REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

En Banc

AVON PRODUCTS MANUFACTURING, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 1062
(CTA Case No. 8174)

Present:
DEL ROSARIO, *P.J.,*
CASTAÑEDA JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
COTANGCO-MANALASTAS, *and*
RINGPIS-LIBAN, *JJ.*

Promulgated:

JAN 15 2016 1:45 p.m.

x- x

RESOLUTION

For resolution is petitioner's "Motion for Reconsideration" filed on April 28, 2015, praying for the reconsideration of this Court's Decision dated March 16, 2015, the dispositive portion of which reads:

> "**WHEREFORE**, all the foregoing considered, the instant *Petition for Review on Certiorari* is hereby **DENIED** for lack of merit. The Decision dated May 16, 2013, and the Resolution dated August 15, 2013, both promulgated by the Court in Division in CTA Case No. 8174 is **AFFIRMED**.
>
> **SO ORDERED**."

On April 29, 2015, petitioner filed its "Supplement to the Motion for Reconsideration".

Subsequently, as directed by this Court in the Resolution dated June 4, 2015[1], respondent filed her "Comment/Opposition (Re: Motion for Reconsideration)" on June 29, 2015.

Hence, this Resolution.

In the instant Motion, petitioner raises the following grounds for reconsideration of the said Decision, to wit:

1. There is no dispute that the article in question is tax exempt denatured ethyl alcohol contemplated under Section 134 of the National Internal Revenue Code (NIRC);

2. There is no legal basis to impose excise tax on denatured ethyl alcohol; and

3. There is no legal basis for the simultaneous imposition of the deficiency interest and the delinquency interest.

In her Comment/Opposition, respondent argued that petitioner's articles were assessed pursuant to Section 150(b) of the NIRC of 1997, and that since petitioner claims that its splash colognes and body sprays contain essential oils of less than 3% by weight, it should not be subject to excise tax under the said Section 150(b). According to respondent, in effect, petitioner's splash colognes and body sprays come within the purview of the term "toilet waters" which should be subject to 20% excise tax under Section 150(b) of the NIRC of 1997.

After considering the arguments of both parties, it is apparent to this Court that the arguments raised by petitioner in its Motion for Reconsideration are not new. They have been previously discussed and considered in the Decision dated May 16, 2013 and the Resolution dated August 15, 2013 of the Court in Division in CTA Case No. 8174. More importantly, they have also been exhaustively studied and considered by this Court prior to rendering our Decision dated March 16, 2015.

Excise Tax Assessed Under Section 141 of the Tax Code, not Under Section 150

Once again, respondent contends that the articles were assessed under Section 150(b) of the Tax Code which provides as follows:

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[1] EB Docket, pp. 548.

"SEC. 150. *Non-essential Goods.* - There shall be levied, assessed and collected a tax equivalent to twenty percent (20%) based on the wholesale price or the value of importation used by the Bureau of Customs in determining tariff and customs duties, net of excise tax and value-added tax, of the following goods:

x x x x x x x x x

(b) Perfumes and toilet waters x x x"

We disagree.

To reiterate, as shown in the Final Decision on Disputed Assessment (FDDA) dated September 1, 2010[2] and Formal Letter of Demand (FLD) dated June 16, 2010[3], the "Excise Tax Rate" that has been applied refers to that which has been provided by Section 141 of the Tax Code, in relation to Section 3 of Revenue Regulations (RR) No. 3-2006.[4]

Moreover, it must be emphasized that under paragraph 12 of their Amended Joint Stipulation of Facts and Issues in CTA Case No. 8174, petitioner and respondent judicially admitted that the excise tax assessment is anchored on Section 141(a) of the Tax Code in relation to RR No. 3-2006.

Respondent's assertion, therefore, clearly has no basis.

Petitioner Failed to Prove that the Article in Question is Exempt from Excise Tax

It is without question that to be entitled to the excise tax exemption or to be beyond the reach of Section 141 of the Tax Code, the following requisites must be present: (1) when the domestic alcohol is not less than 180° proof or 90% absolute alcohol; (2) when the same is suitably denatured; and (3) when it is rendered unfit for oral intake.

As We have held in the assailed Decision, petitioner failed to establish that the subject denatured ethyl alcohol is not less than 180° proof or 90% absolute alcohol, and that it is rendered unfit for oral intake.

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[2] Exhibit "D", Docket, pp. 349 to 352, at p. 350.
[3] Exhibit "A", Docket, pp. 340 to 342, at p. 341.
[4] SUBJECT: Prescribing the Implementing Guidelines on the Revised Tax Rates on Alcohol and Tobacco Products Pursuant to the Provisions of Republic Act No. 9334, and Clarifying Certain Provisions of Existing Revenue Regulations Relative Thereto.

Thus, even granting that the finding of the Bureau of Internal Revenue of the shortages in the subject article are the result of the alleged evaporation, petitioner cannot escape the excise tax assessment since it failed to establish the existence of the said requisites.

With regard to petitioner's contention that *"alcohol cannot be denatured and at the same time remain fit for oral intake"*, the same is untenable.

Section 134 of the Tax Code reads:

> "SEC. 134. *Domestic Denatured Alcohol.* - **Domestic alcohol of not less than one hundred eighty degrees (180°) proof (ninety percent (90%) absolute alcohol) shall, when suitably denatured and rendered unfit for oral intake, be exempt from the excise tax prescribed in Section 141**: *Provided, however*, That such denatured alcohol shall be subject to tax under Section 106(A) of this Code: *Provided, further*, That if such alcohol is to be used for motive power, it shall be taxed under Section 148(d) of this Code: *Provided, finally*, **<u>That any alcohol previously rendered unfit for oral intake after denaturing but subsequently rendered fit for oral intake</u> after undergoing fermentation, dilution, purification, mixture or any other similar process shall be taxed under Section 141 of this Code** and such tax shall be paid by the person in possession of such reprocessed spirits." *(Emphasis supplied)*

Based on the foregoing, while it can be said that a denatured alcohol is considered unfit for oral intake because of the denaturing process, said denatured alcohol may be subsequently rendered fit for oral intake after a specific process. This possibility vis-a-vis the indication in the Material Safety Data Sheet to the effect that ethyl alcohol stated therein is "Food/Grade" creates the impression that the denatured alcohol in question is **fit for oral intake.** Hence, by its own evidence, petitioner's claim of excise tax exemption becomes more doubtful.

Moreover, We cannot adhere to petitioner's contention that *"the article subject of the excise tax assessment was tax-exempt denatured alcohol was never an issue nor in question."* To repeat, as cases filed before this Court are litigated *de novo*, party-litigants should prove every minute aspect of their cases.[5] Furthermore, the burden is upon the taxpayer to prove, by clear and convincing evidence, that his claim for exemption has legal and factual basis.[6]

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[5] Dizon v. Court of Tax Appeals, et al., G.R. No. 140944, April 30, 2008; Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue, G.R. No. 145526, March 16, 2007; and Commissioner of Internal Revenue v. Manila Mining Corporation, G.R. No. 153204, August 31, 2005.

[6] The Provincial Assessor of Marinduque v. Court of Appeals, et al., G.R. No. 170532, April 30, 2009.

The First Paragraph of Section 22 of Revenue Regulations No. 3-2006 is Applicable

Petitioner submits that the first paragraph of Section 22 is not applicable because it speaks of a refund of tax-paid on distilled spirits under Section 141 in relation to Section 130(A)(2) of the Tax Code that have been lost or destroyed after removal from the place of production or after release from customs custody.

It further argues that this Court's ruling runs contrary to settled jurisprudence that evaporated denatured alcohol should not be subject to excise tax. It points to the ruling of the Supreme Court in the case of *La Tondeña, Inc. v. Collector of Internal Revenue, et al.* (La Tondeña case)[7].

We are not convinced.

Again, We quote Section 22 of RR No. 3-2006, viz:

> "SEC. 22. LOSSES ON DISTILLED SPIRITS. - **No claim for excise tax refund or credit shall be allowed on distilled spirits that have been lost or destroyed <u>after removal</u> thereof from the place of production or released from the customs' custody.** In case of losses incurred on bonded distilled spirits, the corresponding excise tax due on such losses shall be paid to the BIR.
>
> Losses of distilled spirits or rectified alcohol incurred **<u>before removal</u>** thereof from the distillery premises shall be accounted for and recorded in the ORBs as they occur on a daily basis. For this purpose, a loss of not more than one percent (1%) for distillation and four percent (4%) of excise tax-paid distilled spirits for rectification may be allowed when such loss is not caused by fraud, negligence or carelessness of the distillers or owners of the rectifying establishments. However, no deduction for losses shall be allowed on bonded distilled spirits delivered and subsequently stored for rectification purposes as well as losses arising from rectification of such bonded distilled spirits. The total volume of losses incurred during the month less the allowable percentage of loss, if any, shall be computed and the corresponding excise tax due thereon shall be paid to the BIR on or before every eighth (8th) day of the month immediately following the month of operations." *(Emphasis supplied)*

[7] G.R. No. L-14875, September 29, 1962.

Clearly, the first paragraph of the foregoing section prohibits the granting of any claim for excise tax refund or credit on distilled spirits that have been lost or destroyed after removal thereof from the place of production, and affirms that excise tax is imposable even when there is loss or destruction of the distilled spirits after such removal.

As regards the second paragraph thereof, it is likewise clear that petitioner cannot avail of the allowances for loss of not more than 1% for distillation and 4% of excise tax-paid distilled spirits for rectification, simply because the said provision permits the said allowances only *"before removal* (of the distilled spirits) *from the distillery premises",* and not after removal, as in this case.

Moreover, petitioner cannot validly invoke in its favor the ruling of the High Court in the *La Tondeña* case, wherein it was held:

> **"According to the Tax Code, 'specific taxes on domestic products shall be paid by the manufacturer, producer or person having possession of the same; and except as otherwise specially allowed, such taxes shall be paid immediately, before removal from the place of production'. (Section 124). <u>The exception mentioned in said section 124 , is section 129 of the same Tax Code, (supra) which fixes a different time of payment for specific taxes on 'alcohol requiring rectification'</u>. As must be observed, in the case heretofore cited, the alcohol lost due to evaporation was crude alcohol, like the one involved in the present, which are undoubtedly 'spirits requiring rectification'.** Until the spirits requiring rectification has been converted into a finished product, no specific tax shall be due from the rectifier receiving them. **The lawmakers, as heretofore shown, in the case cited, had intended to exclude from the computation of said specific tax all losses that may be incurred or sustained from the time the <u>spirits requiring rectification</u> are removed from the place of their production for the purposes of rectification, <u>until they are rectified</u> and converted into a finished product**. The law did not limit that the losses should be caused by natural evaporation, in order to enjoy the exemption provided by law. As long as the alcohol requires rectification, all unintentional, casual, unavoidable and/or natural losses prior to the conversion into some finished product, should not be subject to specific tax. That was the intention of the lawmakers when they introduced the amendment, eliminating a portion of section 133. This intention was further reflected in the amendment to Section 129 of the Tax Code, which states that 'loss for rectification and handling' shall no longer be allowed beginning August 23, 1956 (See Sec. 5, Act No. 1608). In other words, before the amendments, 'loss for rectification and

handling' were allowed, which may reasonably be inferred to include unintentional leakage or spillage, occurring while the alcohol is in transit or in the course of transportation, or as a consequence of rectification. Even in the United States, where the law expressly provides that the tax on distilled spirits shall attach as soon as the said substance is in existence as such, the tax paid on losses thru evaporation, or other shrinkage, leakage, casualty or unavoidable cause during warehousing, storage, transfer, etc., may be remitted or refunded by the Commissioner provided the said alcohol lost has not been diverted to any *illegal use* (Sec. 2800(c), Int. Rev. Code, Act of Feb. 10, 1939; CCH Liquor Control Law Service, Fed. 2d Ed., par. 23126, pp. 2381-3; par. 23533, p. 2431). The reason for the rule, as applied to the case at bar, is that no material or practical benefit was derived by the rectifier or distiller from the loss of the alcohol; it is tyrannical to tax him for a thing which did not exist, in the face of the law then extant." *(Emphasis supplied)*

Parenthetically, while it may be true that the foregoing jurisprudential pronouncements were made under the provisions of the old NIRC, the present Tax Code, as amended, still reflects Sections 124 and 129 of the former law mentioned in the *La Tondeña* case, to wit:

"SEC. 130. *Filing of Return and Payment of Excise Tax on Domestic Products.* -

(A) *Persons Liable to File a Return, Filing of Return on Removal and Payment of Tax.* -

x x x x x x x x x

(2) *Time for Filing of Return and Payment of the Tax.* - **Unless otherwise specifically allowed,** the return shall be filed and the excise tax paid by the manufacturer or producer **before removal** of domestic products from place of production: x x x" *(Emphases supplied)*

x x x x x x x x x

"SEC. 137. *Removal of Spirits Under Bond for Rectification.* - **Spirits requiring rectification may be removed from the place of production to another establishment for the purpose of rectification without prepayment of the excise tax: *Provided,* That the distiller removing such spirits and the rectifier receiving them shall file with the Commissioner their join bond conditioned upon the payment by the rectifier of the excise tax**

> **due on the rectified alcohol:** *Provided, further,* That in cases where alcohol has already been rectified either by original and continuous distillation or by redistillation, no loss for rectification and handling shall be allowed and the rectifier thereof shall pay the excise tax due on such losses: *Provided, finally,* That where a rectifier makes use of spirits upon which the excise tax has not been paid, he shall be liable for the payment of the tax otherwise due thereon." *(Emphases supplied)*

Thus, the *La Tondeña* case may still hold true at present.

However, the *La Tondeña* case cannot be made to apply to the instant case. This must be so because there is no indication that the subject article is considered as *"crude alcohol"*, as specifically indicated in the *La Tondeña* case. Neither is there any evidence to show that the domestic alcohol in question falls under the category of *"spirits requiring rectification"*, and that the supposed distiller and rectifier filed with the Commissioner a joint bond conditioned upon the payment by the rectifier of the excise tax due on the rectified alcohol.

Correspondingly, We see no reason to reverse Our finding on petitioner's excise tax liability.

Section 247(a) in Relation to Section 249(B) of the Tax Code Authorizes the Imposition of Deficiency Interest on the Deficiency Excise Tax of Petitioner

The law is clear and there is no room left for interpretation.

Section 247 of the Tax Code provides in pertinent part:

> "TITLE X
> Statutory Offenses and Penalties
>
> CHAPTER I
> Additions to the Tax
>
> SECTION 247. General Provisions. -
>
> (a) <u>The additions to the tax or deficiency tax prescribed in this Chapter shall apply to **all taxes**, fees and charges **imposed in this Code**</u>. The amount so added to the tax shall be collected at the

> same time, in the same manner and as part of the tax." *(Emphasis supplied)*

The provision plainly states that the additions under Chapter I, Title X are applicable to *all taxes* imposed under the Tax Code. The authority under the provision extends to *all taxes* regardless of the title under which they are classified. Thus, the law does not limit these additions to only three (3) types of internal revenue taxes, namely, income (Title II), estate (Title III) and donor's tax (Title III). Their imposition applies with equal force and effect to the other taxes under the Tax Code such as the value-added tax (Title IV), other percentage taxes (Title V), excise tax (Title VI) and documentary stamp tax (Title VII).

Accordingly, the additions to the tax or deficiency tax such as, among others, *Civil Penalties or Surcharges* under Section 248, *Deficiency Interest* under Section 249(B), *Delinquency Interest* under Section 249(C), and *Installment on Extended Payment* under Section 249(D) are applicable to petitioner's deficiency excise tax.

Section 249(B) and (C) of the Tax Code Authorizes the Simultaneous Imposition of Deficiency Interest and Delinquency Interest

This Court has consistently held that the plain reading of Section 249 of the Tax Code justifies the simultaneous imposition of deficiency interest and delinquency interest.

As this Court held in *Medicard Philippines, Inc. v. CIR*[8], there is no legal obstacle for the Court in Division to not simultaneously impose deficiency interest and delinquency interest.

The aforementioned case cited Our discussion on the subject in *Philippine Aerospace Development Corporation v. Commissioner of Internal Revenue*[9], thus:

> "The propriety of the simultaneous imposition of deficiency and delinquency interests was more definitively resolved in April 2013. This was in *First Lepanto Taisho Insurance Corporation v. Commissioner of Internal Revenue,*[10] where the Supreme Court upheld a 2011 decision of this Court[11] affirming the imposition of delinquency interest under Section 249(c)(3) of the 1997 NIRC.

[8] CTA EB No. 1224, September 2, 2015, citing *Philippine Aerospace Development Corporation v. Commissioner of Internal Revenue,* CTA EB No. 1035, March 11, 2015.
[9] CTA EB No. 1035, March 11, 2015.
[10] G.R. No. 197117, April 10, 2013.
[11] In CTA EB Case No. 563, March 1, 2011 Decision and May 27, 2011 Resolution.

The Supreme Court ruled this imposition "to be proper, because failure to pay the deficiency tax assessed within the time prescribed for its payment justifies the imposition of interest at the rate of twenty percent (20%) per annum, which interest shall be assessed and collected from the date prescribed for its payment until full payment is made."

Earlier in 2011, the Supreme Court sustained the 2005 rulings of this Court imposing 20% delinquency tax on deficiency taxes, inclusive of deficiency interest, in *Rizal Commercial Banking Corporation v. Commissioner of Internal Revenue.*[12]

In 2006, the Supreme Court also upheld a 2004 Court of Appeals decision where the latter imposed delinquency interest at 20% per annum in addition to the interest on deficiency VAT and deficiency documentary stamp tax, in *Michel J. Lhuiller Pawnshop, Inc. v. Commissioner of Internal Revenue,*[13] although without discussion of the propriety of multiple simultaneous interests.

And even earlier, in 2000, the Supreme Court likewise upheld the imposition of 20% annual delinquency interest on deficiency amusement tax, inclusive of 20% deficiency interest, in *Philippine Basketball Association v. Court of Appeals, Court of Tax Appeals, and Commissioner of Internal Revenue.*[14]

Actually, double interests have been sustained by the Supreme Court at least as early as 1971, in *Commissioner of Internal Revenue v. Connel Bros. (Phil.) and Court of Tax Appeals.*[15] Under the tax law at the time, R.A. No. 2343 of 1959, these were the "interest on deficiency" and what may be referred to as "additional interest" (in case of non-payment within the prescribed period), at the rates of 6% per annum and 1% per month, respectively.

It is abundantly clear, from the foregoing discussion of the law and jurisprudence, that under the circumstance laid down by Section 249(c)(3) of the Tax Reform Act of 1997 – *i.e.*, in case of failure to pay a deficiency tax, or any surcharge or interest on such deficiency tax – delinquency interest of 20% per annum shall be assessed and collected."

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[12] G.R. No. 170257, September 7, 2011.
[13] G.R. No. 166786, May 3, 2006.
[14] G.R. No. 119122, August 8, 2000.
[15] G.R. Nos. L-27752-53, August 30, 1971, 40 SCRA 416, en banc. See also *Central Azucarera Don Pedro v. Court of Tax Appeals and Commissioner of Internal Revenue*, G.R. Nos. L-23236 & L-23254, 31 May 1967, 20 SCRA 344.

WHEREFORE, petitioner's Motion for Reconsideration is **DENIED** for lack of merit.

SO ORDERED.

with concurring & dissenting opinion
ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

WITH CONCURRING & DISSENTING OPINION
ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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RINGPIS-LIBAN, *JJ.*

Promulgated:
JAN 15 2016 1:45 p.m.

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CONCURRING AND DISSENTING OPINION

DEL ROSARIO, *PJ*:

With due respect, I join the Concurring & Dissenting Opinion of Honorable Associate Justice Erlinda P. Uy upholding the excise tax liability of petitioner and deleting the imposition of deficiency interest under Sec. 249 (B) of the National Internal Revenue Code (NIRC) of 1997, as amended, and its inclusion in the imposition of delinquency interest under Sec. 249 (C) of the same code.

Additionally, I wish to expound on the position I am taking in this case. I am not unaware of *Paper Industries Corporation of the Philippines vs. Court of Appeals, Commissioner of Internal Revenue, and Court of Tax*

Appeals (PICOP),[1] which somehow made mention of deficiency interest under the NIRC of 1977. I must stress, however, that *PICOP* cannot be relied upon to justify the imposition of deficiency interest on petitioner's **excise tax** liability. *PICOP* did not state nor resolve the issue whether or not the deficiency interest provided for in Section 249 (B) of the NIRC of 1997, as amended, may be imposed on tax other than donor's, estate, and income taxes. Thus, not having been resolved therein, *PICOP* cannot be considered as a doctrine on the matter. The case of *Office of the Ombudsman vs. Honorable Court of Appeals and Former Deputy Ombudsman for the Visayas Arturo C. Mojica,*[2] is instructive:

> "The legal maxim "*stare decisis et non quieta movere*" (follow past precedents and do not disturb what has been settled) states that where the same questions relating to the same event have been put forward by parties similarly situated as in a previous case litigated and decided by a competent court, the rule of *stare decisis* is a bar to any attempt relitigate the same issues.
>
> xxx xxx xxx
>
> **Thus, where the issue involved was not raised nor presented to the court and not passed upon by the court in the previous case, the decision in the previous case is not *stare decisis* of the question presented."** (Emphasis supplied)

If *PICOP* has any relevance to the present controversy, it is the doctrinal precedent that **deficiency interest may be imposed only on tax specifically covered by the relevant provision of the NIRC of 1977.** Thus, the Court in *PICOP*, while recognizing that transaction tax is in the nature of income tax and that deficiency interest is imposable on income tax, nonetheless declined to impose such deficiency interest on transaction tax after noting the significant provisions of the NIRC of 1977: *first,* it is Section 51 (c)(1), (e)(1), and (3) which impose deficiency interest; *second,* Section 51 (c) (1) confines such deficiency interest on taxes covered by TITLE II; and, *third*, that transaction tax does not fall within TITLE II. Thus:

> **"It will be seen that Section 51 (c) (1) and (e) (1) and (3), of the 1977 Tax Code, authorize the imposition of surcharge and interest only in respect of a "*tax imposed by this Title*," that is to say, *Title II on "Income Tax*."** It will also be seen that Section 72 of the 1977 Tax Code imposes a surcharge only in case of failure to file a return or list "*required by this Title*," that is, *Title II on "Income Tax*." **The thirty-five percent (35%) transaction tax is, however, imposed in the 1977 Tax Code by *Section 210 (b) thereof which Section is embraced in Title V on "Taxes on Business"* of that Code.** Thus, while the thirty-five percent (35%) transaction tax is in truth a *tax imposed on* interest *income* earned

[1] G.R. Nos. 106949-50, December 1, 1995.
[2] G.R. No. 146486, March 4, 2005.

> by lenders or creditors purchasing commercial paper on the money market, the relevant provisions, *i.e.*, Section 210 (b), were *not* inserted in Title II of the 1977 Tax Code. The end result is that the thirty-five percent (35%) transaction tax is *not* one of the taxes in respect of which Section 51 (e) authorized the imposition of surcharge and interest and Section 72 the imposition of a fraud surcharge." (Emphases supplied)

True, the Supreme Court in *PICOP* declared that the present provision of the NIRC mentions that **additions** on tax applies to all taxes. While such pronouncement may not be construed beyond the context in which it was made, *PICOP* simply confirmed that *in general*, certain penalties and charges are applicable to all types of tax or deficiency tax; *PICOP,* however, did not categorically construe the provision of Section 249 (B) that deals with "deficiency interest" on the type of tax "as defined in [the] Code". Note that the present NIRC is explicit with respect to the type of tax on which deficiency interest may be imposed, *viz*:

> "Section 249.Interest-
>
> (B) Deficiency Interest. – Any deficiency in the tax due, **as the term is defined in this Code**, shall be subject to the interest prescribed in Subsection (A) hereof, which interest shall be assessed and collected from the date prescribed for its payment until the full payment thereof." (Emphasis supplied)

Section 249 (B) cannot be any clearer: the deficiency interest must refer only to "deficiency in the tax due, <u>as the term is defined in [the] Code</u>."

Verily, as the law stands, only donor's, estate, and income taxes carry a provision on deficiency tax; they are the types of taxes on which such deficiency interest may be imposed.

Finally, Sections 247 (a) and 249 (A) are **general provisions** that impose "additions" to the tax and "interest" thereon. Both sections may not be read in isolation from the relevant and **specific provision** of Section 249 (B) with respect to the imposition of "deficiency" interest, more so as all these provisions fall within the same Chapter I of Title X of the NIRC of 1997, as amended.

In fine, I **VOTE** to **DELETE** the imposition of deficiency interest on the basic deficiency excise tax of Php503,187.37 and the corresponding delinquency interest imposed on the said deficiency interest.

ROMAN G. DEL ROSARIO
Presiding Justice

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COTANGCO-MANALASTAS, and
RINGPIS-LIBAN, JJ.

Promulgated:

JAN 15 2016 1:45 p.m.

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CONCURRING AND DISSENTING OPINION

UY, J.:

With all due respect with the learned ponente, while I concur that petitioner's excise tax liability must be upheld, I do not agree with the imposition of the deficiency interest under Section 249(B) of the NIRC of 1997, and its inclusion in the imposition of delinquency interest under Section 249(C) of the same Code.

Section 249 of the NIRC of 1997 reads:

> "SEC. 249. *Interest.* –
>
> (A) *In General.* – There shall be assessed and collected on any unpaid amount of tax, interest at the rate

of twenty percent (20%) *per annum,* or such higher rate as may be prescribed by the rules and regulations, from the date prescribed for its payment until the amount is fully paid.

(B) *Deficiency Interest.* – Any **deficiency** in the tax due, **as the term is defined in this Code**, shall be subject to the interest prescribed in Subsection (A) hereof, which interest shall be assessed and collected from the date prescribed for its payment until the full payment thereof.

(C) *Delinquency Interest.* – In case of failure to pay:

xxx xxx xxx

(3) A deficiency tax, or any surcharge or interest thereon on the due date appearing in the notice and demand of the Commissioner, there shall be assessed and collected on the unpaid amount, interest at the rate prescribed in Subsection (A) hereof until the amount is fully paid, which interest shall form part of the tax." *(Emphases supplied)*

Based on the foregoing Section 249(B), the *"Deficiency Interest"* shall be imposed on *"*[a]*ny deficiency in the tax due, as the term is defined in this Code"*, *i.e.*, as the term "deficiency" is defined in the NIRC of 1997. Relative thereto, an examination of the said Code discloses that there are only three (3) instances where it defines the term "deficiency", and this relates only and respectively to three (3) types of internal revenue taxes, namely, income tax, estate tax, and donor's tax, pursuant to Sections 56(B), 93 and 104 of the NIRC of 1997, viz:

"SEC. 56. *Payment and Assessment of Income Tax for Individuals and Corporations.*—

xxx xxx xxx

(B) *Assessment and Payment of Deficiency Tax.*— After the return is filed, the Commissioner shall examine it and assess the correct amount of the tax. The tax or deficiency income tax so discovered shall be paid upon notice and demand from the Commissioner.

As used in this Chapter[1], in respect of a tax imposed by this Title[2], the term **'deficiency'** means:

(1) The amount by which the tax imposed by this Title exceeds the amount shown as the tax by the taxpayer upon his return; but the amount so shown on the return shall be increased by the amounts previously assessed (or collected without assessment) as a deficiency, and decreased by the amount previously abated, credited, returned or otherwise repaid in respect of such tax; or

(2) If no amount is shown as the tax by the taxpayer upon his return, or if no return is made by the taxpayer, then the amount by which the tax exceeds the amounts previously assessed (or collected without assessment) as a deficiency; but such amounts previously assessed or collected without assessment shall first be decreased by the amounts previously abated, credited, returned or otherwise repaid in respect of such tax." *(Emphasis supplied)*

"SEC. 93. *Definition of Deficiency.* — As used in this Chapter[3], the term **'deficiency'** means:

(a) The amount by which the tax imposed by this Chapter exceeds the amount shown as the tax by the executor, administrator or any of the heirs upon his return; but the amount so shown on the return shall first be increased by the amounts previously assessed (or collected without assessment) as a deficiency and decreased by the amounts previously abated, refunded or otherwise repaid in respect of such tax; or

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[1] Chapter IX – RETURNS AND PAYMENT OF TAX.
[2] Title II – TAX ON INCOME.
[3] CHAPTER I – ESTATE TAX (under TITLE III – ESTATE AND DONOR'S TAXES).

> (b) If no amount is shown as the tax by the executor, administrator or any of the heirs upon his return, or if no return is made by the executor, administrator, or any heir, then the amount by which the tax exceeds the amounts previously assessed (or collected without assessment) as a deficiency; but such amounts previously assessed or collected without assessment shall first be decreased by the amounts previously abated, credited, returned or otherwise repaid in respect of such tax." *(Emphasis supplied)*
>
> "SEC. 104. *Definitions.* — xxx
>
> The term **'deficiency'** means: (a) the amount by which the tax imposed by this Chapter[4] exceeds the amount shown as the tax by the donor upon his return; but the amount so shown on the return shall first be increased by the amounts previously assessed (or collected without assessment) as a deficiency, and decreased by the amounts previously abated, refunded or otherwise repaid in respect of such tax, or (b) if no amount is shown as the tax by the donor upon his return, then the amount by which the tax exceeds the amounts previously assessed (or collected without assessment) as a deficiency, but such amounts previously assessed or collected without assessment shall first be decreased by the amounts previously abated, credited, returned or otherwise repaid in respect of such tax." *(Emphasis supplied)*

Such being the case, the deficiency interest under Section 249(B) should be applied only whenever there is a deficiency income tax, a deficiency estate tax, and a deficiency donor's tax. For this reason, in this case, no deficiency interest under Section 249(B) should be imposed, since what is involved is a deficiency excise tax. Thus, the computation of the delinquency interest imposed under Section 249(C) must not include the said deficiency interest.

Correspondingly, I vote for the **DELETION** of the following portions found in subparagraphs (a) and (b) of the assailed Decision in CTA Case No. 8174 promulgated on May 16, 2013, imposing

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[4] CHAPTER II – DONOR'S TAX (under TITLE III – ESTATE AND DONOR'S TAXES).

deficiency interest as follows :

(a) "***deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency excise tax of ₱503,187.37, computed from the delivery dates indicated in respondent's Computation of Deficiency Excise Tax Per Final Decision on Disputed Assessment until full payment thereof pursuant to Section 249(B) of the NIRC of 1997, as amended***" ; and

(b) "and on the ***20% deficiency interest which have accrued as afore-stated in (a)***".

ERLINDA P. UY
Associate Justice