REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

En Banc

ONE NETWORK BANK, INC. (A RURAL BANK), *Petitioner,*	**CTA EB No. 1200** (CTA Case No. 8640)
-versus-	Present: DEL ROSARIO, *P.J.,* CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS, *and* RINGPIS-LIBAN, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: AUG 14 2015

x- 11:45 a.m. - x

DECISION

RINGPIS-LIBAN, *J.*:

Before the Court is a Petition for Review filed on July 24, 2014 against the Resolution of this Court's Second Division in CTA Case No. 8640 denying on June 7, 2014 the petitioner's Motion for Reconsideration of the Second Division's Decision of April 11, 2014 which denied the Petition for Review for lack of merit.

The Petition for Review in CTA Case No. 8640 was filed pursuant to Section 4(a) of Rule 8 and Rule 4 of the Revised Rules of the Court of Tax Appeals (RRCTA), to appeal the inaction of the Commissioner of Internal Revenue over petitioner's administrative claim for tax refund in the amount of ₱152,511,746.35 allegedly representing erroneous payment of gross receipts tax (GRT) for taxable year 2012.

THE PARTIES

The petitioner, One Network Bank, Inc. (A Rural Bank), is a domestic corporation duly organized and registered under the laws of the Philippines. It holds office at Km. 9, Sasa, Davao City. It is registered with the Securities and Exchange Commission (SEC) on July 14, 2011 with Company Registration No. CS201109703, and is likewise registered with the BIR as shown in its Certificate of Registration No. OCN8RC0000030625, with Tax Identification Number (TIN) 413-177-215-000. It may be served with notices and other processes at the office of its counsel, Du-Baladad & Associates, at 20/F Chatham House, Rufino cor. Valero Sts., Salcedo Village, Makati City.

The respondent is the duly-appointed Commissioner of the Bureau of Internal Revenue (BIR), vested with authority to, *inter alia*, decide refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code (NIRC) and other laws administered by the BIR, and holding office at the BIR National Office Building, Diliman, Quezon City.

THE COURT'S JURISDICTION

On July 10, 2014, petitioner received a copy of the Second Division's Resolution dated July 7, 2014. Under Section 3(b), Rule 8 of the Revised Rules of the CTA (A.M. No. 05-11-07-CTA),[1] petitioner had fifteen (15) days from receipt of the said Resolution, or until July 25, 2014, within which to appeal to the Court En Banc by way of a petition for review. As the Petition for Review was filed on July 24, 2014, the Petition was timely filed.

THE FACTS[2]

On August 15, 2009, One Network Rural Bank, Inc and Rural Bank of New Corella (Davao del Norte), Inc., two domestic banking corporations, executed a Plan of Consolidation[3] whereby said corporations shall consolidate, with One Network Bank, Inc. (A Rural Bank) as the name of the consolidated bank, the petitioner in this case. On August 24, 2009, the Agreement and Articles of Consolidation[4] was executed by the two constituent rural banks.

On July 14, 2011, the Securities and Exchange Commission (SEC) approved the Plan of Consolidation dated August 15, 2009 and the Agreement

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[1] Dated November 22, 2005, and which took effect starting December 15, 2005.
[2] The facts of this case were culled from the Decision of the Second Division in CTA Case No. 8640 dated April 11, 2014.
[3] *Rollo*, p. 39; *Docket*, pp. 447 to 449, Exhibit "E".
[4] *Id.*, *Docket*, p. 438, Exhibit "D".

and Articles of Consolidation and Supplemental to the Agreement and Articles of Consolidation executed on August 24, 2009.[5] As a result, the corporate existence of One Network Rural Bank, Inc. and Rural Bank of New Corella (Davao del Norte), Inc. ceased to exist and the entire assets and liabilities of the two constituent corporations were taken and deemed to be transferred to and vested in the consolidated bank known as One Network Bank, Inc. (A Rural Bank).

According to its Articles of Incorporation, petitioner's purposes are "[T]to carry and engage in the business of extending rural credit to small farmers and tenants and to deserving rural industries; to do and perform all acts and to transact and conduct all business which may legally be had or done by rural banks under and in accordance with the Rural Banks Act, as it exists or may be amended; and to do all other things incident thereto and necessary and proper in connection with said purposes within such territory, as may be determined by the Monetary Board of the Bangko Sentral ng Pilipinas", and "[T]o carry and engage in the business of a Government Securities Eligible Dealer (GSED) under existing laws, rules and regulations subject however to approval by the Monetary Board of the Bangko Sentral ng Pilipinas."[6]

On August 17, 2011, petitioner was duly authorized to operate as a rural bank by the Bangko Sentral ng Pilipinas (BSP), pursuant to Republic Act No. 7353[7] (Rural Banks Act) and Monetary Board Resolution No. 1210 dated September 2, 2010.[8]

For taxable year 2012, petitioner filed its Monthly Percentage Tax Returns (BIR Form No. 2551M), through the BIR's Electronic Filing and Payment System (EFPS), as well as paid under protest the gross receipts tax in the total amount of ₱152,511,746.36, broken down as follows[9]:

Taxable Month	Date of Filing of Monthly Percentage Tax Return and Payment of GRT	Basic Tax	Surcharge	Interest	Com-promise	Total
January	Dec. 5, 2012	8,175,082.71	2,043,770.68	1,263,218.26	50,000.00	11,532,071.65
February	Dec. 5, 2012	7,331,159.08	1,832,789.77	1,020,336.66	50,000.00	10,234,285.51
March	Dec. 5, 2012	8,180,088.84	2,045,022.21	995,057.38	50,000.00	11,270,168.43
April	Dec. 5, 2012	12,665,377.14	3,166,344.29	1,346,346.94	50,000.00	17,228,068.37
May	Dec. 5, 2012	7,464,071.04	1,866,071.76	666,654.02	50,000.00	10,046,742.82

[5] *Id., Docket,* p. 437, Exhibit "C".
[6] *Rollo,* p. 40; *Docket,* p. 422, Exhibit "B".
[7] The Rural Banks Act of 1992.
[8] *Id., Docket,* p. 483, Exhibit "G".
[9] *Id., Docket,* pp. 201-212, Exhibits "J" to "U-2"; *Docket,* pp. 500 to 558.

June	Dec. 5, 2012	9,304,616.04	2,326,154.01	678,089.83	50,000.00	12,358,859.88
July	Dec. 5, 2012	13,927,190.67	3,481,797.67	755,502.40	50,000.00	18,214,490.74
August	Dec. 5, 2012	11,687,997.15	2,921,999.29	454,711.12	50,000.00	15,114,707.56
September	Dec. 5, 2012	11,724,690.95	2,931,172.74	263,404.02	50,000.00	14,969,267.71
October	Nov. 23, 2012	12,024,344.36				12,024,344.36
November	Dec. 19, 2012	9,377,884.51				9,377,884.51
December	Jan. 24, 2013	10,140,854.82				10,140,854.82
TOTAL		122,003,357.31	22,615,068.42	7,443,320.63	450,000.00	152,511,746.36

On March 13, 2013, petitioner filed an administrative claim for refund dated March 11, 2013 before BIR Revenue District Office (RDO) No. 123-Cebu City for the refund of the amount of ₱152,511,746.36, purportedly representing its gross receipts tax paid for taxable year ended December 31, 2012.[10]

Due to respondent's inaction and in order to suspend the running of the two-year prescriptive period on the said administrative claim for refund, petitioner filed its Petition for Review on April 17, 2013.

As part of respondent's Special and Affirmative Defenses in her Answer[11], she alleged that 1) petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau; 2) the amount of ₱152,511,746.36 allegedly representing erroneously paid Gross Receipts Tax for the calendar year 2012 was not properly documented; 3) in an action for refund, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund/credit; 4) petitioner must show that it has complied with the provisions of Section 112 of the NIRC of 1997 on the prescriptive period for claiming tax refund/credit; and 5) claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation.

Additionally, respondent claims that Revenue Memorandum Circular (RMC) No. 66-2012 categorically provides that the tax exemption granted under Section 15 of the Rural Banks Act may no longer be availed of by consolidated rural banks because:

> 1) the process of consolidation involve existing and operating rural banks that already cater to the public and these processes do not significantly promote the policy enunciated in the Rural Banks Act; but merely prolongs the exemption beyond the period prescribed by law thereby depriving the government of much-needed revenues; and

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[10] *Rollo*, p. 41; *Docket*, pp. 484-498 and 499, Exhibits "H" and "I".
[11] *Id., Docket*, pp. 81-89.

2) following Section 80 of the Corporation Code[12] which lists the effects of consolidation, rural banks formed through consolidation[13] of existing rural banks[14] shall not be entitled to the tax exemption under Section 15 of the Rural Banks Act in cases when the constituent rural banks previously availed of this exemption. Only when any or both the constituent rural banks have not been able to enjoy the tax exemption for the entire five-year period can the consolidated rural bank be entitled to the exemption for the remaining period.

Moreover, respondent contends that the BIR's interpretation of tax laws is entitled to great weight because of its recognized expertise on matters falling within its exclusive administrative domain and that administrative agencies, in the exercise of their rule-making power, can formulate rules and regulations in order to achieve the declared policies as laid down by Congress.

During trial, petitioner presented Atty. Jose M. Balingit, Jr., petitioner's Corporate Secretary[15], and Edwin M. Gupit, its Accounting Head[16], as witnesses. Thereafter, petitioner filed its Formal Offer of Evidence[17] on October 4, 2013, submitting Exhibits "A" to "FF", inclusive of sub-markings; which the Court admitted in the Resolution[18] dated October 29, 2013.

On September 18, 2013, respondent, through counsel, manifested that she has no witness to present.[19] In a Resolution[20] dated October 29, 2013, the

[12] "Sec. 80. Effects or merger or consolidation. - The merger or consolidation shall have the following effects: x x x

3. The surviving or the consolidated corporation shall possess all the rights, privileges, immunities and powers and shall be subject to all the duties and liabilities of a corporation organized under this Code;

4. The surviving or the consolidated corporation shall thereupon and thereafter possess all the rights, privileges, immunities and franchises of each of the constituent corporations; and all property, real or personal, and all receivables due on whatever account, including subscriptions to shares and other choses in action, and all and every other interest of, or belonging to, or due to each constituent corporation, shall be deemed transferred to and vested in such surviving or consolidated corporation without further act or deed; and

5. The surviving or consolidated corporation shall be responsible and liable for all the liabilities and obligations of each of the constituent corporations in the same manner as if such surviving or consolidated corporation had itself incurred such liabilities or obligations; and any pending claim, action or proceeding brought by or against any of such constituent corporations may be prosecuted by or against the surviving or consolidated corporation. The rights of creditors or liens upon the property of any of such constituent corporations shall not be impaired by such merger or consolidation."

[13] Consolidated Rural Banks.

[14] Constituent Rural Banks.

[15] *Rollo*, p. 47; *Docket*, p. 406, Minutes of Hearing dated August 28, 2013.

[16] *Id., Docket*, p. 407, Minutes of Hearing dated September 18, 2013.

[17] *Id., Docket*, pp. 408-420.

[18] *Id., Docket*, pp. 639-640.

[19] *Id.* at Note 16.

[20] *Id.* at Note 18.

Court in Division granted the parties thirty (30) days from receipt of the same to file their respective Memoranda.

On January 22, 2014, the case was submitted for decision, taking into consideration petitioner's Memorandum filed on January 16, 2014 and respondent's Memorandum filed on December 3, 2013.[21]

On April 14, 2014, petitioner, through counsel, received a copy of the Decision dated April 11, 2014 of the Court in Division denying petitioner's claim for lack of merit.

On April 29, 2014, petitioner filed its Motion for Reconsideration which was denied in a Resolution dated July 7, 2014.

On July 24, 2014, petitioner filed its Petition for Review with the CTA En Banc.

On September 8, 2014, respondent was ordered to file her Comment. Respondent filed her Comment on October 1, 2014.

In a Resolution dated October 14, 2014, the Petition for Review was given due course and the parties were granted thirty (30) days within which to submit their respective Memoranda, after which the Petition for Review would be deemed submitted for decision.

In a Manifestation filed on November 3, 2014 by respondent, she indicated that she was adopting her Comment/Opposition as her Memorandum which the Court noted in a Minute Resolution dated November 6, 2014. Petitioner, on the other hand, filed a Motion for Extension of Time to File Memorandum on November 28, 2014 which was granted in a Minute Resolution by this Court on December 2, 2014. Petitioner was thereafter given a final and non-extendible period of thirty (30) days from November 28, 2014 or until December 28, 2014, within which to file its Memorandum.

On December 19, 2014, petitioner filed its Memorandum. In a Resolution dated January 22, 2015, the case was deemed submitted for decision.

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[21] *Id., Docket*, p. 391.

THE ASSIGNMENTS OF ERROR

The petition raises two assignments of errors of this Court's Second Division, as follows:

First, that the Court in Division erred in denying petitioner's claim on the ground that a consolidated rural bank is not entitled to tax exemption under Section 15 of the Republic Act (RA) 7353 when the constituent rural banks had previously availed the same tax exemption; and

Second, assuming that RMC 66-2012 is valid, the Court in Division erred in applying the same retroactively to the prejudice of the petitioner for the period January to September, 2012.

APPLICABLE LAW

The assessment of deficiency taxes against the petitioner was made by the respondent under the National Internal Revenue Code of 1997 (Tax Code), as amended. Also applicable are RA 7353, otherwise known as the "Rural Banks Act of 1992", specifically, Sections 15 and 18 thereof; Batas Pambansa Blg. 68, otherwise known as the "Corporation Code of the Philippines", specifically, Sections 2, 4, 76, and 80 thereof; and the BIR's administrative issuance, RMC 66-2012, all of which shall be applied in the resolution of the instant petition.

THE RULING OF THE COURT

After a thorough consideration of the record and the legal issues involved, we uphold the assailed Decision of this Court's Second Division which denied the petition for lack of merit and concluded that:

> "Based on the foregoing, although the law encourages consolidation and mergers of rural banks, it did not go as far as giving a fresh tax exemption to consolidated rural banks for another five (5) years of operation other than giving incentives on reserve requirement and branching right for a period of seven (7) years."[22]

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[22] *Rollo*, pp. 51-52.

Construction to Give Harmony to Laws

This Court was tasked to determine whether or not a consolidated corporation created under RA No. 7353, comprised of two constituent corporations who have previously enjoyed the five-year exemption granted under Section 15 of RA No. 7353, ought to have a fresh five-year exemption period from paying GRT.

The rule is that a statute should be so construed not only to be consistent with itself but also to harmonize with other laws on the same subject matter, as to form a complete, coherent and intelligible system.[23] As such, in construing Section 15 of RA No. 7353, Batas Pambansa Blg. 68, otherwise known as the Corporation Code of the Philippines, cannot be ignored.

The rule is expressed in the maxim, *interpretare et concordare legibus est optimus interpretandi*, or every statute must be construed and harmonized with other statutes as to form a uniform system of jurisprudence.[24] A construction of a statute which creates an inconsistency should be avoided when a reasonable interpretation can be adopted which will not do violence to the plain words of the act and will carry out the intention of Congress.

In the construction of statutes, the courts start with the assumption that the legislature intended to enact an effective law, and the legislature is not to be presumed to have done a vain thing in the enactment of a statute. Hence, it is a general principle, embodied in the maxim, "*ut res magis valeat quam pereat*," that the courts should, if reasonably possible to do so without violence to the spirit and language of an act, so interpret the statute to give it efficient operation and effect as a whole. An interpretation should, if possible, be avoided under which a statute or provision being construed is defeated, or as otherwise expressed, nullified, destroyed, emasculated, repealed, explained away, or rendered insignificant, meaningless, inoperative, or nugatory.[25]

The Corporation Code defines a corporation as "an artificial being created by operation of law, having the right of succession and the powers, attributes and properties expressly authorized by law or incident to its existence."[26] In the case of petitioner which is a consolidated corporation, Section 76 of the Corporation Code is relevant, to wit:

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[23] *Valera v. Tuason*, 80 Phil. 823 (1948), *Corona v. Court of Appeals*, 214 SCRA 378 (1992), citing Agpalo, Statutory Construction, p. 210.
[24] *Id.*
[25] *Asturias Sugar Central, Inc. vs. Commissioner of Customs*, G.R. No. L-19337, September 30, 1969, citing 50 Am. Jur. 358-359.
[26] Section 2, Batas Pambansa Blg. 68, Corporation Code of the Philippines.

"Sec. 76. Plan or merger of consolidation. - Two or more corporations may merge into a single corporation which shall be one of the constituent corporations or may consolidate into a new single corporation which shall be the consolidated corporation. x x x"

Petitioner argues that since it is a new juridical entity, it is entitled to a fresh five-year exemption under RA No. 7353, regardless whether or not its constituent corporations have previously enjoyed the same. It further argues that the only condition set by Section 15 to be entitled to tax exemption is that the rural bank must be created and organized under the provisions of RA No. 7353. Since Section 15 thereof does not make any distinction between a rural bank created and organized as a result of consolidation and a rural bank that is not created and organized in such manner, the omission of the distinction reveals the intention of the legislature to include consolidated rural banks in the entitlement to the tax exemption.

However, the Corporation Code also mandates how corporations created by special laws or charters shall be governed in Section 4 thereof, thus:

"Sec. 4. Corporations created by special laws or charters. - Corporations created by special laws or charters shall be governed primarily by the provisions of the special law or charter creating them or applicable to them, ***supplemented by the provisions of this Code, insofar as they are applicable.***" *(Emphasis supplied)*

Given that RA No. 7353 is a special law to create and organize rural banks, it is indubitable that the treatment of such to the extent that it is not tackled in the Rural Banks Act itself, will be governed by the applicable provisions of the Corporation Code. As RA No. 7353 does not explicitly mandate whether or not the five-year exemption it offers in its Section 15 shall be applicable as well to consolidated rural banks, Item 4 in Section 80 thereof which describes one of the effects of consolidation becomes relevant:

"Sec. 80. Effects or merger or consolidation. - The merger or consolidation shall have the following effects:

x x x x x x x x x

4. The **surviving or the consolidated corporation** shall thereupon and thereafter possess **all the rights, privileges, immunities and franchises of each of the constituent corporations**; and all property, real or personal, and all receivables due on whatever account, including subscriptions to

> shares and other choses in action, and all and every other interest of, or belonging to, or due to each constituent corporation, shall be deemed transferred to and vested in such surviving or consolidated corporation without further act or deed; and x x x" *(Emphasis supplied)*

An exemption is an immunity or a privilege; it is the freedom from a charge or burden to which others are subjected.[27] It is the surrender of the power to tax, which when claimed, must be clearly shown by a language that will admit of no reasonable construction consistent with the reservation of the power. If the intention of the legislature is open to doubt, then the intention of the legislature must be resolved in favor of the State.[28]

Included in the queue of laws to be reconciled in the matter at hand is RMC No. 66-2012, issued on October 31, 2012[29], which defined the taxation of rural banks formed through consolidation. It mandated:

> "Rural banks formed through *consolidation* ('consolidated rural banks') of existing rural banks ('constituent rural banks') shall not be entitled to the tax exemption under Section 15 of Republic Act No. 7353 in cases when the constituent rural banks previously availed of this exemption. However, should any or both the constituent rural banks not be able to enjoy the tax exemption for the entire five (5)-year period, then the consolidated rural bank shall be entitled to the exemption for the remaining period."

Provisions in an act which are omitted in another act relative to the same subject matter will be applied in a proceeding under the other act, when not inconsistent with its purpose. Prior statutes relating to the same subject matter are to be compared with the new provisions, and if possible, by reasonable construction, both to be construed that effect is given to every provision of each. Statutes in *pari materia*, although in apparent conflict, are as far as reasonably possible construed to be in harmony with each other.[30] Similarly, every new statute should be construed in connection with those already existing in relation to the same subject matter and all should be made to harmonize and stand together, if they can be done by any fair and reasonable interpretation.[31] *Interpretare et concordare leges legibus, est optimum interpretandi modus,* which means

[27] *Smart Communications, Inc. vs. The City of Davao*, et.al, G.R. No. 155491, September 16, 2008.
[28] *Id.* citing citing *Philippine Long Distance Telephone Company, Inc. v. City of Davao*, 415 Phil. 764, 775 (2001).
[29] The Circular was effective immediately.
[30] *C&C Commercial Corp. v. National Waterworks & Sewarage Authority*, G.R. No. 27275, Nov. 18, 1967, 21 SCRA 984 (1967), citing Sutherland, Statutory Construction, Vol. 2, pp. 530-532.
[31] *City of Naga vs. Agna*, G.R. No. 36049, May 31, 1976, 71 SCRA 176 (1976).

that the best method of interpretation is that which makes laws consistent with other laws.[32]

We believe that RMC No. 66-2012 correctly interprets the Rural Banking Act because a perusal thereof shows that it harmonizes existing laws on the subject matter, and, more importantly, an examination of the statute reveals that exemption privileges for rural banks were not meant to run for an unlimited period.

An Indefinite Tax Exemption is Not the Plain Intent of the Statute

The avowed purpose of tax exemption "is some public benefit or interest, which the lawmaking body considers sufficient to offset the monetary loss entailed in the grant of the exemption."[33]

While the Rural Banks Act sought to "promote comprehensive rural development with the end in view of attaining equitable distribution of opportunities, income and wealth; a sustained increase in the amount of goods and services produced by the nation for the benefit of the people; and in expanding productivity as a key to raising the quality of life for all, especially the underprivileged"[34], a cursory reading of the statute shows that despite the legislature's aspirations for what the said law would accomplish, Congress did not intend rural banks created or organized under the act to have an indefinite tax exemption.

First, and most glaring, is the fact that Section 15 limits the exemption of rural banks from "payment of all taxes, fees and charges of whatever nature and description, except the corporate income tax and local taxes, fees and charges"[35] for a period of **five (5) years.**

Second, Section 18[36] of the act lists incentives for rural banks which merge and consolidate and limits the benefit to **seven (7) years**.

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[32] *Gordon vs. Veridiano II*, 167 SCRA 51 (1988).
[33] Sea-Land Service, Inc. vs. Court of Appeals and Commissioner of Internal Revenue,G.R. No. 122605. April 30, 2001, citing Commissioner of Internal Revenue v. Botelho Shipping Corp., 126 Phil. 846, 851 [1967].
[34] Section 2, R.A. No. 7353.
[35] Section 15, R.A. No. 7353.
[36] Section 18, R.A. No. 7353, which states:

"SECTION 18. To encourage consolidation and mergers of rural banks, if there are five (5) or more rural banks within the region that merge and consolidate within three (3) years from the enactment of this Act, the merged or consolidated entity will be given the following incentives for a period of seven (7) years.

Furthermore, Section 18 also limited the period in which these incentives may be availed of by specifically stating that the incentives are available to rural banks **who merge and consolidate within three (3) years from enactment** of RA 7353. Since the Rural Banks Act was enacted on April 2, 1992, clearly, the legislature did not intend for the incentive to extend past 1995.

It is to be noted, however, that the assailed Decision discusses Section 18 in relation to the petitioner in the following manner:

> "It is not disputed that petitioner is the result of the consolidation of two rural banks, i.e., One Network Rural Bank, Inc. and Rural Bank of New Corella (Davao del Norte), Inc. Since petitioner is a product of consolidation, then it does not have the incentive of tax exemption for another five years available under Section 15 of RA No. 7353. ***Its incentives are covered by Section 18 of RA No. 7353, which excluded tax exemption.***"[37] *(Emphasis supplied)*

For the sake of clarity, it is to be emphasized that while Section 18 offers incentives for various corporate combinations of rural banks, the same section is inapplicable to petitioner. The requirement under Section 18 for the incentive to apply is that there be: a) **five or more** rural banks that consolidate or merge; b) the constituent rural banks are located within the same region; and c) the merger or consolidation must have occurred within three (3) years of enactment of RA No. 7353. Since petitioner's Plan of Consolidation was approved by the SEC on July 14, 2011[38], the constituent rural banks consolidated past April 2, 1995, the three-year mark from enactment of RA No. 7353. Hence, petitioner is ineligible for the incentives offered by Section 18 of the Rural Banks Act.

From the foregoing, it can easily be ascertained that the legislature did not intend rural banks to have tax exemptions for an indefinite period; otherwise, the statute would have indicated so, or, at the very least, extended the exemption period for several more years. We cannot read in the law what is not there, or deduce therefrom what it does not necessarily imply. To read

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(a) Its deposit liabilities shall be subjected to only one third (1/3) of reserves normally required for rural banks.

(b) Its reserve requirement can all be maintained under interest-bearing government securities but kept unencumbered with government financial institutions or the Central Bank; and

(c) It shall have unrestricted branching right within the region, free from any assessment or surcharges required in setting up a branch but under coordination with the Central Bank which will have to assess that there are qualified personnel, control and procedures to operate the branch. "

[37] *Rollo*, p. 52.

[38] *Rollo,* p. 39.

into the law something that is simply not there would be tantamount to judicial legislation.[39]

While we acknowledge that generally, tax exemptions are personal in nature and non-transferrable, the principle must be examined in the light of the statute under consideration, and the particular circumstances in this case wherein the constituent corporations comprising the consolidated corporation previously enjoyed tax exemptions conferred by the same statute.

As held in *Commissioner of Internal Revenue vs. Rufino, et. al, and Court of Tax Appeals*[40], "[w]hen it comes to tax exemptions, the basic consideration x x x is the purpose of the merger, as this would determine whether the exchange of properties involved therein shall be subject or not to the capital gains tax. The criterion laid down by the law is that the merger 'must be undertaken for a bona fide' business purpose and not solely for the purpose of escaping the burden of taxation."[41]

There is no justification for us to liberally construe the law, in a situation where the movant seeks exemption from a statutory tax. In this jurisdiction, since 1906, "it has been the constant and uniform holding that exemption from taxation is not favored and is never presumed, so that if granted, it must be strictly construed against the taxpayer. Affirmatively put, the law frowns on exemption from taxation, hence, an exempting provision should be construed *strictissimi juris*."[42] Thus, it has been oft-repeated:

> "Laws granting exemption from tax are construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing power. Taxation is the rule and exemption is the exception."[7] The law "does not look with favor on tax exemptions and that he who would seek to be thus privileged must justify it by words *too* plain to be mistaken and *too* categorical to be misinterpreted."[43]

In claiming exemption from gross receipts tax, petitioner must discharge the burden of establishing the existence of such exemption.

[39] *Philippine Deposit Insurance Corporation vs Bureau of Internal Revenue*, G.R. No. 172892, 13 June 2013.
[40] *Commissioner of Internal Revenue vs. Rufino, et. al, and Court of Tax Appeals*, G.R. Nos. L-33665-68. February 27, 1987.
[41] *Id.*
[42] *Commissioner of Internal Revenue vs A.D. Guerrero*, G.R. No. L-20942, 22 September 1967, *en banc*. Citation omitted.
[43] *Sea-Land Service, Inc. vs Court of Appeals and Commissioner of Internal Revenue*, G.R. No. 122605, 30 April 2001, citing, for the first sentence *Cynamid Philippines, Inc. vs Court of Appeals*, 322 SCRA 639, 650 [2000], citing *Commissioner of Internal Revenue vs Mitsubishi Metal Corporation*, 181 SCRA 214, 223-224 [1990], and for the second sentence, *Commissioner of Internal Revenue vs P. J. Kiener Co., Ltd.*, 65 SCRA 142, 153 [1975], citing *Reagan vs Commissioner of Internal Revenue*, 141 Phil. 621, 633 [1969].

RMC 66-2012 is Consistent with the Law It Seeks to Implement.

As this Court's Second Division observed in its Decision, "The tax exemption provided by Section 15 of RA No. 7353 does not cover situations arising from merger or consolidation of rural banks.[44]"

Notably, Section 244, in relation to Section 4, of the Tax Code of 1997 states:

> "Section 244. Authority of Secretary of Finance to Promulgate Rules and Regulations. — The Secretary of Finance, upon recommendation of the Commission, shall promulgate all needful rules and regulations for the effective enforcement of the provision of this code."

Section 4 of the Tax Code of 1997, on the other hand, gives the power to the Commissioner of Internal Revenue to interpret tax laws, thus:

> "Section 4. Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases. — The power to interpret the provisions of this Code and other laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance."

Correspondingly, Section 10 of the same Code also provides:

> "The Secretary of Finance shall, upon the recommendation of the Commissioner of Internal Revenue, promulgate the necessary rules and regulations for effective implementation of this Act."

The BIR's interpretation of tax laws is entitled to great weight because of its recognized expertise on matters falling within its exclusive administrative domain. It is an elementary rule in administrative law that administrative regulations and policies enacted by administrative bodies to interpret the law which they are entrusted to enforce have the force of law and are entitled to great respect.[45]

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[44] *Rollo*, p. 50.
[45] *Español vs. Philippine Veterans Administration*, 137 SCRA 314.

Executive officials are presumed to have familiarized themselves with all the considerations pertinent to the meaning and purpose of the law, and to have formed an independent, conscientious and competent expert opinion thereon. The courts give much weight to contemporaneous construction because of the respect due the government agency or officials charged with the implementation of the law, their competence, expertness, experience and informed judgment, and the fact that they frequently are the drafters of the law they interpret.[46]

As regards the silence of the Rural Banks Act on the fresh five-year exemption of consolidated rural banks under Section 15, it has been said that the formal or informal interpretation or practical construction of an ambiguous or uncertain statute or law by the executive department or other agency charged with its administration or enforcement is entitled to consideration and the highest respect from the courts, and must be accorded appropriate weight in determining the meaning of the law.[47]

While it is basic that administrative opinions, guidelines, memoranda, circulars or implementing rules and regulations cannot go beyond the ambit of the law they are supposed to implement, given our discussion above, we find the interpretation of the Commission of Internal Revenue in RMC 66-2012 to be consistent with the law it seeks to implement, RA No. 7353.

No Basis for Claimed Retroactive Application of RMC 66-2012

Petitioner claims that this Court's Second Division erred in finding RMC 66-2012 valid and applying the same retroactively to the prejudice of the petitioner for the period January to September 2012, contrary to the provisions of Section 246 of the Tax Code of 1997 which provides:

> "SEC. 246. Non-Retroactivity of Rulings. - Any revocation, modification or reversal of any of the rules and regulations promulgated in accordance with the preceding Sections or any of the rulings or circulars promulgated by the Commissioner shall not be given retroactive application if the revocation, modification or reversal will be prejudicial to the taxpayers, except in the following cases:

[46] *Nestle Philippines vs. Court of Appeals*, et al., 203 SCRA 504 citing *Abejo, et al. vs. Hon. Dela Cruz, etc.*, et al., 149 SCRA 654); *Asturias Sugar Central, Inc. vs. Commissioner of Customs*, 29 SCRA 617; *Ramos vs. Court of Industrial Relations*, 21 SCRA 218 and *Santiago vs. Deputy Executive Secretary*, 192 SCRA 199.
[47] *Asturias Sugar Central, Inc. vs. Commissioner of Customs*, G.R. No. L-19337, September 30, 1969, citing 2 Am. Jur. 2d 66-67.

(a) Where the taxpayer deliberately misstates or omits material facts from his return or any document required of him by the Bureau of Internal Revenue;

(b) Where the facts subsequently gathered by the Bureau of Internal Revenue are materially different from the facts on which the ruling is based; or

(c) Where the taxpayer acted in bad faith."

Under said section, absent any one of the exceptions provided therein, taxpayers may rely upon a rule issued by the Commissioner from the time the rule or ruling is issued up to its reversal by the Commissioner or this Court. The revocation, modification or reversal is not given retroactive effect.[48]

This was discussed in the assailed Decision, thus:

"Anent petitioner's argument that RMC No. 66-2012 should be given prospective application, suffice it to say that this argument is misplaced given that the RMC was issued in October 2012, while petitioner made the actual payments of GRT on November 23, 2012, December 5, 2012, December 19, 2012, and January 24, 2013. Clearly, insofar as petitioner is concerned, RMC No. 66-2012 was issued ahead of petitioner's payments and was applied prospectively."[49]

While petitioner argues that RMC 66-2012 was applied retroactively to it because from the time it commenced operations until the issuance of RMC 66-2012, it relied on several BIR rulings, including a ruling issued to one of the constituent rural banks involved in this case, BIR Ruling No. [DA-420-04] dated August 4, 2004, this argument is misplaced.

Prior to the issuance of RMC 66-2012, the prevailing interpretative rule was RR No. 16-93 dated April 22, 1993 which interpreted the phrase "date of commencement of operations" to refer to the date when the rural bank was registered with the SEC, or the date when the Certificate of Authority to operate as a rural bank was issued by the Monetary Board of the Central Bank. BIR Ruling No. DA-420-04 which was issued to One Network Rural Bank, Inc., one of the constituent rural banks of petitioner, stated the following:

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[48] *Commissioner of Internal Revenue vs. San Roque*, G.R. No. 187485, October 8, 2013.
[49] *Rollo*, p. 52.

> "Such being the case, **since One Network Rural Bank Inc. is an entity created and organized under RA No. 7353 which was issued a Certificate of Incorporation by the SEC on March 12, 2004 and a Certificate of authority by the BSP on March 23, 2004 to operate as a rural bank, it is entitled to all the exemptions provided in Section 15 of RA No. 7353.** Accordingly One Network Rural Bank Inc. is exempt from the payment of gross receipts tax under Section 121 of the Tax Code of 1997 and from the documentary stamp tax due on the sale, exchange or disposition of acquired property through mortgage foreclosure sale as was held in BIR Ruling No. 069-99 dated May 18, 1999 for a period of five (5) years reckoned from March 23, 2004."[50] *(Emphasis supplied)*

Petitioner argues that assuming RMC 66-2012 is valid, petitioner was misled to believe that it was exempted from gross receipts tax under Section 15 of RA No. 7353 and, hence, is not liable for the same during the period prior to the issuance of RMC 66-2012.

However, we agree with the discourse of the Court's Second Division in its Decision, thus:

> "Petitioner's allegation that it relied on prior BIR Rulings declaring that the reckoning point of availing the tax exemption for a rural bank is the date of commencement of its operation is without merit. BIR Ruling No. [DA-(C-117)352-09] dated July 6, 2009 and BIR Ruling No. [DA-420-04] dated August 4, 2004, as cited by petitioner, were not addressed to petitioner, but to some other corporate entities, and that these rulings did not interpret petitioner's supposed entitlement to tax exemptions under RA No. 7353."[51]

Petitioner cannot invoke the argument that it is a new corporate entity under the Corporation Code only when it suits its purposes, and, on the other hand, disavow the same when it does not. The general interpretative rule that petitioner claims it relied upon was a ruling for a single rural bank and its eligibility in availing the tax exemption under Section 15 of RA No. 7353. The ruling did not involve a consolidated corporation borne out of several constituent rural banks. Hence, given the difference in circumstances, petitioner had no reasonable expectation that such ruling would apply in a similar manner to a consolidated corporation composed of constituent corporations that had previously availed of the exemption.

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[50] BIR Ruling [DA-420-04] dated August 4, 2004.
[51] *Rollo*, p. 53.

WHEREFORE, premises considered, the assailed Decision of the Second Division dated April 11, 2014, and its Resolution dated July 7, 2014, are hereby **AFFIRMED** *in toto*, and the instant petition for review is **DENIED** for lack of merit.

SO ORDERED.

Ma. Belen

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda Jr.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla

CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 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.

ROMAN G. DEL ROSARIO
Presiding Justice