REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

TE DEUM RESOURCES, INC., Petitioner,	**CTA AC No. 150**
	Members:
- versus -	**CASTAÑEDA, JR.**, Chairperson, **CASANOVA**, and **MANAHAN**, ***JJ.***
CITY OF DAVAO and HON. RODRIGO S. RIOLA, in his capacity as the City Treasurer of Davao City, Respondent.	Promulgated: FEB 10 2017 1:30 p.m.

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DECISION

CASTAÑEDA, JR., *J.*:

THE CASE

This is a Petition for Review of the Decision dated June 22, 2015 and the Order dated September 11, 2015, both issued by the Regional Trial Court, Branch 16 of Davao City, (RTC of Davao City) in Civil Case No. 34,858-13 entitled *"Te Deum Resources, Inc. vs. City of Davao and Hon. Rodrigo S. Riola, in his official capacity as the City Treasurer of Davao City"*.

The RTC of Davao City denied petitioner's claim for refund and sustained the imposition of local business tax amounting to ₱1,220,513.50 on petitioner's dividends from San Miguel Corporation

(SMC) preferred shares and interests on money market placements. The trial court categorized petitioner as a financial intermediary whose income falls under the coverage of paragraph (f), Section 143 of Republic Act (RA) No. 7160, otherwise known as the "Local Government Code of 1991" (LGC).

THE FACTS

The facts as found in the records of this case are as follows:

Petitioner Te Deum Resources, Inc. (TDRI) is a domestic corporation originally located in Makati City, Metro Manila. On December 16, 2009, the Board of Directors of TDRI approved the transfer of its principal office address to Legaspi Oil Compound, Km. 9.5, Sasa, Davao City and the consequent amendment of Article III of its Articles of Incorporation.[1]

TDRI was incorporated in 1983 with primary purpose, as stated in its Amended Articles of Incorporation, as follows:[2]

> "PRIMARY PURPOSE
>
> The primary purpose for which such Corporation is formed is:
>
> > To purchase, subscribe for, or otherwise acquire and own, hold, use, sell, assign, transfer, mortgage, pledge, exchange, or otherwise dispose of real and personal property of every kind and description, including shares of stocks, voting trust certificates for shares of capital stock, bonds, debentures, notes, evidences of indebtedness, and other securities, contracts or obligations of any corporation or corporations, association or associations, domestic or foreign, and to pay therefor in whole or in part in cash or by

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[1] Pars. 12 and 12.1, Joint Stipulation of Facts and Issues (JSFI), RTC Records, pp. 291-292.
[2] *Ibid.*

> exchanging therefore stocks, bonds, or other evidences of indebtedness or securities, contracts, or obligation, to receive, collect, and dispose of the interest, dividends and income arising from such property, and to possess and exercise in respect thereof, all the rights, powers and privileges of ownership, including all voting powers on any stocks so owned; and to do every act and thing covered generally by the denomination 'holding corporation', and especially to direct the operations of other corporations through the ownership of stock therein, provided however that the Corporation shall not act as an investment company or a securities broker and/or dealer nor exercise the functions of a trust corporation."

Respondent City of Davao is a local government unit (LGU) duly created by law whose address is located at City Hall Building, San Pedro Street, Davao City.[3] On the other hand, respondent Rodrigo S. Riola is the incumbent City Treasurer of Davao City and is being impleaded in his official capacity as it was his office which erroneously and illegally collected from petitioners 0.55% local business tax on dividends and interests received by petitioner.[4]

Since October 2009, petitioner has been the registered owner of 58,487,823 SMC preferred shares of stock after the Supreme Court *En Banc* approved the conversion of TDRI's 58,487,823 SMC common shares of stocks into SMC preferred shares. The dividends received by TDRI were deposited in a trust account which earned interest from money market placements.[5]

In 2010, petitioner obtained the amount of ₱443,823,123.35 from dividends on its SMC preferred shares and interests on its money market placements computed as follows:

Nature of Income	TDRI
Dividends	₱ 438,658,672.50

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[3] Par. 17, JSFI, RTC Records, p. 294.
[4] Par. 18, JSFI, RTC Records, p. 294.
[5] Par. 26, JSFI, RTC Records, p. 297.

Interest	5,164,450.85
Total	**₱ 443,823,123.35**[6]

For the first half of 2011, respondents collected from petitioner 0.55% local business tax for the first and second quarters of 2011 based on the gross receipts derived by petitioner from dividends and interests for taxable year 2010 in the amount of ₱1,220,513.50.[7] Petitioner paid the same under protest on January 18, 2011 and on April 25, 2011.[8]

On September 13, 2012, petitioner filed with respondent City Treasurer a written claim for refund or credit of the 0.55% local business tax collected in the first and second quarters of 2011.[9]

Due to inaction of respondent City Treasurer on the administrative claim for refund,[10] petitioner filed a petition for refund before the RTC of Davao City on January 17, 2013.[11]

However, RTC of Davao City dismissed the petition in a Decision[12] promulgated on June 22, 2015. The pertinent portion of the Decision reads:

> "As such, being categorized as a **Financial Intermediary**, petitioner's principal income falls under the coverage of **paragraph (f), Section 143 of RA No. 7160 of the Local Government Code of 1991**, to wit:
>
> > *'SECTION 143. Tax on Business. – **The municipality may impose taxes on the following businesses**:*
> >
> > *xxx xxx xxx*

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[6] Par. 27, JSFI, RTC Records, pp. 297-298.
[7] Pars. 20 and 28, JSFI, RTC Records, pp. 295 and 298.
[8] Par. 20, JSFI, RTC Records, p. 295.
[9] Par. 25, JSFI, RTC Records, p. 296.
[10] Par. 25, JSFI, RTC Records, pp. 296-297.
[11] Petition with Annexes, RTC Records, pp. 3-85.
[12] RTC Records, pp. 346-355.

> *(f) On banks and other* ***financial institutions****, at a rate not exceeding fifty percent (50%) of one percent (1%) on the gross receipts of the preceding calendar year derived from interest, commissions and discounts from lending activities, income from financial leasing,* ***dividends****, rentals on property and profit from exchange for sale of property, insurance premium.'*
>
> **FOR REASONS STATED**, the instant 'Petition for Tax Refund or Credit Under Section 156, R.A. 7160' filed by the Petitioner is hereby **DENIED** and/or **DISMISSED**.
>
> **SO ORDERED**."

On August 20, 2015, petitioner filed a Motion for Reconsideration[13] but was denied in an Order[14] dated September 11, 2015 after the RTC of Davao City found no cogent reason to alter, modify or set aside the assailed Decision dated June 22, 2015.

On November 9, 2015, petitioner filed the instant Petition for Review.[15]

On November 24, 2015, respondents were ordered to file their comment, not a motion to dismiss, within ten (10) days from notice thereof.[16] Respondents submitted their Comment[17] on January 4, 2016.

In a Resolution[18] dated January 20, 2016, this Court ordered the Branch Clerk of Court or the Officer-In-Charge of the RTC of Davao City to elevate the entire original records of Civil Case No. 34,858-13. In the same Resolution, the Court ordered the parties to submit their memoranda. gr

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[13] RTC Records, pp. 356-369.
[14] RTC Records, p. 384.
[15] Docket, pp. 8-30.
[16] Resolution dated November 24, 2015, docket, p. 142.
[17] Docket, pp. 162-176.
[18] Docket, p. 179.

On March 17, 2016, the Court received the entire original records of Civil Case No. 34,858-13 from the Clerk of Court of RTC Branch 16 of Davao City.[19]

This case was then submitted for decision after the parties filed their memoranda.[20]

THE ISSUE

Petitioner presented this sole issue for the Court's resolution:

Whether or not petitioner is entitled to a refund or credit of the 0.55% local business taxes collected for the first and second quarters of 2011 on the dividends received from its SMC preferred shares and interest on its money market placements for taxable year 2010.[21]

THE RULING

First, the Court shall determine whether it has jurisdiction over the present petition inasmuch as it is the duty of the courts to consider the question of jurisdiction before they look into other matters involved in the case although such question is not raised by any of the parties. Courts are bound to take notice of the limits of their authority and, even if such question is neither raised by the pleadings nor suggested by counsel, they may recognize the want of jurisdiction and act accordingly by staying pleadings, dismissing the action, or otherwise noticing the defect, at any stage of the proceedings.[22]

The Court of Tax Appeals (CTA) is a court of special jurisdiction and can only take cognizance of such matters as are clearly within its jurisdiction.[23] Section 7(a)(3) of RA No. 1125, as amended by RA No. 9282, provides:

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[19] Docket, pp. 212.
[20] Resolution dated March 31, 2016, docket, p. 231.
[21] Issue, Petition for Review, docket, p. 15.
[22] *Bureau of Customs vs. The Honorable Agnes VST Devanadera, et al.,* G.R. No. 193253, September 8, 2015.
[23] *Commissioner of Internal Revenue vs. Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc.),* G.R. No. 169778, March 12, 2014.

"SEC. 7. *Jurisdiction.* – The CTA shall exercise:

(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

xxx xxx xxx

(3) Decisions, order or resolutions of the Regional Trial Courts in local tax cases originally decided or resolved by them in the exercise of their original or appellate jurisdiction;"

In relation thereto, Section 3(a)(3) of Rule 4 and Section 3(a) of Rule 8 of the 2005 Revised Rules of the CTA (RRCTA) state:

"RULE 4
JURISDICTION OF THE COURT

xxx xxx xxx

SEC. 3. *Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise:

(a) Exclusive original over or appellate jurisdiction to review by appeal the following:

xxx xxx xxx

(3) Decisions, resolutions or orders of the Regional Trial Courts in local tax cases decided or resolved by them in the exercise of their original jurisdiction;"

"RULE 8
PROCEDURE IN CIVIL CASES

"SEC. 3. *Who may appeal; period to file petition.* – Je

(a) **A party adversely affected** by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or **by a decision or ruling of** the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or **a Regional Trial Court in the exercise of its original jurisdiction may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling**, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes." (*Emphasis supplied*)

Based on the foregoing, an appeal from the resolutions or orders of the RTC in local tax cases decided or resolved by them in the exercise of their original jurisdiction may be made by filing a Petition for Review before the CTA within thirty (30) days from receipt of a copy of the decision or ruling.

Petitioner received the Order denying its Motion for Reconsideration on October 8, 2015. It had thirty (30) days therefrom or until November 8, 2015 within which to file its Petition for Review. Since November 8, 2015 fell on a Sunday, petitioner had until November 9, 2015 within which to file its Petition for Review. Petitioner timely filed the instant Petition for Review on November 9, 2015.[24]

In view of the foregoing, the Court has jurisdiction to entertain the instant petition.

Petitioner timely filed its claim for refund.

[24] Docket, p. 8.

Since this is a case of refund of an alleged erroneously or illegally collected local business tax, Section 196 of the LGC of 1991 finds application. It provides:

> SECTION 196. *Claim for Refund of Tax Credit.* – No case or proceeding shall be maintained in any court for the recovery of any tax, fee, or charge erroneously or illegally collected until a written claim for refund or credit has been filed with the local treasurer. No case or proceeding shall be entertained in any court after the expiration of two (2) years from the date of the payment of such tax, fee, or charge, or from the date the taxpayer is entitled to a refund or credit.

A perusal of the above-cited provision reveals that in order to be entitled to a refund/credit of local taxes, the following procedural requirements must concur: first, the taxpayer concerned must file a written claim for refund/credit with the local treasurer; and second, the case or proceeding for refund has to be filed within two (2) years from the date of payment of the tax, fee, or charge or from the date the taxpayer is entitled to a refund or credit.[25]

Based on the parties' stipulation, respondents collected from petitioner the amount of ₱1,220,513.50 representing 0.55% local business tax for the first and second quarters of 2011 based on the gross receipts derived by petitioner from dividends and interests for taxable year 2010.[26] Petitioner paid the same under protest on January 18, 2011 and on April 25, 2011.[27]

Amount of Tax Paid to Respondents	**Official Receipt No.**	**Date of Payment**
₱1,220,513.50	5791200 A	January 18, 2011
	9884258 A	April 25, 2011

Counting from these periods, petitioner has two (2) years from the date of payment of the tax within which to file a claim for refund of the alleged erroneously paid local tax. For the payments made on January 18, 2011 and on April 25, 2011, petitioner had until January

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[25] *Metro Manila Shopping Mecca Corp., et al. vs. Ms. Liberty M. Toledo, in her official capacity as the City Treasurer of Manila, and The City of Manila*, G.R. No. 190818, June 5, 2013.
[26] Pars. 20 and 28, JSFI, RTC Records, pp. 295 and 298.
[27] Par. 20, JSFI, RTC Records, p. 295.

18, 2013 and April 25, 2013 within which to file a claim for refund. Records disclose that petitioner filed a written claim for refund with the City Treasurer on September 13, 2012.[28] Due to respondent's inaction, petitioner filed a petition before the RTC of Davao City on January 17, 2013.[29]

Based on the foregoing, the claim for refund was timely filed.

Petitioner is not entitled to the refund of the local business taxes collected by respondents for the first and second quarters of 2011 arising from the imposition of local tax on the dividends received by petitioner from its SMC preferred shares and interest on its money market placements for taxable year 2010.

Each local government unit shall have the power to create its own sources of revenues and to levy taxes, fees, and charges subject to such guidelines and limitations as the Congress may provide, consistent with the basic policy of local autonomy.[30] The guidelines and limitations as provided by Congress are in main contained in the LGC of 1991 which provides for comprehensive instances when and how local government units may impose taxes. The significant limitations are enumerated primarily in Section 133 of the Code, which include among others, a prohibition on the imposition of income taxes except when levied on banks and other financial institutions.[31]

Section 133(a) of the LGC of 1991, reads:

> "SEC. 133. *Common Limitations on the Taxing Powers of Local Government Units.* – Unless otherwise provided herein, the exercise of the taxing powers of

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[28] Par. 25, JSFI, RTC Records, p. 296; Annex "B", RTC Records, pp. 22-31.
[29] Petition with Annexes, RTC Records, pp. 3-85.
[30] Section 5, Article X, 1987 Constitution.
[31] *Yamane vs. BA Lepanto Condominium Corporation*, G.R. No. 154993, October 25, 2005.

provinces, cities, municipalities, and barangays shall not extend to the levy of the following:

(a) Income tax, except when levied on banks and other financial institutions;"

In relation to this, Section 143(f) of the LGC of 1991 provides that a municipality is authorized to impose business taxes on banks and other financial institutions, to wit:

"SEC. 143. *Tax on Business.* – The municipality may impose taxes on the following business:

xxx xxx xxx

(f) On banks and other financial institutions, at a rate not exceeding fifty percent (50%) of one percent (1) on the gross receipts of the preceding calendar year derived from interest, commissions and discounts from lending activities, income from financial leasing, dividends, rentals on property and profit from exchange or sale of property, insurance premium."

Based on the foregoing, the imposition of income taxes by local government units is prohibited *except* when levied on banks and other financial institutions. The Court is now left with the question of whether or not petitioner may be considered a financial institution, specifically a non-bank financial intermediary.

Banks and other financial institutions are defined under Section 131(e) of the LGC of 1991, as follows:

"SEC. 131. *Definition of Terms.* – When used in this Title, the term:

xxx xxx xxx

(e) 'Banks and other financial institutions' **include non-bank financial intermediaries**, lending investors,

> finance and investment companies, pawnshops, money shops, insurance companies, stock markets, stock brokers and dealers in securities and foreign exchange**, as defined under applicable laws, or rules and regulations thereunder**;" (*Emphasis supplied*)

Incidentally, the above definition was adopted in Section 5(b)(3) of the 2005 Revenue Code of the City of Davao. In defining the term "banks and other financial institutions", Section 131(e) gives no precise definition but merely describes the concept by enumerating the entities that may fall within such term. However, in including the phrase "as defined under applicable laws, or rules and regulations thereunder", reference to other definitions of the same term under applicable laws, or rules and regulations may be resorted.

Under Section 2.3 of Revenue Regulations (RR) No. 9-2004, the Bureau of Internal Revenue defines "non-bank financial intermediaries" in the following manner:

> "2.3. ***Non-bank Financial Intermediaries*** – shall refer to persons or entities whose ***principal functions*** **include the lending, investing or placement of funds or evidences of indebtedness or equity deposited with them, acquired by them or otherwise coursed through them, either for their own account or for the account of others**. This includes all entities regularly engaged in the lending of funds or purchasing of receivables or other obligations with funds obtained from the public through the issuance, endorsement or acceptance of debt instruments of any kind for their own account, or through the issuance of certificates of assignment or similar instruments with recourse, trust certificates, or of repurchase agreements, whether any of these means of obtaining funds from the public is done on a regular basis or only occasionally." (*Emphasis supplied*)

Also, Section 4101Q.1 of the Manual of Regulations for Non-Bank Financial Institutions of the *Bangko Sentral ng Pilipinas* defines financial intermediaries as follows: *gr*

"§ **4101Q.1** ***Financial intermediaries*** Financial intermediaries shall mean persons or entities whose principal functions include the lending, investing or placement of funds or evidences of indebtedness or equity deposited with them, acquired by them, or otherwise coursed through them either for their own account or for the account of others.

Principal shall mean chief, main, most considerable or important, of first importance, leading, primary, foremost, dominant or preponderant, as distinguished from secondary or incidental.

Functions shall mean actions, activities or operations of a person or entity by which his/its business or purpose is fulfilled or carried out. The business or purpose of a person or entity may be determined from the purpose clause in its articles of incorporation/partnership, and from the nature of the business indicated in his/its application for registration of business filed with the appropriate government agency.

To be considered a financial intermediary, a person or entity must perform any of the following functions on a regular and recurring, not on an isolated basis:

a. Receive funds from one (1) group of persons, irrespective of number, through traditional deposits, or issuance of debt or equity securities; and make available/lend these funds to another person or entity, and in the process acquire debt or equity securities;

b. Use principally the funds received for acquiring various types of debt or equity securities;

c. Borrow against, or lend on, or buy or sell debt or equity securities;

d. **Hold assets consisting principally of debt or equity securities such as promissory** gu

notes, bills of exchange, mortgages, stocks, bonds, and commercial papers;

e. **Realize regular income in the nature of, but need not be limited to, interest, discounts, capital gains, underwriting fees, guarantees, fees, commissions, and service fees, principally from transactions in debt or equity securities or by being an intermediary between suppliers and users of funds.**

Non-banking financial intermediaries shall include the following:

(1) A person or entity licensed and/or registered with any government regulatory body as a non-bank financial intermediary, such as investment house, investment company, financing company, securities dealer/broker, lending investor, pawnshop, money broker, fund manager, cooperative, insurance company, non-stock savings and loan association and building and loan association.

(2) A person or entity which holds itself out as a non-banking financial intermediary, such as by the use of a business name, which includes the term *financing, finance, investment, lending* and/or any word/phrase of similar import which connotes financial intermediation, or an entity which advertises itself as a financial intermediary and is engaged in the function(s) where financial intermediation is implied.

(3) **A person or entity performing any of the functions enumerated in Items *a* to *e* of this Subsection**." (*Emphasis supplied*)

Based on the foregoing, financial intermediaries are those whose principal functions include investing or placement of funds or evidences of indebtedness or equity deposited with them, acquired by them, or otherwise coursed through them either for their own account or for the account of others. Moreover, "non-banking financial intermediaries" include a person or entity performing any of the functions of a financial intermediary, including, holding assets consisting principally of debt or equity securities such as promissory notes, bills of exchange, mortgages, stocks, bonds, and commercial papers.

In determining whether petitioner's business includes the principal function of a financial intermediary, reference to petitioner's primary purpose as indicated in its Amended Articles of Incorporation is necessary. It reads as follows:[32]

> "PRIMARY PURPOSE
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> The primary purpose for which such Corporation is formed is:
>
> **To purchase, subscribe for, or otherwise acquire and own, hold, use, sell, assign, transfer, mortgage, pledge, exchange, or otherwise dispose of real and personal property of every kind and description, including shares of stock, voting trust certificates for shares of the capital stock, bonds, debentures, notes, evidences of indebtedness, and other securities, contracts, or obligations of any corporation or corporations, association or associations, domestic or foreign, and to pay therefor in whole or in part in cash or by exchanging therefor stocks, bonds, or other evidences of indebtedness or securities, contracts, or obligation, to receive, collect, and dispose of the interest, dividends and income arising from such property, and to possess and exercise in respect thereof, all the rights, powers and privileges of ownership**, including all voting powers on any stocks so owned; and to do every act and thing covered generally by the denomination 'holding corporation', and especially to direct the

[32] Annex "P-10", Petition for Review, docket, pp. 100-111; Exhibit "A-1", RTC Records, pp. 190-201.

> operations of other corporations through the ownership of stock therein, provided however that the Corporation shall not act as an investment company or a securities broker and/or dealer nor exercise the functions of a trust corporation." *(Emphasis supplied)*

A reading of petitioner's Amended Articles of Incorporation shows that the scope of its primary purpose is extensive enough to cover most of the principal functions of a financial intermediary.

Moreover, petitioner's business consists of owning a substantial number of shares of stock and equity in SMC. The Notes to Financial Statements[33] confirmed that petitioner's main activity has been the holding of shares of stock of SMC. Also, based on petitioner's Statement of Cash Flows[34], the dividends and interest income were considered income from both **operating** and **investing** activities. **The continued receipt of dividends and interest income from its equity securities and money market placements is a direct consequence of its business engagements and not merely incidental to its business. Thus, petitioner is deemed engaged in the business of investing or placement of funds which is well within the definition of a financial intermediary.**

The fact that petitioner has a continuing huge investment in shares of stocks of SMC to which it regularly receives millions of pesos in dividends which it reinvests in money placement to attain maximum profit negates petitioner's argument that it does not perform the principal functions of a financial intermediary on a regular and recurring basis. Likewise, the fact that petitioner has no other business, except its investment in SMC, shows its real intent to engage solely and primarily in the business of stock investment and money market placements in the said company; thus, any profit it received is a direct consequence of its business engagements and not just mere incidental thereto.

As regards the last phrase of petitioner's primary purpose, that it "shall not act as an investment company or a securities broker and/ or dealer nor exercise the functions of a trust corporation", the same

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[33] TDRI's Audited Financial Statements for December 31, 2010 and 2009, RTC Records, p. 217.
[34] *Ibid*, p. 216.

cannot prevail over the real nature of petitioner's business, which is mainly holding stocks and investing the interests therein in money market placements. Petitioner therefore cannot hide under the said proviso as it is clearly under the category of non-bank financial intermediary.

Thus, this Court finds no cogent reason to set aside the following findings and conclusions of the RTC, to wit:

> "While the primary purpose of Petitioner appears to set a qualification or condition that: '***provided however that the Corporation shall not act as an investment company or a securities broker and/or dealer nor exercise the functions of a trust corporation.***', said ***proviso*** in the Court's mind is a classic evasion by Petitioner from the requirement to secure a secondary license for investment company under the regulation of the Bangko Sentral ng Pilipinas for non-banking financial intermediaries, per second paragraph of **Section 4101Q1 of MANUAL OF REGULATIONS FOR NON-BANK FINANCIAL INSTITUTIONS**, to wit:
>
> > '*Non-banking financial intermediaries shall include the following*:
> >
> > ***(1) A person or entity licensed and/or registered with any government regulatory body as a non-bank financial intermediary, such as investment house, investment company, financing company, securities dealer/broker, lending investor, pawnshop, money broker, fund manager, cooperative, insurance company, non-stock savings and loan association and building and loan association.*** *(underscoring supplied).* xxxx'
>
> Petitioner cannot hide under the cloak of its evasive *proviso*, because Petitioner is glaringly and clearly under the category of a Financial Intermediary. *JL*

To stress, the income of the Petitioner Corporation comes only from two sources, to wit:

1. ***Dividends from TDRI's SMC Shares; and***
2. ***Interest Income from TDRI's Money Market Placements*** (Par. 11, Petition)

In short, these ***dividends and interests*** are not considered incidental to its business quest, but are the **principal** *(defined above as: **Principal** shall mean chief, main, most considerable or important, of first importance, leading, primary, foremost, dominant or preponderant, as distinguished from secondary or incidental)* incomes of Petitioner's Corporation in the regular course of its business in line with the Primary Purpose of its Amended Articles of Incorporation."

In view of the foregoing, petitioner is a non-bank financial intermediary whose income may, therefore, be subjected to local business tax under Section 143(f) of RA No. 7160, as amended. Consequently, petitioner is not entitled to the refund of ₱1,220,513.50 representing the local business taxes collected by respondents for the first and second quarters of 2011 from dividends received by petitioner from its SMC preferred shares and interest on its money market placements for taxable year 2010.

WHEREFORE, premises considered, the instant Petition for Review is **DISMISSED** for lack of merit.

SO ORDERED.

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

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

Catherine T. Manahan
(With Dissenting Opinion)
CATHERINE T. MANAHAN
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 opinion of the Court's Division.

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

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, 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.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

TE DEUM RESOURCES, INC., *Petitioner,*	**CTA AC No. 150**
-versus-	Members:
CITY OF DAVAO and HON. RODRIGO S. RIOLA, in his capacity as the City Treasurer of Davao City, *Respondents.*	**CASTAÑEDA, JR.**, *Chairperson* **CASANOVA**, *and* **MANAHAN**, *JJ.* Promulgated: FEB 10 2017 1:30 p.m.

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DISSENTING OPINION

MANAHAN, *J.*:

With due respect to the *ponencia*, I register my dissent to the conclusions of the Court.

The *ponencia* found that Te Deum Resources, Inc. (Te Deum) was properly taxed by the City of Davao as a non-bank financial intermediary (NBFI) thereby denying Te Deum's claim for refund/credit of paid business taxes for the 1st and 2nd quarters of 2011 in the total amount of Php1,220,513.50. The *ponencia* affirmed the classification of Te Deum as a NBFI.

However, I disagree with the classification of Te Deum as a NBFI.

The pertinent provisions relied upon for the assessment of Te Deum as a NBFI are quoted below:

Local Government Code (LGC)[1]

[1] Republic Act No. 7160, October 10, 1992.

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Section 131. Definition of Terms. – When used in this Title, the term:

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(e) "Banks and other financial institutions" include non-bank financial intermediaries, lending investors, finance and investment companies, pawnshops, money shops, insurance companies, stock markets, stock brokers and dealers in securities and foreign exchange, as defined under applicable laws, or rules and regulations thereunder;[2]

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Section. 143. Tax on Business. – The municipality may impose taxes on the following businesses:

xxx

(f) On banks and other financial institutions, at a rate not exceeding fifty percent (50%) of one percent (1%) on the gross receipts of the preceding calendar year derived from interest, commissions and discounts from lending activities, income from financial leasing, dividends, rentals on property and profit from exchange or sale of property, insurance premium.

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Bangko Sentral ng Pilipinas (BSP)'s Manual of Regulations for Non-Bank Financial Institutions (BSP Manual)

Section 4101Q.1. Financial Intermediaries. – Financial intermediaries shall mean persons or entities whose principal functions include the lending, investing or placement of funds or evidences of indebtedness or equity deposited with them, acquired by them, or otherwise coursed through them either for their own account or for the account of others.

Principal shall mean chief, main, most considerable or important, of first importance, leading, primary,

[2] Underscoring supplied.

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foremost, dominant or preponderant, as distinguished from secondary or incidental.

Functions shall mean actions, activities or operations of a person or entity by which his/its business or purpose is fulfilled or carried out. The business or purpose of a person or entity may be determined from the purpose clause in its articles of incorporation/ partnership, and from the nature of the business indicated in his/its application for registration of business filed with the appropriate government agency.

To be considered a financial intermediary, a person or entity must perform any of the following functions on a regular and recurring, not on an isolated basis:

a. Receive funds from one (1) group of persons, irrespective of number, through traditional deposits, or issuance of debt or equity securities; and make available/lend these funds to another person or entity, and in the process acquire debt or equity securities;

b. Use principally the funds received for acquiring various types of debt or equity securities;

c. Borrow against, or lend on, or buy or sell debt or equity securities;

d. Hold assets consisting principally of debt or equity securities such as promissory notes, bills of exchange, mortgages, stocks, bonds, and commercial papers;

e. Realize regular income in the nature of, but need not be limited to, interest, discounts, capital gains, underwriting fees, guarantees, fees, commissions, and service fees, principally from transactions in debt or equity securities or by being an intermediary between suppliers and users of funds.

Non-banking financial intermediaries shall include the following:

(1) A person or entity licensed and/or registered with any government regulatory body as a non-bank financial intermediary, such as investment house, investment company, financing company, securities dealer/broker, lending investor, pawnshop, money

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broker, fund manager, cooperative, insurance company, non-stock savings and loan association and building and loan association.

(2) A person or entity which holds itself out as a non-banking financial intermediary, such as by the use of a business name, which includes the term financing, finance, investment, lending and/or any word/phrase of similar import which connotes financial intermediation, or an entity which advertises itself as a financial intermediary and is engaged in the function(s) where financial intermediation is implied.

(3) A person or entity performing any of the functions in Items a to e of this Subsection.[3]

Based on the foregoing provisions, interests and dividends may only be taxed by a local government unit (LGU) when it is earned by a bank or other financial institution.

In the instant case, Te Deum was made to pay local business tax on the ground that it is a NBFI, which Te Deum vigorously protests on the ground that it is a holding company. Thus, it must be determined whether Te Deum was correctly classified as a NBFI.

I find that there is insufficient ground to classify Te Deum as a financial institution, specifically as a NBFI. I agree with the reasoning of the Presiding Justice Roman G. Del Rosario and Associate Justices Erlinda P. Uy and Esperanza R. Fabon-Victorino in Anglo Ventures, Inc. v. City of Davao et al.[4], First Meridian Development, Inc. v. City of Davao et al.[5], and San Miguel Officers Corps, Inc. v. City of Davao et al.[6], respectively, and other similar cases, in concluding that the involved companies should not be classified as NBFI.

First, Te Deum is not an entity authorized by the BSP to perform quasi-banking functions, nor was it shown that Te Deum has a registration with any government regulatory body as a NBFI.

Second, there was no showing that Te Deum has held itself out nor advertised itself as a NBFI. It is noteworthy that Te

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[3] Underscoring supplied.
[4] CTA AC No. 155, July 12, 2016.
[5] CTA AC No. 132, August 26, 2016.
[6] CTA AC No. 136, November 22, 2016.

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Deum's name itself does not use "lending", "investing", or "financing" company.

Third, while Te Deum's primary purpose, as stated in its AOI, may involve one of the activities enumerated in the BSP Manual, it was not shown that Te Deum conducted these activities as its principal function and on a regular and recurring basis. In fact, an examination of Te Deum's primary purpose shows that Te Deum fits the definition of a holding company, rather than a NBFI. The Securities and Exchange Commission (SEC) defines a holding company as:

> A holding company has been defined by the Commission in several opinions. A holding company has been aptly defined as "a corporation organized to hold the stock of another or other corporations." Its essential feature is that it holds stock. The term "holding company" is equivalent to a parent corporation, having such an interest in another corporation, or power of control, that it may elect its directors and influence management. A parent or holding company is one that controls another as a subsidiary or affiliate by the power to elect its management. Affiliates are those concerns that are subject to common control and operated as part of a system.[7]

Like the BSP Manual, the SEC Opinion relies on the AOI for classifying a corporation. Thus, the "primary purpose of the corporation determines its classification."[8] It is the corporation's purpose clause that confers, as well as limits, the powers that a corporation may exercise.[9] A portion of Te Deum's primary purpose is quoted below:

> ...and to do every act and thing covered generally by the denomination 'holding corporation, and especially to direct the operations of other corporations through the ownership of stock therein, provided however that the Corporation shall not act as an investment company or a securities broker and/or dealer nor exercise the functions of a trust corporation.[10]

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[7] SEC-OGC Opinion NO. 15-15, November 3, 2015 (underscoring supplied, citations omitted).
[8] *Id.*
[9] *Id.*
[10] Docket, CTA AC Case No. 156. Petition for Review, p.12.

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From the foregoing, Te Deum is rightfully classified as a holding company, and not an NBFI.

Finally, the Supreme Court's statement that Te Deum was merely one of many companies formed or organized solely for the purpose of holding SMC shares,[11] underlines Te Deum's function as a holding company.

Therefore, finding that Te Deum cannot be classified as a NBFI pursuant to the requirements in the BSP Manual, it cannot be taxed as such by the City of Davao. Accordingly, the amounts paid by Te Deum as local business tax amounting to Php1,220,513.50 for the 1st and 2nd quarters of 2011 were erroneously collected and paid and must be refunded to Te Deum.

In view of the foregoing, I vote to grant Te Deum's Petition for Review.

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

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[11] COCOFED v. Republic, G.R. Nos. 177857 and 177858, January 24, 2012, 663 SCRA 514.