REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION
****

NATIONAL GRID CORPORATION OF THE PHILIPPINES, Petitioner,	**CTA AC No. 181** (Civil Case No. 2010-02-24)
	Members:
- versus -	**DEL ROSARIO,** *P.J.*, *Chairperson,* **UY,** and **MINDARO-GRULLA,** *JJ.*
THE CITY OF TACLOBAN and ZOSIMA A. CORDAÑO, in her capacity as City Treasurer of Tacloban, Respondents.	***Promulgated:*** AUG 14 2019 : 9:34am

x - x

RESOLUTION

UY, *J.*:

For resolution is petitioner's **"MOTION FOR RECONSIDERATION"** filed on March 5, 2019, with respondents' **"COMMENT TO PETITIONER'S MOTION FOR RECONSIDERATION"** filed on April 15, 2019, praying for the reconsideration of this Court's Decision dated January 30, 2019, the dispositive portion of which reads:

> "**WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is **DENIED** for failure of petitioner to prove payment of the required 3% franchise tax for taxable year 2009.
>
> Accordingly, the assessed contractor's tax against petitioner for the year 2009 in the aggregate amount of ₱2,022,863.81, as demanded in the letter dated February

1, 2010 issued by respondent City Treasurer, and as reflected in the notice of assessment attached thereto, us **UPHELD**. Petitioner is hereby **ORDERED TO PAY** the aggregate amount of **₱2,022,863.81** to respondent City of Tacloban.

SO ORDERED."

In the instant *Motion for Reconsideration*, petitioner contends that Section 9 of Republic Act (RA) No. 9511 does not specifically require that petitioner should first pay the 3% franchise tax before it can be exempted from payment of local taxes (contractor's tax) mentioned therein; that the issue on petitioner's actual payment of 3% franchise tax was never raised by the parties before the Regional Trial Court (RTC) or on appeal before this Court, hence, the same cannot be decided for the first time on appeal as it violates petitioner's right to due process. Allegedly, petitioner is exempted from the payment of contractor's tax and that it had already paid the 3% franchise tax for the period 2009. Hence, there is no legal and factual basis to order the payment of contractor's tax.

On the other hand, in their *Comment*, respondents aver that petitioner's exemption from the payment of certain taxes does not include exemption from contractor's tax. Allegedly, petitioner has taken improper procedural remedies against the assessment issued by respondent City Treasurer, thereby causing its liability to pay contractor's tax to attach and to become final. Assuming for the sake of argument only that RA No. 9511 allows exemption even from contractor's tax, petitioner is still liable to pay the assessment on account of its failure to prove payment of the 3% franchise tax.

THE COURT'S RULING

The instant *Motion for Reconsideration* lacks merit.

The "in lieu of income tax and any and all taxes" privilege is dependent on the payment of the 3% franchise tax.

According to petitioner, there is absolutely nothing in the law that says payment of the 3% franchise tax is a condition precedent before petitioner can be declared or considered as exempt from paying local taxes (contractor's tax).

We disagree.

For easy reference, Section 9 of RA No. 9511 is quoted anew, to wit:

> "SECTION 9. *Tax Provisions.* – In consideration of the franchise and rights hereby granted, **the Grantee, its successors or assigns, <u>shall pay</u> a franchise tax equivalent to three percent (3%)** of all gross receipts derived by the Grantee from its operation under this franchise. **<u>Said tax</u> shall be in lieu of income tax and any and all taxes,** duties, fees and charges of any kind, nature or description levied, established or collected by any authority whatsoever, <u>local or national</u>, on its franchise, rights, privileges, receipts, revenues and profits, and on properties used in connection with its franchise, from which taxes, duties and charges, the Grantee is hereby expressly exempted: xxx" (*Emphasis and underscoring supplied*)

A plain reading of the foregoing provision would reveal that the *"in lieu of income tax and any and all taxes"* clause is dependent on the payment of the 3% franchise tax. The first sentence of the above-quoted Section 9 expressly states that petitioner *"shall pay"* the said franchise tax. Jurisprudence and statutory construction teach us that the word *"shall"* connotes mandatory character; it indicates a word of command, and one which has always or which must be given a compulsory meaning, and it is generally imperative and mandatory in nature.[1] Thus, when the word *"shall"* is connected with the word *"pay"*, it logically follows and simply means that payment must be made.

Furthermore, relative to the said first sentence of Section 9 of RA No. 9511 which requires the payment of the 3% franchise tax, the second sentence thereof is clear that the *"said tax"* shall be in lieu of income tax and any and all taxes, etc. From this phraseology, the inevitable conclusion is that the 3% franchise tax must be shown to

---

[1] *UCPB General Insurance Company, Inc. vs. Hughes Electronics Corporation*, G.R. No. 190385, November 16, 2016.

have been paid, before petitioner can enjoy the *"in lieu of income tax and any and all taxes"* privilege.

Moreover, the foregoing view is supported by the case of *National Grid Corporation of the Philippines vs. Ofelia M. Oliva*[2], wherein the Supreme Court said:

> "**Section 9 of RA 9511 states that <u>NGCP's payment of franchise tax is in lieu of payment of 'income tax and any and all taxes</u>**, duties, fees and charges of any kind, nature or description levied, established or collected by any authority whatsoever, local or national, on its franchise, rights, privileges, receipts, revenues and profits, and on properties used in connection with its franchise.' xxx
>
> xxx xxx xxx
>
> **Section 9 of RA 9511 provides that <u>NGCP shall pay 'a franchise tax equivalent to three percent (3%)</u> of all gross receipts derived by the Grantee from its operation under this franchise.' <u>This franchise tax is 'in lieu of income tax and any and all taxes</u>**, duties, fees and charges of any kind, nature or description levied, established or collected by any authority whatsoever, local or national, on its franchise, rights, privileges, receipts, revenues and profits, and on properties used in connection with its franchise, from which taxes, duties and charges, the Grantee is hereby expressly exempted.'" *(Emphases and underscoring supplied)*

Based on the foregoing jurisprudential pronouncements, petitioner's payment of franchise tax is in lieu of payment of income tax and any and all taxes, etc. In other words, without the payment of the said franchise tax, the *"in lieu"* clause shall not be applied.

Correspondingly, there can be no merit in the contention of petitioner that the payment of the 3% franchise tax is not a condition precedent before it can be declared or considered as exempt from paying local taxes.

---

[2] G.R. Nos. 213157 and 213558, August 10, 2016.

This Court may rule on related issues necessary to achieve an orderly disposition of the case.

Petitioner contends that the issue on its actual payment of the 3% franchise tax was never raised by the parties before the RTC or in appeal before this Court, and hence, the same cannot be decided for the first time on appeal as it violates petitioner's right to due process.

Again, We disagree with petitioner

Section 1, Rule 14 of the Revised Rules of the Court of Tax Appeals (RRCTA) categorically states, to wit:

> "SECTION. 1. *Rendition of judgment.* – xxx.
>
> **In deciding the case, the Court may not limit itself to the issues stipulated by the parties <u>but may also rule upon related issues necessary to achieve an orderly disposition of the case</u>.**"

Based on the foregoing, this Court is not limited to resolve issues stipulated by the parties <u>but may also resolve any related issues necessary to achieve an orderly disposition of the case</u>. The issue of whether petitioner has paid the 3% franchise tax is <u>a related issue</u> that needs to be resolved to achieve an orderly disposition of the case. To be sure, the main issue is on whether petitioner is liable to the contractor's tax being imposed by respondents. The resolution of this main issue is dependent on whether petitioner has paid the said 3% franchise tax, pursuant to Section 9 of RA No. 9511, as earlier shown.

Therefore, even if the parties did not invoke the issue of payment of the 3% franchise tax, whether in the court *a quo* or this Court, We are not prevented from looking into the same, since its resolution is dependent of whether petitioner may be declared as exempt from the subject contractor's tax.

The payment of the subject 3% franchise tax has <u>not</u> been clearly shown.

M

Petitioner points out that it already paid the 3% franchise tax due for the year 2009, and in support thereof, it attached, in its *Motion for Reconsideration*, a copy of the *Certification* dated September 4, 2018 issued by the LT-Document Processing & Quality Assurance Division, Large Taxpayers Service, of the Bureau of Internal Revenue (BIR). As such, according to petitioner, there is no legal and factual basis for this Court to order the payment of the contractor's tax.

We are not convinced.

While it may true that the said BIR *Certification* reflects the supposed *"collections"* from petitioner using Form Type *"2551M"* for the years 2009 to 2017, there is no showing that what have been collected from petitioner are the 3% franchise taxes imposed under Section 9 of RA No. 9511 for the said period. It must be remembered that BIR Form No. 2551M is the form being filed to pay various *"Other Percentage Taxes"* [such as those paid by persons exempt from value-added under Section 109(v) of the National Internal Revenue Code of 1997, as amended; and by domestic carriers and keepers of garages], and is not limited only to the payment of franchise taxes. Hence, We cannot be sure from the said BIR *Certification* alone that what was collected from petitioner pertains to the 3% franchise tax being imposed under Section 9 of RA No. 9511.

Moreover, even granting that the said collections per the same BIR *Certification* pertain to the franchise tax imposed on petitioner, there is no showing that it is the 3% of all gross receipts derived by petitioner from its operation under the franchise, pursuant to Section 9 of RA No. 9511.

Considering therefore from the foregoing that the payment of the subject 3% franchise tax has not been clearly shown, this Court has no concrete basis to declare that petitioner is exempt from the payment of the assessed contractor's tax.

WHEREFORE, in light of the foregoing considerations, the instant *Motion for Reconsideration* is **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

CIELITO N. MINDARO-GRULLA
Associate Justice