morong and Poro Point Special Economic Zones including the Subic Special Ecozone and Freeport **for uniformity of incentives to investors in all ecozones and freeports.**
>
> Under Section 15 of Republic Act 7227, there is no categorical grant of fiscal incentives to Clark Special Economic Zone, Camp John Hay Special Economic Zone, and other ecozones created and to be created under the said law. The Executive orders and proclamations issued creating these ecozones were not enough to grant the investors-locators tax perks. Our legislative action is needed to secure this grant of incentives as, of course, **to make our tax system uniform and equitable as mandated by the Philippine Constitution.** x x x"[15] (*Boldfacing supplied*)

It has been held by the Supreme Court that the records of congressional deliberations provide guidance in dissecting the intent of the law.[16] Verily, it was Congress' intention to provide the **same** tax incentives enjoyed by entities located in ecozones administered by the Philippine Economic Zone Authority with the entities located in ecozones administered by the BCDA, such as the CSEZ/CFZ.

To comply with the assailed provision in RMC No. 32-2022 would run counter to the purpose of RA No. 9400 of providing uniform tax incentives to all entities located in all ecozones in the country, particularly the CSEZ/CFZ. Implementation of RMC No. 32-2022 would result in business entities enjoying different tax incentives, albeit all of them located inside the CSEZ/CFZ, *i.e.*, PAGCOR licensees such as

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[15] Transcript of Plenary Hearing, House of Representatives, February 21, 2006, pp. 87-88.
[16] *Roxas & Company, Inc. vs. DAMBA-NSFW and the Department of Agrarian Reform, et seq.*, G.R. Nos. 149548, 167505, 167540, 167543, 167845, 169163 & 179650, December 4, 2009.

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petitioner would be subject to the 5% Franchise Tax, while all other businesses in the CSEZ/CFZ would be subject to the 5% Tax on GIE. This is contrary to the intent of the law which provides that all entities located in all ecozones in the country should enjoy similar or uniform incentives, one of which is the 5% Tax on GIE.

In fine, PAGCOR licensees located in ecozones, such as petitioners in this case, shall continue to be subject to the 5% Tax on GIE, and not the 5% Franchise Tax. Thus, the assailed provision in Item No. IV of RMC No. 32-2022 is null and void for being inconsistent with RA No. 9400.

ALL TOLD, I *VOTE* to:

(1) GRANT the Petition for *Certiorari* and Prohibition;

(2) DECLARE as null and void the sentence, "**Their income from gaming operations, however, shall not be subject to the GIT, ITH or corporate income tax but remains subject to the 5% Franchise Tax in accordance with P.D. No. 1869, as amended, and the aforecited jurisprudence.**" found in Item No. IV of Revenue Memorandum Circular No. 32-2022;

(3) ENJOIN respondents from enforcing the collection of the five percent (5%) Franchise Tax on gaming operations against petitioners; and,

(4) DECLARE as immediately executory the order of suspension of collection of the five percent (5%) Franchise Tax consistent with Section 4, Rule 39 of the Rules of Court, as amended.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

BB INTERNATIONAL LEISURE AND RESORT DEVELOPMENT CORPORATION, HANN INTERNATIONAL LEISURE, INC. (formerly WIDUS INTERNATIONAL LEISURE, INC.) and HANN PHILIPPINES, INC. (formerly WIDUS PHILIPPINES, INC.),
Petitioners,

CTA Case No. 10841

Members:

- versus -

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

BUREAU OF INTERNAL REVENUE, HON. CAESAR R. DULAY, in his capacity as the COMMISSIONER OF INTERNAL REVENUE, AND JOHN DOES AND JANE DOES, AS PERSONS ACTING FOR IN BEHALF, OR UNDER THE AUTHORITY OF THE BUREAU OF INTERNAL REVENUE AND THE COMMISSIONER OF INTERNAL REVENUE,
Respondents.

Promulgated:

OCT 27 2023; 10:30AM

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CONCURRING AND DISSENTING OPINION

REYES-FAJARDO, ***J.*****:**

I concur with the conclusions reached by the *ponencia* that this Court has jurisdiction over the present case, that only petitioner BB International Leisure and Resort Development Corporation ("BBI") has cause of action to file the Petition, and that BBI has no other plain, speedy, and adequate remedy in the ordinary course of law.

Nonetheless, I am constrained to withhold my assent from the majority opinion that the fifth sentence of the first paragraph of Item IV of Revenue Memorandum Circular ("RMC") No. 32-2022 should be declared null and void for being *ultra vires*.

The fifth sentence of the first paragraph of Item IV RMC No. 32-2022 states that the imposition of the five percent (5%) franchise tax is in accordance with Presidential Decree ("PD") No. 1869 and jurisprudence cited in the rules and regulations, to wit:

> IV. TAX TREATMENT OF PAGCOR's LICENSEES LOCATED IN ECOZONES/FREEPORTS
>
> . . .
>
> **Their income from gaming operations, however, shall not be subject to the GIT, ITH or corporate income tax but remains subject to the 5% Franchise Tax in accordance with P.D. No. 1869, as amended, and the aforecited jurisprudence.**[1]

The decision to declare said provision null and void stemmed from the Supreme Court's pronouncement in *Thunderbird Pilipinas Hotels and Resorts, Inc. v. Commissioner of Internal Revenue ("Thunderbird")*[2] that the income tax exemptions of the Philippine Amusement and Gaming Corporation ("PAGCOR") under PD No. 1869 do not extend to PAGCOR licensees.

While it is indeed true that the Supreme Court in Division held in *Thunderbird* that PAGCOR's income tax exemptions only extend to entities or individuals in a contractual relationship with PAGCOR in connection with its casino operations and not to PAGCOR licensees, in the more recent case of *Saint Wealth Ltd. v. Bureau of Internal Revenue ("Saint Wealth")*,[3] the Supreme Court *En Banc* reiterated the doctrine laid down in *Bloomberry Resorts and Hotels, Inc. v. Bureau of Internal Revenue, represented by Commissioner Kim S. Jacinto*

1 Emphasis supplied.
2 G.R. No. 211327, November 11, 2020.
3 G.R. Nos. 252965 & 254102, December 7, 2021.

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(*"Bloomberry"*)[4] that PAGCOR's income tax exemption extends to its licensees and contractees. The Supreme Court *En Banc* ruled:[5]

> Clearly, both law and jurisprudence mandate that PAGCOR's licensees are only liable to pay a five percent (5%) franchise tax for income derived from its gaming operations. However, a plain reading of the PAGCOR Charter and the ruling in *Bloomberry* shows that the liability of paying the five percent (5%) franchise tax only applies to PAGCOR's licensees which are connected to the operations of casinos and other related amusement places.
>
> Stated differently, **the payment of this five percent (5%) franchise tax only applies to PAGCOR licensees which operate casinos and other related amusement places,** and excludes those licensees who derive profit from other means, such as POGOs. Thus, POGOs, including offshore-based POGO licensees, are not taxed under the PAGCOR Charter.[6]

In ruling in above manner, the Supreme Court *En Banc* has clearly overturned its Third Division's previous ruling in *Thunderbird* and reverted to the original doctrine in *Bloomberry.*

It should be emphasized that the doctrine *stare decisis et non quieta movere,* as embodied in Article 8 of the Civil Code of the Philippines,[7] enjoins adherence to judicial precedents and requires courts to follow the rule established in Supreme Court decisions.

All told, I vote to **DENY** petitioner's Petition for Certiorari and Prohibition [with Application for Temporary Restraining Order and or Writ of Preliminary Injunction].

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

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4 G.R. No. 212530, August 10, 2016.

5 *Saint Wealth Ltd. v. Bureau of Internal Revenue,* G.R. Nos. 252965 & 254102, December 7, 2021.

6 Emphasis supplied.

7 ART. 8. Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines.