REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

NATIONAL POWER CORPORATION,
Petitioner,

versus

C.T.A. CASE NO. 2183

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

9/30/74

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DECISION

This is an appeal from the decision of respondent dated September 10, 1970, denying petitioner's claim for refund of the amount of ₱1,304,021.53 as alleged erroneous payment of income tax for the fiscal period July 1, 1968 to June 30, 1969.

Petitioner is a government-owned and controlled corporation duly organized and existing under and by virtue of its charter, Commonwealth Act No. 120, as amended. Republic Act No. 2641 converted petitioner from a non-stock to stock corporation with an initial authorized capital stock of one hundred million pesos.

On June 4, 1949, Republic Act No. 358 was approved granting petitioner exemption from the payment of all taxes, duties, fees, imposts, charges and restrictions imposed by the Republic of the Philippines. Subsequently, under Republic Act No. 987, approved on June 2, 1954, petitioner was required to pay real property tax but its exemption from all other taxes was retained.

On June 27, 1968, Republic Act No. 5431 was approved amending, among others, Section 24 of the Revenue Code imposing corporate income tax on corporations, agencies or instrumentalities owned or controlled by the Government.

On December 15, 1969, petitioner filed its income tax return for the fiscal year ending June 30, 1969 and paid under protest the amount of ₱652,010.77, representing one-half of the income tax for the said period and the other half of said tax was paid on January 14, 1970.

On February 11, 1970, petitioner filed with the respondent a claim for refund of the income tax paid in the total amount of ₱1,304,021.53. After a review of petitioner's case, respondent in a letter dated September 10, 1970 denied the claim for refund. Petitioner appealed to this Court.

On September 10, 1971, Republic Act No. 6395 took effect revising the charter of petitioner. The revised charter exempts petitioner from all taxes, fees and charges, specifically including the income tax.

On January 22, 1974, petitioner's charter was again revised through Presidential Decree No.

380. Under this decree, petitioner's capitalization was increased to ₱2 billion pesos and it continues to retain its exemption from all income taxes, fees and charges.

The sole issue posed for our determination is one of law, i.e., whether or not petitioner is exempt from the corporate income tax imposed by Republic Act No. 5431 for the fiscal period July 1, 1968 to June 30, 1969.

Petitioner claims exemption from income tax notwithstanding the provision of Republic Act No. 5431 because its charter, Commonwealth Act No. 120, as amended, exempted it from all taxes except real property tax. It is argued that its exemption under the charter is by virtue of a special law which could not have been amended or repealed by mere implication by the Revenue Code, a general law. Contrariwise, respondent contends that petitioner's exemption from income tax has been repealed by Republic Act No. 5431.

Repeal of statutes may either be express or implied. There is "express" repeal when it is literally declared by subsequent statute and "implied" when the new statute contains provisions contrary to or irreconcilable with those of the former statute. (Stoker v. Police Jury of Sabine

Parish, La. App., 190 So. 192, 194, cited in 15A Words & Phrases 566.) Republic Act No. 5431 does not expressly or literally declare petitioner subject to income tax. Its liability to said tax is being justified on the wordings of the law declaring, among others, that all corporations owned or controlled by the Government shall pay the rate of tax imposed thereunder. The dispute, therefore, hinges on the determination as to whether or not petitioner's exemption from taxes has been impliedly repealed by Republic Act No. 5431.

It is a cardinal principle of statutory construction that repeals of laws by implication are not favored (see Phil. Railway Co. v. Coll. of Int. Rev., 91 Phil. 35, 39-40); that a special law is not regarded as having been amended or repealed by a general law unless the intent to repeal or alter is manifest (Valera v. Tuason, Jr., 80 Phil. 823, 827); and that in determining whether repeal has been effected, the intention of the legislature is controlling and such intent even prevails over the literal import of the words used (50 Am Jur 527).

Inasmuch as the legislative intent is the controlling factor in determining whether a new act works an implied repeal of an existing statute, we will first trace the evolution of the laws granting petitioner exemption from taxes.

1. Commonwealth Act No. 120 (Nov. 3, 1936)

This is the original charter of the National Power Corporation Section 4 of which provides that bonds issued under authority of the Act shall be exempt from the payment of all taxes by the Commonwealth of the Philippines or any of its branches or political subdivisions.

2. Republic Act No. 357 (June 4, 1949)

This is a special law providing, among others, that the National Power Corporation shall be exempt from all taxes, contributions and restrictions of the Republic of the Philippines and its political subdivisions in respect of any loan, loan agreement, and payments made pursuant thereto (Secs. 7 & 8).

3. Republic Act No. 358 (June 4, 1949)

This law amended Commonwealth Act No. 120 and provides, among others, as follows:

> SEC. 2. To facilitate payment of its indebtedness, the National Power Corporation shall be exempt from all taxes, duties, fees, imposts, charges, and restrictions of the Republic of the Philippines, its provinces, cities and municipalities. (Underscoring supplied)

4. Republic Act No. 987
(June 2, 1954)

This law amended Section 2 of Republic Act No. 358, thus -

> SEC. 2. To facilitate payment of its indebtedness, the National Power Corporation shall be exempt from all taxes, except real property tax, and from all duties, fees, imposts, charges, and restrictions of the Republic of the Philippines, its provinces, cities and municipalities. (Underscoring supplied)

5. Republic Act No. 6395
(Sept. 10, 1971)

This is an act revising the charter of the National Power Corporation. Section 13 thereof reads as follows:

> SEC. 13. Non-profit Character of the Corporation; Exemption from all Taxes, Duties, Fees, Imposts and other Charges by Government and Governmental Instrumentalities. - The Corporation shall be non-profit and shall devote all its returns from its capital investment, as well as excess revenues from its operation, for expansion. To enable the Corporation to pay its indebtedness and obligations and in furtherance and effective implementation of the policy enunciated in Section one of this Act, the Corporation is hereby declared exempt:
>
> (a) From the payment of all taxes, duties, fees, imposts, charges, costs and service fees in any court or administrative proceedings in which it may be a party, restrictions and duties to the Republic of the Philippines, its provinces, cities, municipalities and other government agencies and in-

> (b) From all income taxes, franchise taxes and realty taxes to be paid to the National Government, its provinces, cities, municipalities and other government agencies and instrumentalities;
>
> (c) From all import duties, compensating taxes and advanced sales tax, and wharfage fees on import of foreign goods required for its operations and projects; and
>
> (d) From all taxes, duties, fees, imposts, and all other charges imposed by the Republic of the Philippines, its provinces, cities, municipalities, and other government agencies and instrumentalities, on all petroleum products used by the Corporation in the generation, transmission, utilization, and sale of electric power. (Underscoring supplied.)

6. Presidential Decree No. 380 (Jan. 22, 1974)

Petitioner's exemption, among others, from the income tax as found in Section 13(b) of Republic Act No. 6395, supra, was reiterated under this decree also to enable it to pay its indebtedness and obligations.

On the other hand, the law on which respondent anchors his stand is Section 24(d) of the Revenue Code, as inserted by Republic Act No. 5431, which reads -

> (d) The provisions of existing special or general laws to the contrary notwithstanding, all corporate taxpayers not specifically exempt under Section twenty-four (c)(1) and twenty-seven of this Code shall pay

> the rates provided in this section. <u>All corporations, agencies, or instrumentalities owned or controlled by the Government</u>, 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. (Underscoring supplied.)

From a careful perusal and analysis of the foregoing laws affecting petitioner's liability for taxes or exemption therefrom, it can be clearly gathered that whenever the legislature wanted to tax or exempt petitioner or any of its transaction from taxes it did so by express legislation, either by amending its charter or by special law. To illustrate, petitioner's charter expressly exempts its bonds from all taxes. Subsequently, Republic Act No. 357 was passed explicitly exempting petitioner from taxes on any of its loans, loan agreements and payments made pursuant thereto. Then Republic Act No. 358 was enacted amending its charter expressly exempting it from all taxes. When the legislature desired to tax its real properties, it did so by passing Republic Act No. 987, also amending its charter, expressly holding petitioner liable thereto. All these lead us to the inevitable conclusion that when the legislature wanted to impose a tax on petitioner or exempt it therefrom, it did so either by express repeal of its charter or through an independent legislation solely affecting petitioner. This, we believe, was deliberately done because petitioner, by virtue of its peculiar functions and role in the development of our economy, stands on a different footing from other corporations owned or controlled by the Government. Its declared objectives are the comprehensive development, utilization and conservation of Philippine water resources for all beneficial uses, including power generation and the total electrification of the Philippines through the development of power from all sources to meet the needs of industrial development and dispersal and the needs of rural electrification. The Legislature has its attention directed to these special facts and circumstances which led it to create petitioner through a special charter. It will not, therefore, be correct to conclude that the Legislature in enacting Republic Act No. 5431, a general law, although repugnant to petitioner's charter, intended to amend, modify or repeal the latter.

Another strong argument in support of petitioner's position is the enactment of Republic Act No. 6395 on September 10, 1971, reiterating its exemption from the payment of all taxes. Noteworthy is the fact that Congress did not limit itself in declaring petitioner exempt from all taxes, as it did in previous amendments to its charter, but had to enumerate in detail the particular kinds of taxes to which it is exempt which, for all intents and purposes, covers any and all conceivable taxes imposed or to be imposed by the National or any local government. This to our mind is a strong and positive indication that Congress this time did not want to be misunderstood as to its manifest intention to exempt petitioner from any and all kinds of taxes. And to dispel any doubt whatsoever on the matter, the President of the Philippines on January 22, 1974, reiterated said exemption privilege when Presidential Decree No. 380 was promulgated in order to hasten the goal of total electrification for the entire country.

There are other considerations which justify petitioner's claim for exemption from income tax under Republic Act No. 5431.

Petitioner was created to undertake the development of hydroelectric generation of power and the production of electricity from nuclear, geothermal and other sources, as well as the transmission of electric power on a nationwide basis. As envisioned by the law creating it, the activity to be pursued by the National Power Corporation can hardly be motivated by profit or income.

> x x x The NPC, on the other hand, was specifically created to undertake the development of hydraulic

> power throughout the country and the production of power from other sources, for use of the government and the general public. (Sec. 1, Com. Act 120.) <u>As envisioned by the law creating it, the activity to be pursued by the NPC can hardly be motivated by profit or income</u>. (Davao Light & Power Co., Inc. v. Comm. of Customs, G.R. Nos. L-28739 & L-28902, March 29, 1972; <u>underscoring supplied</u>.)

Due to the inability of the National Government to finance petitioner's varied undertakings, a law was passed authorizing the National Power Corporation to contract loans from the International Bank for Reconstruction and Development, or the World Bank, authorizing the President of the Philippines to negotiate and contract for said corporation and to guaranty the same on behalf of the Republic of the Philippines. (Rep. Act No. 357.) Pursuant to this authority, petitioner had contracted several loans to finance its projects. One of these loans is the Fourth Power Project entered into among the World Bank, as the Lender, the National Power Corporation, as Borrower, and the Republic of the Philippines, as the Guarantor, evidenced by Loan Agreement and Guarantee Agreement dated April 5, 1967. (Exhs. A & B, pp. 46-63 & 64-71, CTA rec.)

In the negotiation for the Fourth Power Project loan, petitioner represented to the World Bank that it is enjoying the privilege of exemption from all taxes except real property tax.

(Pp. 9-10, t.s.n.) This led the World Bank to impose as one of the conditions for the grant of the loan that petitioner shall take all action to maintain, among others, this tax exemption privilege. (Pp. 76-81, t.s.n.)

> SECTION 5.07. (a) The Borrower shall take all action within its power to maintain its existence and right to carry on operations and shall, except as the Bank shall otherwise agree, <u>take all steps necessary to maintain and renew all rights, powers, privileges and franchises which are necessary or useful in the conduct of its business</u>. (Exh. A-1, p. 55, CTA rec.; <u>underscoring supplied</u>.)

To guarantee that the said "privilege" will not be impaired, the World Bank required the Philippine Government not to permit any of its political subdivisions or agencies to take any action which would prevent or interfere with the performance by petitioner of its obligations assumed under the Loan Agreement. (p. 78, t.s.n.)

> SECTION 3.06. <u>The Guarantor covenants that it will not take or permit any of its political subdivisions or any of its agencies or any agency of any political subdivision to take any action which would prevent or interfere with the performance by the Borrower of any of the covenants, agreements and obligations of the Borrower in the Loan Agreement contained</u>, and will take or cause to be taken all reasonable action which shall be necessary in order to enable the Borrower to perform such covenants, agreements and obligations. (Exh. B-1, p. 69, CTA rec.; <u>underscoring supplied</u>.)

Viewed from the foregoing circumstances, we believe that when Congress passed Republic Act No. 5431 imposing income tax on corporations owned or controlled by the Government, it did not intend to include the National Power Corporation as among those subject to income tax, otherwise the Republic of the Philippines would be reneging on its commitment not to permit any of its agencies or political subdivisions to interfere with the performance by said corporation of its obligations under the Loan Agreement. It seems unlikely for the Government to prohibit its agencies or political subdivisions from interfering with petitioner in the performance of its obligations and in the same breath allow Congress to interfere with it with the concomitant embarrassment to the Republic of the Philippines. To submit to respondent's contention that Republic Act No. 5431 has repealed Republic Act No. 987, which granted tax exemption to petitioner, would amount to an interference to a solemn commitment made by the President of the Philippines which we do not think Congress intended when it enacted the alleged repealing statute.

Under Republic Act No. 357, petitioner was expressly authorized to contract loans with the World Bank. Pursuant to this authority, petitioner contracted various loans, the latest of which was the loan for the Fourth Power Project, dated April 5, 1967, for the sum of $12,000,000 payable in 16 years at 6% interest per annum. (Secs. 2.01 & 2.04, Exh. A, p. 50, CTA rec.) To facilitate the payment of these loans, petitioner was granted exemption from all taxes under Republic Act No. 358. Subsequently, Republic Act No. 987 reiterated petitioner's exemption from taxes, except real property tax - "To facilitate payment of its indebtedness." When Congress passed Republic Act No. 5431 on June 27, 1968, it is to be presumed that it was well aware of its previous enactments authorizing petitioner to contract loans and exempting it from the payment of all taxes to enable it to pay its indebtedness. Obviously, Congress realized that without this exemption privilege, petitioner would find difficulty meeting its loan obligations and the Government, represented by the President himself as the principal obligor, would finally be called upon to answer for it. In granting such tax exemption, the Supreme Court held that the Government waived its right to collect taxes from petitioner to facilitate liquidation of its liabilities.

> The provisions of Section 2 of Republic Act 358 granting tax exemptions to the NPC, taken in the light of the existing legislation affecting

> the NPC, notably Republic Act 357, must be construed as intended to benefit only the NPC, <u>the lawmakers expecting</u> (as <u>so unequivocally expressed in the law) that by relieving said corporation of tax obligations, the NPC would be enabled to pay easily its indebtedness or whatever indebtedness it is certain to incur</u>. In granting such tax exemption, the <u>government actually waived its right to collect taxes from the NPC in order to facilitate the liquidation</u> by said corporation <u>of its liabilities, and the consequential release by the government itself</u> from its obligation (as principal obligor) in the transactions entered into by the President on behalf of the NPC. (Davao Light & Power Co., Inc. v. Comm. of Customs, <u>supra</u>; <u>underscoring supplied</u>.)

If we are to sustain the theory that Republic Act No. 358 has been impliedly repealed by Republic Act No. 5431, so as to make petitioner liable under the latter law for income tax, it would amount to an impairment of petitioner's capacity to pay its indebtedness which we believe was not intended by Congress when it passed Republic Act No. 5431.

The World Bank likewise required petitioner to maintain its rates at such levels as shall provide revenues sufficient to produce a reasonable annual return.

> SECTION 5.09. <u>The Borrower shall</u> (a) from time to time take all action necessary or desirable to set and maintain its rates for the sale of electricity at such levels as shall <u>provide revenues at least</u>

> sufficient, after covering all operating expenses of the Borrower, to produce a reasonable annual return on its net revalued fixed assets in operation for each fiscal year; . . . (Exh. A-2, p. 55, CTA rec.; underscoring supplied.)

In this connection, the World Bank indicated to petitioner that the reasonable rate of return a year on its net fixed assets in operation should be 8%.

> We wish to confirm our understanding reached during negotiations that, on the basis of present forecasts, an annual return of at least 8% on the Borrower's net fixed assets in operation is considered "reasonable" for the purposes of Section 5.09 of the Loan Agreement. For the purpose of calculating the required return, the denominator will be the average between the net revalued fixed assets in operation at the beginning and the end of the year in question. The numerator will be the operating income of the Borrower for the year under review. (Exh. C-1, p. 73, CTA rec.; underscoring supplied.)

This condition was spelled out because the World Bank wanted to be sure that petitioner would be able to pay the amortizations as they fall due (p. 14, t.s.n.).

In 1968, petitioner's rate of return was 3.68% (Exh. F, p. 80, CTA rec.) and in 1972, it was 6% (p. 17, t.s.n.). It was shown through the testimony of Mr. Jorge A. Gonzales, Chief Legal Counsel, National Power Corporation, that petitioner has never met the 8% rate of return required by the World Bank (p. 16, t.s.n.). Necessarily, if Republic Act No. 5431 were to be made applicable to petitioner, its paying capacity will be further impaired and will fall into a deteriorated level as far as the rate of return agreed upon is concerned. Moreover, the applicability of said law to petitioner would amount to a violation of the covenant assumed by the Republic of the Philippines which guaranteed the World Bank that it will not interfere with the petitioner in the performance of its obligation under the Loan Agreement.

WHEREFORE, the decision appealed from is hereby reversed. Accordingly, respondent is hereby ordered to refund to petitioner the sum of ₱1,304,-021.53 paid as income tax for the fiscal period July 1, 1968 to June 30, 1969. Without pronouncement as to costs.

SO ORDERED.

Quezon City, September 30, 1974.

R M Umali
ROMAN M. UMALI
Presiding Judge

WE CONCUR:

Estanislao R. Alvarez
ESTANISLAO R. ALVAREZ
Associate Judge

Ramon L. Avanceña
RAMON L. AVANCEÑA
Associate Judge