**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

## SECOND DIVISION

**NATIONAL TRANSMISSION CORPORATION,**
*Petitioner,*

-versus-

**PROVINCE OF BATAAN, represented by its PROVINCIAL TREASURER, EMERLINDA S. TALENTO, AND CITY OF BALANGA represented by its CITY TREASURER, JOSELITO R. EVANGELISTA,**
*Respondents.*

**CTA AC CASE NO. 78**

**Members:**

**CASTAÑEDA, JR.,** *Chairperson*
**CASANOVA**, and
**MINDARO-GRULLA,** *JJ.*

**Promulgated:**
DEC 16 2011
3:45 p.m.

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# D E C I S I O N

**CASTAÑEDA, JR.,** ***J.*:**

This is an appeal from the Joint Decision of the Regional Trial Court (RTC) Branch 3 of Balanga City, Bataan in Civil Case No. 9237 entitled "National Transmission Corporation (Transco) vs. Province of Bataan, represented by its Provincial Treasurer, Emerlinda S. Talento" and in Civil Case No. 9412 entitled "National Transmission Corporation (Transco) vs. City of Balanga, represented by its City Treasurer, Joselito R. Evangelista".

## THE FACTS

The significant factual antecedents as narrated by the Court *a quo* are as follows:[1]

"1. Transco is a government instrumentality created pursuant to Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001 (Epira), with principal office address at Transco Main Building, Quezon Avenue corner BIR Road, Diliman, Quezon City. Pursuant to the said Epira, Transco is the entity which provides and transmits electrical power from the generating source/s thereof to institutional end-users, such as electric cooperatives, and to other corporate end-users, such as manufacturing companies and similar large electrical power-consuming customer;

2. The Province of Bataan is a local government unit duly created and organized under Philippine laws, with capacity to sue and be sued, and is represented in Civil Case No. 9237 by Ms. Emerlinda Talento, the Provincial Treasurer, with office address at Provincial Capitol, Balanga City, Bataan;

3. The City of Balanga is a local government unit duly created and organized under Philippine laws, with capacity to sue and be sued, and is represented in Civil Case No. 9412 by Mr. Joselito R. Evangelista, the City Treasurer, with office address at the City Hall, Poblacion, Balanga City, Bataan;

4. It is of public knowledge, and is thus of judicial notice, that the electric posts and wires strung thereto which run at the side of the whole length of the national highway from the foot, at Dinalupihan town, to the tip, at the town of Mariveles, of the Bataan Peninsula, and passing through the City of Balanga, are maintained and used by Transco to transmit electric power to its customers in the entire Province of Bataan, including the City of Balanga;

5. It is likewise of judicial notice that Penelco is an electric cooperative which provides electrical power to customers in the entire Province of Bataan, including those in Balanga City, which is the capital of the Province of Bataan and a component city thereof. The Province of Bataan has eleven (11) towns and one (1) component city;

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[1] RTC Records, Civil Case No. 9237, pp. 111-114; Docket, pp. 26-29

6. By Transco's admission, Penelco is a customer of Transco which 'is located in Balanga City.' Thus, the source of electrical power which Penelco retails to its customers in the entire Province of Bataan, including the City of Balanga, is Transco;

7. Transco admits that it has a sub-station and other customers which it directly serves, aside from Penelco, in the Province of Bataan and accordingly, on January 20, 2009, Transco paid to the Provincial Government of Bataan, through the Provincial Treasurer, franchise tax for the year 2009 in the amount of P1,060,713.14. In the receipt covering said payment, it is stated that it is a partial payment of franchise tax for 2009 and, further, it is noted therein: 1) that the payment was made through credit advice; and 2) that said payment excludes franchise tax due from sale to Penelco;

8. The Provincial Treasurer avers that payments of Penelco to Transco for the years 2003 to 2008, which payments became the basis for the assessment of the franchise taxes for the years 2004 to 2009, were made at Transco's substation in Hermosa, Bataan, which place of payment is within the territorial jurisdiction of the Province of Bataan. Transco admits that its substation in Hermosa, Bataan is allowed to receive, and in fact receives, payments from its power customers in the Province of Bataan, which includes Penelco;

9. Transco claims that said payment of franchise tax 'excludes the gross sales receipts for Penelco because said customer is located in Balanga City, which is outside the territorial jurisdiction of the Province of Bataan,' and that 'Transco is not exercising rights and privileges for the gross receipts derived from Penelco within the territory of the Province of Bataan;

10. By letter dated February 4, 2009, the Provincial Treasurer acknowledged receipt of the partial payment to the Province of Bataan of the franchise tax and, further, assessed Transco for franchise tax for calendar years 2003 to 2008 on its 'receipts to Penelco which (are) derived from the schedule of monthly payments to Transco by Penelco' based on the total amount of gross receipts of P1,413,090,096.84 and computed the total amount of the franchise tax at the amount P12,875,083.62, for which it demanded payment on or before February 28, 2009 to avoid incurring additional interest. The

amount of P12,875,083.62 is composed of the principal amount of franchise tax of P7,065,450.48, surcharge of P1,766,362.62, and interest of P4,043,270.51;

11. By letter dated April 3, 2009, Transco protested said franchise tax assessment and, while admitting that the amount of the franchise tax 'was derived from the schedule of monthly payments made by Penelco to Transco,' it prayed that said tax assessment be set aside on the following grounds:

1. Pursuant to Art. 226 (a) of the Implementing Rules and Regulations of the Local Government Code, the liability of TRANSCO to pay franchise tax accrues only from gross receipts from its operations within the province's territorial jurisdiction. The said territorial jurisdiction excludes the territorial limits of any city located in the province. The said rule was affirmed by the Supreme Court in the case of National Power Corporation vs. City of Cabanatuan (GR No. 149110, 9 April 2003);

2. Considering that PENELCO is located within the City of Balanga which is outside the territorial jurisdiction of the Province of Bataan, we respectfully submit that the Province of Bataan has no authority to collect franchise tax from the gross receipts of Penelco.

12. Subsequently, by letter dated October 30, 2009, the City Treasurer assessed Transco for franchise taxes for the years 2005 to 2009 based on 'actual payment of Penelco-Balanga City' for the base years 2004 to 2008 and which taxes are due 2005 to 2009, which franchise taxes he computed to amount to P13,269,395.26, composed of principal amount of franchise tax of P6,962,821.33, and the balance consisting of surcharges and interests;

13. In its letter dated December 22, 2009, Transco protested said assessment, stating, among other matters, that:

> x x x the basis of your assessment is the actual payment of PENELCO to TransCO which is also the same basis used by the Province of Bataan in its claim for franchise tax against TransCO. Please be informed that there is now a pending appeal before the Regional Trial Court, Branch 3 of Bataan filed by TransCO against the Province of Bataan for an erroneous assessment.

Notwithstanding the aforesaid claim of the Province of Bataan, we would like to protest the assessment issued by your office on the following grounds:

1. The requisites for the determination of franchise tax liability in the case of NPC vs. City of Cabanatuan, G.R. No. 149110, April 9, 2003 was not met. In said case the liability for franchise tax is subject to two conditions: (1) that petitioner 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 respondent city government.

2. While TransCO's customer, PENELCO, is located within the City of Balanga, Transco has no substation/district/branch/regional office within the territorial jurisdiction of the City and as such TransCO cannot be considered as exercising its rights under its franchise within the City's territory.

14. The position of Transco is that it 'did not completely exercise its rights under its franchise in the Province of Bataan as well as in the City of Balanga (because) to be considered as exercising its rights under its franchise, TRANSCO must have a substation and a customer within a certain province or within a certain city, (a)bsent any one of which TRANSCO cannot be considered as operating as a transmission company because a substation and a customer are two vital components of TRANSCO's business, x x x regardless of where the payment is made. On the other hand, the Provincial Treasurer asserts that the 'tax situs of appellant Transco should not be confused x x x with the tax situs of Penelco, (as) the determining factor of appellant's liability for franchise taxes on the payments made by Penelco is not where Penelco derived its income but rather, where appellant Transco derived the payments of Penelco, (for) it is not the gross receipts of Penelco which is the basis of Transco's franchise tax, rather, the gross receipts of Transco itself which it realized in its Hermosa substation and which clearly include the payments made by Penelco.' The City Treasurer, for his part, states that 'appellant Transco cannot deny the fact that it maintains steel towers and transmission lines within the territorial jurisdiction of the City of Balanga which enables it to deliver and sell electric power to Penelco

which holds office in Balanga and from such sale Transco generates income."

On September 23, 2010, the Court *a quo* rendered the assailed Joint Decision, the dispositive portion thereof reads:

> "WHEREFORE, in the light of the foregoing, judgment is hereby rendered ordering appellee National Transmission Corporation (Transco) in Civil Case No. 9237 and plaintiff in Civil Case No. 9412 to pay franchise tax on the gross receipts received or realized by it from the Peninsula Electric Cooperative (Penelco), in the total amount of Twelve Million Eight Hundred Seventy Five Thousand Eighty Three Pesos and 62/100 (P12,875,083.62) representing the franchise tax due for the calendar years 2004 to 2009 representing the payments made by Penelco to Transco for the years 2003 to 2008, plus accrued interests and penalties from the time of judicial demand until full payment, with legal interest of six percent (6%) per annum on the accrued interest from judicial demand on August 26, 2009, when the Provincial Treasurer of Bataan asserted judicially through its comment to Transco's appeal the right to assess, and claim payment of, the franchise tax from Transco, pursuant to Art. 2212 of the Civil Code.
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> All costs against the National Transmission Corporation (Transco).
>
> SO ORDERED."

Dissatisfied, TRANSCO filed its Motion for Reconsideration[2] on November 2, 2010 praying that the Joint Decision be reconsidered and the Notices of Assessment issued by the City Treasurer of Balanga City on October 30, 2009 and by the Provincial Treasurer of Bataan on February 4, 2009 be declared null and void. Said Motion was denied by the Court *a quo* in an Order[3] dated March 23, 2011, the dispositive part thereof provides:

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[2] RTC Records, Civil Case No. 9237, pp. 120-128
[3] RTC Records, Civil Case No. 9237, pp. 141-142

> "WHEREFORE, the motion of National Transmission Corporation dated October 19, 2010 for reconsideration of the Joint Decision dated September 23, 2010 is hereby DENIED.
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> SO ORDERED."

Hence, the present Petition for Review praying that this Court will annul and set aside the September 23, 2010 Joint Decision and the March 23, 2011 Order of the Court *a quo*, as well as declare that petitioner is not liable for franchise tax to the Province of Bataan.[4]

After respondents' posted their Comment[5] on July 4, 2011 and petitioner filed its Reply[6] on July 18, 2011, this case was submitted for decision on October 5, 2011 considering petitioner's "Memorandum" filed on September 8, 2011 and "Memorandum (For the Respondents)" filed on October 4, 2011.

## PETITIONER'S ARGUMENTS

Petitioner submits that the lower court erred in ruling that it is liable to the Province of Bataan for payment of franchise tax.

Petitioner argues that it is not exercising its secondary or special franchise since to be considered as exercising its rights or privileges under its franchise, it must have (1) a substation/district/branch/regional office, and (2) a customer; both of which must be within the territory of the province. The presence of a customer and a substation/district/branch/regional office is not only essential in its operation but also determines its *tax situs* pursuant to

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[4] Docket, p. 16
[5] Docket, pp. 114-130
[6] Docket, pp. 108-113

Section 150 of the Local Government Code (LGC). While it has a substation in the Province of Bataan, its customer, Peninsula Electric Cooperative (PENELCO), is in the City of Balanga, outside the territorial jurisdiction of the Province of Bataan. Therefore, it cannot be considered to be operating or performing its privilege under its franchise in the Province of Bataan based on the gross receipts from PENELCO.

Petitioner further asserts that the gross receipts from PENELCO's payments were not realized within the Province of Bataan but in the Province of La Union inasmuch as PENELCO's payments were all recorded at its Regional Office in Poro Point, La Union.

Moreover, petitioner stresses that it is distinct and separate from PENELCO since it is involved in the transmission of electricity, while the latter is a distribution utility. Thus, even though PENELCO operates within Bataan, the same is not true insofar as petitioner is concerned.

Petitioner likewise argues that it is not estopped by paying franchise tax on the gross receipts of its customers. Accordingly, while it has other customers in the Province of Bataan of which it has lawfully paid the franchise tax imposed by the Province based on the gross receipts from the said customers, this does not mean that it is automatically liable to the Province insofar as PENELCO is concerned. In the absence of the aforesaid twin requisites, the notice of assessment issued to it by the Province of Bataan regarding its gross receipts from PENELCO is void for having been issued without legal and factual bases.

Lastly, petitioner contends that assuming without admitting any liability for franchise tax, the computation of gross receipts provided by the Provincial Treasurer is erroneous because under the Local Government Code, the gross annual receipts do not include discounts, ancillary services charges, value-added tax and universal charge.

## RESPONDENTS' ARGUMENTS

Respondents maintain that the RTC of Bataan aptly ruled that petitioner is exercising its secondary franchise in both the Province of Bataan and the City of Balanga.

Respondents contend that the opinion of petitioner as regards the twin requisites before it is considered as exercising its rights or privileges under its franchise is self-serving and contrary to the pronouncement of the Supreme Court in the case of *National Power Corporation vs. City of Cabanatuan*[7].

Furthermore, the acts of erecting poles, stringing wires or maintaining transmission lines are considered exercises of secondary franchise. Under Republic Act (RA) No. 9136, TRANSCO assumed the electrical transmission function of National Power Corporation (NPC) as well as 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; which are considered exercises of secondary franchise. Hence, petitioner cannot claim that without a substation

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

or office it is not deemed as exercising its secondary franchise in a particular locality and not subject to franchise tax.

On petitioner's reliance on Section 150 of the LGC on *situs* of the tax, respondents assert that the said provision specifically pertains to tax on business imposable by municipalities and not to franchise tax which may be imposed by provinces and cities.

Respondents reiterate that the trial court did not err in ruling that petitioner is liable to pay franchise taxes on its gross receipts from PENELCO to Bataan; and that the computation of franchise tax by petitioner as presented in the Petition for Review are unsubstantiated and were not raised during the hearings in the Court *a quo*.

## THE ISSUE

Petitioner raised the following issue[8] for this Court's resolution:

> "WHETHER OR NOT THE TRIAL COURT ERRED IN RULING THAT TRANSCO IS LIABLE FOR FRANCHISE TAX TO THE PROVINCE OF BATAAN ON PENELCO'S GROSS RECEIPTS."

## THE COURT'S RULING

Under Section 134, Article 1, Book II of the Local Government Code, the province is authorized to levy taxes, fees, and charges provided in the said Article.[9] One of the taxes which may be imposed by the province is franchise tax pursuant to Section 137 of the LGC, which provides:

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[8] Docket, p. 11

[9] SEC. 134. *Scope of Taxing Powers.* - Except as otherwise provided in this Code, the province may levy only the taxes, fees, and charges as provided in this Article.

> "SEC. 137. *Franchise Tax.* — 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 for the preceding calendar year **based on the incoming receipt, or realized, within its territorial jurisdiction**. xxx" (*Emphasis supplied*)

This kind of tax may also be imposed by the city in accordance with Section 151 of the LGC.[10]

Section 137 of the LGC provides that franchise tax may be imposed 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 the territorial jurisdiction.

In the case of *National Power Corporation vs. City of Cabanatuan*[11], the Supreme Court discussed the requisites for the imposition of franchise tax under Section 137 of the LGC as follows:

> xxx Verily, to determine whether the petitioner is covered by the franchise tax in question, the following requisites should concur: (1) that petitioner 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 respondent city government. [12]

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[10] SEC. 151. *Scope of Taxing Powers.* - Except as otherwise provided in this Code, the city, may levy the taxes, fees, and charges which the province or municipality may impose: *Provided, however*, That the taxes, fees and charges levied and collected by highly urbanized and independent component cities shall accrue to them and distributed in accordance with the provisions of this Code.
The rates of taxes that the city may levy may exceed the maximum rates allowed for the province or municipality by not more than fifty percent (50%) except the rates of professional and amusement taxes.

[11] G.R. No. 149110, April 9, 2003, 401 SCRA 259.

[12] See *National Power Corporation vs. The Provincial Government of Bukidnon and Luis L. Oro, in his capacity as Provincial Treasurer of Bukidnon,* CTA AC No. 57, Decision dated August 10, 2010 and Amended Decision dated December 13, 2010.

There is no dispute that petitioner has a franchise in the sense of a secondary or special franchise. Petitioner was created by virtue of RA No. 9136, otherwise known as the "Electric Power Industry Reform Act of 2001". It assumed the electrical transmission function of the National Power Corporation as well as 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.[13]

Petitioner contends that it cannot be considered to be operating or performing its privilege under its franchise within the Province of Bataan based on the gross receipts of PENELCO because although it has a substation in the said Province, its customer, PENELCO, is in the City of Balanga, which is outside the territorial jurisdiction of the Province. In other words, in order to be considered as exercising its rights or privileges under its franchise, it must have (1) a substation/district/branch/regional office and (2) a customer, both of which must be within the territory of the Province of Bataan.

The foregoing argument of petitioner does not hold water.

At the risk of being repetitive, there are only two requirements before a taxpayer may be held liable to a franchise tax, namely: it has a "franchise" in the sense of a secondary or special franchise; and it is exercising its rights or privileges under this franchise within the territory of the local government unit concerned. Contrary to petitioner's view, the presence of a substation/district/branch/regional office is certainly not a condition for the

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[13] Section 8 of the EPIRA

exercise of the rights or privileges under the franchise. It is enough that an income is realized within the territory of the local government concerned as a result of the exercise of the said rights and privileges under the franchise.

Petitioner has exercised its rights and privileges under its franchise by its use of streets within the Province of Bataan and the City of Balanga to erect poles and string wires in connection with its electrical transmission function, as correctly observed by the Court *a quo*, *viz.*:

> It cannot be gainsaid that Transco is exercising the privilege under its secondary or special franchise to use the streets within the Province of Bataan and the City of Balanga to erect poles or string wires in connection with the service to transmit electrical power to its customers in the Province of Bataan and the City of Balanga, including Penelco.
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> xxx xxx xxx
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> It is a matter of common sense that the wires and poles located within the Province of Bataan, which same wires and poles pass within the City of Balanga itself, and which Transco uses to transmit electrical power to its customers, other than Penelco, in the Province of Bataan, for the gross receipts of which it admits liability to the Province of Bataan for franchise tax, and in fact paid franchise tax thereon, **are the same wires and poles which Transco uses to service its customer Penelco, which electrical power Penelco, in turn, retails to its customers not only within Balanga City but also in the entire Province of Bataan, excluding those customers already directly served by Transco.**[14]

This is in line with the pronouncement of the Supreme Court in the case of *National Power Corporation vs. City of Cabanatuan*[15] that secondary or special franchise refers to the right or privileges conferred upon an existing

[14] RTC Records, Civil Case No. 9237, p. 115; Docket, p. 30
[15] *Supra.*

corporation such as the right to use the streets of a municipality to lay pipes of tracks, erect poles or string wires.

The question that remains to be settled is whether the Province of Bataan can impose franchise tax on the gross receipts realized by petitioner from PENELCO, which is located in the City of Balanga, a component of the Province of Bataan.

The said issue must be answered in the negative.

Article 226 of the Rules and Regulations Implementing the Local Government Code of 1991 in part provides:

> "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*)

Therefore, while petitioner has exercised its rights and privileges under its franchise within the Province of Bataan, including the City of Balanga in connection with its electrical transmission function, nevertheless, the Province of Bataan is not authorized to impose franchise tax on petitioner's gross receipts from PENELCO. The one authorized to impose such franchise tax on petitioner's gross receipts from PENELCO is the City of Balanga pursuant to the afore-quoted provision of the Implementing Rules and Regulations of the LGC.

**WHEREFORE**, the instant Petition for Review is hereby **GRANTED**. Accordingly, the assailed Joint Decision of the RTC of Bataan, Branch 3, Balanga City is hereby **REVERSED** and **SET ASIDE**.

**SO ORDERED**.

Juanito C. Castañeda, Jr.
**JUANITO C. CASTAÑEDA, JR.**
Associate Justice

WE CONCUR:

**CAESAR A. CASANOVA**
Associate Justice

Cielito N. Mindaro-Grulla
**CIELITO N. MINDARO-GRULLA**
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 opinión of the Court's Division.

Juanito C. Castañeda, Jr.
**JUANITO C. CASTAÑEDA, JR.**
Associate Justice
Chairperson, Second Division

# CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, 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.

**ERNESTO D. ACOSTA**
Presiding Justice