Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

NATIONAL TRANSMISSION CORPORATION,
Petitioner,

CTA AC NO. 75
For: Franchise Tax Assessment

-versus-

Members:
CASTAÑEDA, JR., *Chairperson*
CASANOVA, and
MINDARO-GRULLA, *JJ.*

PROVINCE OF AGUSAN DEL NORTE, REPRESENTED BY ITS PROVINCIAL TREASURER, MR. LEOPOLDO L. AVILA,
Respondent.

Promulgated:
JUN 05 2012
3:55 p.m.

x--x

DECISION

MINDARO-GRULLA, J.:

This is a Petition for Review filed on April 19, 2011 by the National Transmission Corporation as petitioner against the Province of Agusan Del Norte, represented by its Provincial Treasurer, Mr. Leopoldo Avila as respondent, for the Court in Division, pursuant to pursuant to Section 7 (c) (2)(a) of Republic Act (RA) No. 1125, An Act Creating the Court of Tax

Appeals, as amended[1], as well as Rule 4, Section 3(c)(2) of the 2005 Revised Rules of the Court of Tax Appeals, as amended.

The said Petition is an appeal from the Decision[2] dated March 5, 2010 of the Regional Trial Court (RTC), Branch 3 of Butuan City (RTC–Butuan City) in SP. Civil Case No. 1357, which upheld the tax assessment issued by respondent against petitioner in the aggregate amount of P3,401,001.92, representing franchise tax due for the years 2003 to 2008; as well as the Order[3] dated February 14, 2011 of RTC-Butuan City denying reconsideration thereof.

The dispositive portions thereof, respectively, read as follows:

Decision dated March 5, 2010:

> "WHEREFORE, premises considered, the appeal of the National Transmission Corporation is hereby **DENIED**. The Notice of Assessment dated January 19, 2009 issued against National

---

1 Sec. 7. *Jurisdiction*. –The CTA shall exercise:
(c) Jurisdiction over tax collection cases as herein provided:
x x x x x x
(2) Exclusive appellate jurisdiction in tax collection cases:

(a) Over appeals from the judgments, resolutions or orders or the Regional Trial Courts in tax collection cases originally decided by them, in their respective territorial jurisdiction.
x x x x x x

2 RTC Records, pp. 94-101; Annex "A", Petition for Review, Docket, pp. 24-31.
3 RTC Records, p. 132; Annex "B", Petition for Review, Docket, p. 32.

Transmission Corporation by the Province of Agusan del Norte through its Provincial Treasurer is hereby **AFFIRMED**.

SO ORDERED."

Order dated February 14, 2011:

"WHEREFORE, premises considered, the Motion for Reconsideration filed by Appellant National Transmission Corporation (TRANSCO) of the Decision of this Court dated March 5, 2010 is hereby **DENIED**.

SO ORDERED."

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

Petitioner National Transmission Corporation (hereinafter referred to as "TRANSCO") is a government instrumentality, created pursuant to Republic Act (R.A.) No. 9136, otherwise known as the "Electric Power Industry Reform Act of 2001" (EPIRA), with principal office address at Power Center, EDSA corner Quezon Avenue, Diliman, Quezon City.[4]

On the other hand, the Province of Agusan del Norte (respondent) is a local government unit (LGU) duly created and organized under the laws of the Philippines, with capacity to sue and be sued. It is represented

[4] Par. 1, The Parties, Petition for Review, Docket, pp. 5-6.

herein by Mr. Leopoldo L. Avila, the Provincial Treasurer, with office address at Provincial Hall, Agusan del Norte, Butuan City.[5]

On February 12, 2009, petitioner received the letter entitled "Notice of Franchise Tax Delinquency in the Province of Agusan del Norte"[6] dated January 19, 2009 from respondent, through Mr. Leopoldo L. Avila, the Provincial Treasurer.[7] In the said "Notice of Franchise Tax Delinquency", respondent assessed petitioner in the aggregate amount of P3,401,001.92, representing franchise tax due for the years 2003 to 2008; the pertinent portion of which is herein quoted, to wit:

> "Notice is hereby served pursuant to the provision of Section 14 and 17 of the Agusan del Norte Revenue Code of 1993 under Provincial Ordinance No. 008-93 as amended by Provincial Revenue Code No. 195-2006 that Franchise TAX DUE for Calendar Years 2003 to 2008 has been delinquent. TOTAL UNPAID FRANCHISE TAX is Three Million Four Hundred One Thousand One Pesos & Ninety-Two Centavos (P3,401,001.92) as follows:

[5] Par. 2, The Parties, Petition for Review, Docket, p. 6.
[6] Annex "C", Petition for Review, Docket, pp. 33-34.
[7] With documentary enclosures/attachments, namely: Annual Franchise Tax, Surcharge & Penalty Computation for TRANSCO for the Period 2003 up to 2008, Docket, pp. 35-41; Agusan del Norte Electric Cooperative, Inc.'s (ANECO) letter dated November 11, 2008, Docket, p. 42; Department of Finance Local Finance Circular No. 1-07, Docket, pp. 43-49; and Copy of Provincial Ordinance No. 195-2006, Sections 11 to 13, Docket, p. 50.

Year (A)	Annual Gross Receipts Preceding Year (B)	Rate of Tax 50% of 1% (C)	Tax Due (D= 50% of 1% of B)	Surcharge (E= 25% of D)	Interest (F = D+E x 72%)	Total Tax Delinquency (G=D+E+F)
2003	10,329,137.65	50% of 1%	51,645.69	12,911.42	46,481.12	111,038.23
2004	61,349,056.00	50% of 1%	306,745.28	76,686.32	276,070.75	659,502.35
2005	62,504,959.31	50% of 1%	312,524.80	78,131.20	281,272.32	671,928.32
2006	66,143,307.99	50% of 1%	330,716.54	82,679.13	297,644.89	711,040.56
2007	71,850,639.45	50% of 1%	359,253.20	89,813.30	215,551.92	664,618.42
2008	75,209,553.86	50% of 1%	376,047.77	94,011.94	112,814.33	582,874.04
TOTAL	**347,386,654.26**		**1,736,933.28**	**434,233.31**	**1,229,835.33**	**3,401,001.92**

Drawing breadth on The Local Finance Circular No. 1-07 issued by the Department of Finance, Manila particularly Section 3, paragraph (b), item 1, 2 and 3, we were able to secure a statement from the Agusan del Norte Electric Cooperative (ANECO), Butuan City, the actual transactions made by TRANSCO from Calendar Years 2002 to 2007, which was made as one of the basis of Franchise tax Computation.

Thank you for your kind attention."

On April 3, 2009, petitioner wrote its formal protest[8] addressed to Mr. Leopoldo L. Avila, the Provincial Treasurer. The protest was denied by respondent Province of Agusan del Norte, through the Office of the Provincial Treasurer, in a Decision[9] dated April 24, 2009, which is quoted as follows:

"This is a protest case of Franchise Tax assessment by the National Transmission Corporation (TRANSCO), Quezon City

[8] RTC Records, pp. 35-36; Annex "D", Petition for Review, Docket, pp. 51-52.
[9] RTC Records, pp. 37-40; Annex "E", Petition for Review, Docket, pp. 53-56.

against the Local Government Unit of Agusan del Norte in the total amount of P3,401,001.92.

On January 19, 2009, LGU-Agusan del Norte in its effort to increase local revenues sends NOTICE of Delinquencies to TRANSCO, representing Unpaid Franchise Tax covering the period from Calendar Years 2003 to 2008. The basis of which are the existing Agusan del Norte Revenue Code under Provincial Ordinance No. 008-93 as amended by Provincial Revenue Code of 2006 No. 195-2006, and in pursuant to Section 3, paragraph (b), item 1, 2 and 3 of the Local Finance Circular No. 1-07, issued by the Department of Finance, Manila.

Protestant argued that Franchise Tax for Gross Receipts derived from ANECO be set aside on the following grounds:

1. Pursuant to Article 226(a) of the Implementing Rules and Regulations of the Local Government Code, the liability of TRANSCO to pay Franchise tax accrues only from Gross Receipts from its operation within the province's territorial jurisdiction. The said territorial jurisdiction excludes the territorial limits of any city located in the province. The said rule was affirmed by the Supreme Court in the case of National Power Corporation vs. City of Cabanatuan (GR No. 149110, 9 April 2003);
2. Considering that ANECO is located within the City of Butuan which is outside the territorial jurisdiction of the Province of Agusan del Norte, we respectfully submit that the province of Agusan del Norte has no authority to collect Franchise Tax from the gross receipt of ANECO.

This office is not persuaded:

The pertinent provisions of Article 226 of which are heretofore reproduced, thus-

<u>Article 226 of IRR (RA 7160)</u>

(a) Notwithstanding any exemption granted by any law, or other Special law, the province may impose a tax on businesses enjoying a franchise, at a rate not exceeding fifty percent (50%) of one percent (1%) of the gross annual receipts, which shall include both cash sales and sales on account realized during the preceding calendar year within its territorial jurisdiction, excluding the territorial limits of any city located in the province.

(b) The province, however, shall not impose the tax on businesses enjoying franchise operating within the territorial jurisdiction of any highly-urbanized or component city located within the province.

It may be worth to stress that Franchise Tax impositions are exclusively granted to provinces and cities. Taxing powers of component and highly-urbanized cities are distinct and separate from the province. The province should not levy any tax within the taxing jurisdiction of any city. Simply stated, we do not include Butuan City as one of our Franchise Tax base to enforce collection from TRANSCO. The truth of the matter, LGU-Agusan del Norte imposition of Franchise Tax was based on the annual gross receipts of provincial operations made and reported by ANECO from the eleven (11) municipalities as it encompasses the taxing territorial jurisdiction of the province.

Hereunder is the list of the Municipalities:

Statement of Remittance from ANECO to TRANSCO for Calendar Years 2002 to 2007

Municipalities	2002	2003	2004	2005	2006	2007	TOTAL
Las Nieves	291,950.32	1,817,008.54	1,989,257.15	2,046,809.17	2,000,380.66	2,289,615.18	10,435,021.02
Kitcharao	249,962.42	1,540,899.20	1,613,031.86	1,672,743.78	1,904,331.74	1,980,142.67	8,960,111.67
Magallanes	3,991,836.25	22,994,204.78	24,575,280.41	23,992,885.50	27,927,293.68	27,257,141.26	130,738,641.88
Cabadbaran	1,780,576.15	10,866,129.58	10,822,464.53	11,478,122.68	12,535,874.34	14,100,195.84	61,583,363.12
Tubay	163,122.67	1,003,965.38	1,081,007.16	1,169,858.63	1,386,867.10	1,733,447.20	6,538,268.14
Santiago	148,026.46	1,030,255.68	1,056,202.58	1,036,116.77	1,054,856.07	1,322,377.09	5,647,834.65
Jabonga	141,125.49	1,032,150.34	1,131,887.67	1,018,239.12	1,251,900.46	1,446,662.43	6,022,965.50
RTR	188,009.43	1,265,812.49	1,382,076.24	1,341,768.88	1,472,519.21	1,664,615.21	7,314,801.45
Carmen	242,007.86	1,521,022.11	1,538,888.54	1,586,662.15	1,691,641.59	1,832,218.57	8,412,440.81
Nasipit	1,141,350.78	7,022,251.88	7,116,109.82	7,713,408.09	8,779,176.06	8,627,527.04	40,398,823.66
Buenavista	1,991,169.82	11,255,356.03	10,199,753.36	13,077,693.24	11,845,798.55	12,955,611.39	61,325,382.38
TOTAL	10,329,137.65	61,349,056.01	62,504,959.32	66,134,307.99	71,850,639.45	75,209,553.86	347,377,654.27
TRANSCO							

> We posit the view that LGU-Agusan del Norte's action to enforce Franchise Tax is consistent with Article 226 of the Implementing Rules and Regulations of the Local Government Code under RA 7160.
>
> Wherefore, the instant protest for Franchise Tax Assessment is denied for lack of merit."

On June 15, 2009, petitioner filed its Appeal[10] through registered mail with the RTC-Butuan City. The said Appeal was docketed as SP. Civil Case No. 1357 entitled "National Transmission Corporation (TRANSCO) vs. The Provincial Government of Agusan del Norte, represented by its Provincial Treasurer, Mr. Leopoldo L. Avila.

In the Decision[11] dated March 5, 2010, the RTC-Butuan City denied petitioner's Appeal and upheld the validity of the Notice of Assessment dated January 19, 2009 issued against petitioner TRANSCO by the Province of Agusan del Norte through its Provincial Treasurer.

On June 2, 2010, petitioner filed through registered mail its Motion for Reconsideration[12] dated June 1, 2010, praying that the assessment by the Provincial Treasurer dated January 19, 2009 would be declared null

[10] RTC Records, pp. 1-41; Annex "F", Petition for Review, Docket, pp. 57-66.
[11] RTC Records, pp. 94-101' Annex "A", Petition for Review, Docket, pp. 24-31.
[12] RTC Records, pp. 102-109; Annex "H", Petition for Review, Docket, pp. 99-105.

and void. The said Motion was denied in an Order[13] dated February 14, 2011.

Hence, petitioner filed the instant Petition for Review on April 19, 2011.

Petitioner raised the following grounds:

> "The Court a quo erred in denying petitioner's appeal as respondent is expressly prohibited by law to impose franchise tax on business outside its territorial jurisdiction.
>
> The Court a quo erred in denying petitioner's appeal since the imposition of franchise tax on the gross sales of ANECO constitutes double taxation.
>
> The Court a quo erred in denying petitioner's appeal as the enabling tax ordinance of respondent does not mention of public utilities with a franchise operating and maintaining nationwide electric transmission system as one of entities subject to franchise tax."

The issue is whether the RTC–Butuan CIty in its Decision dated March 5, 2010 erred in upholding the tax assessment of the Province of Agusan del Norte against petitioner in the amount of P3,401,001.92, representing franchise tax due for the years 2003 to 2008.

In the Resolution[14] dated September 30, 2011, this case was submitted for decision, taking into consideration petitioner's

[13] RTC Records, p. 132; Annex "B", Petition for Review, Docket, p. 32.

Memorandum[15] filed by registered mail on August 26, 2011 and received by this Court on September 6, 2011 and respondent's Memorandum[16] filed by registered mail on September 12, 2011 and received by this Court on September 23, 2011.

Petitioner argues that the RTC–Butuan City gravely erred in issuing the assailed Decision because respondent is expressly prohibited by law to impose franchise tax on business outside its territorial jurisdiction.

Petitioner posits that Section 137 of the Local Government Code (LGC) of 1991 "is explicit that the franchise tax is assessed at the place where the gross annual receipts for the preceding calendar year based on the incoming receipt, or realized, which in this case is receipted and realized in the principal office of ANECO at Butuan City." According to petitioner, although the Province may impose franchise tax, the power to impose it is limited only to the gross annual receipts within its territorial jurisdiction pursuant to Section 137 of the LGC, in keeping with the

[14] Docket, p. 174.
[15] Docket, pp. 146-161.
[16] Docket, pp. 165-172.

Implementing Rules and Regulations of the LGC, specifically, Article 226(a) and (b), which allegedly clarified the *situs* of taxation for franchise tax, as quoted below:

> "ARTICLE 226. *Franchise Tax.* — (a) Notwithstanding any exemption granted by any law or other special law, the province may impose a tax on businesses enjoying a franchise, at a rate not exceeding fifty percent (50%) of one percent (1%) of the gross annual receipts, which shall include both cash sales and sales on account realized during the preceding calendar year **within its territorial jurisdiction, excluding the territorial limits of any city located in the** province.
>
> (b) **The province shall not impose the tax on business enjoying franchise operating within the territorial jurisdiction of any city located within the province.** " (*Emphasis supplied*)

Petitioner contends that the foregoing provision "clearly means that when the 'gross annual receipts xxx based on the incoming receipt, or realized' takes place within the territorial limits of any city located within the province, the same is excluded from the jurisdiction of the province's taxing power, as this is now within the taxing power of the city where (a) gross annual receipts is receipted or realized; and (2) where the franchise business is being enjoyed." Petitioner concludes that this is the reason that notwithstanding the remittances from the different municipalities to ANECO at its office in Butuan City, the gross annual receipts are still realized within the City of Butuan, where ANECO is located. Even assuming that ANECO has several offices, it cannot be argued that in the case of franchise tax, the principal office is where the gross receipts are realized. Ultimately, the receipts of satellite offices are reported and remitted to the principal office, which is in Butuan City.

Petitioner also alleges that the Court *a quo* erred in denying petitioner's appeal since the imposition of franchise tax on ANECO's gross sales constitutes double taxation because petitioner's gross receipts for the calendar years 2003 to 2008 are being taxed in the form of franchise taxes by both the City and the Province, which is not only objectionable but also prohibited. In petitioner's case, it has a sub-station and a customer, ANECO in Butuan City; hence, it paid a franchise tax to the local government unit of Butuan City, including the gross sales receipt being claimed by the Province. According to petitioner, this is unfair and oppressive as it would be required to pay a franchise tax to two local government units involving the same gross sales receipts covering the same taxing periods. Petitioner explains that it is not exercising rights and privileges within the territory of the Province, citing as basis the case of *National Power Corporation vs. City of Cabanatuan;*[17] thus, it is not liable to pay the assessed franchise tax.

Finally, petitioner points out that the RTC erred in denying petitioner's appeal since respondent's enabling tax ordinance, Provincial Tax Ordinance 008-93, as amended by Provincial Revenue Code of 2006 195-2006, particularly, Section 11 does not mention of public utilities with a franchise operating and maintaining nationwide electric transmission system as one of the entities subject to franchise tax, contrary to the express provision of Local Finance Circular 1-07, Section 3 thereof, which prescribes the guidelines governing the powers of local government units to impose taxes, fees and charges on electric cooperatives (ECs) registered, supervised and controlled by the National Electrification Administration (NEA). Section 11 of the said enabling ordinance is very vague and cannot be considered as an enabling law as it was merely reproduced with slight modification from the Implementing Rules and

[17] G.R. No. 149110, April 9, 2003.

Regulations of the LGC, specifically, Article 226. Moreover, the enabling law used by respondent as basis in collecting franchise tax from petitioner was only enacted on March 27, 2006; hence, if petitioner is liable at all to pay franchise tax, such liability should start only from 2006 and that prior thereto, respondent has no right to collect franchise tax in the absence of an enabling law.

Respondent maintains that its authority to impose a tax on business enjoying a franchise is sanctioned by Section 137 of the LGC, which is quoted below:

> "SECTION 137. *Franchise Tax.* - Notwithstanding any exemption granted by any law or other special law, **the province may impose a tax on businesses enjoying a franchise**, at the rate not exceeding fifty percent (50%) of one percent (1%) of the gross annual receipts for the preceding calendar year based on the incoming receipt, or realized, within its territorial jurisdiction.
>
> In the case of a newly started business, the tax shall not exceed one-twentieth (1/20) of one percent (1%) of the capital investment. In the succeeding calendar year, regardless of when the business started to operate, the tax shall be based on the gross receipts for the preceding calendar year, or any fraction thereon, as provided herein." (*Emphasis supplied*)

Respondent argues that it is also authorized to impose local taxes under Section 3(b)(3) of Local Finance Circular No. 1-07, which provides:

> "Section 3(b)(3) – On the charges being remitted by EC's to NPC and TransCo the local government units may impose local taxes considering that both Companies are Government-owned and Controlled Corporations (GOCCs), whose tax exemptions have been withdrawn under Section 193 of the LGC. Said charges pertain to their gross receipts and therefore, the LGUs concerned may directly bill said Corporation for taxation purposes."

Respondent claims that petitioner's franchise tax liability has been confirmed by the Supreme Court in its two latest Decisions, namely: *National Power Corporation (NAPOCOR) vs. City of Cabanatuan*[18] and *NAPOCOR vs. Province of Isabela.*[19] Even though the party to these cases is NAPOCOR and not TRANSCO, said cases are in point as Section 8 of R.A. No. 9136 or the EPIRA expressly transferred to petitioner the nationwide transmission franchise of NAPOCOR.

Respondent asserts that the Province of Agusan del Norte is separate and distinct from the City of Butuan. The Province was created earlier than the City of Butuan. The latter has its own Charter and it has its own taxing territory separate and distinct from the Province. Likewise, respondent's computation in the "Notice" is limited to the gross receipts of

---

[18] G.R. No. 149110, April 9, 2003.
[19] G.R. No. 165827, June 16, 2006.

TRANSCO in its operation within the Province and does not include Butuan City. The computation in the said Notice is anchored in ANECO's Statement dated November 11, 2008, showing the Annual Gross Receipts remitted to TRANSCO in the latter's actual operation and transaction in the Province.

In addition to ANECO's categorical admission of its annual remittance to petitioner, its billing statement sent to all electric power end-users in the Province distinguishes the amount due to generation and transmission.

Moreover, the fact that petitioner's client ANECO has its main office in Butuan City shall not be the determining factor in the assessment of franchise tax, but must be where the business is being engaged in, because ANECO has other offices spread around the Province of Agusan del Norte and not only in Butuan City.

Respondent also avers that the Province imposes a franchise tax on the gross receipts of petitioner's provincial operation as reported by ANECO, thus, within the territorial jurisdiction of the Province of which it has a right to impose. It does not include those derived by TRANSCO in its operation in the City of Butuan. In other words, there is no double taxation in the instant case.

Finally, respondent points out that Provincial Tax Ordinance No. 008-93, as amended by Provincial Ordinance No. 195-2006, in fact uses the same wording of the Local Government Code to signify its intention to impose the same franchise tax. There is nothing in the law or other enactment that requires the said Ordinances to expressly mention the imposition of franchise tax to petitioner in its electric transmission.

Section 137 of R.A. No. 7160, otherwise known as the "Local Government Code of 1991" provides:

> "SECTION 137. *Franchise Tax*. - Notwithstanding any exemption granted by any law or other special law, the province may impose a tax on businesses **enjoying a franchise**, at the rate not exceeding fifty percent (50%) of one percent (1%) of the gross annual receipts for the preceding calendar year based on the **incoming receipt**, or **realized**, **within its territorial** jurisdiction.
>
> In the case of a newly started business, the tax shall not exceed one-twentieth (1/20) of one percent (1%) of the capital investment. In the succeeding calendar year, regardless of when the business started to operate, the tax shall be based on the gross receipts for the preceding calendar year, or any fraction thereon, as provided herein." (*Emphasis supplied*)

In *National Power Corporation vs. City of Cabanatuan,*[20] the Supreme Court upheld the authority of the local government unit to impose franchise tax against the National Power Corporation, stating thus:

> "(S)ection 137 of the LGC clearly states that the LGUs can impose franchise tax 'notwithstanding any exemption granted by any law or other special law.' This particular provision of the LGC does not admit any exception. In City Government of San Pablo, Laguna v. Reyes, MERALCO's exemption from the payment of franchise taxes was brought as an issue before this Court. The same issue was involved in the subsequent case of Manila Electric Company v. Province of Laguna. Ruling in favor of the local government in both instances, we ruled that the franchise tax in question is imposable despite any exemption enjoyed by MERALCO under special laws, *viz*:
>
> > 'It is our view that petitioners correctly rely on provisions of Sections 137 and 193 of the LGC to support their position that MERALCO's tax exemption has been withdrawn. The explicit language of section 137 which authorizes the province to impose franchise tax 'notwithstanding any exemption granted by any law or other special law' is all-encompassing and clear. The franchise tax is imposable despite any exemption enjoyed under special laws.
> >
> > 'Section 193 buttresses the withdrawal of extant tax exemption privileges. By stating that unless otherwise provided in this Code, tax exemptions or incentives granted to or presently enjoyed by all persons, whether natural or juridical, including government-owned or controlled corporations except (1) local water districts, (2) cooperatives duly registered under R.A. 6938, (3) non-stock and non-profit hospitals and educational institutions, are withdrawn upon the effectivity of this code, the obvious import is to limit the exemptions to the three enumerated entities. It is a basic precept of statutory construction that the express mention of one person, thing, act, or

[20] G.R. No. 149110, April 9, 2003.

> consequence excludes all others as expressed in the familiar maxim *expressio unius est exclusio alterius*. In the absence of any provision of the Code to the contrary, and we find no other provision in point, any existing tax exemption or incentive enjoyed by MERALCO under existing law was clearly intended to be withdrawn.
>
> 'Reading together sections 137 and 193 of the LGC, we conclude that under the LGC the local government unit may now impose a local tax at a rate not exceeding 50% of 1% of the gross annual receipts for the preceding calendar based on the incoming receipts realized within its territorial jurisdiction. The legislative purpose to withdraw tax privileges enjoyed under existing law or charter is clearly manifested by the language used on (sic) Sections 137 and 193 categorically withdrawing such exemption subject only to the exceptions enumerated. Since it would be not only tedious and impractical to attempt to enumerate all the existing statutes providing for special tax exemptions or privileges, the LGC provided for an express, albeit general, withdrawal of such exemptions or privileges. No more unequivocal language could have been used."

As provided in Section 137 of R.A. No. 7160, "the province may impose a tax on businesses enjoying a franchise, at the rate not exceeding fifty percent (50%) of one percent (1%) of the gross annual receipts for the preceding calendar year based on the incoming receipt, or realized, within its territorial jurisdiction."

Petitioner's allegation that the gross annual receipts are realized within the City of Butuan where ANECO's head office is located although the remittances come from the different municipalities of Agusan del Norte because "the principal office is where the gross receipts are realized" lacks legal and factual bases.

The law does not make an exemption from the payment of franchise tax merely because petitioner's customer, ANECO, has its principal office located in Butuan City, which is a separate local government unit.

The fact that the principal office of ANECO is within the territorial jurisdiction of Butuan City, a separate local government unit that also imposes franchise tax on petitioner, does not prevent the Province of Agusan del Norte from exercising the *situs* of taxation on franchise tax authorized under Section 137 of R.A. No.7160.

Petitioner does not dispute the fact that ANECO's satellite offices are located and operating within the territorial jurisdiction of the Province, and the sources of revenue from such locations are incoming receipt and/or realized within respondent's territorial jurisdiction; which is what the law requires. The *situs* of taxation clearly does not depend on where the head office of petitioner's customer, ANECO, is located. To argue that since the head office of ANECO is in Butuan City, and therefore the revenue is realized therein is untenable, simply because the source or the incoming revenue is from the satellite offices and not from the head office.

Petitioner is the corporation organized to acquire all the transmission assets of the National Power Corporation.[21] Under Section 8 of R.A. No. 9136, petitioner has been created with the following purpose and guidelines:

> "SECTION 8. *Creation of the National Transmission Company.* - There is hereby created a National Transmission Corporation, hereinafter referred to as TRANSCO, which shall assume the electrical transmission functions of the National Power Corporation (NPC), and have the powers and functions hereinafter granted. The **TRANSCO shall assume the authority and responsibility of NPC for the planning, construction and centralized operation and maintenance of its high voltage transmission facilities, including grid interconnections and ancillary services.**" (*Emphasis supplied*)

Based on the foregoing provision, it is clear that petitioner TRANSCO **shall assume the authority and responsibility of NPC for the planning, construction and centralized operation and maintenance of its high voltage transmission facilities, including grid interconnections and ancillary services**. Even granting that the principal office of petitioner's

[21] Section 8, R.A. No. 9136.

customer, ANECO, is located in the City of Butuan, there is nothing on record which shows that petitioner's high voltage transmission facilities, including grid interconnections and ancillary services in operating the business to its customer is not within the territory of the Province of Agusan del Norte.[22]

As regards petitioner's argument that the franchise tax imposed by the Province of Agusan del Norte is tantamount to double taxation as petitioner is also paying franchise tax imposed by Butuan City, suffice it to say that the requisites for oppressive double taxation is not present in the instant case.

Double taxation is defined as taxing the same property twice when it should be taxed but once. It has also been defined as taxing the same person twice by the same jurisdiction over the same thing.[23] In general, there is no Constitutional prohibition against double taxation.[24] It becomes

[22] *Provincial Government of Cagayan, Represented by: Ms. Emilia L. Iringan, Asst. Provincial Treasurer, OIC-Office of the Provincial Treasurer vs. National Transmission Corp.*, CTA OC Case No. 013, January 27, 2011.
[23] *Victorias Milling Co. vs. The Municipality of Victorias*, G.R. No. L-21183, September 27, 1968.
[24] *Pepsi Cola Bottling Co. of the Philippines, Inc. vs. City of Butuan, et. al.*, G.R. No. L-22814, August 28, 1968.

obnoxious only when the taxpayer is taxed twice for the benefit of the same government entity;[25] and that both taxes are imposed on the same property or subject matter for the same purpose, by the same State, Government, or taxing authority within the same jurisdiction or taxing district during the same taxing period and must be the same kind or character of tax.[26]

In the instant case, it is not disputed that the Province of Agusan del Norte imposed a franchise tax of P3,401,001.92 for the years 2003 to 2008 on ANECO's annual gross receipts derived from the 11 municipalities within respondent's territorial jurisdiction. Clearly, petitioner's taxable base is the annual gross receipts derived from the 11 municipalities within the territorial limits of respondent Province, as reported by ANECO, and not the entire gross receipts of petitioner, nor does it include those derived by TRANSCO in its operation in the City of Butuan. Therefore, the tax base used is different from that of Butuan City. It is not a tax over the same

[25] *Commissioner of Internal Revenue vs. Lednicky, et. al.*, G.R. Nos. L-18169, L-18262, L-21434, July 31, 1964.
[26] *Eusebio Villanueva, et. al. vs. City of Iloilo*, G.R. No. L-26521, December 28, 1968.

thing. It is not also a tax imposed by the same jurisdiction, since the Province and the City are two different taxing jurisdictions.

Petitioner's allegation that the subject Ordinance does not mention of public utilities with a franchise operating and maintaining nationwide electric transmission system as one of the entities subject to franchise tax is not meritorious. This Court shall accord respect to the ruling of the Court *a quo*, which states:

> "This Court finds Provincial Ordinance No. 008-93 as amended by Provincial Ordinance No. 195-2006 sufficient and valid. There is nothing wrong in said ordinance that would prevent the Province of Agusan del Norte to impose its rights and privileges against appellant TransCo.
>
> Nowhere in the above-stated rules that says the province cannot impose a tax on business enjoying franchise in the municipalities within the territorial jurisdiction of the province. The fact that ANECO's principal business is located within Butuan City is of no consequence and should not be a reason to strip appellees rights and privileges conferred by law."

In addition, it is clear that what is referred to in the Ordinance levying franchise tax are those "businesses enjoying a franchise". There is no question that petitioner is enjoying a franchise in the said 11 municipalities within the Province of Agusan del Norte, hence, petitioner is covered by the provision of the said Ordinance.

Anent petitioner's argument that the enabling law used by respondent as basis in collecting franchise tax from petitioner was only enacted on March 27, 2006, and as a consequence, it cannot be held liable for franchise tax prior thereto, the same has no factual and legal bases. In the instant case, the notice of assessment refers to franchise tax due for the years 2003 to 2008 that has been delinquent pursuant to Sections 14 and 17 of the Agusan del Norte Revenue Code of 1993 under Provincial Tax Ordinance No. 008-93, now Section 11 as amended by Provincial Revenue Code No. 195. The governing ordinance prior to 2006 is Provincial Tax Ordinance No. 008-93, which was approved on April 30, 1993[27] and respondent has the right to collect said franchise tax. As also pointed out by respondent, Provincial Tax Ordinance No. 008-93, as amended by Provincial Ordinance No. 195-2006, supposedly uses the same wording of the Local Government Code to signify the intention to impose the same franchise tax. The said Ordinance has not been

[27] RTC Records, pp. 77-79.

adequately or properly questioned in any proper proceeding by petitioner. *ergo*, the Ordinance remains valid and binding.

A municipal tax ordinance empowers a local government unit to impose taxes. The power to tax is the most effective instrument to raise needed revenues to finance and support the myriad activities of local government units for the delivery of basic services essential to the promotion of the general welfare and enhancement of peace, progress, and prosperity of the people. Consequently, any delay in implementing tax measures would be to the detriment of the public.[28]

Assessments are *prima facie* presumed correct and made in good faith. It is an elementary rule that absent any proof of irregularities in the performance of official duties, an assessment will not be disturbed. All presumptions are in favor of tax assessments.[29]

Finally, laws granting exemption from tax are construed in *strictissimi juris* against the taxpayer and liberally in favor of the taxing power.

---

[28] *Jardine Davies Insurance Brokers, Inc. vs. Hon. Erna Aliposa, et. al.*, G.R. No. 118900, February 27, 2003, citing *Reyes vs. Court of Appeals*, 320 SCRA 486 (1999).
[29] *Commissioner of Internal Revenue vs. Court of Appeals, et. al.*, G.R. No. 104151, March 10, 1995.

Taxation is the rule and exemption is the exception. The law does not look with favor on tax exemptions and he who seeks to be thus privileged must justify it by words too plain to be mistaken and too categorical to be misinterpreted.[30]

WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED**. Accordingly, the Decision promulgated on March 5, 2010 and the Order promulgated on February 14, 2011 by the RTC-Butuan City in SP. Civil Case No. 1357 are hereby **AFFIRMED**.

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

CAESAR A. CASANOVA
Associate Justice

[30] *Sea-Land Service, Inc. vs. Court of Appeals, et. al.*, G.R. No. 122605, April 30, 2001.

A T T E S T A T I O N

I attest 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.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

C E R T I F I C A T I O N

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, 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.

ERNESTO D. ACOSTA
Presiding Justice