# REPUBLIC OF THE PHILIPPINES
*Court of Tax Appeals*
QUEZON CITY

## SECOND DIVISION

**NATIONAL TRANSMISSION CORPORATION,**
Petitioner,

vs.

**PROVINCE OF DAVAO DEL NORTE, REPRESENTED BY ITS PROVINCIAL TREASURER MS. REGINA RICAFORT AND PROVINCE OF COMPOSTELA VALLEY, REPRESENTED BY ITS PROVINCIAL TREASURER MS. CARMEN RAZUL,**
Respondents.

**CTA AC NO. 298**

*Present:*

**RINGPIS-LIBAN**, *Chairperson*,
**MODESTO-SAN PEDRO**, and
**FERRER-FLORES**, JJ.

Promulgated:

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## DECISION

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

Before this Court is a **Petition for Review** filed via registered mail by petitioner **National Transmission Corporation (petitioner/TransCo)** on July 20, 2023,[1] assailing the Decision dated January 18, 2023 (assailed Decision),[2] and the Order dated May 12, 2023 (assailed Order),[3] both rendered by the Regional Trial Court of Tagum City, Davao del Norte (RTC/court *a quo*) – Branch 1, in Civil Case No. 4135, entitled "*National Transmission Corporation (TransCo), Appellant, versus Province of Davao del Norte, rep. by its Provincial Treasurer, Ms. Regina C. Ricafort, Appellee, versus Province of Compostela Valley rep. by its Provincial Treasurer, Ms. Carmen Razul, Third-party Defendant*", the dispositive portions of which respectively read as follows:

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[1] Docket, pp. 16 to 41.
[2] Docket, pp. 43 to 53; and RTC Docket (Civil Case No. 4135), pp. 389 to 399.
[3] Docket, pp. 68 to 70; and RTC Docket (Civil Case No. 4135), pp. 416 to 418.

*Assailed Decision*

> **WHEREFORE**, judgment is hereby rendered against the appellant TRANSCO and in favor of appellee Province of Davao de Norte. TRANSCO is hereby **ORDERED TO PAY** franchise taxes for the years 2003 – 2008 in the total amount of P 408,620,30 with interest at the legal rate of six percent (6%) per annum from the date of finality of judgment until fully paid.
>
> The claim of appellee Province of Davao del Norte against third-party defendant Compostela Valley (now, Davao de Oro) is **DISMISSED** for lack of merit.
>
> **SO ORDERED.**

*Assailed Order*

> **WHEREFORE**, premises considered, the Motion for Reconsideration is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**

## THE PARTIES

Petitioner TransCo is a government instrumentality created pursuant to Republic Act (R.A.) No. 9136, otherwise known as the *Electric Power Industry Reform Act of 2001* (EPIRA), with principal office at BIR Road cor. Quezon Avenue, Diliman, Quezon City.[4]

Respondent **Province of Davao del Norte** is a local government unit (LGU) duly created and organized under the laws of the Philippines, with capacity to sue and be sued. It is represented herein by Ms. Regina C. Ricafort, the Provincial Treasurer, with office address at the Office of the Provincial Treasurer, Tagum City, Davao del Norte.[5]

Respondent **Province of Compostela Valley** is also an LGU, represented by its Provincial Treasurer, Ms. Carmen Razul, with official

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[4] Par. 6, The Parties, petitioner's *Appeal/Complaint*, RTC Docket (Civil Case No. 4135), p. 3, vis-à-vis par. 4, respondent Province of Davao del Norte's *Answer (to Appeal/Complaint) with Third Party Complaint*, RTC Docket (Civil Case No. 4135), p. 31.

[5] Par. 7, The Parties, petitioner's *Appeal/Complaint*, RTC Docket (Civil Case No. 4135), p. 3, vis-à-vis par. 4, respondent Province of Davao del Norte's *Answer (to Appeal/Complaint) with Third Party Complaint*, RTC Docket (Civil Case No. 4135), p. 31.

address at Capitol Building, Cabadianan, Nabunturan, Compostela Valley Province.[6]

## ANTECEDENTS (ADMINISTRATIVE LEVEL)

On December 1, 2009, petitioner received from the Provincial Treasurer of respondent Province of Davao del Norte the Assessment Notice dated November 16, 2009, informing the former of its franchise tax liabilities for the years 2003 to 2008 in the aggregate amount of ₱408,620.30. The assessed amount was based on the gross receipts derived by Davao del Norte Electric Cooperative, Inc. (DANECO) from M-II Asuncion for the said period.[7]

Thereafter, on January 25, 2010, petitioner filed its protest on the said assessment through the letter dated January 22, 2010.[8]

## THE PROCEEDINGS BEFORE THE RTC

There being no response issued by respondent Province of Davao del Norte,[9] petitioner filed an *Appeal/Complaint* before the Court *a quo* on April 22, 2010.[10] The case was docketed as Civil Case No. 4135, and was raffled to RTC – Branch 1.

On June 11, 2010, respondent Province of Davao del Norte filed its *Answer (To Appeal/Complaint) with Third Party Complaint*,[11] interposing certain special and affirmative defenses, stating that petitioner is doing business in the operation of the transmission and subtransmission systems traversing Davao del Norte area, particularly going to Asuncion Substation, Asuncion, Davao del Norte, and, thus, its income from this activity should be the one subject to local franchise tax, covering the years 2003 to 2008; that its power to impose franchise tax against petitioner is based on Section 137 of the Local Government Code (LGC) of 1991, as amended; and, that the

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6 Under the heading "Third Party Complaint", respondent Province of Davao del Norte's *Answer (to Appeal/Complaint) with Third Party Complaint*, RTC Docket (Civil Case No. 4135), p. 38.

7 Par. 2, petitioner's *Appeal/Complaint*, RTC Docket (Civil Case No. 4135), p. 2, vis-à-vis par. 2, respondent Province of Davao del Norte's *Answer (to Appeal/Complaint) with Third Party Complaint*, RTC Docket (Civil Case No. 4135), p. 30.

8 Par. 3, petitioner's *Appeal/Complaint*, RTC Docket (Civil Case No. 4135), p. 2, vis-à-vis par. 3, respondent Province of Davao del Norte's *Answer (to Appeal/Complaint) with Third Party Complaint*, RTC Docket (Civil Case No. 4135), p. 31.

9 Par. 4, petitioner's *Appeal/Complaint*, RTC Docket (Civil Case No. 4135), p. 2, vis-à-vis par. 3, respondent Province of Davao del Norte's *Answer (to Appeal/Complaint) with Third Party Complaint*, RTC Docket (Civil Case No. 4135), p. 31.

10 RTC Docket (Civil Case No. 4135), pp. 1 to 9.

11 RTC Docket (Civil Case No. 4135), pp. 30 to 42.

bringing of third-party defendant, respondent Province of Compostela Valley, is proper in order to settle, once and for all, the issues, it appearing that there was already a payment made by petitioner to respondent Province of Compostela Valley, which includes the franchise tax allegedly in favor of respondent Province of Davao del Norte.

On September 13, 2010, respondent Province of Compostela Valley filed its *Manifestation* with attached *Answer to the Third Party Complaint with Special Affirmative Defenses*,[12] stating that: (1) respondent Province of Davao del Norte (as third-party plaintiff) has no cause of action against respondent Province of Compostela Valley; and, (2) the third-party complaint is not in accord with the rules. Respondent Province of Davao del Norte filed its *Reply* on September 24, 2010.[13]

Thereafter, the Pre-Trial Conference initially set on April 28, 2011[14] was reset and held on October 19, 2011.[15] Prior thereto, the *Pre-Trial Brief (For the Appellee-Third Party Plaintiff Province of Davao del Norte)* was filed on February 14, 2011;[16] while petitioner's *Pre-Trial Brief* was submitted on April 11, 2011.[17]

As per the *Mediator's Report* filed on July 26, 2011,[18] there was an unsuccessful mediation.

The Judicial Dispute Resolution (JDR) was held on April 4, 2014.[19] Subsequently, the Order and Amended Order, both dated April 4, 2014[20] was issued.

Considering that the parties failed to arrive at an agreement despite the considerable length of time given, the JDR was terminated, and the parties were ordered to submit within 30 days their respective memorandum.[21]

Petitioner filed its *Memorandum (for the Appellant)* on June 3, 2022,[22] while the *Motion for Reconsideration with Motion for Leave of Court to*

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[12] RTC Docket (Civil Case No. 4135), pp. 74 to 87.
[13] RTC Docket (Civil Case No. 4135), pp. 89 to 93.
[14] Notice of Pre-Trial Conference dated January 28, 2011, RTC Docket (Civil Case No. 4135), p. 104.
[15] Order dated September 27, 2011, RTC Docket (Civil Case No. 4135), p. 154; and Order dated October 19, 2011, RTC Docket (Civil Case No. 4135), p. 159.
[16] RTC Docket (Civil Case No. 4135), pp. 109 to 116.
[17] RTC Docket (Civil Case No. 4135), pp. 117 to 125.
[18] RTC Docket (Civil Case No. 4135), p. 144.
[19] Notice of Cancellation dated February 5, 2014, RTC Docket (Civil Case No. 4135), p. 222.
[20] RTC Docket (Civil Case No. 4135), pp. 227 to 229 and 242 to 244, respectively.
[21] Order dated February 18, 2022, RTC Docket (Civil Case No. 4135), pp. 332 to 333.
[22] RTC Docket (Civil Case No. 4135), pp. 335 to 342.

*Belatedly Submit the Hereto Attached Memorandum for the Appellee and Third-Party Plaintiff Province of Davao del Norte* was filed on July 19, 2022.[23] Respondent Province of Compostela Valley filed its *Memorandum for Third Party Defendant* on July 18, 2022.[24]

Thereafter, RTC – Branch 1 promulgated the assailed Decision on January 18, 2023.[25]

Aggrieved, petitioner filed its *Motion for Reconsideration to the Decision dated 18 January 2023* on April 3, 2023,[26] which the RTC-Branch 1 denied through the assailed Order issued on May 12, 2023.[27]

## THE PROCEEDINGS BEFORE THIS COURT

Petitioner filed with this Court an *Entry of Appearance with Motion for Extension of Time to File Petition for Review* on July 6, 2023.[28] The said *Entry of Appearance* and *Motion* were respectively noted and granted in the Resolution dated July 26, 2023.[29]

In the meantime, petitioner filed the present *Petition for Review* on July 20, 2023.[30] In the Resolution dated August 14, 2023,[31] the Court noted the *Petition for Review*, and ordered the respondents to file their comment within 10 days from notice.

Respondent Province of Davao del Norte filed its *Motion for Leave of Court to Belatedly File the Instant Comment to the Petition for Review with Comment* on September 4, 2023,[32] while respondent Province of Compostela Valley filed its *Manifestation* on September 15, 2023.[33] Petitioner submitted its *Manifestation* on October 2, 2023.[34] The Court noted both *Manifestations*, considered the *Motion* moot, and admitted respondent's *Comment*, in the

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[23] RTC Docket (Civil Case No. 4135), pp. 347 to 350 and 352 to 376, respectively.
[24] RTC Docket (Civil Case No. 4135), pp. 377 to 385.
[25] RTC Docket (Civil Case No. 4135), pp. 389 to 399.
[26] RTC Docket (Civil Case No. 4135), pp. 401 to 414.
[27] RTC Docket (Civil Case No. 4135), pp. 416 to 418.
[28] Docket, pp. 5 to 8.
[29] Docket, p. 15.
[30] Docket, pp. 16 to 41.
[31] Docket, p. 153.
[32] Docket, pp. 154 to 180.
[33] Docket, pp. 183 to 185.
[34] Docket, pp. 187 to 191.

Resolution dated October 31, 2023.[35] On the other hand, respondent Province of Compostela Valley failed to file its comment to the petition.[36]

In the Minute Resolution dated April 2, 2024,[37] the Court directed the Branch Clerk of Court of RTC – Branch 1 to elevate the entire RTC records of the case.

In compliance thereto, on May 8, 2024, the Branch Clerk of Court of RTC – Branch 1 transmitted the entire original RTC records, consisting of one folder.[38]

Subsequently, the Court directed the parties to file their respective memorandum.[39]

Petitioner submitted its *Memorandum* on August 14, 2024,[40] while the *Memorandum (for respondent Province of Davao Del Norte)* was filed on September 24, 2024.[41] Respondent Province of Compostela Valley failed to file its memorandum.[42]

The present case was then considered submitted for decision on October 15, 2024.[43]

## THE ISSUES RAISED

In the present *Petition for Review*, petitioner raised the following issues:

I. Whether the RTC erroneously relied on a Supreme Court ruling entitled *City of Iriga vs. Camarines Sur III Electric Cooperative, Inc. (CASURECO III), G.R. No. 192945, 5 September 2012;*

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35 Docket, pp. 195 to 197.
36 Records Verification dated January 12, 2024 issued by this Court's Judicial Records Division, Docket, p. 198.
37 Docket, p. 199.
38 *Compliance* and *Certification of Correctness and Completeness of Original Records or Certified True Copies*, both dated May 7, 2024, Docket, pp. 200 to 205; and Minute Resolution dated June 20, 2024, Docket, p. 209.
39 Minute Resolution dated June 6, 2024, Docket, p. 207.
40 Docket, pp. 210 to 233.
41 Docket, pp. 239 to 263.
42 Records Verification dated August 29, 2024 issued by this Court's Judicial Records Division, Docket, p. 237.
43 Minute Resolution dated October 15, 2024, Docket, p. 265.

II. Whether the RTC failed to conclude that TransCo's payment to the Province of Compostela Valley, now Davao De Oro, is presumed to be regular;

III. Whether the RTC erroneously failed to consider that TransCo is not liable for franchise tax based on existing laws and Bureau of Internal Revenue (BIR) revenue regulations; and,

IV. Whether the RTC failed to appreciate that the imposition of franchise tax against TransCo may result in double taxation.[44]

***Petitioner's arguments:***

Petitioner argues that the RTC's reliance on the case of *City of Iriga vs. CASURECO III* (City of Iriga)[45] is misplaced; that petitioner's payment to Davao de Oro (formerly the Province of Compostela Valley)[46] is presumed to be regular; that petitioner is not liable to pay franchise tax based on existing laws and BIR Regulations; and, that, assuming there was no payment, the imposition of franchise tax on petitioner may result in double taxation.

***Respondent Province of Davao del Norte's counter-arguments:***

On the other hand, respondent Province of Davao del Norte contends that petitioner is considered doing business or enjoying corporate rights and privileges within the territorial jurisdiction of the said Province; and, that the Court *a quo* was correct in declaring that the assessment for franchise tax by respondent Province of Davao del Norte against the petitioner was valid.

## THE RULING OF THE COURT

The present *Petition for Review* is meritorious.

The power of LGUs to tax emanates from Section 5, Article X of the 1987 Constitution, which empowers them to create their own sources of revenues and to levy taxes, fees, and charges subject to such guidelines and

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44 Issues, *Petition of Review*, Docket, pp. 20 to 21.
45 G.R. No. 192945, September 5, 2012.
46 R.A. No. 11927, April 17, 2019, (An Act Renaming the Province of Compostela Valley as the Province of Davao De Oro).

limitations as the Congress may provide.[47] These guidelines and limitations as provided by Congress are mainly contained in the LGC of 1991, which provides for comprehensive instances when and how LGUs may impose taxes.[48]

One such power to tax granted to LGUs is the imposition of franchise tax embodied in Section 137 of the LGC of 1991 which reads:

> SECTION 137. *Franchise Tax.* - Notwithstanding any exemption granted by any law or other special laws, **the province may impose a tax on businesses enjoying a franchise,** at a rate not exceeding fifty percent (50%) of one percent (1 %) of the gross annual receipts for the preceding calendar year **based on the incoming receipt, or realized, within its territorial jurisdiction.** xxx xxx xxx *(Emphasis supplied)*

In line with this, Article 226(a) and (b) of Implementing Rules and Regulations of the LGC of 1991 clarifies:

> ARTICLE 226. *Franchise Tax.* – (a) Notwithstanding any exemption granted by any law or other special law, **the province may impose a tax on businesses enjoying a franchise**, at a rate not exceeding fifty percent (50%) of one percent (1%) of the gross annual receipts, which shall include both cash sales and sales on account realized during the preceding calendar year **within its territorial jurisdiction, excluding the territorial limits of any city located in the province.**
>
> **(b) The province shall not impose the tax on business enjoying franchise operating within the territorial jurisdiction of any city located within the province**. *(Emphasis supplied)*

Pursuant to the foregoing provisions, respondent herein is authorized to impose a tax on "businesses enjoying a franchise" based on the incoming receipt, or realized, within its territorial jurisdiction. By way of limitation, however, it cannot impose a tax on business enjoying a franchise operating within the territorial jurisdiction of any city located within the province.

In *City of Iriga*,[49] the Supreme Court identified and explained the situs of the local franchise tax as follows:

> The Court reiterates that a franchise tax is a tax levied on the exercise by an entity of the rights or privileges granted to it by the government. In the absence of a clear and subsisting legal provision

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[47] *Smart Communications, Inc. vs. City of Davao, et al.*, G.R. No. 155491, July 21, 2009.
[48] *Luz R. Yamane, in her capacity as the City Treasurer of Makati City vs. BA Lepanto Condominium Corporation*, G.R. No. 154993, October 25, 2005.
[49] *Supra* at note 45.

granting it tax exemption, a franchise holder, though non-profit in nature, may validly be assessed franchise tax by a local government unit.

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CASURECO III is an electric cooperative duly organized and existing by virtue of Presidential Decree (PD) 269, as amended, and registered with the National Electrification Administration (NEA). **It is engaged in the business of electric power distribution to various end-users and consumers within the City of Iriga and the municipalities of Nabua, Bato, Baao, Buhi, Bula and Balatan of the Province of Camarines Sur, otherwise known as the "Rinconada area."**

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**The Court's Ruling**

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Indisputably, petitioner [City of Iriga] has the power to impose local taxes. The power of the local government units to impose and collect taxes is derived from the Constitution itself which grants them 'the power to create its own sources of revenues and to levy taxes, fees and charges subject to such guidelines and limitation as the Congress may provide.' This explicit constitutional grant of power to tax is consistent with the basic policy of local autonomy and decentralization of governance. With this power, local government units have the fiscal mechanisms to raise the funds needed to deliver basic services to their constituents and break the culture of dependence on the national government. **Thus, consistent with these objectives, the LGC was enacted granting the local government units, like petitioner** [City of Iriga], **the power to impose and collect franchise tax**, to wit:

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In *National Power Corporation v. City of Cabanatuan*,[50] the Court declared that 'a franchise tax is 'a tax on the privilege of transacting business in the state and exercising corporate franchises granted by the state.'' **It is not levied on the corporation, simply for existing as a corporation, upon its property or its income, but on its exercise of the rights or privileges granted to it by the government.** 'It is within this context that the phrase 'tax on businesses enjoying a franchise' in Section 137 of the LGC should be interpreted and understood.

**Thus, to be liable for local franchise tax, the following requisites should concur: (1) that one has a 'franchise' in the sense of a secondary or special franchise; and (2) that it is exercising its rights or privileges under this franchise within the territory of the pertinent local government unit.**

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[50] G.R. No. 149110, April 9, 2003.

> ***CASURECO III is liable for franchise tax on gross receipts within Iriga City and Rinconada area***
>
> CASURECO III further argued that its liability to pay franchise tax, if any, should be limited to gross receipts received from the supply of the electricity within the City of Iriga and not those from the Rinconada area.
>
> **Again, <u>the Court is not convinced</u>.**
>
> **It should be stressed that what the petitioner seeks to collect from CASURECO III is a franchise tax, which as defined, is a tax on the exercise of a *privilege*. As Section 137 of LGC provides, franchise tax shall be based on gross receipts precisely because it is a tax on *business*, rather than on persons or property. <u>Since it partakes of the nature of an excise tax, the *situs* of taxation is the place where the privilege is exercised, in this case in the City of Iriga, where CASURECO III has its principal office and from where it operates, regardless of the place where its services or products are delivered. Hence, franchise tax covers all gross receipts from Iriga City and the Rinconada area.</u>** *(Emphasis and underscoring supplied)*

As can be gleaned from the foregoing, to be liable to franchise tax, the following requisites must concur: *(1)* that one has a 'franchise' in the sense of a secondary or special franchise; and, *(2)* that it is exercising its rights or privileges under this franchise within the territory of the pertinent local government unit.

The Supreme Court further interpreted and applied Section 137 of the LGC of 1991, which grants a ***province*** the power to tax franchises, and Section 151 of the same Code, which also authorizes, in effect, a ***city*** to impose franchise tax, vis-à-vis ***situs*** of taxation, in that such power of a city to levy franchise tax covers <u>all gross receipts</u> derived from within the territorial limits of that city where the franchise holder exercises the privilege including those derived from other areas where the services or products are also delivered.

Notably, the *first* issue relates to the alleged erroneous reliance made by the Court *a quo* on *City of Iriga* relating to the situs of taxation. But before We delve into the *first* issue, it is apt to determine if the first requisite is present (i.e., whether petitioner has a special or secondary franchise, for local franchise tax purposes) which will address the *third* issue.

In *New Vision Satellite Network, Inc. vs. The Provincial Government of Cagayan, et al.*,[51] the Supreme Court held as follows:

> ...the definition of a franchise for the purpose of the imposition of franchise tax does not include the general or primary franchise, which is simply the authority giving rise to the juridical capacity of a corporation. **Rather, it only includes the special or secondary franchise to do particular business activities. Moreover, <u>the said special or secondary franchise must enable the taxpayer to operate within the territorial jurisdiction of the respondent province</u>.** Furthermore, by special or secondary franchise, We understand this to exclude general business and local permits which are applicable to all types of businesses, such as the barangay clearance, Mayor's Permit, from Certificate of Registration of the Bureau of Internal Revenue, and others of similar kind. **A special or secondary franchise includes a particular kind of regulated business.** *(Emphases and underscoring added)*

Based on the following qualifications relative to the special or secondary franchise, this Court finds that petitioner has such a franchise as it enjoys a particular kind of regulated business, which, as will be shown momentarily, is the transmission and subtransmission of electricity.

To be sure, Section 137 of the LGC of 1991 is categorical in stating that franchise tax can only be imposed on businesses enjoying a franchise. This goes without saying that, without a franchise, an LGU cannot impose franchise tax.[52]

Relative thereto, Section 8 of R.A. No. 9136 provides, in part, as follows:

> SEC. 8. *Creation of the National Transmission Company.* – **There is hereby created a National Transmission Corporation, hereinafter referred to as TRANSCO, which shall assume the electrical transmission function of the National Power Corporation (NPC), and have the powers and functions hereinafter granted.** The TRANSCO shall assume the authority and responsibility of NPC for the planning, construction and centralized operation and maintenance of its high voltage transmission facilities, including grid interconnections and ancillary services.
>
> **Within six (6) months from the effectivity of this Act, the transmission and subtransmission facilities of NPC and all other assets related to the transmission operations, <u>including the nationwide franchise of NPC for the operation of the transmission system and the grid</u>, shall be transferred to the TRANSCO.** The TRANSCO shall be

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[51] G.R. No. 248840, July 5, 2021.

[52] *Power Sector Assets and Liabilities Management Corporation (PSALM) vs. Felisa Agricultural Corporation, et al.*, G.R. No. 205193, July 5, 2021.

> wholly owned by the Power Sector Assets and Liabilities Management Corporation (PSALM Corp.). *(Emphases and underscoring added)*

Based on the foregoing provisions, petitioner is a government-owned and controlled corporation (GOCC) created to continue the transmission and subtransmission functions of the National Power Corporation (NPC).[53] Specifically, NPC's transmission and subtransmission facilities and all other assets related to the transmission operations, **including the NPC's nationwide franchise** for the operation of the transmission system and grid, are all transferred to petitioner under the law. Parenthetically, it must be noted that the transmission of electric power shall be a regulated common electricity carrier business, subject to the ratemaking power of the Energy Regulatory Commission.[54]

Thus, on the basis of the aforequoted Section 8 of R.A. No. 9136, it cannot be doubted that petitioner has a special or secondary franchise, which may warrant the imposition of a local franchise tax by a province having territorial jurisdiction over the area where petitioner exercises the privilege, as will be discussed below.

Having settled the issue of whether petitioner has a special or secondary franchise, the Court shall then proceed to determine the situs of taxation for the present case.

To recall, as held in *City of Iriga*, the local franchise tax partakes of the nature of an excise tax; thus, the situs of taxation is the place where the privilege is exercised. In said case, the Supreme Court disregarded where CASURECO III delivered its services and fixed the tax situs with the City of Iriga, where it has its principal office and from where it operates. Consequently, CASURECO III was held liable for the local franchise tax on its gross receipts from the City of Iriga including those derived from the Rinconada area.

Relying on *City of Iriga*, the Court *a quo* held as follows:

> Since TRANSCO had the privilege of conducting business in the Province of Davao del Norte by supplying electricity to DANECO, which in [turn], distributes electricity in the same province and has a substation in Asuncion, Davao del Norte, TRANSCO has, therefore, fulfilled the second requirement to be liable for franchise tax.

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[53] Refer to *Power Sector Assets and Liabilities Management Corporation (PSALM) vs. Felisa Agricultural Corporation, et al.*, supra.

[54] Section 7 (first paragraph), R.A. No. 9136.

> The argument that TRANSCO has no substation, district, branch or office in Davao del Norte is irrelevant. What is material is that TRANSCO had the privilege of conducting business in the Province of Davao del Norte for purposes of payment of franchise tax.

The pivotal issue then is whether petitioner exercised the privilege of its franchise within the territorial jurisdiction of respondent Province of Davao del Norte when it supplied power to DANECO so as to warrant the imposition of the local franchise tax in the years 2003 to 2008.

We answer in the negative.

It is undisputed that petitioner supplies power to DANECO, which is located in Montevista, a municipality within the territorial jurisdiction of the Province of Compostela Valley. DANECO, in turn, delivers the same to its customers including certain municipalities of respondent Province of Davao del Norte. As such, respondent Province of Davao del Norte based the subject franchise tax liabilities of petitioner on its gross receipts from its transmission of power to DANECO.

Following the principle laid down by the Supreme Court in *City of Iriga*, and considering that there is no showing that petitioner's principal office is located in the Province of Davao del Norte, respondent Province of Davao del Norte therefore cannot impose franchise tax on petitioner's gross receipts from DANECO or any part thereof, even if it allegedly caters its services within the such province's territory.

Furthermore, the fact that the electricity transmitted to DANECO is subsequently distributed to its end users, which include certain municipalities in the Province of Davao del Norte, is of no consequence since petitioner's gross receipts were derived from its <u>transmission of electricity to DANECO</u> and not from the end users. As there is no indication that petitioner and DANECO are one and the same entity or that one is an extension of the other, DANECO's distribution of electricity to the Province of Davao del Norte cannot be considered an operation of an office by petitioner in the said Province.

Such being the case, the Court *a quo*'s conclusion that *"[s]ince* [petitioner] *TRANSCO had the privilege of conducting business in the Province of Davao del Norte by supplying electricity to DANECO, which in* [turn], *distributes electricity in the same province and has a substation in Asuncion, Davao del Norte, TRANSCO has, therefore, fulfilled the second requirement to be liable for franchise tax"* is not legally sound.

In fine, contrary to the ruling of the Court *a quo*, petitioner did not exercise the privilege of its franchise or conduct business in the Province of Davao del Norte. As such, the imposition of the local franchise tax for the period from 2003 to 2008 is unwarranted.

In view of the foregoing disquisitions, the Court will no longer belabor discussing the remaining issues and arguments raised by the parties.

**WHEREFORE**, in light of the foregoing considerations, the *Petition for Review* is **PARTIALLY GRANTED**.

Accordingly, the assailed Decision dated January 18, 2023 and the Order dated May 12, 2023, both rendered by the RTC – Branch 1, Tagum City, Davao del Norte in Civil Case No. 4135, is hereby **REVERSED** and **SET ASIDE**, but only insofar as it ordered petitioner to pay local franchise taxes for the years 2003 to 2008 in the total amount of ₱408,620.30, with interest at the legal rate of six percent (6%) per annum.

**SO ORDERED.**

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

**WE CONCUR:**

**MA. BELEN M. RINGPIS-LIBAN**
Associate Justice

(On Official Business)
**MARIA ROWENA MODESTO-SAN PEDRO**
Associate Justice

## ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

**MA. BELEN M. RINGPIS-LIBAN**
Associate Justice
Division Chairperson

## CERTIFICATION

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

**MA. BELEN M. RINGIS-LIBAN**
Acting Presiding Justice