REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

C.T.A. EB No. 402
(C.T.A. Case No. 7261)

Present:

-*versus*-

Acosta, P.J.
Castañeda, Jr.
Bautista,
Uy,
Casanova, and
Palanca-Enriquez, JJ.

AYALA LAND, INC.,
Respondent.

Promulgated:
FEB 1 2 2009 3:30 p.m.

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DECISION

BAUTISTA, J.:

The Case

Before Us is a Petition for Review[1] filed on August 6, 2008, praying for the reversal of:

1. the Decision dated April 11, 2008 of the Second Division of the Court ("Court in Division") in C.T.A. Case No. 7261,

[1] *Rollo*, C.T.A. EB No. 402 (C.T.A. Case No. 7261), pp. 6 – 66 with Annexes.

canceling and setting aside the assessment for deficiency value added tax ("VAT") against herein respondent in the amount of P103,346,691.40 for the year 2003; and

2. the Resolution dated July 3, 2008, denying the "Motion for Reconsideration" of herein petitioner.

Antecedent Facts

As recapitulated by the Court in Division, the following facts are undisputed:

> "Petitioner,[2] Ayala Land, Incorporated, is a corporation duly organized and existing under Philippine laws, with principal place of business located at the 29th Floor Tower One, Ayala Triangle, Ayala Avenue, Makati City. It is primarily engaged in the sale and/or lease of real properties, and among others, likewise owns and operates theaters or cinemas.
>
> On the other hand, respondent,[3] Commissioner of Internal Revenue, is the duly-appointed officer of the Bureau of Internal Revenue (BIR), with exclusive and original jurisdiction to: (a) interpret the provisions of the National Internal Revenue Code (NIRC) of 1997, as amended, and other tax laws, subject to review by the Secretary of Finance; and (2) decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the NIRC or other laws or portions thereof administered by the BIR, subject to the exclusive jurisdiction of the Court of Tax Appeals; with office address at the 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.
>
> On November 12, 2004, petitioner received respondent's Formal Letter of Demand and Assessment Notice No. 002-03, both dated October 29, 2004; whereby respondent assessed petitioner for an alleged deficiency ten percent (10%) VAT on its alleged income from cinema operations for taxable year 2003 in the aggregate amount of P103,346,691.40, inclusive of twenty percent (20%) interest. The deficiency VAT is computed as follows:

Income from cinema operation	896,424,485.80
Rate of Tax (Sec. 108, NIRC)	10%

[2] Herein Respondent.
[3] Herein Petitioner.

Basic VAT due	89,642,448.58
Add: 20% interest from 01/26/04 to 10/31/04	13,704,242.82
Total Amount Due	103,346,691.40

On December 10, 2004, petitioner filed its protest with the office of respondent contesting the factual and legal bases of the VAT assessment. Subsequently on April 28, 2005, petitioner received respondent's Decision dated April 25, 2005 denying petitioner's protest with a notation that the same constitutes respondent's 'Final Decision' on the matter, thus constraining petitioner to file the instant Petition for Review on May 27, 2005.

Respondent filed an Answer on August 25, 2005. After the pre-trial held on September 29, 2005, the parties submitted their Joint Stipulation of Facts and Issues on January 26, 2006, which was approved by this Court in the Resolution dated February 1, 2006.

During trial, petitioner presented testimonial and documentary evidence to prove its case. Upon admission of petitioner's documentary evidence, the Court set the presentation of respondent's evidence on January 31, 2007, March 7, 2007, and April 25, 2007, but respondent's counsel failed to do so. Upon motion of petitioner's counsel, respondent was declared to have waived the right to present evidence in the Resolution dated April 30, 2007 and the parties were directed to submit their respective Memorandum. Both petitioner and respondent submitted the required Memorandum on May 22, 2007 and on July 6, 2007, respectively. This case was considered submitted for decision in the Resolution dated July 30, 2007.

In the meantime however, petitioner filed an 'Urgent Omnibus Motion' on January 21, 2008 alleging, among others, that respondent's January 11, 2008 Letter, requiring petitioner to settle and pay the alleged deficiency tax liabilities involved in this case on or before January 18, 2008 to prevent the issuance of a Warrant of Distraint and Garnishment and/or Levy, has no basis under existing laws considering that petitioner appealed the instant case to the Honorable Court of Tax Appeals prior to the finality of respondent's assessment, which cannot therefore be considered as delinquent. In said Motion, petitioner prayed for the issuance of an order directing respondent to desist from enforcing its January 11, 2008 letter and collecting the alleged deficiency taxes until the case is decided with finality; requiring respondent not to issue the Warrant of Distraint and Garnishment and/or Levy against the petitioner and suspend the collection of the disputed VAT assessment until this case is decided with finality.

During the hearing of said Motion on January 31, 2008, respondent's counsel interposed no objection to petitioner's Motion to suspend collection of taxes. Thus, the same was correspondingly granted by this Court in the Resolution dated February 7, 2008, for the purpose of preserving the status quo during the pendency of this appeal, and in order not to render ineffective and nugatory the judgment that will be rendered in this case, pursuant to R.A. No. 9282, in relation to Rule 10 of the Revised Rules of the Court of Tax Appeals, subject to the filing of an acceptable surety bond in an amount double the disputed amount or value. On February 22, 2008, petitioner filed the required surety bond and the same was approved in the Resolution dated February 29, 2008."[4] *(Citations omitted)*

The Ruling of the Court in Division

The following issues were submitted by the parties for resolution by the Court in Division:

"(A) Whether or not the gross receipts from admission to petitioner's[5] cinemas are subject to the 10% value-added tax?

(B) Whether or not the gross receipts, or a portion thereof, by cinema/theater proprietors are subject to VAT considering the following:

1. Whether or not there is a provision in the Local Government Code of 1991 (R.A. No. 7160) that expressly excludes the National Government from imposing VAT on the gross receipts of cinema/theater operators or proprietors?

2. Whether or not there is a current, existing provision of law in this jurisdiction which exempts the business, or a portion of the business, of operators or proprietors of cinemas/theater houses from the coverage of VAT?

(C) Whether or not the assessment for deficiency VAT on petitioner's income from cinema operations for the taxable year 2003 in the amount of P103,346,691.40 is valid and accurate?"[6]

In resolving the issues, the Court in Division made a run-through of all the tax laws enacted in the Philippines involving operators of theaters and cinematographs. According to the Court in Division, operators of theaters were formerly subjected to amusement tax under Section 260 of Commonwealth Act

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[4] *Rollo*, pp. 37 - 40.
[5] Herein Respondent.
[6] *Rollo*, pp. 40 - 41.

No. ("CA") 466, the first codification of the National Internal Revenue Code ("NIRC") of 1939. However, the National Government's right to subject operators of theaters to amusement tax was removed with the passage of Presidential Decree No. ("PD") 231, otherwise known as the Local Tax Code. The power to tax operators of theaters and cinematographs was thereafter transferred exclusively to the Local Government. As a result, the revisions made on the NIRC, particularly PD 1158, otherwise known as the NIRC of 1977, no longer imposed "amusement tax" on the "proprietor, lessee, or operator of theaters of cinematographs" which was previously provided under CA 466. On the other hand, the subsequent repeal of the Local Tax Code by Republic Act No. ("RA") 7160, otherwise known as the Local Government Code, retained the provision on amusement tax.

Although the phrase "to the exclusion of both the national or municipal government" is no longer found in RA 7160, the Court in Division did not take this to mean that the National Government is now empowered or authorized to levy and collect tax on the gross receipts from admission fees collected by the operators/proprietors of theaters, cinemas and other amusement places, without Congress enacting a statute enabling the National Government to do so. It said that when the legislature enacts a provision, it is understood that it is aware of previous statutes relating to the same subject matter and that in the absence of any express repeal or amendment therein, the new provision should be deemed enacted pursuant to the legislative policy embodied in the prior statutes. In support of this view, the Court in Division pointed out the fact that Section 125 of the NIRC of 1997 only imposes amusement tax on proprietors, lessees or operators of cockpits, cabarets, night or day clubs, boxing exhibitions, professional basketball games, *jai-alai*, and racetracks; and not on proprietors and operators of theaters and cinemas. The Court in Division saw this as an indication of the legislature's intention to impose only one form of tax on proprietors/operators of theaters or cinemas, and that is, the amusement tax as found in RA 7160.

To the mind of the Court in Division, this interpretation holds true even after the passage of Executive Order No. ("EO") 273, otherwise known as "Adopting A Value-Added Tax, Amending For This Purpose Certain Provisions Of The National Internal Revenue Code And For Other Purposes," and its subsequent amendments (RA Nos. 7716, 8241, 8424 and 9238). The Court in Division explained that:

> "While the meaning of the phrase ***'sales or exchange of services'*** remains unchanged and may appear all-encompassing, the intention of the legislature to subject specific sales of services to VAT is clear. Had Congress intended the phrase to comprehend all kinds of sales of services, it would not have included more types or kinds of sales of services to be subject to VAT in every amendment of the VAT laws. Moreover, the showing of films by operators of cinematographs and theaters is a widely known service too significant to be omitted in the enumeration if the lawmaking body indeed intended to include the same as being subject to VAT.
>
> The same remains true notwithstanding that the phrase ***'sale or exchange of services'*** is qualified at the end of the enumeration with the phrase ***'and other similar services.'*** Under the principle of *ejusdem generis*, where general words follow an enumeration of persons or things by words of a particular and specific meaning, such general words are not to be construed in their widest extent, but are to be held as applying only to persons or things of the same kind or class as those specifically mentioned. Its purpose is to give effect to both the particular and general words, by treating the particular words as indicating the class and the general words as including all that is embraced in said class, although not

specifically named by the particular words. Had the lawmaking body intended the general terms to be used in their unrestricted sense, it would have not made an enumeration of particular subjects but would have used only general terms.

Moreover, the exclusion of petitioner's cinema/theater operation from payment of value-added tax under Section 108 of the Tax Code finds affirmation in the House of Representatives' House Resolution No. 975, submitted by the Committee on Rules on October 11, 2005, recommending its approval by the House of Representatives as House Joint Resolution No. 13, which reads:

> "WHEREAS, it is imperative for the State to promote and support the development and growth of the theater and local film industry as a medium for the dissemination of aesthetic, cultural and social values for the better understanding and appreciation of the Filipino identity;
>
> WHEREAS, theaters and/or movie houses are the primary media through which the output or artistic creation of the local film industry is exhibited;
>
> WHEREAS, the viability of the cinema/theater industry is now under threat due to continuous operational losses brought about by low patronage and high taxation regime;
>
> WHEREAS, both theater owners and local movie producers are greatly prejudiced by cheaper home movie alternatives like television and cable programs, as well as by rampant film piracy which turns out inexpensive and untaxed films in VCD or DVD formats and severely undercut the cost of movie tickets;
>
> WHEREAS, the industry is now suffering from the wrong collection of two business taxes, each imposed by the national government and local government units on ticket sales;
>
> WHEREAS, when the collection of the amusement tax on admission to theaters was transferred by the old Local Tax Code of 1973 from the national government to the local government, the industry has been subject to the top rate of thirty percent (30%) amusement tax imposed by the local government units to the exclusion of the national government until the Bureau of Internal Revenue erroneously appreciated the Local Government Code of 1991 and imposed a business tax of ten percent (10%) on the same gross receipts by way of the value-added tax (VAT).
>
> WHEREAS, such erroneous interpretation of the law will result to the imposition of a total top rate of forty percent (40%) business taxes (30% local and 10% national) on gross receipts which, under the circumstances, is unjust, oppressive and confiscatory;

> WHEREAS, the foregoing tax imposition, which is consistent with the State's policy to have a viable, sustainable and competitive theater and film industry, will surely lead to the demise of the industry. Now, therefore, be it;
>
> *Resolved, as it is hereby resolved by the House of Representatives,* **That it is the sense of Congress that there should only be one business tax applicable to theaters and movie houses, same being the top rate of thirty percent (30%) amusement tax imposed by cities and provinces under the Local Government Code of 1991, and that consistent with the State's policy to have a viable, sustainable and competitive theater and film industry, it is the intent of Congress under prevailing laws, that the national government be precluded from imposing its own business tax in addition to that already imposed and collected by local government units.'"**[7]

Simply put, the Court in Division found that the gross receipts derived from cinema or theater ticket sales are not subject to VAT. Accordingly, the Court in Division disposed of the case in this wise:

> "**WHEREFORE,** the instant Petition for Review is hereby **GRANTED** and the assessment against petitioner for deficiency VAT in the amount of P103,346,691.40 for calendar year 2003 is hereby **CANCELLED** and **SET ASIDE.**
>
> Accordingly, the Surety Bond posted by petitioner for the suspension of collection of taxes is likewise ordered cancelled.
>
> **SO ORDERED.**"[8]

On May 2, 2008, herein petitioner filed a "Motion for Reconsideration"[9] which was denied by the Court in Division in its Resolution dated July 3, 2008[10] for lack of merit.

The Issue

Hence, the instant Petition where the petitioner interposes the following assigned errors:

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[7] *Rollo*, pp. 54 - 56.
[8] *Id.*, pp. 56 - 57.
[9] *Records*, C.T.A. Case No. 7261, pp. 371 - 389.
[10] *Rollo*, pp. 59 - 63.

"THE ASSESSMENT ISSUED BY PETITIONER IS VALID IN ALL RESPECTS AND WAS ERRONEOUSLY CANCELLED BY THE SECOND DIVISION OF THE HONORABLE CTA.

THE SECOND DIVISION OF THE HONORABLE CTA ERRONEOUSLY UTILIZED LEGISLATIVE HISTORY, RULES OF STATUTORY CONSTRUCTION AND A PROPOSED HOUSE RESOLUTION TO INTEPRET A CLEAR PROVISION OF LAW."[11]

Based on the following errors, the crux of the controversy boils down to whether or not the operation of theaters and cinematographs is subject to VAT.

The Ruling of the Court En Banc

The Petition for Review is bereft of merit.

The tax provision in dispute reads:

"SEC. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.* –

(A) Rate and Base of Tax. – There shall be levied, assessed and collected, a value-added tax equivalent to ten percent (10%) of gross receipts derived from the sale or exchange of services, including the use or lease of properties.

The phrase 'sale or exchange of services' means the performance of all kinds of services in the Philippines for others for a fee, remuneration or consideration, including those performed or rendered by construction and service contractors; stock, real estate, commercial, customs and immigration brokers; lessors of property, whether personal or real; warehousing services; lessors or distributors of cinematographic films; persons engaged in milling, processing, manufacturing or repacking goods for others; proprietors, operators or keepers of hotels, motels, rest houses, pension houses, inns, resorts; proprietors or operators of restaurants, refreshment parlors, cafes and other eating places, including clubs and caterers; dealers in securities; lending investors; transportation contractors on their transport of goods or cargoes, including persons who transport goods or cargoes for hire and other domestic common carriers by land, air and water relative to their transport of goods or cargoes; services of franchise grantees of telephone and telegraph, radio and television broadcasting and all other franchise grantees except those under Section 119 of this Code; services of banks, non-bank financial intermediaries and finance companies; and non-life insurance companies (except their crop insurances), including surety,

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[11] *Rollo*, p. 9.

> fidelity, indemnity and bonding companies; and similar services regardless of whether or not the performance thereof calls for the exercise or use of the physical or mental faculties. The phrase 'sale or exchange of services' shall likewise include:
>
> (1) The lease or the use of or the right or privilege to use any copyright, patent, design or model, plan, secret formula or process, goodwill, trademark, trade brand or other like property or right;
>
> (2) The lease or the use of, or the right to use of any industrial, commercial or scientific equipment;
>
> (3) The supply of scientific, technical, industrial or commercial knowledge or information;
>
> (4) The supply of any assistance that is ancillary and subsidiary to and is furnished as a means of enabling the application or enjoyment of any such property, or right as is mentioned in subparagraph (2) or any such knowledge or information as is mentioned in subparagraph (3);
>
> (5) The supply of services by a nonresident person or his employee in connection with the use of property or rights belonging to, or the installation or operation of any brand, machinery or other apparatus purchased from such nonresident person;
>
> (6) The supply of technical advice, assistance or services rendered in connection with technical management or administration of any scientific, industrial or commercial undertaking, venture, project or scheme;
>
> (7) The lease of motion picture films, films, tapes and discs; and
>
> (8) The lease or the use of or the right to use radio, television, satellite transmission and cable television time.
>
> xxx xxx xxx"

Petitioner's view is that Section 108 of the NIRC of 1997 does not categorically define what constitutes "service," which may be "sold or exchanged" in the course of business. Rather, the phrase "sale or exchange of service" is a catch-all phrase which embraces the performance of all kinds of services rendered in the Philippines by a person for others for a fee, remuneration, or consideration, regardless of whether the performance thereof calls for the exercise or use of the physical or mental faculties, including but not limited to, several items of services as enumerated and similar services. Therefore, even in the absence of a specific mention in the provision, the operation of theaters and cinematographs rendered in the Philippines by a person for others for a fee, remuneration, or consideration, which is not expressly exempt from VAT under the NIRC of 1997 or any special law, is a sale of service contemplated under Section 108 of the NIRC of 1997.

We do not agree with petitioner.

The issue presented before Us is not novel.

In the case of *Commissioner of Internal Revenue v. SM Prime Holdings, Inc. and First Asia Realty Development Corporation*,[12] We declared that the activity of showing motion pictures, films or movies by the proprietors, lessees, or operators of theaters or cinemas is not a "sale or exchange of service" subject to VAT, as it is not among the enumerated activities contemplated in the phrase "sale or exchange of services" found in Section 108 of the NIRC of 1997. Although the said provision makes use of the phrase "all kinds of services" to define what "sale or exchange of services" is subject to VAT, it actually sets forth an exhaustive enumeration of what services are intended to be subject to VAT. The only provision relating to films or motion pictures in the said section is the lease of motion picture films, films, tapes and discs, which is different and distinct from the act of showing or exhibiting movies, motion pictures or films.

[12] C.T.A. EB Case No. 244 (C.T.A. Case Nos. 7079, 7085, 7111 & 7272), April 30, 2008.

"Exhibition" in Black's Law Dictionary is defined as "to show or display xxx to produce anything in public so that it may be taken into possession." While the word "lease" is defined as "a contract by which one owning such property grants to another the right to possess, use and enjoy it on specified period of time in exchange for periodic payment of a stipulated price, referred to as rent." Without a doubt, the law in specifically providing the lease of motion picture films, films, tapes and discs as a "sale or exchange of service" subject to VAT, did not intend to include the showing of motion picture/films by cinema and theaters operators or proprietors. It is well to note that film showing is a widely known activity too significant to be omitted in the enumeration, if it was intended to be subject to VAT. In fact, in Our jurisdiction, the tax laws, past and present, did not include the showing of films in public by the owners, operators or proprietors of cinematographs or theaters as "sale or exchange of services" subject to VAT.

We further ruled in the case of *SM Prime Holdings* that such interpretation holds true notwithstanding the fact that the phrase "sale or exchange of services" is qualified at the end of the enumeration with the phrase "and other similar services." Under the principle of *ejusdem generis*, where general words follow an enumeration of persons or things, by words of a particular and specific meaning, such general words are not to be construed in their widest extent, but are to be held as applying only to persons or things of the same kind or class as those specifically mentioned.[13] Its purpose is to give effect to both the particular and general words, by treating the particular words as indicating the class and the

[13] Philippine Basketball Association v. Court of Appeals, G.R. No. 119122, August 8, 2000, 337 SCRA 358.

general words as including all that is embraced in said class, although not specifically named by the particular words. This is justified on the ground that if the lawmaking body intended the general terms to be used in their unrestricted sense, it would have not made an enumeration of particular subjects but would have used only general terms.

It is a hornbook doctrine in the interpretation of tax laws that: "A statute will not be construed as imposing a tax unless it does so clearly, expressly, and unambiguously xxx. A tax cannot be imposed without clear and express words for that purpose. Accordingly, the general rule of requiring adherence to the letter in construing statutes applies with peculiar strictness to tax laws and the provisions of a taxing act are not to be extended by implication."[14] A tax is never presumed and there must be clear language in the law imposing the tax. Any doubt whether a person, article or activity is taxable is resolved against taxation.[15] Thus, in answering the question of who is subject to tax statutes, the rule is that in case of doubt, tax statutes are to be construed strictly against the government and liberally in favor of the taxpayer, for taxes being burdens, are not to be presumed beyond what the applicable statute expressly and clearly declares.[16] The reason underlying the rule of strict construction of statutes imposing taxes or customs duties is that taxation is a destructive power which interferes with the personal and property rights of the people and takes from them a portion of their property for the support of the government.[17]

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[14] Commissioner of Internal Revenue v. Court of Appeals, G.R. No. 115349, April 18, 1997, 271 SCRA 605.
[15] Philippine Fisheries Development Authority v. Court of Appeals, G.R. No. 169836, July 31, 2007, 528 SCRA 707.
[16] Republic of the Philippines v. Intermediate Appellate Court, G.R. No. 69344, April 26, 1991, 196 SCRA 335.
[17] Agpalo, Ruben E., Statutory *Construction*, 3rd Edition (1995), p. 235.

In view of the foregoing disquisition, the contention of petitioner that respondent has the burden to prove its exemption from the imposition of VAT no longer has any leg to stand on. The principles of tax exemption may not be applied without first applying the well-settled doctrine of strict interpretation in the imposition of taxes. It is obviously both illogical and impractical to determine who are exempted without first determining who are covered by the provision.[18] The rule that tax exemptions should be construed strictly against the taxpayer presupposes that the taxpayer is clearly subject to the tax being levied against him. Unless a statute imposes a tax clearly, expressly, and unambiguously, what applies is the equally well-settled rule that the imposition of a tax cannot be presumed.[19] For this reason, petitioner must first prove that respondent is indeed covered by Section 108 of the NIRC of 1997 before he can impose upon it the burden of proving its exemption from the imposition of VAT. This petitioner failed to do. What is clear, instead, is that respondent is not subject to VAT, and consequently, has no burden to prove its exemption from it.

Neither do We find any error on the part of the Court in Division in applying the doctrine of *ejusdem generis*, nor in utilizing legislative history, rules of statutory construction, and a proposed House Resolution to interpret a clear provision of law. It is a basic precept in statutory construction that the intent of the legislature is the controlling factor in the interpretation of a statute. [20] And in case of doubt as to what a provision of a statute means, the meaning put to the

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[18] Commissioner of Internal Revenue v. Court of Appeals, *supra* at note 14.
[19] Commissioner of Internal Revenue v. Philippine American Accident Insurance Company, Inc., et. al., G.R. No. 141658, March 18, 2005, 453 SCRA 668.
[20] Commission on Audit of the Province of Cebu v. Province of Cebu, G.R. No. 141386, November 29, 2001, 371 SCRA 196.

provision during the legislative deliberations may be adopted.[21] It bears stressing that statutes should receive a sensible construction, such as will give effect to the legislative intention, and so as to avoid an unjust or an absurd conclusion.[22]

As We see it then, the activity of showing motion pictures, films or movies by the proprietors, lessees, or operators of theaters or cinemas is not a "sale or exchange of service" subject to VAT, but is an "amusement activity" subject to amusement tax under Section 140 of the RA 7160, to wit:

> "SEC. 140. Amusement Tax. — (a) The province may levy an amusement tax to be collected from the proprietors, lessees, or operators of theaters, cinemas, concert halls, circuses, boxing stadia, and other places of amusement at a rate of not more than thirty percent (30%) of the gross receipts from admission fees.
>
> (b) In the case of theaters or cinemas, the tax shall first be deducted and withheld by their proprietors, lessees, or operators and paid to the provincial treasurer before the gross receipts are divided between said proprietors, lessees, or operators and the distributors of the cinematographic films.
>
> (c) The holding of operas, concerts, dramas, recitals, painting and art exhibitions, flower shows, musical programs, literary and oratorical presentations, except pop, rock, or similar concerts shall be exempt from the payment of the tax hereon imposed.
>
> (d) The sangguniang panlalawigan may prescribe the time, manner, terms and conditions for the payment of tax. In case of fraud or failure to pay the tax, the sangguniang panlalawigan may impose such surcharges, interest and penalties as it may deem appropriate.
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> (e) The proceeds from the amusement tax shall be shared equally by the province and the municipality where such amusement places are located."

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[21] National Police Commission (NAPOLCOM) v. De Guzman, Jr., G.R. No. 106724, February 9, 1994, 229 SCRA 801.
[22] Commissioner of Internal Revenue v. TMX Sales, Inc., G.R. No. 83736, January 15, 1992, 205 SCRA 184, *citing People v. Rivera, 59 Phil. 236 (1933).*

In arriving at this conclusion, We explained in the case of *SM Prime Holdings* that:

> "It must be emphasized that motion picture/film/movie exhibition or showing is an amusement activity subject to amusement tax. Under RA 7160, otherwise known as ('An Act Providing for A Local Government Code of 1991'), 'Amusement' is defined as a 'pleasurable diversion and entertainment. It is synonymous to relaxation, avocation, pastime, or fun' (Section 131 (b), RA 7160). While, 'Amusement Places' 'include theaters, cinemas, concert halls, circuses and other places of amusement where one seeks admission to entertain oneself by seeing or viewing the show or performances' (Section 131 (c), RA 7160).
>
> Specifically, Section 140 of the RA 7160 imposes amusement tax to proprietors, lessees, or operators of theaters and cinemas, to wit:
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> xxx xxx xxx
>
> Pursuant to the foregoing provisions of RA 7160, it is clear that the activity of showing motion pictures, films or movies by the proprietors, lessees, or operators of theaters or cinemas is considered an 'amusement activity' subject to amusement tax. It is not considered a 'sale or exchange of service' subject to VAT.

All told, We find no convincing reason to depart from Our previous ruling. Then and now, the same tax principle applies: "No person or property is subject to taxation unless they fall within the terms or plain import of a taxing statute."[23]

WHEREFORE, the instant Petition for Review is hereby **DISMISSED.** Accordingly, the Decision dated April 11, 2008 and the Resolution dated July 3, 2008 are hereby **AFFIRMED.**

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

[23] Commissioner of Internal Revenue v. Court of Appeals, G.R. No. 86785, November 21, 1991, 204 SCRA 182.

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of this Court.

ERNESTO D. ACOSTA
Presiding Justice