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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

RADIO COMMUNICATIONS
OF THE PHILIPPINES, INC.,
Petitioner,

- versus - C.T.A. CASE NO. 2426

THE COMMISSIONER OF INTERNAL
REVENUE,
Respondent.
x - - - - - - - - - - - - - - - - x

1/25/80

D E C I S I O N

Petition filed in this Court by Radio Communications of the Philippines, Inc., (RCPI) for review of the decision of respondent Commissioner of Internal Revenue dated June 16, 1972, denying the protest filed by it against the correctness and validity of a deficiency assessment for income tax and franchise tax, and reiterating his demand for payment of the taxes involved therein, details of which are computed as follows:

I. INCOME TAX

1970

Net operating income per return - - - -	None
Add: (a) Net operating income (including extraneous income credited to expenses ₱161,398.04 - - - - -	₱1,210,553.00
(b) Special Messengers fee (extraneous income) - - - - -	1,232,131.87
(c) Provision for doubtful accounts (unallowable deduction) - - -	312,191.00
TOTAL TAXABLE INCOME - - -	₱2,754,875.87
TAX DUE THEREON - - - - - - - -	954,207.00
Less amount already paid - - - -	N O N E
Deficiency Tax - - - - - - - - -	954,207.00
Interest, 4-16-71 to 12-15-71-	38,168.28
TOTAL TAX DUE & COLLECTIBLE	₱ 992,375.28

1 9 6 9

Net Income per return - - - - - - - - -	N o n e
Add: (a) Net Operating Income - - - -	₱1,277,079.00
(b) Special Messengers Fee (extraneous income) - - - - - -	1,013,803.57
(c) Provision for doubtful accounts	67,741.00
TOTAL TAXABLE INCOME - - -	₱2,358,623.57
Tax Due Thereon - - - - - - - -	815,518.00
Less amount already paid - -	N O N E
Deficiency Tax - - - - - - - -	815,518.00
Interest, 4-16-70 to 12-15-71	81,551.80
TOTAL TAX DUE & COLLECTIBLE	₱ 897,069.80

1 9 6 8

Net Income per return - - - - - - - - -	N o n e
Add: Net Income from operations (including extraneous income of ₱62,678.52) half year only - - -	₱ 150,585.50
Provision for doubtful accounts -	141,739.00
TOTAL TAXABLE INCOME - - - - -	₱ 292,324.50
TAX DUE THEREON - - - - - - - - - -	91,373.00
Less amount already paid - - - - -	N O N E
Deficiency Tax - - - - - - - - - -	91,373.00
Interest, 4-16-69 to 12-15-71 - -	14,619.68
TOTAL TAX DUE & COLLECTIBLE -	₱ 105,992.68

1 9 6 7

Net Income per return - - - - - - - - -	N o n e
Add: (a) Other Income - - - - - - - - -	₱ 41,111.03
TOTAL TAXABLE INCOME - - - - -	₱ 41,111.03
TAX DUE THEREON - - - - - - - - - -	9,044.00
Less amount already paid - - - -	N o n e
Deficiency Tax - - - - - - - - - -	9,044.00
Interest Maximum - - - - - - - - -	1,671.92
TOTAL TAX DUE & COLLECTIBLE -	₱ 10,671.92

1 9 6 6

Net Income per return - - - - - - - - -	N o n e
Add: (a) Other Income - - - - - - - - -	₱ 21,254.92
TOTAL TAXABLE INCOME - - - -	21,254.92
TAX DUE THEREON - - - - - - - -	4,676.00
Less amount already paid - -	N o n e
Deficiency Tax - - - - - - - -	4,676.00
Interest Maximum - - - - - - -	841.68
TOTAL TAX DUE & COLLECTIBLE	₱ 5,517.68

II. FRANCHISE TAX:

1 9 7 0

Gross revenue per investigation - - - -	₱18,005,108.68
Franchise Tax Due thereon (1-1/2%) - -	270,076.63
Less amount already paid - - - - - - - -	251,594.65
Deficiency Tax - - - - - - - - - - - - -	18,481.98
25% Surcharge - - - - - - - - - - - - - -	4,620.50
FRANCHISE TAX STILL DUE & COLLECTIBLE	₱ 23,102.48
	vvvvvvvvvvvvvvv

1 9 6 9

Gross revenue per books - - - - - - - - -	₱13,987,782.44
Add: Special Messengers fee - - - - - - -	1,013,803.57
Gross Revenue per investigation - - - -	₱15,001,586.01
FRANCHISE TAX DUE THEREON (1-1/2%) - -	₱ 225,023.79
Less amount already paid - - - - - - -	211,427.38
Deficiency Tax - - - - - - - - - - - -	13,596.41
25% Surcharge - - - - - - - - - - - - -	3,399.10
FRANCHISE TAX STILL DUE & COLLECTIBLE -	₱ 16,995.51
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The pertinent facts, including the issues involved in this case, as stipulated and submitted by the parties, are the following:

JOINT PARTIAL STIPULATION OF FACTS

COME NOW the parties through their respective counsel, respectfully submit the following partial stipulation of facts:

1. That petitioner is a corporation duly organized and existing under and by virtue of the laws of the Philippines with principal place of business at New York Street and Epifanio de los Santos Avenue, Cubao, Quezon City, while respondent is the duly authorized Commissioner of Internal Revenue with Office at the Department of Finance Building, Manila;

2. That pursuant to Republic Act No. 2036 as amended by Republic Act No. 4054, petitioner was granted franchise to establish radio stations for the reception and transmission of wireless messages on radio telegraphy and/or radio telephony,

including coastal and marine telecommunications throughout the Philippines;

3. That in a letter dated December 1, 1971 respondent assessed and demanded from petitioner the following amounts:

A. Deficiency income taxes

1966	-	₱ 5,517.68
1967	-	10,671.92
1968	-	105,992.68
1969	-	506,755.70
1970	-	543,878.40
Total	-	₱1,172,816.38

B. Deficiency franchise taxes

1969	-	₱ 16,995.51
1970		270,076.63
Total	-	₱ 287,072.14

(pp. 167-172, BIR records)

4. That in a letter dated February 2, 1972, petitioner through counsel protested the assessment and requested the cancellation thereof (pp. 186-191, BIR records);

5. That in a letter dated June 16, 1972, respondent denied the protest of the petitioner and reiterated the demand for the following amounts:

A. Income taxes -

1966	-	₱ 5,517.58
1967	-	10,671.92
1968	-	105,992.68
1969	-	897,069.80
1970	-	992,375.28
Total	-	₱2,011,627.36

B. Franchise tax -

1969	-	₱ 16,995.51
1970	-	23,102.48
Total	-	₱ 40,097.99

(pp. 193-203, BIR records)

ISSUES

6. The issues in this case are as follows:

a. Whether or not the provisions of Republic Act 2036 as amended by Republic Act 4054 exempt petitioner from payment of income tax;

b. Whether or not the provisions of Republic Act 5431 (now Sec. 24[d] of the National Internal Revenue Code as amended) is applicable to the franchise of the petitioner;

c. Whether or not petitioner should be taxed for income arising from business activities not covered by the franchise; and

d. Whether or not the "special messenger fees" collected by petitioner should be included as part of the taxable gross receipts subject to franchise tax.

7. The parties hereby reserve their rights to introduce additional evidence not covered by this Partial Stipulations of Facts in support of their respective contentions.

Appropriate to state here is that under its original franchise granted by Republic Act No. 2036 in 1957 (Exh. "E-1", p. 178, BIR records), petitioner was subject to franchise tax and income tax. In 1964, Republic Act No. 2036 was amended by Republic Act No. 4054. (Exh. "E", p. 179, BIR records.) Under the amended franchise, petitioner was, and still is, subject to a franchise "tax equal to one and one-half per centum of all gross receipts from the business transacted under this franchise by the grantee." By virtue, however, of the addition of the following provision to Section 14 of Republic Act No. 2036, by Section 2 of

Republic Act No. 4054:

> "x x x. Said tax shall be in lieu of any and all taxes of any kind, nature or description levied, established or collected by any authority whatsoever, municipal, provincial or national, from which taxes the grantee is hereby expressly exempted."

petitioner considered itself exempted fron income tax. As a matter of fact, on the basis of the above "in lieu of any and all taxes" provision, petitioner has not paid income tax from 1964.

On June 27, 1968, Republic Act No. 5431, amending several provisions of the National Internal Revenue Code, was approved. One of the provisions of the Revenue Code which it amended was Section 24, with the addition, aside from increasing corporate income tax rates, of paragraph (d), which reads as follows:

> "(d) The provisions of existing special or general laws to the contrary notwithstanding, all corporate taxpayers not specifically exempt under Sections 24 (c) (1) and 27 of this Code shall pay the rates provided in this section. All corporations, agencies, or instrumentalities owned or controlled by the Government, including the Government Service Insurance System and the Social Security System but excluding educational institutions, shall pay such rate of tax upon their taxable net income as are imposed by this section upon associations or corporations engaged in a similar business or industry."

It appears that notwithstanding the provision of Section 24(d) of the Code, as inserted by Republic Act No. 5431, there were rulings issued by the Bureau of Internal Revenue to the effect that the tax exemption privilege of franchise grantees is not affected or revoked. Nevertheless, in 1971 an examination of the books of accounts of petitioner for the years 1969 to 1970, inclusive, was conducted by the examiners of respondent. As a result thereof, petitioner was assessed on December 1, 1971 deficiency income tax and franchise tax liabilities. In a letter dated February 2, 1972, petitioner contested the correctness and validity of the deficiency assessment. Respondent, however, reiterated the assessment in his decision dated June 16, 1972. Hence, the appeal to this Court.

Although the parties have presented in their joint partial stipulation of facts four (4) issues to be resolved in this case, petitioner, in its memorandum posed the following issues:

1) Whether or not Section 24(d) of the Tax Code, as added by Republic Act No. 5431, repealed the income tax exemption of herein petitioner under its franchise, Republic Act No. 2036, as amended by Republic Act No. 4054;

2) Whether or not the alleged revocation by respondent of previous BIR rulings, which stated that Section 24(d) did not withdraw the tax exemption of franchise grantees with the "in lieu of any and all taxes" provision,

can be given a retroactive effect, to the prejudice of herein petitioner;

3) Assuming, without admitting, that the Answer to Issue No. 1 is in the affirmative, whether or not respondent is correct in subjecting petitioner to income tax for the year 1968;

4) Assuming, without admitting, that the answers to Issues 1 and 2 are in the affirmative, whether or not the Special Messengers Fees (SMF) are subject to income tax;

5) Whether or not the Special Messengers Fees (SMF) are subject to franchise tax; and

6) Whether or not petitioner's miscellaneous income are subject to income tax notwithstanding the fact that the same were already included in the payment of franchise tax.

Since the issues presented by the parties in their partial stipulation of facts are so intimately related to, and are in fact assumed by, the issues posed by petitioner, the Court for clarity and thoroughness, will discuss the issues as set forth by petitioner, and in their order as presented by it.

1. Whether or not Section 24(d) of the National Internal Revenue Code repealed the income tax exemption of petitioner.

There seems to be no dispute between the parties that Republic Act No. 4054, amending Republic Act No.

2036, granted income tax exemption to petitioner. Respondent contends, however, that the said income tax exemption was withdrawn with the enactment of Republic Act No. 5431 which added paragraph (d) to Section 24 of the Revenue Code.

A similar issue was recently settled by this Court in Koronadal Electric Light & Power Co., Inc. vs. Commissioner of Internal Revenue, CTA Case No. 2600, June 16, 1979, wherein we ruled that the application of Section 24(d) of the National Internal Revenue Code, as amended by Republic Act No. 5431, providing that "The provisions of existing special or general laws to the contrary notwithstanding, all corporate taxpayers not specifically exempt under Sections 24(c)(1) and 27 of this Code shall pay the rates provided in this section", to grantees of franchises that are enjoying income tax exemption does not violate the non-impairment clause of the Constitution. In arriving at the conclusion that corporate franchise holders whose charters contain a provision that the payment of the franchise tax therein shall be <u>in lieu of any and all taxes</u>, like petitioner herein, are subject to income tax with the passage of Republic Act No. 5431, this Court made observations, among others, as follows:

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> Petitioner submits that as a grantee of a legislative franchise, it is exempt from

income tax by virtue of the provision of Section 1, Republic Act No. 466 (its original franchise), as amended by Republic No. 1118, subjecting the same to the terms and conditions of the Model Franchise Law (Act No. 3636, as amended by Republic Act No. 39) which provides that the franchise tax imposed therein "shall be in lieu of any and all taxes of any kind, nature or description levied, established or collected by any authority whatsoever x x x." This "in lieu of" provision of the Model Franchise Act has been interpreted by the Supreme Court in Carcar Electric & Ice Plant Co., Inc., supra, to mean that its incorporation in the franchise of the grantee has the effect of granting such grantee exemption from income tax. Since the franchise of petitioner constitutes a contract between the State and petitioner, and the latter accepted the franchise solely upon the terms and conditions thereof, petitioner argues that the removal or withdrawal of its income tax exemption under the franchise would naturally diminish the value of its franchise and, consequently, a clear violation of the constitutional provision that no law impairing the obligation of contracts shall be passed.

This argument at once loses potency on the face of Section 8, Article XIV of the 1935 Constitution, under whose authority the franchise of petitioner was granted, which provides that "No franchise or right shall be granted to any individual, firm, or corporation, except under the condition that it shall be subject to amendment, alteration, or repeal by Congress when the public interest so requires." Stated otherwise, the power of Congress to amend the franchise, as provided in the Constitution, is deemed to be a part of said franchise. (Hoa Hin vs. David, 105 Phil. 783; Lealda Electric Co., Inc. vs. Commissioner of Internal Revenue, L-16428, April 30, 1963, 7 SCRA 728; Imus Electric Co. vs. Court of Tax Appeals, L-22421, March 18, 1967, 19 SCRA 612; Guagua Electric Light vs. Collector of Internal Revenue, L-23611, April 24, 1967, 19 SCRA 790.)

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Accordingly, when petitioner accepted its franchise it did so with the understanding that the constitutional and statutory reservations of the right of Congress, or the National Assembly, to amend, alter, modify or repeal petitioner's franchise when public interest so requires became an unwritten condition thereof. Such constitutional and statutory provisions constitute part of the obligation of contracts. As aptly observed by respondent, it is clear from the above-quoted provisions that Congress reserved the right to amend, alter, modify or repeal petitioner's franchise. Since the franchise was accepted by petitioner with full knowledge of the reservation clause, there can be no impairment of the obligation of contracts within the meaning of the Constitution, where the grantee of a franchise accepted it, subject to the right of the grantor to alter, amend, modify or repeal the same. (Balanga Power Plant Co., Inc., vs. Commissioner of Internal Revenue, CTA Case No. 979, September 19, 1976; G.R. No. L-20499, June 30, 1965, 14 SCRA 604, cited in Visayan Electric Co. vs. Commissioner of Internal Revenue, CTA Case No. 1105, May 29, 1963; Escudero Electric Service Co. vs. Benjamin Tabios, as Commissioner of Internal Revenue, CTA Case No. 1026, G.R. No. L-23014, June 30, 1970, 33 SCRA 547; Manila Electric Co., Inc. vs. Commissioner of Internal Revenue, L-29987 & L-23847, October 22, 1975, 67 SCRA 351-352.) The imposition of the corporate income tax as prescribed by Republic Act No. 5431, amending Section 24(d) of the National Internal Revenue Code, upon petitioner is not, therefore, violative of the constitutional provision that no law impairing the obligation of contracts shall be passed.

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Not much need be said on petitioner's other point, citing the cases of Manila Railroad Company vs. Rafferty, 40 Phil. 224, and Philippine Railway Company vs. Collector of Internal Revenue, 91 Phil. 35, that a special law or charter may not be amended, altered, or repealed, by general law, by implication. While it is a canon of statutory construction that a later statute, general in its terms and not expressly repealing a prior special statute, will ordinarily not affect the special provisions of such earlier statute, the clean-up phrase "The provisions of existing special or general laws to the contrary notwithstanding" employed in Republic Act No. 5431 is so clear, express, explicit and manifest that it indubitably includes within its broad sweep the franchise or special charter of petitioner. In granting petitioner a legislative franchise to operate an electric light, heat and power system in the municipality of Buayan (now General Santos City), province of South Cotabato, Congress might have considered and made provision for all the circumstances of the particular case, but the power of Congress to amend, alter or repeal when public interest so requires, as provided in the Constitution and in the franchise of petitioner, is also a part of petitioner's charter. It cannot, therefore, be said that Congress, by adopting Republic Act No. 5431 prescribing the rates of income tax to be paid by corporations, unless specifically exempt under Sections 24(c)(1) and 27 of the Tax Code, has not included petitioner whose liability for income tax is governed by its special charter, otherwise the clear-cut proviso- "The provisions of existing special or general laws to the contrary notwithstanding" - found in the law would make little sense.

We are not to indulge, therefore, in statutory construction because the law is clear. Our duty is only to apply the law as it is written. So applying, we rule that since petitioner accepted its franchise with the understanding of the right of Congress to alter, amend, modify or repeal the same, and it (petitioner) is not specifically exempt under Sections 24(c)(1) and 27 of the National Internal Revenue Code, the imposition of the income tax as prescribed by Republic Act No. 5431 amending Section 24(d) of the Tax Code does not violate the non-impairment clause of the Constitution. With this conclusion, it follows that petitioner is liable to pay income tax in accordance with the rates prescribed under the provisions of Section Section 24(d) of the Tax Code as amended by Republic Act No. 5431.

In finding no merit in petitioner's cause, the Court cannot overlook the well-settled rule that "one who claims to be exempt from the payment of a particular tax must do so under clear and unmistakable terms found in the statute. Tax exemptions are strictly construed against the taxpayer; they being highly disfavored and may almost be said "to be odious to the law." He who claims an exemption must be able to point to some positive provision of law creating the right; it cannot be allowed to exist upon a mere vague implication or inference. (Asiatic Petroleum vs. Llanes, 49 Phil. 466, 471; Union Garment Co., Inc. vs. Court of Tax Appeals, L-16809, January 31, 1962, 4 SCRA 304; Philippine Acetylene Co., Inc. vs. Commissioner of Internal Revenue, L-19707, August 17, 1967, 20 SCRA 1056; Republic Flour Mills, Inc. vs. Commissioner of Internal Revenue, L-25602, February 18, 1970, 31 SCRA 520; Commissioner of Customs vs. Philippine Acetylene Co. & Court of Tax Appeals, L-22443, May 29, 1971, 39 SCRA 71; Davao Light and Power Co., Inc. vs. Commissioner of Customs, L-28902, March 29, 1972, 44 SCRA 122.) The right of taxation will not be held to have been surrendered unless the intention to surrender is manifested by words too plain to be mistaken (Ohio Life Insurance & Trust Co. vs. Debolt, 60 Howard, 416), for the state cannot strip itself of the most essential power of taxation by doubtful words; it cannot, by ambiguous language, be deprived of this highest attribute of sovereignty (Erie Railway Co. vs. Commonwealth of Pennsylvania, 21 Wallace, 492, 499). So, when exemption is claimed, it must be shown indubitably to exist, for every presumption is against it, and a well-founded doubt is fatal to the claim (Farrington vs. Tennessee & County of Shelby, 95 U.S. 679,686). (Asiatic Petroleum Co. vs. Llanes, 49 Phil. 466,471; Manila Electric Company vs. Commissioner of Internal Revenue L-29987 & L-23844,

> October 22, 1975, 67 SCRA 351.) In the same manner, claims for refund are construed strictly against claimants since a claim for refund is in the nature of an exemption from taxation. (Commissioner of Internal Revenue vs. Ledesma, L-17509, January 30, 1970, 31 SCRA 95.)

We find no cogent and valid reason to modify, much less depart from the conclusion reached in Koronadal, as expressed in the above-quoted opinion of the Court there, and the same should resolve the identical problem now brought before us in this appeal.

Petitioner asserts, however, that respondent has issued several rulings during the years involved in this case to the effect that Section 24(d) of the Tax Code did not repeal in lieu of any and all taxes provisions in franchises. Thus, on June 16, 1969, a ruling was issued by the Bureau of Internal Revenue in the case of Clavecilla Radio System, which was paying a franchise tax, that Section 24(d) "could not have contemplated the withdrawal of the tax exemption of franchise grantees for such withdrawal would impair the obligations of contracts between the government and the grantee, which is prohibited by the Constitution." (p. 87, CTA records.) This was reiterated in BIR ruling 70-041 dated August 13, 1970 (Exh. "DD"); and in still another ruling dated January 28, 1972 which was issued by respondent to Globe-Mackay Cable & Radio Corporation in reply to the latter's protest against a deficiency income tax assessment for the years 1965 to 1970. Petitioner therefore alleges that it did not consider itself subject to income tax, even after the addition of Section 24(d) by Republic Act No. 5431, not only because of its honest belief, based on the advice of its tax counsel, that its exemption from income tax was not withdrawn by Section 24(d), but also because of its reliance on the rulings of respondent that said Section 24(d) did not withdraw the income tax exemption of franchise grantees whose franchises contain the in lieu of any and all taxes provision. And assuming arguendo that respondent's revocation of such rulings when he issued Revenue Memorandum Order No. 15-72 dated May 17, 1972 is correct, petitioner submits that such revocation cannot be given retroactive effect since it would be prejudicial to it, in accordance with Section 338-A (now Section 327) of the National Internal Revenue Code.

This brings us to the second issue posed by petitioner:

2. Whether or not the revocation by respondent of previous BIR rulings that Section 24(d) did not withdraw the income tax exemption of franchise grantees with "in lieu of any and all taxes" provision can be given retroactive effect to the prejudice of petitioner.

Petitioner's position calls to mind ABS-CBN Broadcasting Corporation vs. Commissioner of Internal Revenue, CTA Case No. 2809, November 29, 1979, one of the issues litigated and law involved of which are on all fours with the case at bar.

In that case, the taxpayer therein had settled its withholding income tax liabilities for the years 1965 to 1968 on film rentals paid and remitted by it to non-resident foreign corporations not engaged in trade or business in the Philippines in accordance with General Circular No. V-334 dated April 12, 1961 of the Bureau of Internal Revenue. Later on February 8, 1971, General Circular No. V-334 relied upon by the taxpayer was revoked by Revenue Memorandum Circular No. 4-71. Deficiency withholding income tax for the same years was assessed against the taxpayer by the Commissioner of Internal Revenue. In assailing the correctness and validity of the deficiency withholding income tax assessment, the taxpayer therein contended that having relied on and settled its withholding tax liabilities on General Circular No. V-334 which was in force and in effect at the time, any revocation of circulars or rulings promulgated by the Commissioner of Internal Revenue should not be given retroactive application if it would be prejudicial to taxpayers.

This Court disposed of the same charge and contention in clear and unequivocal terms, in the following wise:

> Relying however on the then Section 338-A (now Section 327) National Internal Revenue Code, petitioner assails the retroactive application of Revenue Memorandum Circular No. 4-71. Section 338-A reads as follows:
>
> > SEC. 338-A. Non-retroactivity of rulings.- Any revocation, modification, or reversal of any of the rules and regulations promulgated in accordance with the preceding section or any of the rulings or circulars promulgated by the Commissioner of Internal Revenue shall not be given retroactive application if the revocation, modification, or reversal will be prejudicial to the taxpayers except in the following cases: (a) where the taxpayer deliberately misstates or omits material facts from his return or in any document required of him by the Bureau of Internal Revenue; (b) where the facts subsequently gathered by the Bureau of Internal Revenue are materially different from the facts on which the ruling is based, or (c) where the taxpayer acted in bad faith.
>
> In dealing with the authority of the Commissioner of Internal Revenue to issue and promulgate (rulings or) circulars, it must be stressed that he is not and could not be authorized under the provisions of the National Internal Revenue Code, under which the deficiency withholding income tax here is assessed, to alter, amend or modify, much less lower, the amount, measure or rate of the tax. That power is vested in the legislature or the law-making body. The legislature may not delegate the power to select the subject person or property to be taxed, the amount or measure of the tax and the definition of the purpose for which the tax shall be levied. (61 C.J. 86.) The only authority given to the Commissioner of Internal Revenue by the Tax Code, in respect of circulars, is to issue and promulgate all necessary circulars (or rulings) for carrying out the provisions of the Code. Therefore, it logically follows that any circular of the Commissioner of Internal Revenue which would alter, amend or modify the amount, measure or

rate of the tax specifically provided by the National Internal Revenue Code would be void. (Greenfield vs. Meer, 77 Phil. 394; Wise & Co. vs. Meer, 78 Phil. 655.)

It seems too clear for serious argument that an administrative officer can not change a law enacted by Congress. A regulation or circular that is merely an interpretation of the statute when once determined to have been erroneous becomes nullity. An erroneous construction of the law by the Commissioner of Internal Revenue does not, therefore, preclude or estop the Government from collecting a tax which is legally due. (Hilado vs. Collector of Internal Revenue, 100 Phil. 288, citing Ben Stocker, et. al., 12 B.T.A. 1351.) No vested or acquired right can arise from acts or omissions which are against the law or which infringe upon the rights of others. (Article 2254, New Civil Code.) It follows that the Commissioner of Internal Revenue is vested with authority to revoke, repeal or abrogate the acts or previous rulings of his predecessor in office because the construction of a statute by those administering it is not binding on their successors if thereafter the latter become satisfied that a different construction should be given. (See Hilado vs. Collector of Internal Revenue, supra, citing Association of Clerical Employees vs. Brotherhood of Railway & Steamship Clerks, 85 F.[2d] 152, 109 A.L.R. 345.)

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Accordingly, if General Circular No. V-334 of the Commissioner of Internal Revenue under which petitioner computed and deducted the withholding income tax due on the film rentals and royalty it remitted to non-resident foreign corporations and foreign film distributors not engaged in trade or business within the Philippines is not in conflict with the law, then the withholding and payment to the Bureau of Internal Revenue of only thirty per cent (30%) of ONE-HALF of such film rentals and royalty did not result in any deficiency withholding tax liability of petitioner. On the other hand, it is axiomatic that if, under the law, petitioner as local film exhibitor should deduct and withhold thirty per cent (30%) of the entire amount of film rentals or royalty it remitted to foreign corporations not engaged in trade or business within the Philippines, it is self-evident that petitioner is still liable for the deficiency withholding income tax assessed against it by respondent. Any erroneous interpretation of the law by the Commissioner of Internal Revenue would not estop the Government from asserting the tax, even though petitioner may have relied, or been misled, by such interpretation. Petitioner's liability was determined by the law, and not what some administrative official thought was the law. We should therefore determine the measure or basis of the income tax levied and collected upon the amount of film rentals and royalty received by foreign corporations not engaged in trade or business within the Philippines from sources within the Philippines.

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Nonetheless, petitioner would attempt to draw support from Section 338-A (now Section 327) of the National Internal Revenue Code, supra, by contending that any revocation of circulars (or rulings) promulgated by the Commissioner of Internal Revenue should not be given retroactive application if it would be prejudicial to taxpayers. Since the law during all the taxable years involved in the instant case from 1965 thru 1968 was General Circular No. V-334, petitioner argues that the same was correctly applied by it in withholding 30% of one-half of the film rentals remitted to its foreign film distributors. (p. 5, Memorandum for Petitioner, pp. 44-51, CTA records.)

Petitioner misses the point. General Circular No. V-334 was not the law that governed its withholding income tax liabilities during the taxable years covered by this case, but as its designation implies, a circular issued by the Commissioner of Internal Revenue for the guidance of internal revenue officers in the enforcement of the law. However, since General Circular No. V-334 is in conflict with the law it was supposed to implement, as already discussed above, it was null and void. As such it had no effect whatsoever; absolutely and entirely null; of no legal force and for that reason cannot be enforced. (Go Chioco vs. Martinez, 45 Phil. 285.) General Circular No. V-334 could not therefore give rise to a vested or acquired right that could be invoked by petitioner for it is against

> the law. (Article 2254, New Civil Code.) It is thus clear beyond doubt that legally there was no circular (or ruling) to revoke which revocation should be prospective in operation under the then Section 338-A of the National Internal Revenue Code. xxx xxx xxx.

It is hardly necessary to add that settled is the rule that the State is not estopped from collecting taxes by the mistakes and errors of its agents. (British Traders' Insurance Co., Ltd. vs. Commissioner of Internal Revenue, L-20501, April 30, 1965, 13 SCRA 719; Hilado vs. Collector of Internal Revenue, 100 Phil. 288; Koppel (Philippines), Inc. vs. Collector of Internal Revenue, L-10539, September 19, 1961, 113 Phil. 17; Compania General de Tabacos de Filipinas vs. City of Manila, L-16619, June 29, 1963; 8 SCRA 367.) And if through a misapprehension of law an officer has erroneously executed it for a long time, the error may be corrected when the full construction is ascertained. (Philippine Long Distance Telephone Co. vs. Collector of Internal Revenue, L-3222, January 21, 1952, 90 Phil. 674.)

Assuming that Section 24(d) of the National Internal Revenue Code, as added by Republic Act No. 5431, repealed the income tax exemption of petitioner under its franchise,petitioner nevertheless pleads that the income tax assessment covering July 1 to December 31, 1968 is erroneous. The next issue that presents itself is therefore:

> 3. Whether or not respondent is correct in subjecting petitioner to income tax for the year 1968.

Citing Manila Times Publishing Co., Inc. vs. Commissioner of Internal Revenue, CTA Case No. 2263, December 17, 1973, certiorari denied in L-38154, May 10, 1974, petitioner asserts that since it is on the calendar year basis, it was exempt from income tax for the entire year 1968. If Republic Act No. 5431 withdrew the income tax exemption of petitioner, as shown above, for resolution therefore is the question of when did said Republic Act take effect. Stated otherwise, when was petitioner subject to income tax after its income tax exemption was withdrawn by Republic Act No. 5431?

Republic Act No. 5431, which was approved on June 27, 1968, amended Section 24 of the National Internal Revenue Code not only by adding paragraph (d) to the said Section but also increasing corporate income tax rates of 22% to 25% on the first ₱100,000.00 net income and 30% to 35% on the excess thereof. Section 10 of the Act provides:

> SEC. 10. The provisions of this Act shall apply to income for taxable years beginning after June thirty, nineteen hundred sixty-eight.

In Manila Times, where the question was whether or not the increased rates of corporate income tax prescribed in Republic Act No. 5431 should apply to income received beginning July 1, 1968, by corporations reporting income on a calendar year basis, this Court ruled that since the beginning of the taxable year of a calendar year corporation is January 1, it follows that a calendar year corporation can not be held subject to the increased rates of income tax provided in Republic Act No. 5431 until January 1, 1969, the beginning of its taxable year after June 30, 1968.

There is no valid reason for us not to apply this ruling to petitioner for which it is similarly situated. As stated earlier, Republic Act No. 5431 amended Section 24 of the National Internal Revenue Code not only by increasing the corporate income tax rates but also by inserting paragraph (d) thereof. Since the Act expressly and explicitly provides that it shall apply to income for taxable years beginning after June 30, 1968, it seems logical and reasonable that petitioner, which is on the calendar year basis, should also be subject to income tax starting January 1, 1969. Accordingly, the income tax assessment covering July 1 to December 31, 1968 is erroneous, petitioner being subject to income tax starting January 1, 1969.

Having reached the result that Section 24(d) of the National Internal Revenue Code, as amended by Republic Act No. 5431, repealed the income tax exemption of petitioner under its franchise; and that the revocation by respondent of previous BIR rulings to the effect that Section 24(d) did not withdraw the tax exemption of franchise grantees with the in lieu of any and all taxes provision can be given retroactive effect, petitioner alleges however that the "special messengers fees" (SMF) should not be included as part of its taxable gross receipts, which brings us to the issue of:

4. Whether these special messengers fees are subject to franchise tax and to income tax.

The nature of these "special messengers'fees" (SMF), as explained by witness Pedro Guevarra of petitioner in his testimony before this Court, is as follows: (t. s.n., pp. 10-13, Hearing on May 30, 1977.)

Q. One of the items involved in this case pertains to the special messenger's fee which the respondent considered to be subject to income tax and franchise tax. Will you please explain to this honorable Court what this special messenger's fee is all about?

A. Special messenger's fees are amounts that we collect from our customers which are earmarked for special messengers who are employed on a contractual basis. These special messenger's fees are for messages which are addressed outside our free delivery limit.

Q. Now, will you kindly relate or inform this honorable Court the procedure that is followed in a particular RCPI station when a customer files a message for transmission to another place?

A. When a customer files a message in any of our branch stations, the counter clerk determines the amount of telegraph toll if the message is addressed within free delivery limit. If a message is addressed outside the delivery limit, after ascertaining the telegraph toll, he informs the customer that a certain special messenger fee has to be paid by the same customer. Then we collect the special messenger fee aside from the telegraph toll in the station of origin which has to be disbursed.

ATTY. Tejada -

Let us clarify that. Supposing a telegram is for transmission to a place within your area of operation, or what you call within your free delivery limit, what is charged to this particular customer?

A. Telegraph toll.

Q. Now, supposing the telegram is, let us say, for transmission to a place which is outside your area of operation or what you call outside your free delivery limit, what charge or charges are imposed on the customer?

A. Aside from the telegraph toll?

Q. Yes.

A. After informing the customer beforehand, we charge him or collect from him or her the special messenger's fee.

Q. So the customer is informed beforehand before the message is transmitted that there is an additional amount to be paid corresponding to this special messenger's fee?

A. Exactly.

Q. How does the station of origin determine the amount of special messenger's fee to be charged to a particular customer that files a certain message for transmission?

A. As basis for charging the special messenger fee for a place outside the delivery limit, we have prepared, or we prepare the SMF book, or special messenger's fee-

Q. Special messenger's fee.

A. - which is distributed on all of our branch stations. Then the counter clerk, after ascertaining the address of the addressee, as given by the customer, looks for the address in the book and opposite the address or the place of delivery there appears the amount of SMF fee to be charged.

The law involved is Section 14 of Republic Act No. 2036, as amended by Republic Act No. 4054, the pertinent portion of which reads:

> "x x x In consideration of the franchise, a tax equal to one and one-half per centum of all gross receipts from the business transacted under this franchise by the grantee shall be paid to the Treasurer of the Philippines each year, within ten days after the audit and approval of the accounts as prescribed in this Act."

And the business transacted under franchise as provided by Section 1 of Republic Act No. 2036 consists of:

> "x x x the right and privilege of constructing, installing, establishing and operating in the Philippines, at such places as the said corporation (petitioner) may select and the Secretary of Public Works and Communications may approve, radio stations for the reception and transmission of wireless messages on radiotelegraphy and/or radiotelephony, including both coastal and marine telecommunications, each station to consist of two radio apparatus comprising of a receiving and sending radio apparatus."

It seems clear beyond doubt that in the conduct and transaction of its enfranchised business, all the gross receipts of which constitute the tax base of the franchise and income taxes payable by petitioner, the delivery or service by petitioner, through its messengers or employees, to the addressees of the messages received and transmitted by it is an inherent and essential part or feature of its business. Whatever the dialectics employed, the duty or obligation of petitioner of delivering messages to the addressees, whether inside or outside its free delivery limit, is intrinsic in its business of establishing radio stations for the reception and transmission of wireless messages on radio telegraphy and/or radio telephony. The relationship between petitioner and its messengers, whether regular or special, employed to deliver messages inside or outside its free delivery limit, is therefore an abiding one.

Just like its regular messengers, petitioner employed the services of its special messengers; it is petitioner for whom the special messengers worked and who paid their fees and wages, whether on piece-work or contractual basis. Petitioner employed the special messengers to do a certain work or execute a particular job directly and necessarily connected with the conduct and pursuit of its usual enfranchised business, all the gross receipts from which it is required to pay its franchise tax, and of course, income tax; and who directs supervision and control over them in the performance of their job or work of delivering messages addressed to its customers. And the special messengers rendered and performed service for petitioner for fees or wages paid by petitioner who has the power to employ or discharge them. When a customer of petitioner pays a special messenger's fee for the transmission and delivery of his message to a particular addressee, the source of the right to receive and dispose of the special messenger's fee is petitioner.

We can see no significance, therefore, in the contention of petitioner that it acts merely as agent of the messengers in collecting fees for delivering messages outside its free delivery limit. Petitioner retains power and control over the receipt and disposal of the "special messengers' fees" as to make it the recipient of the fees for franchise tax and income tax purposes. That the fees have been earmarked for salaries or wages of special messengers who are employed in the service of, working for wages paid by, and in connection with the enfranchised business of, petitioner would not insulate petitioner from franchise tax and income tax liabilities since it is the source of the right to receive and dispose of the "special messengers' fees". So far as the power and control over the receipt and disposal of the "special messengers' fees" are concerned, we can see no difference in principle between petitioner's power and control over the receipt and disposal of additional charges that form part of the cost of delivering messages within its free delivery limit, and which are included by petitioner as its gross receipts for purposes of the franchise tax payable by it.

Some stress is placed by petitioner upon the form of its treatment of the "special messengers' fees" in its books which are reflected thereon as liability to be turned over to special messengers who will deliver messages or telegrams to places outside its free delivery limit. While gross receipts should not include any money that has been especially earmarked for some other person (Commissioner of Internal Revenue vs. Manila Jockey Club, Inc., L-13890 & L-13887, June 30, 1960, 108 Phil. 821), petitioner here, as shown above, is not a mere collection agent who receives the "special messengers' fees" to be transmitted to special messengers. By virtue of its duty and obligation of delivering messages received and transmitted by it from its customers, in the conduct and pursuit of its enfranchised business, petitioner retains sufficient power and control over the receipt and disposal of the "special messengers' fees" to make it the recipient of the income for tax purposes. Income is not any less taxable income of petitioner because by its command it is paid directly to special messengers under its employ in the performance of petitioner's obligation of delivering messages in the pursuit of its business. Whatever is the articulation, it seems clear beyond dispute that taxation is not so much concerned with mere formalism of bookkeeping entries as it is with the actual command over the income sought to be taxed.

In the light of the above, we are therefore of the opinion, and so hold, that the "special messengers' fees" (SMF) are subject to income tax and franchise tax.

The last issue posed on this appeal is:

5. Whether or not petitioner's miscellaneous income are subject to income tax notwithstanding the fact that the same were already included in the payment of franchise tax.

The miscellaneous income of petitioner during the years in question, which is referred to by respondent as income arising from business activities not covered by the franchise, consisted of the following:

Nature	1966	1967	1968	1969	1970
Interest on Bancom bills & savings account	₱14,443.60	₱20,547.20	₱39,450.02	₱ 69,795.01	₱33,317.00
Gain on sale of fixed assets	-	500.00	1,700.00	3,738.07	20,378.00
Registration fee of customers cable	209.60	551.00	223.90	3,979.00	3,547.71
Handling charges on cables originating from various RCPI stations	-	675.50	882.00	5,884.50	23,762.00
Discount on purchase of fixed assets	487.75	150.75	-	227.25	118.75
Sale of scrap & charges for lost equipment received from employees	1.48	462.52	14,934.15	1,838.46	2,657.95

Collection of accounts receivable previously written off	-	-	933.53	21,022.40	-
Other charges collected	5,239.25	17,324.06	-	-	-
Offset of accounts of RCA, Inc.	864.50	-	-	-	-
Collection fee on SSS salary and education loans	8.74	-	-	891.31	-
Commission received from insurance under-writers	-	-	3,230.00	-	-
T o t a l	₱21,254.92	₱40,211.03	₱61,353.60	₱107,376.00	₱83,781.41

After having arrived at the conclusion that Section 24(d) of the National Internal Revenue Code, as amended by Republic Act No. 5431, repealed the income tax exemption of petitioner under its franchise, Republic Act No. 2036 as amended by Republic Act No. 4054, and petitioner is subject to income tax starting January 1, 1969, there seems to be no more dispute that the miscellaneous income during the years 1969 and 1970 are subject to income tax even if they were already included in the payment of franchise tax. The controversy centers on the miscellaneous income of petitioner during the years 1966, 1967 and 1968 before the withdrawal of its income tax exemption.

In Philippine Power & Development Co., Inc. vs. Commissioner of Internal Revenue, CTA Case No. 1152, October 31, 1965, this Court ruled:

> "The interest income on petitioner's savings account is subject to franchise tax for the reason that it represents profit made in the course of regular transactions in connection with petitioner's franchise (Philippine Long Distance Telephone Co. vs. Collector, 90 Phil. 674). Similarly, the other contested items, consisting of earning of employees' retirement fund, profits in the sales of fixed assets, interest in the sale of cars, and proceeds of sales of materials and supplies, are earnings or profits incidental to and necessarily connected with the operation of its franchise, hence, includible in its taxable gross earnings."

On the basis of the foregoing, the interest income on Bancom bills and savings account is not subject to income tax for the reason that it represents profit made in the course of petitioner's franchise. As testified to by petitioner's witness during the hearing of this case, the funds placed by petitioner in Bancom bills and savings accounts were part of its gross receipts from its business covered by the franchise, and the same had to be invested or deposited because they constituted temporary excess in its cash requirements. (pp. 3-5, t.s.n., August 29, 1977.) Similarly, the other contested items consisting of gain on sale of fixed assets, registration fee of customers' cable, handling charges on cables originating from various RCPI stations, discount on purchase of fixed assets, sale of scrap and charges for lost equipment received from employees, collection of accounts receivable previously written off, other charges collected, offset of accounts of RCA, Inc., collection fee on SSS salary and education loans, and commission received from insurance underwriters, the franchise tax of which had already been paid, are no longer subject to income tax pursuant to the in lieu of any and all taxes provision of petitioner's franchise. The nature and amount involved in each item, as can be seen from above, do not suggest that they are income from other business activities conducted by petitioner but clearly indicate that they are earnings and profits necessarily in connection with and approximately resulting from the operation of its enfranchised business.

It is true that in Manila Electric Company vs. Commissioner of Internal Revenue, CTA Case No. 1737, November 29, 1969, this Court ruled that any extraneous income derived from business not specified by the franchise is subject to (income) tax, but the miscellaneous income of herein petitioner appear clearly to be earnings and profits incidental to and necessarily connected with the operation of its franchise. Even more, in arriving at the ruling enunciated in Manila Electric, this Court observed that the items of income involved therein were clearly foreign to the taxpayer's authorized business of generating and distributing electricity for sale and no evidence was presented which would show that such income came from the operation of its franchise. In resolving the factual question involved therein, the Court therefore adopted the rule that it is incumbent upon the taxpayer to show clearly that the tax assessment is erroneous in order to be relieved from it and laws granting tax-exemption should be construed in strictissimi juris against the taxpayer and liberally in favor of the taxing authority.

COMPUTATION

For all the foregoing considerations, the computation of the deficiency income tax liabilities of petitioner during the years involved in this case, and in which it is subject to income tax, is as follows:

1970

Net Income Per Return	n o n e
Add: (a) Net income from operation (including extraneous income debited to operating expenses (₱161,398.04)	₱ 1,210,553.00
(b) Provision for doubtful accounts (unallowable deduction)	312,191.00
Total Taxable Income	₱ 1,522,744.00
Tax Due Thereon	₱ 522,960.00
Less amount already paid	-
Deficiency tax	₱ 522,960.00
Interest, 4/16/71 to 12/1/71	19,611.00
TOTAL TAX DUE & COLLECTIBLE	₱ 542,571.00

1969

Net Income Per Return	n o n e
Add: (a) Net income from operation (including extraneous income debited to operating expenses (₱69,795.01)	₱ 1,277,079.00
(b) Provision for doubtful accounts (unallowable deduction)	67,741.00
Total Taxable Income	₱ 1,344,820.00
Tax Due Thereon	₱ 460,687.00
Less amount already paid	-
Deficiency tax	₱ 460,687.00
Interest, 4/16/70 to 12/1/71	44,916.98
TOTAL TAX DUE & COLLECTIBLE	₱ 505,603.98

The interest on the deficiency income tax for the years 1970 and 1969 was imposed up to December 1, 1971 because the deficiency assessment of respondent is dated December 1, 1971. (Exh. "B", pp. 170-172, BIR records.).

It will be noted that for the years 1969 to 1970, respondent assessed petitioner's entire gross receipts from "special messengers' fees" in the amounts of ₱1,013,803.57 and ₱1,232,131.87 for deficiency income tax without taking into account the deductible expenses involved. As shown on pages 3 and 6 of the working papers of respondent's examiner (pp. 106 & 112, BIR records), the "special messengers' fees" received from customers were reflected in petitioners' books of accounts for 1969 & 1970 as liability account and payments to the special messengers were taken up as direct deductions or debits to the account. In both years, the account showed debit balances, which indicates that more payments to special messengers were made than collections received for "special messengers' fees."

This treatment of the "special messengers' fees" account in the books of petitioner as found by respondent's examiner corroborates the evidence presented by petitioner, both documentary and oral, that the "special messengers' fees" did not accrue to its benefit since the same fees were turned over as payments to the special messengers contracted for that purpose. At any rate, had the receipts from "special messengers' fees" been recorded as income and the corresponding disbursements to messengers taken up as expenses, the result would have been the same - that no profit would have been realized from the transactions. Inasmuch as there is no taxable income resulting from the collection of "special messengers' fees" for the years involved, respondent erred in imposing deficiency income tax on the same.

With respect to the deficiency franchise tax assessment of respondent, the Court finds the same, as discussed above, in accordance with law and therefore affirms the said assessment. However, there is no deficiency franchise tax liability of petitioner for 1970 inasmuch as it availed itself of the benefits of Letter of Instructions No. 308 by paying the amount of ₱11,854.24 under Official Receipt No. 2896711 dated February 25, 1977. (pp. 77; 132-133, CTA records.) Consequently, petitioner is liable for ₱16,995.51 as deficiency franchise tax for 1969 as computed by respondent.

Accordingly, petitioner Radio Communications of the Philippines, Inc., is liable, and hereby ordered to pay, to respondent Commissioner of Internal Revenue the amounts of ₱505,603.98 for 1969 and ₱542,571.00 for 1970 as deficiency income tax, plus 5% surcharge and 12% interest per annum from December 1, 1971, the date of demand, until December 31, 1972, and 14% interest per annum from January 1, 1973 to December 1, 1974, pursuant to Section 51(e) of the Tax Code as amended by Republic Act No. 2343 and further amended by Presidential Decree No. 69; and the additional amount of ₱16,995.51 as deficiency franchise tax for 1969, plus 14% interest per annum from January 1, 1973 up to the date of full payment, pursuant to Section 193(a) of the 1977 National Internal Revenue Code.

WHEREFORE, the decision appealed from is modified as indicated in the above opinion of the Court. With costs.

SO ORDERED.

Quezon City, Metro Manila, January 25, 1980.

Amante Filler
AMANTE FILLER
Acting Presiding Judge

I CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge