REPUBLIC OF THE PHILIPPINES
Court Of Tax Appeals
QUEZON CITY

SECOND DIVISION

PHILIPPINE AIRLINES, INC. (PAL),	**C.T.A. CASE NO. 7029**
Petitioner,	Members:
	CASTAÑEDA, JR., Chairman UY, and PALANCA-ENRIQUEZ, JJ.
-versus-	**Promulgated:**
COMMISSIONER OF INTERNAL REVENUE, ***Respondent.***	AUG 2 2 2006

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DECISION

PALANCA-ENRIQUEZ, J.:

The elementary rule in statutory construction is that if a statute is clear, plain and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. *Verba legis non est recedendum*. From the words of a statute there should be no departure (*Del Mar vs. Philippine Amusement and Gaming Corp., 358 SCRA 768, 781*).

THE CASE

This is a Petition for Review filed by Philippine Airlines, Inc. (hereafter "petitioner PAL") on August 4, 2004, which seeks to cancel and withdraw the assessment of the Commissioner of Internal Revenue (hereafter "respondent) for deficiency Minimum Corporate Income Tax (MCIT) amounting to P326,778,723.35 for the fiscal year ending March 31, 2000.

THE FACTS

In their "Joint Stipulation of Facts", the parties stipulated as follows:

> "1. Petitioner PHILIPPINE AIRLINES, INC. (PAL) is a domestic corporation organized in accordance with the laws of the Republic of the Philippines with principal office at the 9th Floor, PAL Center, Legaspi St., Legazpi Village, Makati City, where it may be served with summons.
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> 2. Respondent is the Commissioner of the Bureau of Internal Revenue (BIR), which is the government agency in charge of the assessment and collection of all national internal revenue taxes, fees, and charges, including the 2% Minimum Corporate Income Tax Return (MCIT), imposed under Sec. 27(E) of the National Internal Revenue Code (NIRC), with principal office at the BIR National Office Building, Agham Road, Diliman, Quezon City, where he may be served with summons.
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> 3. For the fiscal year ended March 31, 2000, petitioner filed on July 17, 2000 its Tentative Corporate Income Tax Return, showing a creditable tax withheld for

the fourth quarter amounting to PHP524,957.00, a copy of which is attached to the Petition for Review as Annex "A".

4. The income tax return of petitioner reflected a zero taxable income for fiscal year ending March 31, 2000.

5. Petitioner did not pay MCIT for the fiscal year ending March 31, 2000.

6. Revenue Memorandum Circular No. 66-2003 dated October 14, 2003 exists.

7. Revenue Regulations No. 9-98 exists.

8. On July 16, 2001, petitioner also filed with the office of the respondent a written claim for refund, copy of which is attached to the Petition for Review as Annex "D".

9. On September 10, 2001, petitioner received Letter of Authority No. 200000002247 from the BIR Large Taspayers Service, dated September 3, 2001, authorizing the revenue officers named therein to examine petitioner's books of accounts and other accounting records for 'Claim for Refund on Creditable Withholding Tax – Income Tax ' for the fiscal year ending March 31, 2000. Attached to said letter of authority is a letter from Group Supervisor Ramoncito M. Ona, dated September 10, 2001, requesting petitioner to prepare and submit the documents enumerated therein within ten (10) days from receipt thereof. A copy of the letter of authority and the letter attached thereto are attached to the Petition for Review as Annexes "E" and "E-1".

10. On September 25, 2001, petitioner submitted partial documents mentioned in the accompanying letter dated September 24, 2001, a copy of which is attached to the Petition for Review as Annex "F".

11. On January 16, 2002, petitioner received another letter from Group Supervisor Ona, dated January 10,

2002, requesting the preparation and submission of additional documents enumerated therein, within ten (10) days from receipt thereof. A copy of the aforementioned letter is attached to the Petition for Review as Annex "G".

12. On January 31, 2002 petitioner filed with the office of Group Supervisor Ona a letter, a copy of which is attached to the Petition for Review as Annex "H", requesting for an extension of time to submit the additional documents requested by the latter.

13. On March 18, 2002, petitioner received another letter from Group Supervisor Ona, dated February 26, 2002, labeled 'Second Request For Presentation Of Records'. A copy of said letter is attached to the Petition for Review as Annex "I".

14. On April 10, 2002, petitioner partially submitted to the Group Supervisor through a letter dated April 4, 2002, a copy of which is attached to the Petition for Review as Annex "J", photocopies of validated Monthly Remittance Return of Income Taxes Withheld and Annual Information Return of the withholding agents enumerated therein.

15. On November 8, 2002 petitioner received a letter from Revenue officer Edalyin T. Dayacap dated October 18, 2002, requesting for additional documents enumerated therein.

On the same date, petitioner received also a letter from Chief LT Audit & Investigation Division I Aida N. Florencio, dated October 26, 2002 and labeled 'Final Notice', requesting for the presentation of the documents listed in their previous request. A copy of the letter from Revenue Office Dayacap and from Chief Florencio are attached to the Petition for Review as Annexes "K" and "L", respectively.

16. On June 24, 2003, petitioner submitted to Group supervisor Ona, through a letter dated June 23, 2003, a copy of which is attached to the Petition for Review as Annex "M", additional documents described therein.

17. On July 16, 2003 petitioner received from the revenue officers examining its accounting records, a "Summary of Creditable Withholding Tax at Source Certified by RAD Fiscal Year Ending March 31, 2000", together with a computation labeled "Compromise Penalties for Late Filing of Return". A copy of the 'Summary' and the computation of compromise penalties are attached to the Petition for Review as Annexes "N" and "O", respectively.

On the same date, petitioner received a letter from Chief, LT Audit & Investigation Division I Armi S. Linsangan, dated July 8, 2003, informing the petitioner that the results of the investigation of its claim for refund on creditable withholding tax for fiscal year March 31, 2000 had already been submitted, and that the petitioner is requested to come to their office on July 17, 2003 for an informal conference. A copy of said letter is attached to the Petition for Review as Annex "P".

18. On August 11, 2003, petitioner received from the same revenue officers a computation of their initial deficiency Minimum Corporate Income Tax (MCIT) assessment amount to PHP537,77,867.64, a copy of which is hereto attached to the Petition for Review as Annex "Q".

19. On October 20, 2003, petitioner received a Preliminary Assessment notice and Details of Assessment issued by the Large Taxpayers Service, dated September 22, 2003, assessing petitioner deficiency MCIT including interest, the details of which as shown in said letter are quoted hereunder as follows:

'Revenue	P27,277,000,000.00
Less: Cost of services	17,392,118,799.00
Gross Income	P 9,884,881,201.00

Add: Deduct: Non-operating Income		(273,742,279.00)
Total Gross Income for MCIT purposes	P	9,611,138,922.00
Rate of tax		2%
Tax Due	P	192,222,778.44
Add: 20% Interest fr. 8-16-00 to 10-31-03 (.64167)		123,343,590.24
TOTAL AMOUNT DUE	P	315,566,368.68'

A copy of the Preliminary Assessment Notice and the Details of Assessment are attached to the Petition for Review as Annexes "R" and "R-1", respectively.

20. On December 16, 2003, petitioner received a Formal Letter of Demand and Details of Assessment from the Large Taxpayers Service, dated December 1, 2003, demanding the payment of the total amount of PHP326,778,733.35, the details of which as shown in said letter are quoted hereunder as follows:

Assessment No. INC-FY-99-2000-000085

Revenue		P27,277,000,000.00
Less:Cost of services		17,392,118,799.00
Gross Income	P	9,884,881,201.00
Add:Deduct: Non-operating Income		(273,742,279.00)
Total Gross Income for MCIT purposes	P	9,611,138,922.00
Rate of Tax		2%
Tax Due	P	192,222,778.44
Add: 20% Interest fr. 8-16-00 to 2-16-04 (.7)		134,555,944.91
TOTAL AMOUNT DUE	P	326,778,723.35

A copy of respondent's December 1, 2003 Formal Letter of Demand and the Details of Assessment are attached to the Petition for Review as Annexes "T" and T-1", respectively.

21. On January 13, 2004, petitioner filed a formal written protest dated January 8, 2004, addressed to the respondent protesting the PHP326,778,723.35 assessment

> contained in its December 1, 2003 formal letter of demand, reiterating its defenses that PAL is exempt from, or is not subject to, the 2% MCIT by virtue of its charter, PD 1590, and that the three-year period allowed by law for the BIR to assess deficiency internal revenue taxes for the taxable fiscal year ending March 31, 2000 had already lapsed on July 15, 2003. A copy of the petitioner's January 8, 2004 formal written protest is attached to the Petition for Review as Annex "U"."

In his answer, respondent alleged by way of special and affirmative defenses that petitioner is liable for the computed deficiency MCIT of P326,778,723.35 under *Section 27 (E) of the Tax code, and Revenue Memorandum Circular No. 66-2003,* dated October 14, 2003; that *Revenue Memorandum Circular No. 66-2003* did not alter, modify or amend the intent of the law insofar as the imposition of the MCIT is concerned; that issues and defenses not raised in the administrative level cannot be raised for the first time on appeal; and that the assessment was issued in accordance with existing law and regulations.

Petitioner presented Ms. Evelyn Taghap, its Manager for Tax Division, as witness, and documentary evidence, marked as Exhibits "*A*" to "*V*", inclusive of submarkings.

On the other hand, at the hearing on October 5, 2005, counsel for respondent manifested that she is dispensing the presentation of her evidence and submitted the case for decision.

Thereafter, both parties were ordered to file their respective memoranda within thirty (30) days from notice. Both parties having complied thereto, the case was deemed submitted for decision on January 16, 2006.

ISSUES

As stipulated upon by the parties, the following are the issues for the consideration of this Court:

I

WHETHER OR NOT THE DEFICIENCY 2% MINIMUM CORPORATE INCOME TAX ASSESSMENT AGAINST PETITIONER FOR THE FISCAL YEAR ENDING MARCH 31, 2000, WAS ISSUED WITHIN THE PRESCRIPTIVE PERIOD PROVIDED BY LAW.

II

WHETHER OR NOT PETITIONER IS EXEMPT FROM THE DEFICIENCY 2% MINIMUM CORPORATE INCOME TAX BY VIRTUE OF ITS FRANCHISE, PRESIDENTIAL DECREE NO. 1590.

III

WHETHER OR NOT PETITIONER IS LIABLE TO THE MCIT AS PROVIDED FOR UNDER SECTION 27 (E) OF THE TAX CODE IN RELATION TO REVENUE REGULATIONS NO. 9-98 AND REVENUE MEMORANDUM CIRCULAR NO. 66-2003.

IV

WHETHER OR NOT PETITIONER IS LIABLE TO PAY THE AGGREGATE AMOUNT OF PHP326,778,723.35 REPRESENTING DEFICIENCY MCIT, INCLUSIVE OF INCREMENTS, FOR THE FISCAL YEAR ENDING MARCH 31, 2000.

THE COURT'S RULING

We find merit in the instant petition.

Primordial Issue to Resolve

The primordial issue for this Court's resolution is whether or not petitioner is liable to pay the MCIT in the amount of P326,778,723.35 for the fiscal year ending March 31, 2000.

The resolution of this issue must take precedence over the others, as this will determine the necessity to discuss the other incidental issues.

Petitioner's Arguments

Petitioner argues that it is exempt from the deficiency 2% MCIT by virtue of its franchise, *P.D. 1590*. Under *Section 13 of P.D. 1590*, it is liable only to either the basic corporate income tax based on its annual net taxable income, or the 2% franchise tax based on gross revenue, whichever is lower. The purpose of providing alternative computations in determining PAL's tax liability is clearly to grant PAL an incentive. To make PAL liable to MCIT notwithstanding that it is in tax loss position, hence without any regular corporate income tax liability, would have the effect of adding a third option which is not the intention of the lawmakers and nowhere to be found in *P.D. 1590.*

Petitioner maintains that the MCIT falls under the phrase "all other taxes x x x of any kind, nature, or description, imposed x x x by any x x x national authority or government agency, now or in the future" of the last paragraph of *Section 13* "in lieu of", which PAL is required to pay only the basic corporate income tax or the 2% franchise tax whichever results in a lower tax.

The contention of the respondent that PAL is subject to MCIT is tantamount to saying that *Section 27 (E) of the NIRC* has amended *Section 13 of P.D. 1590*, which is clearly devoid of any legal basis.

According to the petitioner, since *Section 27 (E) of the NIRC* did not amend nor modify PAL's liability under *Section 13 of P.D. 1590* only for either the basic corporate income tax or a 2% franchise tax, whichever results in a lower tax liability, in lieu of all other taxes "of any kind, nature, or description, imposed, levied, established, assessed, or collected by any municipal, city, provincial or national authority or government agency, now or in the future", it follows that *Revenue Regulations No. 9-98*, which was issued by the BIR to implement

Section 27 (E) is not applicable to PAL. Similarly, *Revenue Memorandum Circular No. 66-2003*, which was issued by the BIR purportedly to clarify the liability of PAL for the 2% MCIT, does not make PAL liable for the MCIT as it amounts to an unauthorized amendment of *Section 13 of P.D. 1590*, in violation of *Section 24* thereof.

Respondent's Arguments

Respondent reiterates that the petitioner is covered by *Section 27 (E) of the NIRC, as amended*, it being a domestic corporation incorporated in 1941 and registered with the BIR in 1994, hence, it is liable for the computed deficiency MCIT of P326,778,723.35 covering the fiscal year ending March 2000.

Respondent alleges that since petitioner computed its liability based on *Section 27 (A) of the NIRC,* it necessarily follows that it may also be made liable for the MCIT, pursuant to *Section 27 (E)*, in relation to *Sections 27 (A) and 22 (B) of the same Code*.

Respondent contends that there is no conflict with the provisions of *P.D. 1590 and R.A. 8424*. Petitioner was given the option under its Charter how to pay its tax. It made its option, and that is to pay corporate income tax, the governing law for the computation of which is

R.A. 8424, Title II thereof. But *P.D. 1590 and R.A. 8424* are both special laws, hence, in case of conflict, the latter law must prevail. Petitioner, not being one of the entities explicitly exempted from the payment of the MCIT as provided under *Revenue Regulations 9-98*, petitioner is laible to pay the questioned assessment.

We rule for the petitioner.

Section 13 of P.D. 1590 (An Act Granting a New Franchise to Philippine Airlines, Inc. To Establish, Operate, And Maintain Air-Transport Services In the Philippines And Between the Philippines and Other Countries), provides:

> "SEC. 13. In consideration of the franchise and rights hereby granted, the grantee shall pay to the Philippine Government during the life of this franchise whichever of subsections (a) and (b) hereunder will result in a lower tax:
>
> (a) The basic corporate income tax based on the grantee's annual net taxable income computed in accordance with the provisions of the National Internal Revenue Code; or
>
> (b) A franchise tax of two per cent (2%) of the gross revenues derived by the grantee from all sources, without distinction as to transport or non-transport operations; provided that with respect to international air-transport service, only the gross passenger, mail, and freight revenues from its outgoing flights shall be subject to this tax.
>
> The tax paid by the grantee under either of the above alternatives shall be in lieu of all other taxes, duties, royalties, registration, license, and other fees and charges of any kind, nature, or description imposed, levied, established, assessed, or collected by any

> municipal, city, provincial, or national authority or government agency, now or in the future x x x."

Pursuant to *P.D. 1590,* petitioner was provided a franchise to establish, operate and maintain air-transport services within the Philippines and other countries. And in consideration of said franchise and rights granted, petitioner shall undertake to pay the Government either the basic corporate income tax in accordance with the National Internal Revenue Code (hereafter "NIRC") or the 2% franchise tax.

Statutory Construction

Section 13 of P.D. 1590 acquiring and limiting the extent of the tax liability of the petitioner under its franchise is coached in a clear, plain and unambiguous manner, and needs no further interpretation or construction. The explicit tenor thereof requires hardly anything than a simple application [*Commissioner of Internal Revenue vs. Court of Appeals, 310 Phil. 392, 397 (1995)*].

The elementary rule in statutory construction is that if a statute is clear, plain, and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. *Verba legis non est recedendum*. From the words of a statute there should be no departure *(Del Mar vs. Philippine Amusement and Gaming Corp., 358 SCRA 768, 781).*

Petitioner, therefore, shall pay its tax liability using either of the following alternatives:

a) the basic corporate income tax computed in accordance with the provisions of the NIRC; or

b) 2% franchise tax of the gross revenues derived by the grantee (petitioner) from all sources.

The petitioner-grantee must choose between the two aforementioned alternatives in the payment of its tax liability to the government and its choice must be that which will result in a lower tax liability. Petitioner opted to pay the corporate income tax for the fiscal year ending March 31, 2000, pursuant to *Section 13 (a)* of its franchise as shown by its Annual Income Tax Return and Amended Corporate Income Tax Returns (*Exhibits* "*A*", "*B*" and "*C-1*"). Hence, the basic corporate income tax shall be based on petitioner's annual net taxable income computed, pursuant to *Section 27* of the *NIRC of 1997, as amended*, pertinent portion of which reads:

> "**SEC. 27. Rates of Income Tax on Domestic Corporations —**
> **(A) In General.** — Except as otherwise provided in this Code, an income tax of thirty-five percent (35%) is hereby imposed upon the taxable income derived during each taxable year from all sources within and without the Philippines by every corporation, as defined in Section 22(B) of this Code and taxable under this Title as a corporation, organized in, or existing under the laws of the

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> Philippines: Provided, That effective January 1, 1998, the rate of income tax shall be thirty-four percent (34%); effective January 1, 1999, the rate shall be thirty-three percent (33%); and effective January 1, 2000 and thereafter, the rate shall be thirty-two percent (32%).
>
> In the case of corporations adopting the fiscal-year accounting period, the taxable income shall be computed without regard to the specific date when specific sales, purchases and other transactions occur. Their income and expenses for the fiscal year shall be deemed to have been earned and spent equally for each month of the period xxx."

The income tax return of petitioner reflected a zero taxable income for the fiscal year ending March 31, 2000 (Exhibit "*C-1*"). Obviously, zero tax liability is lower than the 2% franchise tax; hence, petitioner chose a better alternative in availing of the basic corporate income tax as basis for its tax liability to the government. Nevertheless, respondent assessed petitioner for a deficiency MCIT for the same fiscal year.

The basic corporate income tax mentioned in *Section 13* of *P.D. 1590* does not refer to MCIT under *Section 27 (E)* of the *NIRC of 1997, as amended.* Rather, it particularly refers to the applicable rate of 32% income tax, under *Section 27 (A)* of the *NIRC of 1997, as* amended, on the taxable income of domestic corporations, such as petitioner. The tax base thereof, as expressly specified in the afore-quoted section of

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petitioner's franchise and in fact admitted by respondent in his answer, is its annual net taxable income.

On the other hand, under *Section 27 (E)(1)* of the *NIRC of 1997, as amended*, the MCIT is imposed on the gross income of a corporation. There is a clear difference between the two terms. Therefore, the MCIT as it is imposed on the gross income of a corporation cannot be made to apply to herein petitioner by virtue of the express provision of its franchise that its basic corporate income tax shall be based on its annual net taxable income. Thus, being a different specie from the required tax payable by petitioner established under its franchise, the MCIT qualifies as "other taxes" from which petitioner had been granted tax exemption.

"In lieu of all other taxes" clause

Petitioner may choose to pay either of the two options provided by its franchise whichever will result to a lower tax. Payment, when made, shall be in lieu of all other taxes. The "in lieu of all other taxes" clause of *Section 13* of petitioner's legislative franchise exempts PAL from all taxes necessary in the conduct of its business covered by the franchise, except the tax on its real property for which PAL is expressly made payable.

The "in lieu of all other taxes" proviso in the franchises of numerous grantees has been consistently upheld by no less than the Supreme Court. In the case of Philippine National Railways vs. Nolting *(34 Phil. 401)*, it was held that the "in lieu of" clause in PNR's franchise exempted it from the documentary stamp tax imposed on bills of lading issued by railway companies, PNR's franchise provided that the annual payment for which PNR is liable, when promptly and fully made shall be in lieu of all taxes of every name and nature, municipal, provincial or central, upon its capital stock, franchise, right of way, earnings and all other property owned or operated by the grantee, under this concession or franchise. In upholding PNR's exemption from DST on bill of lading it had issued, the Supreme Court said:

> "The phrase 'all taxes of every name and nature' is a very inclusive statement, especially when it names, in connection therewith, the only government entities who have a right to collect taxes, it not only includes all payments which might be regarded as taxes, but it excludes everything which might by any possibility, be denominated taxes x x x"

Likewise, in the case of Province of *Misamis Oriental vs. Cagayan Electric Power and Light Company, Inc. (181 SCRA 38)*, the Supreme Court upheld the validity and effectivity of the "in lieu of all taxes" provision found in therein petitioner's legislative franchise and held that the franchise was not amended by *P.D. 231* (*Local Tax Code*) which authorized provinces to impose franchise tax on businesses operating in the provinces.

In *Philippine Airlines, Inc. vs. Court of Tax Appeals, et al., CA-G.R. SP No. 69388, November 25, 2003,* the Court of Appeals held:

> "The 'in lieu of all taxes' clause under section 13 of petitioner's legislative franchise, exempts PAL from all taxes necessary in the conduct of its business covered by the franchise, except the tax on its real property for which PAL is expressly made payable.
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> The phrase 'in lieu of means instead of; in place of; or on substitution for (Black v. Barnes, 46 p. 2d 625, 626, 142 Kan. 381; Rutherland vs. Oroville-Wyandotte Irr. Dist., 22 P. 2d 505, 218 Cal. 242; Words and Phrases, Vol. 21, p.472). It does not mean 'in addition to' (Glassman Const. Co. v. Baltimore Brick Co., 246 Md. 478, 228 A. 2d 472, 474, Black's law Dictionary, 6th ed., 1990, p. 787). The 'in lieu of' implies the existence of something for which a substitution is being made. Thus, the 'in lieu of all other taxes' means that none other than the tax specified however described, can be demanded. It limits the liability to the specific tax (State of Tennessee vs. Bank of Commerce, 53 F. 735, 736, Words and Phrases, Vol. 21, p. 474)."

Rationale of the Exemption

The rationale or purpose for the exemption from all other taxes except the income tax and real property tax granted to petitioner upon the payment of the basic corporate income tax or the 2% franchise tax is that such exemption is part of the inducement for the acceptance of the franchise and the rendition of public service by the grantee. To repeat, the only qualification provided for in the law is the option given to PAL to choose between the taxes which will yield the lesser liability. Nothing is said about exemption from other taxes if petitioner, choosing the payment of corporate income tax, does not pay income tax at all. If the lawmakers intended to provide for such a condition, then they would have included such a provision. More importantly, if We were to impose the MCIT against petitioner, this would effectively negate the rationale of the law, by stripping PAL of the right given to it by virtue of its franchise to avail of tax incentives, such as the "in lieu of all other taxes" clause.

In the event that petitioner results to a no tax liability upon availing of one of the alternatives given, it should not be held liable for any other tax, such as the MCIT, except for real property tax. This is the clear intendment of *P.D. 1590* which grants a new franchise to herein petitioner PAL.

Similarly, in the case involving the same parties regarding a claim for refund of the 20% final tax on interest on income on its bank deposits, the Court of Appeals in ruling for PAL held:

> "Moreover, the law does not say that to avail of the exemption from payment of all other taxes, there must be, after the computation, a tax due coupled with an "actual" payment thereof. The law simply states that the petitioner-

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> grantee must choose between the two alternatives and such choice must be that whichever will result in a lower tax liability. Any tax paid under either of the two alternatives shall exempt the petitioner-grantee from the payment of the other taxes as the said tax payment is considered by law "in lieu of all other taxes." In this case, as earlier stated, the petitioner availed of the right and privilege granted to it by law by opting to choose the basic corporate income tax as basis for its tax liability, which however, after considering the factors allowed by law, resulted in a zero tax liability. Such zero tax liability as a result of the exercise of its lawful privilege should not be taken against the petitioner nor deprive it of availment of the exemption granted by the law." *(Philippine Airlines Inc., vs. Hon. Court of Tax Appeals, CA-GR. SP. No. 67970, September 30, 2003)*

To conclude, the MCIT is regarded to belong to "other taxes" as it was not included in the choices provided by the franchise. To hold otherwise would be to give another option to petitioner which is evidently not within the ambit of *P.D. 1590*.

Finally, in the recent case of *PAL vs. Commissioner of Internal Revenue, C.T.A. Case No. 7010,* promulgated on July 31, 2006, involving the same parties and issue but different taxable year, this Second Division, under the ponencia of Justice Juanito C. Castañeda, Jr., likewise ruled that petitioner PAL cannot be held liable to pay the MCIT assessed by the respondent.

Having definitively disposed of the case through the resolution of the principal issue, We find no need to pass upon the other incidental issues raised for being moot and academic.

WHEREFORE, premises considered, the present Petition For Review is hereby **GRANTED.** Accordingly, Assessment No. INC-FY-99-2000-000085 and Formal Letter of Demand for the payment of deficiency Minimum Corporate Income Tax in the amount of P326,778,723.35 are hereby **CANCELLED** and **WITHDRAWN**.

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

ATTESTATION

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

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairman, Second Division

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Justice