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

***EN BANC***

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| **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,** Petitioners, | **CTA EB NO. 2975** (CTA Case No. 10841) |
| - versus - | Members: **RINGPIS-LIBAN,** *P.J.* **BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID, FERRER-FLORES,** *and* **ANGELES,** *JJ.* |
| **BB INTERNATIONAL LEISURE AND RESORT DEVELOPMENT CORPORATION, HANN INTERNATIONAL LEISURE, INC. (formerly Widus International Leisure, Inc.) and HANN PHILIPPINES, INC. (formerly Widus Philippines, Inc.),** Respondents. | Promulgated: FEB 23 2026 4:05pm |

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## DECISION

***FERRER-FLORES, J.:***

This is a **Petition for Review** seeking the nullification of the Amended Decision promulgated on March 26, 2024 (assailed Amended Decision) promulgated by the Special First Division (Court in Division),[1] and the Resolution dated July 30, 2024,[2] (assailed Resolution) in the case entitled *BB International Leisure and Resort Development Corporation, Hann*

[1] *Rollo,* pp. 38 to 43. Penned by (Ret.) Associate Justice Catherine T. Manahan with concurrence of (Ret.) Presiding Justice Roman G. Del Rosario and Associate Justice Marian Ivy F. Reyes-Fajardo.

[2] *Rollo,* pp. 46 to 49. Penned by (Ret.) Associate Justice Catherine T. Manahan with concurrence of (Ret.) Presiding Justice Roman G. Del Rosario and Associate Justice Marian Ivy F. Reyes-Fajardo.

*International Leisure, Inc. (formerly Widus International Leisure, Inc.), and Hann Philippines, Inc. (formerly Widus Philippines, Inc.), vs. 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,* docketed as CTA Case No. 10841, the dispositive portions of which read:

Assailed Amended Decision:

> **WHEREFORE**, petitioner [herein respondent] HILI's Partial Motion for Reconsideration (Re: Decision dated 27 October 2023) is **GRANTED**, thereby confirming the existence of HILI's cause of action to file the present petition, while respondents' [herein petitioners] Motion for Reconsideration (Re: Decision dated 27 October 2023) is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**

Assailed Resolution:

> **WHEREFORE**, respondents' [herein petitioners'] *Motion for Reconsideration (Re: Amended Decision dated 26 March 2024)* is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**

## THE PARTIES

Petitioner is the **Commissioner of the Bureau of Internal Revenue (BIR)**, the government agency in charge of, among others, the assessment and collection of all national internal revenue taxes, fees, and charges.[3]

Respondents **BB International Leisure and Resort Development Corporation (BBI)**, **Hann International Leisure, Inc. (HILI)**, formerly operating under the name Widus International Leisure, Inc., and **Hann Philippines, Inc. (HPI)**, formerly operating under the name Widus Philippines, Inc., are corporations registered under the laws of the Republic of the Philippines.

[3] Paragraph 1, Parties, *Petition for Review, Rollo,* p. 8.

## THE FACTUAL ANTECEDENTS

The Court in Division narrated the facts and the proceedings before it as follows: [4]

> On March 29, 2022, respondent [herein petitioner] BIR issued RMC No. 32-2022 which clarifies the tax treatment of the PAGCOR, its licensees and contractees.
>
> On April 11, 2022, respondent [herein petitioner] BIR, through its Revenue District Office (RDO) No. 21C Clark Freeport Zone, Revenue Region No. 4, issued a letter which informed and reminded petitioner [herein respondent] BBI on the filing of Percentage Tax Return (BIR Form No. 2553) and to upgrade its registration to include percentage tax in petitioner's [herein respondent's] tax type pursuant to RMC No. 32-2022.
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> On April 20, 2022, petitioners [herein respondents] filed the instant petition. However, the Court noted a deficiency in the said petition, hence, petitioners [herein respondent] were directed to address the same.
>
> On May 26, 2022, petitioners [herein respondents] filed their Compliance [to the Honorable Court's Resolution dated 12 May 2022] 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], where they named their witnesses and documentary evidence. Thus, the Court set a hearing on petitioner's [herein respondent's] Application for Temporary Restraining Order and/or Writ of Preliminary Injunction on June 14, 2022 and directed respondents [herein petitioners] to file their comment on the said petition.
>
> After said hearing, petitioners [herein respondents] were directed to file their Formal Offer of Evidence (FOE) and respondents [herein petitioners] to file their comment thereon.
>
> On June 27, 2022, petitioners [herein respondents] filed their FOE while respondents [herein petitioners] filed their Comment (On Petitioner's Formal Offer of Evidence) on July 5, 2022. Petitioners [herein Respondents] submitted the following exhibits:
>
> xxx xxx xxx
>
> On June 29, 2022, respondent [herein petitioner] BIR filed a Comment/Opposition Re: Petitioners' Petition for Certiorari and Prohibition (With Application for Temporary Restraining Order and/or Writ of Preliminary Injunction). Hence, petitioners' [herein respondents'] FOE was submitted for resolution.
>
> On July 29, 2022, acting on petitioners' [herein respondents'] FOE, this Court admitted petitioners' [herein respondents'] 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",

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[4] Decision dated October 27, 2023, Division Docket – Vol. III, pp. 1477 to 1481. Citations and italics omitted.

"P-16", "P-17", "P-18", "P-19", "P-20", "P-21", "P-22", "P-24", "P-25", "P-26", and "P-27".

On the other hand, petitioners' [herein respondents'] 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' [herein respondents'] failure to identify the same or the document described in the FOE was different from the actually marked exhibit.

On August 17, 2022, petitioners [herein respondents] 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. The Court admitted Exhibit "P-23" and noted the tender of excluded evidence.

On September 6, 2022, respondent [herein petitioner] BIR filed a Manifestation 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 [herein respondents] filed their Memorandum. Thus, on October 28, 2022, the case was submitted for decision.

On October 27, 2023, the Court in Division rendered its Decision partially granting respondents' *Petition for Certiorari and Prohibition [With Application for Temporary Restraining Order and/or Writ of Preliminary Injunction],*[5] the dipositive portion of which reads as follows:

**WHEREFORE,** premises considered, petitioners' [herein respondents'] *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.**

In the said Decision, the Court in Division held that it has jurisdiction over the instant case. The Court in Division, however, found that only respondent BBI had the cause of action to file a petition considering that the Reminder Letters and Notice of Discrepancy pertaining to HILI and HPI were denied admission during the resolution of their formal offer of evidence. Finally, the Court in Division ruled that petitioners acted with grave abuse of discretion in imposing franchise tax against respondents for being mere

[5] Decision dated October 27, 2023, Division Docket – Vol. III, pp. 1475 to 1493.

licensees; and therefore, the incentive of paying franchise tax does not inure to their benefit.

Ret. Presiding Justice Roman G. Del Rosario and Associate Justice Marian Ivy F. Reyes-Fajardo registered their Separate Opinion and Concurring and Dissenting Opinion, respectively.[6] Ret. Presiding Justice Del Rosario agreed with the jurisdiction of the Court in Division and petitioner's grave abuse of discretion. He, however, pointed out that the benefits accorded to PAGCOR inure to the benefit of its Licensees. Associate Justice Reyes-Fajardo, on the other hand, voted to deny the *Petition for Certiorari* and opined that the imposition of franchise tax on respondents is proper and in accordance with P.D. No. 1869.

Unconvinced with the Decision of the Court in Division, respondents HILI and HPI filed their *Partial Motion for Reconsideration [Re: Decision dated 27 October 202]* on November 28, 2023,[7] to which petitioners filed their *Comment/Opposition (Re: Motion for Partial Reconsideration filed on 28 November 2023)* on January 11, 2024.[8]

Petitioners likewise filed their *Motion for Reconsideration (Re: Decision dated 27 October 2023)* on November 22, 2023. Respondents filed their *Comment/Opposition [Re: Respondent's Motion for Reconsideration dated 22 November 2023]* on December 11, 2023.

Addressing both *Motions for Reconsideration*, the Court in Division issued the assailed Amended Decision[9] and held that the Court in Division has jurisdiction over *Motions* that were timely filed. The Court in Division likewise reconsidered HILI's *Motion* and held that the issuance of the Reminder Letters did not give rise to respondents' cause of action, but the issuance of RMC No. 32-2022. The Court in Division also denied petitioners' *Motion for Reconsideration* for being mere rehash.

Petitioners then filed their *Motion for Reconsideration (Re: Amended Decision dated 26 March 2024)* on April 17, 2024,[10] to which respondents HILI and HPI filed their *Comment/Opposition [Re: Motion for Reconsideration dated 17 April 2024]* on May 6, 2024.[11]

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[6] *Id.* at 1495 to 1506.
[7] *Id.* at 1507 to 1513.
[8] *Id.* at 1539 to 1546.
[9] *Rollo*, pp. 38 to 43.
[10] Division Docket – Vol. III, pp. 1562 to 1571.
[11] *Rollo*, pp. 1574 to 1581.

The Court in Division issued the assailed Resolution denying petitioners' *Motion for Reconsideration.*[12]

Petitioners, having failed to obtain an affirmative relief from the Court in Division, filed a *Motion for Extension of Time to File Petition for Review* on August 20, 2024.[13]

The instant *Petition for Review* was filed by petitioners on September 4, 2024[14] praying for the Court to reverse, set aside the assailed Amended Decision and assailed Resolution and enter a new one dismissing respondents' original *Petition* for lack of jurisdiction, or in the alternative, should the Court declare that it has jurisdiction, deny the *Petition* for utter lack of merit.

On the other hand, respondents in their *Comment [Re: Petition for Review dated 04 September 2024* filed on October 25, 2024, incorporated in their counsel's *Notice of Change of Firm Name*, prays for this Court to deny the instant *Petition for Review.*[15]

In the Minute Resolution dated January 22, 2025, the Court noted counsel for respondents' change of firm name and submitted the instant case for decision.[16]

In the meantime, respondents filed an *Urgent Motion to Lift and/or Suspend Collection of Taxes and to Suspend the Posting of the Surety Bond* on September 29, 2025.[17] Said *Urgent Motion*, however, was withdrawn on October 8, 2025.[18] In the Minute Resolution dated November 19, 2025, the Court granted respondents' *Motion to Withdraw Urgent Motion to Lift and/or Suspend Collection of Taxes and to Suspend the Posting of the Surety Bond* and deemed said *Motion* withdrawn.[19]

## THE ISSUES

The issues submitted by petitioners for resolution of the Court *En Banc* are:

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[12] *Id.* at 46 to 49.
[13] *Id.* at 1 to 3.
[14] *Id.* at 7 to 28.
[15] *Rollo*, pp. 53 to 72.
[16] *Id.* at 84 to 85.
[17] *Id.* at 86 to 92.
[18] *Motion to Withdraw Urgent Motion to Lift and/or Suspend Collection of Taxes and to Suspend the Posting of the Surety Bond, Id.* at 262 to 264.
[19] *Rollo*, pp. 269.

I.

> The Honorable Court in Division erred in ruling that the Honorable Court has jurisdiction over the instant case.

II.

> The Honorable Court in Division erred in ruling that the assessment is void.

***Petitioners' arguments:***

Petitioners strongly argue that the Court in Division has no jurisdiction over the instant case as certiorari and prohibition do not fall under any of the enumerations in Section 7 of Republic Act (R.A.) No. 1125, as amended by R.A. No. 9282 and Section 3, Rule 4 of the Revised Rules of the Court of Tax Appeals (RRCTA). Petitioners contend that the authority to declare an administrative issuance as void is part of the general power conferred by Section 1, Article VIII of the 1987 Constitution on courts of general jurisdiction and not courts of special jurisdiction. Petitioners maintain that, the CIR exercised his quasi-legislative power, and not his quasi-judicial power when he issued the assailed memorandum circulars.

In the alternative that the Court *En Banc* still finds that the Court in Division has jurisdiction, petitioners posit that respondents miserably failed to exhaust administrative remedies before elevating the case to the Court. While respondents sent a letter to the Department of Finance (DOF) to seek reconsideration and/or clarification of the issued Revenue Memorandum Circular (RMC) No. 32-2022, it filed a *Petition* before the Court in Division without waiting for the response of the DOF.

Petitioners submit that the assailed RMC No. 32-2022 is valid and not contrary to law. The imposition of the five percent (5%) franchise tax on gaming revenues of the licensees of Philippine Amusement and Gaming Corporation (PAGCOR) is pursuant to Section 13 of Presidential Decree (P.D.) No. 1869, as amended by R.A. No. 9487, otherwise known as the PAGCOR Charter. For petitioners, since the amendments to R.A. No. 7227, otherwise known as the Bases Conversion and Development Act (BCDA), was enacted on March 2007 and the amendments to the PAGCOR Charter was enacted on June 2007, the amendments could have at least mentioned that the 5% franchise tax shall not apply to casino operators located within the ecozones or freeport zones. As RMC No. 32-2022 is an interpretative rule issued by the CIR in the exercise of his legislative power under Section 4 of the National Internal Revenue Code (NIRC) of 1997, as amended, it simply addressed the inadequacies of the current BIR regulations on the matter and clarified the proper tax treatment of income from gaming operations, and gross income earned from registered business activities pursuant to existing laws.

Petitioners claim that there is actually no conflict of tax exemption privileges between the PAGCOR Charter and BCDA. In essence, what is being taxed in P.D. No. 1869, as amended, is the franchise granted to PAGCOR and its licensees with the privilege to operate casinos; whereas, the preferential 5% rate granted in R.A. No. 7227, as amended, is for the gross income earned in the registered project or activity of the registered business enterprise located within economic or freeport zones. Hence, petitioners assert that the issuance of RMC No. 32-2022 does not constitute double taxation as only one tax is imposed on respondents.

Finally, petitioners aver that the imposition of the 5% franchise tax is not arbitrary, unconscionable and unjust.

***Respondents' counter-arguments:***

Respondents counter that this Court has jurisdiction over the instant case. Respondents likewise argue that RMC No. 32-2022 is invalid and contrary to law and jurisprudence. Respondents claim that they were granted Certificate of Registration and Tax Exemption (CRTE) with privileges and incentives enjoyed by registered enterprises within the freeport zones. Thus, respondents are required to pay 5% gross income tax (GIT) from allowed activities inside Clark Development Corporation (CDC), including casino operations, in lieu of all national and local taxes. Respondents posit that, to require them to pay 5% franchise tax, whether in addition or in replacement of the 5% GIT on gaming revenue is tantamount to amending or repealing the law that grants them the incentive and privileges.

Lastly, respondents staunchly contend that RMC No. 32-2022 constitutes double taxation and the imposition of 5% franchise tax is arbitrary, unconscionable and unjust.

## THE RULING OF THE COURT *EN BANC*

The Court denies the instant *Petition for Review*.

***Timeliness of the Petition for Review***

Before proceeding to the merits of the arguments of the parties, the Court *En Banc* deems it necessary to delve on the timeliness of the instant *Petition for Review*.

Records show that, on August 5, 2024, petitioners received a copy of the assailed Resolution. Consequently, petitioners had until August 20, 2024 within which to file a Petition before the Court *En Banc*.

On August 20, 2024, petitioners filed a *Motion for Extension of Time to File Petition for Review*[20] seeking an additional period of 15 days within which to file its petition.

In the Minute Resolution dated August 27, 2024, the Court *En Banc*, granted petitioner's *Motion*.[21]

On September 4, 2024, the instant *Petition for Review* was timely filed.

We shall now proceed to the merits of the case.

***The Court in Division has jurisdiction over the instant case.***

The Court in Division has extensively discussed its jurisdiction over the instant case.

In *Confederation for Unity, Recognition and Advancement of Government Employees vs. Commissioner, Bureau of Internal Revenue*,[22] the Supreme Court *En Banc* has explicitly and categorically ruled that the CTA has jurisdiction over the constitutionality or validity of a tax law or regulation issued by petitioner, viz.:

> Subsequently, in Banco de Oro v. Republic,[54] the Court, sitting En Banc, further held that the CTA has exclusive appellate jurisdiction to review, on certiorari, the constitutionality or validity of revenue issuances, even without a prior issuance of an assessment. The Court En Banc reasoned:

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[20] *Rollo*, pp. 1-3.
[21] *Id.* at 6.
[22] G.R. Nos. 213446 & 213658, July 3, 2018.

xxx xxx xxx

**The Court of Tax Appeals has undoubted jurisdiction to pass upon the constitutionality or validity of a tax law or regulation when raised by the taxpayer as a defense in disputing or contesting an assessment or claiming a refund. It is only in the lawful exercise of its power to pass upon all matters brought before it, as sanctioned by Section 7 of Republic Act No. 1125, as amended.**

**This Court, however, declares that the Court of Tax Appeals may likewise take cognizance of cases directly challenging the constitutionality or validity of a tax law or regulation or administrative issuance (revenue orders, revenue memorandum circulars, rulings).**

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.

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.

Republic Act No. 9282, a special and later law than Batas Pambansa Blg. 129 provides an exception to the original jurisdiction of the Regional Trial Courts over actions questioning the constitutionality or validity of tax laws or regulations. Except for local tax cases, actions directly challenging the constitutionality or validity of a tax law or regulation or administrative issuance may be filed directly before the Court of Tax Appeals.

**Furthermore, with respect to administrative issuances (revenue orders, revenue memorandum circulars, or rulings), these are issued by the Commissioner under its power to make rulings or opinions in connection with the implementation of the provisions of internal revenue laws. Tax rulings, on the other hand, are official positions of the Bureau on inquiries of taxpayers who request clarification on certain provisions of the National Internal Revenue Code, other tax laws, or their implementing regulations. Hence, the determination of the validity of these issuances clearly falls within the exclusive appellate jurisdiction of the Court of Tax Appeals under Section 7(1) of Republic Act No. 1125, as amended, subject**

> **to prior review by the Secretary of Finance, as required under Republic Act No. 8424.** (Emphasis in original)

Based on the foregoing, the jurisdiction of the CTA in certiorari cases is not limited to the acts of petitioner in his quasi-judicial power. The Supreme Court has held that the CTA may take cognizance of cases which directly or indirectly challenge the constitutional validity of a tax law or regulation or administrative issuance and the determination of its validity falls within the exclusive jurisdiction of the CTA.

***The exemption of PAGCOR from all kinds of taxes, as the franchise holder under P.D. No. 1869, inures to the benefit of its licensees and contractees.***

The Court in Division, in its Decision dated October 27, 2023, held that the last 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 P.D. No. 1869 pertaining to the payment of 5% franchise tax, does not extend to PAGCOR's licensees.

It is clear in the pronouncement of the Supreme Court in the case of *Bloomberry Resorts and Hotels, Inc. vs. Bureau of Internal Revenue (Bloomberry case),*[23] however, that the exemptions of PAGCOR extend to its licensees, the *fallo* of the said decision reads:

> Section 13 of PD No. 1869 evidently states that payment of the 5% franchise tax by PAGCOR and its *contractees and licensees* exempts them from payment of any other taxes, including corporate income tax, quoted hereunder for ready reference:
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> > Sec. 13. Exemptions. –
> >
> > x x x
> >
> > (2) <u>Income and other taxes</u>. — **(a) Franchise Holder: No tax of any kind or form, income or otherwise, as well as fees, charges or levies of whatever nature, whether National or Local, shall be assessed and collected under this Franchise from the Corporation; nor shall any form of tax or charge attach in any way to the earnings of the Corporation, <u>except a Franchise Tax of five (5%) percent</u>**

[23] G.R. No. 212530, August 10, 2016. Citations omitted.

> **of the gross revenue or earnings derived by the Corporation from its operation under this Franchise.** Such tax shall be due and payable quarterly to the National Government and shall be in lieu of all kinds of taxes, levies, fees or assessments of any kind, nature or description, levied, established or collected by any municipal, provincial, or national government authority.
>
> **(b) Others: The exemptions herein 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 Corporation or operator has any contractual relationship in connection with the operations of the casino(s) authorized to be conducted under this Franchise and to those receiving compensation or other remuneration from the Corporation or operator as a result of essential facilities furnished and/or technical services rendered to the Corporation or operator.** (Emphasis and underlining supplied)

As previously recognized, the above-quoted provision providing for the said exemption was neither amended nor repealed by any subsequent laws (*i.e.* Section 1 of R.A. No. 9337 which amended Section 27(C) of the NIRC of 1997); thus, it is still in effect. Guided by the doctrinal teachings in resolving the case at bench, it is without a doubt that, like PAGCOR, its *contractees and licensees* remain exempted from the payment of corporate income tax and other taxes since the law is clear that said exemption inures to their benefit.

We adhere to the cardinal rule in statutory construction that when the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation. As has been our consistent ruling, where the law speaks in clear and categorical language, there is no occasion for interpretation; there is only room for application.

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 amusement places, and gaming pools, defined within the purview of the aforesaid section, is not subject to corporate income tax. (Emphasis in original)

This ruling in the *Bloomberry case* was replicated in the more recent case of *Saint Wealth Ltd., et al. vs. Bureau of Internal Revenue, et al. (Saint Wealth case),*[24] wherein the Supreme Court *En Banc* pronounced that the tax exemption of PAGCOR extends to its licensees pursuant to Section 3(2)(b) of P.D. No. 1869, to wit:

> 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:
>
> xxx xxx xxx
>
> **Such exemption extends to PAGCOR's licensees pursuant to Section 13(2)(b) of the PAGCOR Charter, which provides:**
>
> xxx xxx xxx
>
> 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 5% (5%) franchise tax for income generated from its gaming operations, in lieu of all other taxes, **inures to the benefit of PAGCOR's licensees**:
>
> xxx xxx xxx
>
> 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**. *(Additional boldfacing and underlining supplied)*

Hence, contrary to the ruling of the Court in Division in the Decision dated October 27, 2023, PAGCOR's tax exemption privileges inure to the

[24] G.R. Nos. 252965 and 254102, December 7, 2021.

benefit of respondents pursuant to Section 13(2)(b), in relation to Section 13(2)(a), of P.D. No. 1869, as amended. This tax exemption covers both direct and indirect taxes.

***Respondent is subject to 5% GIT and not the 5% franchise tax.***

On March 29, 2022, the BIR issued RMC No. 32-2022, "Clarifying the Tax Treatment of the Philippine Amusement and Gaming Corporation (PAGCOR), its Licensees and Contractees". The subject of the instant case is the last sentence of the first paragraph of Item IV, which reads:

> **IV. TAX TREATMENT OF PAGCOR's LICENSEES LOCATED IN ECOZONES/FREEPORTS**
>
> 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 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**. (Emphasis & underscoring ours)

Based on the foregoing, a 5% franchise tax, and not the 5% GIT, income tax holiday, or corporate income tax, is imposed on the income of PAGCOR Licensee located in ecozones or freeport zones from its gaming operations.

Section 13(2)(a) of P.D. No. 1869 grants exemption to PAGCOR on its income tax, as well as fees, charges or levies of whatever nature, whether national or local, except a franchise tax of 5% of the gross revenue or earnings derived by the Corporation from its operation.[25] Said exemption inures to the

[25] Section 13. *Exemptions.* -

(2) Income and Other Taxes. — (a) Franchise Holder: **No tax of any kind or form, income or otherwise, as well as fees, charges or levies of whatever nature, whether National or Local, shall be assessed and collected under this Franchise from the Corporation; nor shall any form of tax or charge attach in any way to the earnings of the Corporation, except a Franchise Tax of five (5%) percent of the gross revenue or earnings derived by the Corporation from its operation under this Franchise.** Such tax shall be due and payable quarterly to the National Government and shall be in lieu

benefit of PAGCOR Licensees pursuant to the *Saint Wealth case* as discussed above.

On the other hand, entities that are located within the Clark Freeport Zone (CFZ), such as herein respondents, are likewise granted tax exemptions, subject to 5% tax on gross income earned, in lieu of national and local taxes imposed on registered business said ecozone or freeport zone, pursuant to Section 15 of the BCDA,[26] as amended by R.A. No. 9400, viz.:[27]

> SEC. 15. Clark Special Economic Zone (CSEZ) and Clark Freeport Zone (CFZ). — Subject to the concurrence by resolution of the local government units directly affected, the President is hereby authorized to create by executive proclamation a Special Economic Zone covering the lands occupied by the Clark military reservations and its contiguous extensions as embraced, covered and defined by the 1947 Military Bases Agreement between the Philippines and the United States of America, as amended, located within the territorial jurisdiction of Angeles City, municipalities of Mabalacat and Porac, Province of Pampanga, and the municipalities of Capas and Bamban, Province of Tarlac, in accordance with the provisions as herein provided insofar as applied to the Clark military reservations. The Clark Air Base proper with an area of not more than four thousand four hundred hectares (4,400 has.) with the exception of the twenty-two-hectare commercial area situated near the main gate and the Bayanihan Park consisting of seven and a half hectares (7.5 has.) located outside the main gate of the Clark Special Economic Zone, is hereby declared a freeport zone.
>
> xxx xxx xxx
>
> The provisions of existing laws, rules and regulations to the contrary notwithstanding, no national and local taxes shall be imposed on registered business enterprises within the CFZ. **In lieu of said taxes, a five percent (5%) tax on gross income earned shall be paid by all registered business enterprises within the CFZ and shall be directly remitted as follows: three percent (3%) to the National Government, and two percent (2%) to the treasurer's office of the municipality or city where they are located**:

A perusal of the foregoing reveals that entities located within ecozones or freeport zones enjoy national and local tax exemption except for the payment of 5% tax on gross income earned by said registered business enterprises within CFZ. Three percent of said tax is remitted to the national government; while, two percent thereof is remitted to the municipality or city where they are located.

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of all kinds of taxes, levies, fees or assessments of any kind, nature or description, levied, established or collected by any municipal, provincial, or national government authority. (emphasis supplied)

[26] REPUBLIC ACT NO. 7227, March 13, 1992.

[27] AN ACT AMENDING REPUBLIC ACT NO. 7227, AS AMENDED, OTHERWISE KNOWN AS THE BASES CONVERSION AND DEVELOPMENT ACT OF 1992, AND FOR OTHER PURPOSES, March 20, 2007.

To implement BCDA and its amendment, the Department of Finance (DOF) issued Department Order No. 03-08, reiterating the tax incentive granted to entities located in ecozone and freeport zone.[28] For entities located within the CFZ, the DOF Department Order grants the following tax incentives:

> **SECTION 4. Tax Incentives in Ecozones and Freeport Zones. Ecozone and Freeport Enterprises shall be entitled to the following tax incentives:**
>
> xxx xxx xxx
>
> Clark Freeport Zone — Freeport Enterprises in the CFZ shall be entitled to- (i) the freeport status of the zone; and (ii) the **5% special tax on Gross Income Earned, in lieu of national and local taxes**. PEZA Enterprises in the PEZA Ecozone/s within CFZ shall be entitled to incentives provided under RA 7916, but shall not be entitled to the freeport status of CFZ. (*Boldfacing supplied*)

Moreover, a perusal of the Certificates of Registration & Tax Exemption (CRTEs) issued to respondent BBI, HILI and HPI by Clark Development Corporation (CDC)[29] reveals that they have been granted the incentive to pay 5% tax on gross income earned, in lieu of national and local taxes.

Going back to the PAGCOR Charter and the BCDA, it appears that the former grants general tax incentives to PAGCOR and its Licensees; whereas, the latter particularly grants tax incentives to entities that are located within the ecozone or freeport zone. The PAGCOR Charter was enacted on July 11, 1983, whereas the BCDA came into law in 1992 and was amended in 2007. The BCDA and its amendments do not exclude PAGCOR licensees from the exemptions enjoyed by other businesses that are located within the ecozone or freeport zone.

Clearly, the BCDA and its amendments are more recent laws, granting tax incentives to entities located within the ecozone or freeport zones, including PAGCOR Licensees.

In his Separate Opinion, (Ret.) Presiding Justice Roman G. Del Rosario explained that PAGCOR Licensee located in ecozones, such as respondent in this case, shall continue to be subject to the 5% tax on gross income earned, and not the 5% franchise tax, as it would run counter to the purpose of R.A. No. 9400 of providing uniform tax incentives to all entities located in the

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28 RULES AND REGULATIONS TO IMPLEMENT REPUBLIC ACT NO. 9400, "AN ACT AMENDING REPUBLIC ACT NO. 7227, OTHERWISE KNOWN AS THE BASES CONVERSION AND DEVELOPMENT ACT OF 1992, AND FOR OTHER PURPOSES, February 13, 2008.

29 Exhibits "P-22", "P-23" and "P-24" Division Docket – Vol. III, pp. 1181 to 1183.

ecozones. He further states that, if RMC No. 32-2022, which imposes 5% franchise tax on PAGCOR Licensees even those located in ecozones or freeport zones, will be implemented, such would result in business entities located inside CFZ to enjoy different tax incentives, to wit:

> In *Department of Energy vs. Court of Tax Appeals*, 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 in original*)
>
> 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 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" (*Boldfacing supplied* in the original)

> It has been held by the Supreme Court that the records of congressional deliberations provide guidance in dissecting the intent of the law. 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 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. (*Emphasis ours*)

As aptly held in the Decision dated October 27, 2023, PAGCOR's Licensees within the Special Economic Zone (SEZ), which includes the CFZ, where the taxes imposed on registered business enterprises are covered by R.A. No. 7916, as amended by R.A. No. 8748 and the BCDA, as amended by R.A. No. 9400, viz:

> 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 [herein petitioners] as it is bereft of legal basis and not guided by jurisprudence.

> Thus, respondents [herein petitioners] 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.

Clearly, petitioners acted with grave abuse of discretion amounting to lack or excess of jurisdiction when it included the last paragraph of the first sentence of Item IV of RMC No. 32-2022.

**WHEREFORE**, in light of the foregoing considerations, the **Petition for Review** is **DENIED**. The assailed Amended Decision dated March 26, 2024and the Resolution dated July 30, 2024 are **AFFIRMED**.

**SO ORDERED.**

**CORAZON G. FERRER-FLORES**
Associate Justice

**WE CONCUR:**

On Official Business
**MA. BELEN M. RINGPIS-LIBAN**
Presiding Justice

*With Concurring and Dissenting Opinion*
**JEAN MARIE A. BACORRO-VILLENA**
Associate Justice

**MARIA ROWENA MODESTO-SAN PEDRO**
Associate Justice

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

**LANEE S. CUI-DAVID**
Associate Justice

**HENRY S. ANGELES**
Associate Justice

## CERTIFICATION

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

**JEAN MARIE A. BACORRO-VILLENA**
Acting Presiding Justice

REPUBLIC OF THE PHILIPPINES
**COURT OF TAX APPEALS**
Quezon City

***EN BANC***

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|---|---|
| **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,**<br>Petitioners, | **CTA EB No. 2975**<br>(CTA Case No. 10841)<br><br>Present:<br><br>**RINGPIS-LIBAN,** *P.J.*,<br>**BACORRO-VILLENA,**<br>**MODESTO-SAN PEDRO,**<br>**REYES-FAJARDO,**<br>**CUI-DAVID,**<br>**FERRER-FLORES,** *and*<br>**ANGELES,** *JJ.* |
| - versus - | |
| **BB INTERNATIONAL LEISURE AND RESORT DEVELOPMENT CORPORATION, HANN INTERNATIONAL LEISURE, INC. (formerly WIDUS INTERNATIONAL LEISURE, INC.), and HANN PHILIPPINES, INC. (formerly WIDUS PHILIPPINES, INC.),**<br>Respondents. | Promulgated:<br>FEB 23 2026 4:07 |

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## CONCURRING AND DISSENTING OPINION

***BACORRO-VILLENA, J.:***

The *ponencia* of my esteemed colleague, Associate Justice Corazon G. Ferrer-Flores, concludes that: (1) the Court of Tax Appeals (**CTA**) has jurisdiction over the subject matter of the petition, citing *Confederation for Unity Recognition and Advancement of Government Employees (COURAGE),* *et al. v. Commissioner, Bureau of Internal Revenue, et al.*[1] (**Courage**) and (2) petitioners committed grave abuse of discretion in clarifying that respondents BB International Leisure and Resort Development Corporation, Hann International Leisure, Inc., and Hann Philippines, Inc. (collectively, **respondents**') casino gaming income, as PAGCOR licensees, is subject to 5% franchise tax, pursuant to *Thunderbird Pilipinas Hotels and Resorts, Inc. v. Commissioner of Internal Revenue*[2] (**Thunderbird**).

In fine, I respectfully submit that this Opinion rests on two (2) principal legal grounds:

a. While I concur that the CTA may properly take cognizance of the petition consistent with *Courage* and the Supreme Court *En Banc*'s pronouncement in *Banco de Oro, et al. v. Republic of the Phils., et al.*[3] (**Banco de Oro**) it must be underscored that jurisdiction is conceptually distinct from ripeness and from the doctrine of exhaustion of administrative remedies. Here, although petitioners seasonably interposed non-exhaustion in their Answer, the case ultimately falls within the settled exception for pure questions of law. Revenue Memorandum Circular (**RMC**) No. 32-2022[4] is, in tenor, an interpretative issuance under Section 4[5] of the National Internal Revenue Code (**NIRC**) of 1997, as amended (as distinguished from legislative rules under Section 244[6]). It merely articulates the temporal reach of *Thunderbird*, which addressed liabilities incurred prior to the effectivity of Republic Act (**RA**) No. 9487,[7] together with *Bloomberry Resorts and Hotels, Inc. v. Bureau of Internal Revenue*[8] (**Bloomberry**), which recognized that after the amendment, PAGCOR licensees' gaming income is subject to 5% franchise tax in *lieu* of other national and local taxes; and

b. Applying the principle of *lex specialis derogat generali*—that general legislation must give way to special legislation on the same subject, and generally is so interpreted as to embrace only cases in which the special provisions are not applicable[9]—Presidential Decree (**PD**)

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1 G.R. No. 213446, 03 July 2018.
2 G.R. No. 211327, 11 November 2020.
3 G.R. No. 198756, 16 August 2016.
4 Clarifying the Tax Treatment of the Philippine Amusement and Gaming Corporation (PAGCOR), Its Licensees and Contractees.
5 **SEC. 4**. *Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases.*
6 **SEC. 244**. *Authority of Secretary of Finance to Promulgate Rules and Regulations.*
7 AN ACT FURTHER AMENDING PRESIDENTIAL DECREE NO. 1869, OTHERWISE KNOWN AS PAGCOR CHARTER.
8 G.R. No. 212530, 10 August 2016.
9 *Johanson V. Disuanco, et al. v. Miguel Luis R. Villafuerte*, G.R. No. 247391, 13 July 2021.

No. 1869,[10] as amended by RA 9487 (**PAGCOR Charter**), which is a special statute that narrowly governs the incidence, base and exclusivity of the franchise tax on gaming revenues, prevails over RA 7227[11] or the Bases Conversion and Development Act (**BCDA**'s), as amended by RA 9400,[12] general incentives regime within ecozones or freeports to the extent of any overlap. The assailed RMC does not defy *Thunderbird* and does not enlarge the same. Rather, it reflects a reasonable contemporaneous construction of the PAGCOR Charter, *Thunderbird* and *Bloomberry*. By no fair measure does it constitute an arbitrary, whimsical, or capricious exercise of power amounting to grave abuse of discretion.

At this juncture, I now lay down the legal grounds for my concurrence on the issue of jurisdiction and my respectful dissent on the issue of grave abuse of discretion.

Anent the *first issue*, I concur that jurisdiction properly lies with the CTA, consistent with the Supreme Court *En Banc*'s pronouncement in *Banco de Oro*. Nevertheless, as stated earlier, jurisdiction must be distinguished from ripeness. In administrative law, ripeness is shaped by the doctrine of exhaustion of administrative remedies, which requires resort to all remedies within the administrative framework before judicial intervention may be sought.[13]

Here, petitioners seasonably asserted in their "Comment/Opposition Re: Petitioners' Petition for *Certiorari* and Prohibition (With Application for Temporary Restraining Order and/or Writ of Preliminary Injunction)"[14] before the Special First Division that respondents failed to exhaust administrative remedies. The objection, thus, cannot be deemed waived.

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10 CONSOLIDATING AND AMENDING PRESIDENTIAL DECREE NOS. 1067-A, 1067-B, 1067-C, 1399 AND 163/2, RELATIVE TO THE FRANCHISE AND POWERS OF THE PHILIPPINE AMUSEMENT AND GAMING CORPORATION (PAGCOR).

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

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

13 See *Association of Medical Clinics for Overseas Workers, Inc. v. GCC Approved Medical Centers Association, Inc., et al.*, G.R. Nos. 207132 & 207205, 06 December 2016; and *GSIS Family Bank Employees Union v. Sec. Cesar L. Villanueva, et al.*, G.R. No. 210773, 23 January 2019.

14 Division Docket, Volume III, pp. 1248-1274.

In *Republic of the Philippines v. Drugmaker's Laboratories, Inc., et al.*,[15] the Supreme Court elucidated on three (3) classifications of administrative regulation pursuant to the administrative agency's exercise of its quasi-legislative powers, *viz*:

> ...
>
> Administrative agencies may exercise quasi-legislative or rule-making powers only if there exists a law which delegates these powers to them. Accordingly, the rules so promulgated must be within the confines of the granting statute and must involve no discretion as to what the law shall be, but merely the authority to fix the details in the execution or enforcement of the policy set out in the law itself, so as to conform with the doctrine of separation of powers and, as an adjunct, the doctrine of non-delegability of legislative power.
>
> **An administrative regulation may be classified as a legislative rule, an interpretative rule, or a contingent rule. Legislative rules are in the nature of subordinate legislation and designed to implement a primary legislation by providing the details thereof. They usually implement existing law, imposing general, extra-statutory obligations pursuant to authority properly delegated by Congress and effect a change in existing law or policy which affects individual rights and obligations. Meanwhile, interpretative rules are intended to interpret, clarify or explain existing statutory regulations under which the administrative body operates. Their purpose or objective is merely to construe the statute being administered and purport to do no more than interpret the statute. Simply, they try to say what the statute means and refer to no single person or party in particular but concern all those belonging to the same class which may be covered by the said rules.** Finally, contingent rules are those issued by an administrative authority based on the existence of certain facts or things upon which the enforcement of the law depends.
>
> In general, an administrative regulation needs to comply with the requirements laid down by Executive Order No. 292, s. 1987, otherwise known as the "Administrative Code of 1987," on prior notice, hearing, and publication in order to be valid and binding, except when the same is merely an interpretative rule. This is because "[w]hen an administrative rule is merely interpretative in nature, its applicability needs nothing further than its bare issuance, for it gives no real consequence more than what the law itself has already prescribed. When, on the other hand, the administrative rule goes beyond merely providing for the means that can facilitate or render least cumbersome the implementation of the law but substantially increases the burden of those governed, it behooves the agency to accord at least to those directly affected a chance to be heard, and thereafter to be duly informed, before that new issuance is given the force and effect of law."
>
> ...

[15] G.R. No. 190837, 05 March 2014; Citations and emphasis omitted, underscoring and emphasis supplied.

Sections 4[16] and 244[17] of the NIRC of 1997, as amended, reflect this distinction.[18] Section 4 of the NIRC of 1997, as amended, provides the power of the Commissioner of Internal Revenue (**CIR**) to interpret tax laws, subject to review by the Secretary of Finance (**SOF**), *i.e.*, an authority that yields **interpretative rules**. Section 244, on the other hand, empowers the SOF to promulgate rules and regulations for the enforcement of the Code, *i.e.*, **legislative in character**.

The differentiation is not semantic.

Interpretative rules fall within the exhaustion rule, while legislative rules do not. It is therefore necessary to determine the nature of RMC No. 32-2022.[19] **In my humble view, the subject RMC is an interpretative issuance. It merely clarifies the tax treatment of PAGCOR, its licensees and contractees in light of *Thunderbird*. It does not supply details to implement the NIRC of 1997, as amended, but only guides PAGCOR and internal revenue officials on the application of existing law to gaming income.**

**Even so, one of the well-recognized exceptions to the exhaustion doctrine is present: where only a pure question of law is involved.[20] The issue here—whether petitioners correctly interpreted the NIRC of 1997, as amended, in light of *Thunderbird*—is purely legal and requires no examination of factual matters.**

*In brevi*, while RMC No. 32-2022 is an interpretative rule ordinarily requiring exhaustion, the CTA may nonetheless take cognizance of respondents' petition because the controversy rests solely on a question of law. Respondents' direct resort to the CTA is therefore permissible.

As to the <u>second issue</u>, however, I respectfully register my dissent. I hold a different view on whether petitioners committed grave abuse of discretion in issuing the assailed interpretation of *Thunderbird*.

The disputed text in RMC No. 32-2022 reads:

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16 Supra at note 5.
17 Supra at note 6.
18 See *Association of International Shipping Lines, Inc., et al. v. Secretary of Finance, et al.*, G.R. No. 222239, 15 January 2020.
19 Supra at note 4.
20 See *Oceanagold (Philippines), Inc. v. Commissioner of Internal Revenue*, G.R. No. 234614, 14 June 2023; See *Association of Non-Profit Clubs, Inc. (ANPC) v. Bureau of Internal Revenue (BIR)*, G.R. No. 228539, 26 June 2019.

> ...
> 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.[21]
> ...

The *ponencia* reasons that the PAGCOR Charter and the BCDA, as amended by R.A. No. 9400, both confer incentives, but that the BCDA, as amended, being the later and allegedly more specific enactment for entities within ecozones or freeports, should prevail to preserve uniform incentives in all zones. On this basis, the *ponencia* finds grave abuse of discretion.

I, respectfully, cannot lend assent to this conclusion.

This case[22] reaches Us *via certiorari* petition under Rule 65[23] of the Rules of Civil Procedure (**RCP**), as amended, where the inquiry is *not* whether the assailed act is **merely erroneous**, but whether it is attended by **grave abuse of discretion**. Grave abuse of discretion has a specific meaning. It is the "arbitrary or despotic exercise of power due to passion, prejudice or personal hostility; or the whimsical, arbitrary, or capricious exercise of power that amounts to an evasion or refusal to perform a positive duty enjoined by law or to act at all in contemplation of law".[24] For an act to be struck down as having been done with grave abuse of discretion, the abuse of the discretion must be patent and gross.[25]

Because the standard is exacting, the determinative inquiry is narrower than the *ponencia* suggests—does the disputed text in RMC No. 32-2022 clearly defy or materially expand beyond, what the Supreme Court's actual holding in *Thunderbird*?

I answer in the negative. *Thunderbird* must be read for what it decided, and what it did not.

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21 Emphasis supplied.
22 "Petition for *Certiorari* and Prohibition [With Application for Temporary Restraining Order and/or Writ of Preliminary Injunction]" filed on 20 April 2022; Division Docket, Volume I, pp. 7-46.
23 *Certiorari*, Prohibition and Mandamus.
24 *Main T. Mohammad v. Office of the Secretary, Department of Justice, Menardo I. Guevarra, in his capacity as Secretary of Justice*, G.R. No. 256116, 27 February 2024.
25 Id.

Let me dissect *Thunderbird.*

In *Thunderbird,* the Bureau of Internal Revenue (**BIR**) assessed Thunderbird Pilipinas (**TP**) the 5% tax on gross income earned (**GIE**) by reason of its location in a freeport, **notwithstanding its status as a PAGCOR licensee.**

The Supreme Court **sustained** the assessment because the taxable period was 2006, *i.e.,* prior to the effectivity of RA 9487 (which was 2007), the amendatory law relevant to the extension of PAGCOR-related fiscal treatment to licensees. **Stated simply, *Thunderbird* turned on what the law covered at the time of the taxable period.**

Correlatively, *Thunderbird* must be read alongside *Bloomberry,* which clarifies the post-amendment regime. In *Bloomberry,* the Supreme Court recognized the "in lieu of all taxes" character of the 5% franchise tax for gaming operations of the licensees under the PAGCOR Charter.

**Harmonizing *Thunderbird* and *Bloomberry,* for taxable periods after the effectivity of RA 9487, the "in lieu of all taxes" character of the 5% franchise tax for gaming operations may be extended to PAGCOR licensees and this holds true even if the licensee operates within an ecozone or freeport.**

Read in this light, RMC No. 32-2022 merely restates that licensees' gaming revenues remain subject to the 5% franchise tax—not to 5% tax on GIE/income tax holiday (**ITH**)/corporate income tax—even if the licensee operates within an ecozone or freeport.

There is, therefore, no overreach. The subject RMC hews to *Thunderbird*'s temporal holding and to *Bloomberry*'s post-RA 9487 framework.

Statutory construction likewise favors petitioners' position. The PAGCOR Charter is a special law that narrowly regulates the gaming industry, *i.e.,* defining the incidence, base and exclusivity of the 5% franchise tax on gaming revenues of PAGCOR and its licensees. The BCDA, as amended, by contrast, is a general investment-promotion statute applicable to diverse enterprises within zones.

*Lex specialis derogat generali*[26] directs that the special fiscal clause governing gaming revenues prevails over general zone-incentive provisions with respect to the same subject matter. Implied repeals are not favored. The statutes are harmonized by recognizing: (a) the PAGCOR Charter controls the tax treatment of gaming income (5% franchise tax in *lieu* of other national and local taxes, subject to statutory exceptions); and (**b**) the BCDA regime may apply to non-gaming income or to matters outside the Charter's specific fiscal clause.

*En totale*, petitioners' reading, at minimum, is reasonable and anchored in controlling law and jurisprudence. The foregoing discloses no whim or caprice, only a good-faith contemporaneous construction of *Thunderbird*, *Bloomberry* and the PAGCOR Charter post-RA 9487.

All told, I vote to GRANT petitioner Bureau of Internal Revenue's Petition for Review, thereby **REVERSING** and **SETTING ASIDE** the Special First's Decision and Resolution dated 26 March 2024 and 30 July 2024, respectively. Consequently, respondents BB International Leisure and Resort Development Corporation, Hann International Leisure, Inc., and Hann Philippines, Inc.'s "Petition for *Certiorari* and Prohibition [With Application for Temporary Restraining Order and/or Writ of Preliminary Injunction]" filed on 20 April 2022 should be DENIED for lack of merit.

**JEAN MARIE A. BACORRO-VILLENA**
Associate Justice

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[26] Supra at note 9.