REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SAN FERNANDO ELECTRIC LIGHT
AND POWER CO., INC.,
Petitioner,

- versus - C.T.A. CASE NO. 1300

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

7/15

D E C I S I O N

As the question and point of law involved in this case are the same as those resolved by this Court in Lingayen Gulf Electric Power Co., Inc. vs. Melecio R. Domingo, as Commissioner of Internal Revenue, CTA Cases Nos. 581 and 1302, September 15, 1964, which decision was appealed by respondent Commissioner of Internal Revenue to the Supreme Court, the hearing of this case, upon motion of the parties, was deferred by this Court in its order of October 19, 1964 to await the decision of the Supreme Court in said appeal. Nevertheless, on

August 5, 198? the above-entitled case was set for hearing for the parties to manifest as to whether or not they are still interested in prosecuting this appeal or in a decision thereof as supervening events might have transpired which may render the case moot and academic or otherwise substantially affect the same. During the hearing, however, the parties submitted this case for decision on the basis of the pleadings and the records of the case after petitioner has presented and the Court has admitted its exhibits.

As alleged in the petition for review and admitted in the answer, the antecedent facts of this case are:

1. That petitioner is a domestic corporation organized and existing under and by virtue of the laws of the Philippines, doing business and with principal offices located in San Fernando, Pampanga.

2. That petitioner is the grantee of a municipal franchise for an electric light, heat and power system in the municipality of San Fernando, province of Pampanga, granted by the Council of said municipality sometime in 1927, in pursuance to

the provisions of Act No. 667 as amended by Act No. 1022, and subject to Act No. 2307 as amended by Act No. 2694 and Act No. 3108; Sec. 10 of which municipal franchise provides for the payment by the grantee, petitioner herein, of a privilege tax of 1% of its gross receipts, payable quarterly, for the first 20 years, and 2% for the next 15 years, with no other provision therein providing for further increase of said franchise tax beyond 2%.

3. That shortly after the effectivity of Rep. Act No. 418 sometime in 1949, increasing the franchise tax to 5% of the gross annual receipts, upon demand from respondent, petitioner paid an additional franchise tax of 5% up to and until 1952.

4. That the next year petitioner demanded from the respondent, the return of the overpayment in excess of the 2% franchise tax, amounting to P36,526.73, and the said respondent after finding that petitioner under its franchise is only liable for 2% franchise tax, made a refund sometime in 1954, of the amount claimed by petitioner.

5. That thereafter petitioner continued to pay on time, its franchise tax of 2%, which

payments were all accepted without question by the respondent until 1961, when respondent changed his opinion with regards to the rate of franchise tax payable by petitioner, not only from then, but even retroactively from 1950, and accordingly, issued against petitioner an assessment for alleged deficiency franchise tax which with the surcharge for late payment of 25%, amounted to a total of P131,987.56, for the 10-year period.

6. That said alleged deficiency assessment was received by petitioner on March 11, 1961, and on March 25, 1961, petitioner wrote the respondent requesting that, for the reasons stated in said letter, said assessment be reconsidered and withdrawn.

7. That after over a year and a half later, the respondent by a letter dated Oct. 10, 1962, and which letter was received by petitioner on Nov. 8, 1962, admitted petitioner's allegation of prescription under Sec. 331 of the then applicable Tax Code, but re-asserted his claim for supposed deficiency franchise tax for the years 1956 to 1961, instead of from 1950 to 1960, which alleged

deficiency together with the surcharge of 25% for late payment, amounted to a total of P82,755.14.

Hence this petition for review filed on November 26, 1962 praying that the deficiency franchise tax assessment as contained in respondent's letter to petitioner dated October 10, 1962 be cancelled and withdrawn.

Basically, the lone question tendered for resolution is whether petitioner is subject to a franchise tax of 2% as prescribed in its municipal franchise, instead of the 5% franchise tax prescribed by Section 259 of the then applicable National Internal Revenue Code.

Respondent contends that petitioner has become liable for the 5% franchise tax since October 1, 1946, the date of effectivity of Republic Act No. 39, amending Section 259 of the then applicable National Internal Revenue Code, for said franchise is subject to amendment, alteration or repeal by the Congress of the Philippines, and petitioner's municipal franchise does not preclude the imposition of a higher rate of franchise tax.

The records of the case show that after the petition for review was filed:

1. The last legislative franchise of petitioner is Republic Act No. 3660 dated June 22, 1963, to wit:

[REPUBLIC ACT NO. 3660]

AN ACT TO AMEND REPUBLIC ACT NUMBERED THIRTY-TWO HUNDRED SEVEN, ENTITLED "AN ACT GRANTING THE SAN FERNANDO ELECTRIC LIGHT AND POWER CO., INC., A FRANCHISE FOR AN ELECTRIC LIGHT, HEAT AND POWER SYSTEM IN THE MUNICIPALITY OF SAN FERNANDO, PROVINCE OF PAMPANGA."

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Republic Act Numbered Thirty-two hundred seven is hereby amended by inserting between sections two and three thereof the following new section:

"SEC. 2-A. In consideration of the franchise and rights hereby granted, the grantee shall pay into the Treasury of the Philippines a franchise tax equal to two per centum of the gross earnings for electric current sold under this franchise. Provision of laws to the contrary notwithstanding, the franchise tax equal to two per centum of the gross earnings of the grantee shall be respected. <u>Effective upon the date the original franchise was granted, no other tax upon its capital stock, franchise, right of way, earnings and all other property owned or operated by the grantee under this concession or franchise shall be levied or assessed on the herein grantee except the franchise tax of two per centum of the gross earnings mentioned in the said original franchise.</u>" (Emphasis supplied.)

SEC. 2. This Act shall take effect upon its approval.

Approved, June 22, 1963.

2. On August 4, 1963, petitioner wrote respondent Commissioner of Internal Revenue a letter reiterating its request for the withdrawal and cancellation of his assessment demand for deficiency franchise tax because petitioner's new franchise, Republic Act No. 3660, supra, which imposes 2% franchise tax on its gross receipts, took effect upon the date the original franchise was granted.

3. To which letter respondent wrote back to petitioner on January 2, 1964 countermanding and cancelling the additional assessment of P42,257.45, alleged deficiency franchise tax of petitioner for the period from January 1, 1961 to December 1962, due to the fact that under petitioner's franchise Republic Act No. 3660, petitioner is subject only to 2% franchise tax. To quote: (Exh. C, p. 40, CTA record.)

"Referring to your letter dated August 4, 1963, concerning the deficiency franchise tax liability of the San Fernando Electric Light & Power Co., Inc., that municipality, for the period from

> January 1, 1961 to December 31, 1962 in the aggregate amount of P42,257.45, please be informed that upon further study of the relevant facts of the case and the law involved, as well as the arguments you have presented, this Office agrees with your opinion that the electric company is subject to the 2% franchise tax rate only, pursuant to Section 2-A of its franchise, Republic Act No. 3660, which amended Republic Act No. 3207. This is also in line with our previous ruling on the franchise tax case of the Marikina Electric Light, Inc., holding that the same is subject to the rate of tax provided for in its franchise. Accordingly, our letter to the Company calling for the payment of the amount of P42,457.45 is hereby countermanded and the assessment issued therefor withdrawn and cancelled.

4. By letter dated October 7, 1964, received October 8, 1964 by respondent's office, petitioner again wrote respondent Commissioner of Internal Revenue calling attention to the fact that respondent in his letter of January 2, 1964 had already conceded that petitioner is subject to the 2% franchise t x only pursuant to Section 2-A of Republic Act No. 3660 and accordingly withdrew and cancelled his assessment for the amount of P42,457.45 representing deficiency franchise tax for the period from January 1, 1961 to December 31, 1962. In view thereof, respondent should also

withdraw and cancel his deficiency franchise tax assessment in the amount of P82,755.14 for the period from January 1, 1956 to December 31, 1960, which is the subject matter of the present petition for review.

5. Since the abovesaid letter dated October 7, 1964, nothing has been heard by petitioner from respondent, although respondent has been collecting from petitioner a franchise tax of 2% without any question.

Petitioner contends that in view of Section 2-A, quoted above, it is subject to the 2% franchise tax.

We agree.

Section 2-A of petitioner's franchise, Republic Act No. 3660, quoted above, which amended Republic Act No. 3207, is very specific and mandatory. It merely calls for application as thus worded: "Provision of laws to the contrary notwithstanding, the franchise tax equal to two per centum of the gross earnings of the grantee shall be respected. Effective upon the date the original franchise was granted, no other tax upon its capital stock, franchise, right of way, earnings and all other property owned or operated by the grantee under this concession or franchise shall be levied or assessed on the herein grantee except the franchise tax of two per centum of the gross earnings mentioned in the said original franchise." There is no room for interpretation. It is well-settled that a statute, free from any constitutional infirmity, must be enforced as written.

Republic Act No. 3660 which imposes 2% franchise tax on the gross earnings of petitioner expressly and clearly provides that it shall take effect upon the date the original franchise was granted, provision of laws to the contrary notwithstanding. As a rule, revenue laws are prospective in operation, unless, as in this case, the legislative intent that the statute operate retrospectively is intently expressed or necessarily implied. (51 Am. Jur. 359; Lorenzo vs. Posadas, 64 Phil. 353; Commissioner of Internal Revenue vs. Filipinas Cia de Seguros, 107 Phil. 1055.) It can be said therefore that the amendatory legislation has the effect of precluding the imposition of a higher tax as provided in

Section 259, as amended by Republic Act No. 39, of the then applicable National Internal Revenue Code.

Accordingly, the assessment of respondent Commissioner of Internal Revenue assessing and demanding from petitioner San Fernando Electric Light and Power Co., Inc., the payment of the total amount of P82,755.14 representing deficiency franchise tax and 25% surcharge for the period from January 1, 1956 to December 31, 1960 is cancelled and countermanded.

WHEREFORE, the decision appealed from is hereby reversed without pronouncement as to costs.

SO ORDERED.

Quezon City, Metro Manila, July 15, 1988.

Amante Filler

AMANTE FILLER
Presiding Judge

WE CONCUR:

(on official leave)
CONSTANTE C. ROAQUIN
Associate Judge

ALEX Z. REYES
Associate Judge

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

I hereby certify that this decision was reached after due consultation among the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

AMANTE FILLER
Presiding Judge
Court of Tax Appeals