Republic of the Philippines
**COURT OF TAX APPEALS**
Quezon City

# *EN BANC*

**COMMISSIONER OF INTERNAL REVENUE,**
Petitioner,

-versus-

**PHILIPPINE AIRLINES, INC. (PAL),**
Respondent.

**CTA EB CASE NO. 920**
(CTA Case No. 7665 & 7713)

x-----------------------------------x

**REPUBLIC OF THE PHILIPPINES, represented by the COMMISSIONER OF CUSTOMS,**
Petitioner,

-versus-

**PHILIPPINE AIRLINES, INC. (PAL),**
Respondent.

**CTA EB CASE NO. 922**
(CTA Case No. 7665 & 7713)

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

**Promulgated**:

SEP 09 2013 9:00 a.m.

x-------------------------------------------------------------------------x

## D E C I S I O N

***MINDARO-GRULLA, J.:***

Submitted for decision are the two (2) consolidated "Petitions for Review" for the Court *En Banc* under Section 18 of Republic Act No. 1125,[1] as amended, and under Rule 4, Section 2(a)(1), in relation to Rule 8, Section 4(b) of the

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[1] An Act Creating the Court of Tax Appeals

2005 Revised Rules of the Court of Tax Appeals (RRCTA) *as amended* [2], of the Decision[3] dated April 17, 2012, rendered by the former Second Division of this Court in CTA Case Nos. 7765 & 7713, and its Resolution[4] dated June 28, 2012.

The Commissioner of Internal Revenue (CIR) filed on July 17, 2012 a "Petition for Review" with the CTA *En Banc* docketed as EB No. 920. The Commissioner of Customs (COC) filed on August 3, 2012 a "Petition for Review" with the CTA *En Banc* docketed as EB No. 922.

Both the CIR and the COC seek a reversal of both the aforesaid Decision and Resolution, the dispositive portions of which, respectively, read as follows:

Decision dated April 17, 2012:

> "***WHEREFORE***, *premises considered, the instant Petition for Review is hereby* ***GRANTED.*** *Accordingly, respondents are hereby* ***ORDERED TO REFUND*** *in favor of petitioner the amount of ₱4,469,199.98, representing petitioner's erroneously paid excise tax for the period covering July 2005 to February 2006.*
>
> ***SO ORDERED."***

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[2] RULE 4
JURISDICTION OF THE COURT
Sec. 2. *Cases within the jurisdiction of the Court en banc.-* The Court en banc shall exercise exclusive appellate jurisdiction to review by appeal the following:
(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Division in the exercise of its exclusive appellate jurisdiction over:
(1) Cases arising from administrative agencies- Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture;
xxx xxx xxx
RULE 8
PROCEDURE IN CIVIL CASES
Sec. 4. *Where to appeal; mode of appeal.-*
(a) xxx.
(b) An appeal from a decision or resolution of the Court in Division on a motion for reconsideration or new trial shall be taken to the Court by petition for review as provided in Rule 43 of the Rules of Court. The Court en banc shall act on the appeal.
(c) xxx.

[3] En banc Docket, pp. 22-50.

[4] En banc Docket, pp. 51-60.

Resolution dated June 28, 2012:

*"**WHEREFORE**, the Motion for Reconsideration filed by respondent CIR on April 23, 2012 and the Motion for Reconsideration (of the Decision dated April 17, 2012) filed by respondent COC on May 4, 2012 are hereby **DENIED** for lack of merit.*

***SO ORDERED**."*

The following undisputed facts are culled from the decision.

"Petitioner Philippine Airlines, Inc. is a domestic corporation organized in accordance with the laws of the Republic of the Philippines, with its principal office at the PNB Financial Center, President Diosdado P. Macapagal Avenue, CCP Complex, Pasay City 1300, Metro Manila.

On the other hand, respondent Commissioner of Internal Revenue (CIR) is the head of the Bureau of Internal Revenue (BIR), the government agency in charge of the assessment and collection of all national internal revenue taxes, fees and charges under the National Internal Revenue Code (NIRC), as amended. She holds office at the BIR National Office Building, Agham Road , Diliman , Quezon City.

Also named as respondent is the Commissioner of Customs (BOC) who is the chief of the Bureau of Customs (BOC), the government agency in charge of the assessment and collection of customs duties and other lawful revenues from imported articles, including excise taxes imposed on wines and cigarettes under Sections 142 and 145, respectively, of the NIRC, as amended. Respondent COC has his office address at G/F OCOM Building, Bureau of Customs, Port Area, City of Manila.

On June 11, 1978, petitioner was granted a franchise to establish, operate and maintain air transport services within the Philippines and other countries by Presidential Decree (P.O.) No. 1590.

On January 1, 2005, Republic Act (RA) No. 9334 took effect. Section 6 of RA No. 9334 provides:

'SECTION 6. Section 131 of the National Internal Revenue Code of 1997, as amended, is hereby amended to read as follows:

SEC. 131 . *Payment of Excise Taxes on Imported Articles. -*

(A) *Persons Liable.* - Excise taxes on imported articles shall be paid by the owner or importer to the Customs Officers, conformably with the regulations of the Department of Finance and before the release of such articles from the customs house, or by the person who is found in possession of articles which are exempt from excise taxes other than those legally entitled to exemption.

In the case of tax-free articles brought or imported into the Philippines by persons, entities, or agencies exempt from tax which are subsequently sold , transferred or exchanged in the Philippines to non-exempt persons or entities, the purchasers or recipients shall be considered the importers thereof, and shall be liable for the duty and internal revenue tax due on such importation.

The provision of any special or general law to the contrary notwithstanding, the importation of cigars and cigarettes, distilled spirits, fermented liquors and wines into the Philippines, even if destined for tax and duty-free shops, shall be subject to all applicable taxes, duties, charges, including excise taxes due thereon. This shall apply to cigars and cigarettes, distilled spirits, fermented liquors and wines brought directly into the duly chartered or legislated freeports of the Subic Special Economic and Freeport Zone, created under Republic Act No. 7227; the Cagayan Special Economic Zone and Freeport, created under Republic Act No. 7922; and the Zamboanga City Special Economic Zone, created under Republic Act No. 7903, and such other freeports as may hereafter be established created by law: *Provided, further,* That importations of cigars and cigarettes, distilled spirits, fermented liquors and wines made directly by a government-owned and operated duty-free shop, like the Duty-Free Philippines (DFP), shall be exempted from all applicable duties only: *Provided, still further,* That such articles directly imported by a government-owned and operated duty-free shop, like the Duty-Free Philippines, shall be labeled 'duty-free' and 'not for resale': *Provided,*

> *finally,* That the removal and transfer of tax and duty-free goods, products, machinery, equipment and other similar articles other than cigars and cigarettes, distilled spirits, fermented liquors and wines, from one freeport to another freeport, shall not be deemed an introduction into the Philippine customs territory."[5]

In view of the said provision, and despite the exemption granted in favor of petitioner under its franchise, petitioner's importations were subjected to excise tax under Sections 142(8) and 145(C)(1) of the NIRC of 1997, as amended. Petitioner paid under protest the excise taxes due on the said importation, xxx:

Thereafter, petitioner filed before the Commissioner of Internal Revenue three (3) written claims for refund on January 18, 2007 for excise taxes which were alleged to have been erroneously paid on July 29, 2005, August 15, 2005 and December 28, 2005.

On January 18, 2007, another two (2) written claims for refund were filed by petitioner with the Commissioner of Internal Revenue for excise taxes alleged to have been erroneously paid on January 19, 2006 and February 24, 2006.

The Commissioner of Internal Revenue failed to act however on the said administrative claims for refund"

Philippine Airlines, Inc. (PAL) filed two (2) petitions for review which were consolidated and raffled to the Court a quo. Thereafter, trial ensued. Petitioner presented testimonial and documentary evidence and the case was submitted for decision without the CIR and the COC presenting any witness.

On April 17, 2012, the Court a quo granted PAL's consolidated petitions and ordered the refund of the amount of ₱4,469,199.98, representing the erroneously paid excise tax for the period covering July 2005 to February 2006.

This Court's Division held that both the CIR and the COC are the real parties in interest; that Section 204 and

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[5] Supra Note 2

229 of the National Internal Revenue Code (NIRC)[6], as amended, are the applicable provisions involving erroneously collected excise tax and not Section 112[7] thereof which involve the refund of input VAT; and that the exemption granted to PAL under Presidential Decree No.

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[6] SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* - The Commissioner may -

(A) Compromise the Payment of any Internal Revenue Tax, when:xxx.

(B) Abate or Cancel a Tax Liability, when:xxx.

(C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction.

No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty: *Provided, however,* That a return filed showing an overpayment shall be considered as a written claim for credit or refund.
A Tax Credit Certificate validly issued under the provisions of this Code may be applied against any internal revenue tax, excluding withholding taxes, for which the taxpayer is directly liable.

xxxxx.

SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.* - no suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, of any sum alleged to have been excessively or in any manner wrongfully collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: *Provided, however,* That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.

[7] SEC. 112. *Refunds or Tax Credits of Input Tax.* -

(A) *Zero-Rated or Effectively Zero-Rated Sales.*- any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: Provided, however, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (B) and Section 108 (B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): Provided, further, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods of properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales.xxxx.

1590 (PD1590)[8] was not repealed by Republic Act No. 9334 (RA9334)[9]. Likewise, this Court's Division found that PAL opted to pay its basic corporate income tax for the fiscal year ending March 31, 2006; that the articles imported are intended for its operations; and that the same are not locally available in reasonable quantity, quality or price.

Thereafter, the CIR and the COC's respective Motions for Reconsideration were denied, hence, these separate petitions.

The CIR in its petition for review before the Court en Banc raise the issue of whether PAL is entitled to the tax refund in the amount of ₱4,469,199.98, representing the erroneously paid excise tax for the period covering July 2005 to February 2006. The CIR argues that P.D. No. 1590, particularly Section 13 thereof had already been expressly amended by R.A. No. 9344 and asserts that the meaning of "express amendment" of a legislative franchise, by a general law had been resolved in the Cagayan Case[10] . Moreover, the CIR claims that PAL failed to prove that the alleged commissary supplies are not locally available in reasonable quantity, quality and price considering that no independent credible evidence was presented but merely the self-serving testimony of PAL's own employee on the non-availability locally of commissary supplies in reasonable quantity, quality and price which is not comprehensive.

On the other hand, the COC's petition for review alleges the following grounds:

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[8] AN ACT GRANTING A NEW FRANCHISE TO PHILIPPINE AIRLINES, INC. TO ESTABLISH, OPERATE, AND MAINTAIN AIR-TRANSPORT SERVICES IN THE PHILIPPINES AND OTHER COUNTRIES.

[9] AN ACT INCREASING THE EXCISE TAX RATES IMPOSED ON ALCOHOL AND TOBACCO PRODUCTS, AMENDING FOR THE PURPOSE SECTIONS 131,141, 142, 143, 144, 145 AND 288 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED.

[10] Cagayan Electric Power & Light Co., Inc. vs. Commissioner of Internal Revenue, G.R. No. L-60126, September 25, 1985.

"IT IS RESPECTFULLY SUBMITTED THAT THE SECOND DIVISION OF THE HONORABLE COURT ERRED IN DIRECTING PETITIONER AND THE COMMISSIONER OF INTERNAL REVENUE TO REFUND RESPONDENT THE AMOUNT OF ₱4,469,199.98, REPRESENTING THE EXCISE TAX IT PAID FOR THE PERIOD COVERING JULY 2005 TO FEBRUARY 2006, CONSIDERING THAT---

I.

THE PETITION SHOULD HAVE BEEN DISMISSED AGAINST PETITIONER BECAUSE IT STATES NO CAUSE OF ACTION AGAINSTS THE COMMISSIONER OF CUSTOMS, THE LATTER HAVING ACTED MERELY AS COLLECTING AGENT FOR THE COMMISSIONER OF INTERNAL REVENUE.

II.

EVEN GRANTING PETITIONER WAS A PROPER PARTY DEFENDANT, THE SECOND DIVISION STILL SHOULD HAVE DISMISSED CTA CASE NOS. 7665 AND 7713, CONSIDERING THAT:

A. RESPONDENT DID NOT EXHAUST ITS ADMINISTRATIVE REMEDIES WITH PETITIONER THUS DEPRIVING IT OF A CAUSE OF ACTION AGAINST THE COMMISSIONER OF CUSTOMS.

B. SECTIONS 6 AND 10 OF R.A. NO. 9334 HAVE REPEALED SECTIONS 13 AND 24 OF P.D. NO. 1590, BECAUSE---

B.1. THE ALL ENCOMPASSING PASSAGE "NOTWITHSTANDING THE PROVISION OF ANY SPECIAL OR GENERAL LAW TO THE CONTRARY," UNEQUIVOCALLY SHOWS THE INTENT OF CONGRESS TO REPEAL P.D. NO. 1590 AND HENCE WITHDREW RESPONDENT'S PREVIOUS EXEMPTION THEREUNDER.

B.2. THE IRRECONCILABLE REPUGNANCY BETWEEN SECTION 13 OF P.D. NO. 1590 AND SECTION 6 OF R.A. NO. 9334 SHOWS LEGISLATURE'S UNMISTAKABLE INTENT TO REPEAL PETITIONER'S FRANCHISE.

B.3. COMMISSIONER OF INTERNAL REVENUE V. PHILIPPINE AIRLINES (G.R. NO. 180066, JULY 7, 2009) DOES NOT APPLY TO THE INSTANT CASE.

B.4. PETITIONER FAILED TO ESTABLISH THAT THE COMMISSARY SUPPLIES SUBJECT OF THESE CASES ARE NOT LOCALLY AVAILABLE IN

REASONABLE QUANTITY, QUALITY AND PRICE."

In its Comment to the CIR's petition, PAL argues that the CIR misread Section 24[11] of P.D. 1590 considering that there is nothing in R.A. No. 9334 (referring specifically to P.D. 1590) which modifies, amends or repeals the tax exemption privilege of PAL. Likewise, PAL maintains that the CIR's reliance in the Cagayan Case is misplaced considering that the legislative franchise in that case does not contain a provision requiring a special law or decree before any section or provision thereof may be modified, amended or repealed. In addition, PAL claims that it had already submitted credible evidence on the non-availability locally of the commissary supplies, thus, the arguments raised by the CIR are just mere rehashed which had already been ruled upon by the Court in Division. In its Comment on the COC's petition, PAL avers the same argument in its Comment to the CIR's petition and claims that the arguments raised by the COC are likewise mere rehash and they have been previously ruled upon by the Court in Division.

After a careful evaluation and consideration of all the arguments and the evidence on record, this Court En Banc finds no merit in both the petitions for review filed by the CIR and the COC.

The records of the case indubitably show that the former CTA Second Division had already fully and exhaustively resolved the issue in relation to the arguments/grounds raised in the petitions which this Court already noted are mere rehash of the arguments proffered by petitioners in their Motion for Reconsideration.

On the core issue of whether Sections 6 and 10 of R.A. No. 9334 (the provisions requiring payment of excise tax on imported articles) have repealed Section 13 P.D. No. 1590

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[11] Sec.24. This franchise, as amended, or any section or provision hereof may only be modified, amended, or repealed expressly by a special law or decree that shall specifically modify, amend, or repeal this franchise or any provision thereof.

(provisions of tax exemption under PAL's franchise), We find that the CTA Second Division correctly held that there was no repeal. The pertinent portion of the decision[12] which We quote reads:

> *"On the issue of whether or not Section 6 of RA No. 9334 repealed the exemption granted to petitioner under P.O. No. 1590, the Court hereunder quotes Section 6 of RA No. 9334:*
>
> > *"SECTION 6. Section 131 of the National Internal Revenue Code of 1997, as amended, is hereby amended to read as follows:*
> >
> > *'SEC. 131 . Payment of Excise Taxes on Imported Articles.-*
> >
> > *(B) Persons Liable. - Excise taxes on imported articles shall be paid by the owner or importer to the Customs Officers, conformably with the regulations of the Department of Finance and before the release of such articles from the customshouse, or by the person who is found in possession of articles which are exempt from excise taxes other than those legally entitled to exemption.*
> >
> > *In the case of tax-free articles brought or imported into the Philippines by persons, entities, or agencies exempt from tax which are subsequently sold, transferred or exchanged in the Philippines to non-exempt persons or entities, the purchasers or recipients shall be considered the importers thereof, and shall be liable for the duty and internal revenue tax due on such importation. The provision of any special or general law to the contrary notwithstanding, the importation of cigars and cigarettes, distilled spirits, fermented liquors and wines into the Philippines, even if destined for tax and duty-free shops, shall be subject to all applicable taxes, duties, charges, including excise taxes due thereon. This shall apply to cigars and cigarettes, distilled spirits, fermented liquors and wines brought directly into the duly*

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[12] Supra Note 2

> *chartered or legislated freeports of the Subic Special Economic and Freeport Zone, created under Republic Act No. 7227; the Cagayan Special Economic Zone and Freeport, created under Republic Act No. 7922; and the Zamboanga City Special Economic Zone, created under Republic Act No. 7903, and such other freeports as may hereafter be established or created by law: Provided, further, That importations of cigars and cigarettes, distilled spirits, fermented liquors and wines made directly by a government-owned and operated duty-free shop, like the Duty-Free Philippines (DFP), shall be exempted from all applicable duties only: Provided, still further, That such articles directly imported by a government-owned and operated duty-free shop, like the Duty-Free Philippines, shall be labeled 'duty-free' and 'not for resale': Provided, finally, That the removal and transfer of tax and duty-free goods, products, machinery, equipment and other similar articles other than cigars and cigarettes, distilled spirits, fermented liquors and wines, from one freeport to another freeport, shall not be deemed an introduction into the Philippine customs territory."*

*While it is true that Section 6 of RA No. 9334 states the all encompassing phrase, "The provision of any special or general law to the contrary notwithstanding", such phrase cannot be considered as an express repeal of the exemptions granted under petitioner's franchise because it fails to identify or designate the acts that are intended to be repealed. As laws are presumed to be passed with deliberation and with knowledge of all existing ones on the subject, it is logical to conclude that in passing a statute, it is not intended to interfere with or abrogate a former law relating to the same subject matter, unless the repugnancy between the two is not only irreconcilable but also clear and convincing as a result of the language used, or unless the latter Act fully embraces the subject matter of the earlier. It is a cardinal rule in statutory construction that implied repeals are disfavored and will not be so declared unless the intent of the legislators is manifest.*

*Equally noteworthy is the fact that Republic Act No. 1590 is a special law, which governs the franchise of petitioner. Between the provisions under P.D. No. 1590 as* *against the provisions under the NIRC of 1997, as amended by RA No. 9334, which is a general law, the former necessarily prevails. This is in accordance with the rule that on a specific matter, the special law shall prevail over the general law, which shall be resorted to only to supply deficiencies in the former. In addition, where there are two statutes, the earlier special and the later general - the terms of the general broad enough to include the matter provided for in the special - the fact that one is special and the other is general creates a presumption that the special is to be considered as remaining an exception to the general, one as a general law of the land, the other as the law of a particular case.*

*Considering respondent's failure to prove that the exemption granted to petitioner under P.D. No. 1590 was already repealed by RA No. 9334, the Court shall proceed to determine whether petitioner is entitled to be refunded of the amount claimed on the basis of the exemption granted under its franchise.*

> *Section 13 of P.D. No. 1590 is quoted hereunder for ready reference:*
>
> *"SECTION 13. In consideration of the franchise and rights hereby granted , the grantee shall pay to the Philippine Government during the life of this franchise whichever of subsections (a) and (b) hereunder will result in a lower tax:*
>
> *(a) The basic corporate income tax based on the grantee's annual net taxable income computed in accordance with the provisions of the National Internal Revenue Code; or*
>
> *(b) A franchise tax of two per cent (2%) of the gross revenues derived by the grantee from all sources, without distinction as to transport or non-transport operations; provided, that with respect to international air-transport service, only the gross passenger, mail, and freight revenues from its outgoing flights shall be subject to this tax.*
>
> ***The tax paid by the grantee under either of the above alternatives shall be in lieu of all other taxes, duties, royalties, registration, license, and other fees and charges of any kind, nature, or description,***

> ***imposed, levied, established, assessed, or collected by any municipal, city, provincial, or national authority or government agency,*** *now or in the future, including but not limited to the following :*
>
> *(1) All taxes, duties, charges, royalties, or fees due on local purchases by the grantee of aviation gas, fuel, and oil, whether refined or in crude form , and whether such taxes, duties, charges, royalties, or fees are directly due from or imposable upon the purchaser or the seller, producer, manufacturer, or importer of said petroleum products but are billed or passed on the grantee either as part of the price or cost thereof or by mutual agreement or other arrangement; provided , that all such purchases by, sales or deliveries of aviation gas, fuel , and oil to the grantee shall be for exclusive use in its transport and non-transport operations and other activities incidental thereto;*
>
> *(2)* ***All taxes,*** *including compensating taxes, duties, charges, royalties, or fees due on* ***all importations by the grantee*** *of aircraft, engines, equipment, machinery, spare parts, accessories,* ***commissary and catering supplies,*** *aviation gas, fuel, and oil, whether refined or in crude form* ***and other articles, supplies, or materials; provided, that such articles or supplies or materials are imported for the use of the grantee in its transport and transport operations and other activities incidental thereto and are not locally available in reasonable quantity, quality, or price;"*** *(Emphasis supplied)*

*In other words, petitioner may be exempted from the payment of all taxes, including compensating taxes, duties, charges, royalties, or fees due on all importations of commissary and catering supplies and other articles, supplies, or materials upon payment by the grantee under either of the abovementioned alternatives, provided that:*

*1. Such articles or supplies or materials are imported for the use of the grantee in its transport and non-transport operations and other activities incidental thereto; and*

*2. They are not locally available in reasonable quantity, quality or price.*

*Let it be noted that Section 22 of RA No. 9337, which took effect on July 1, 2005, abolished the franchise tax provided under petitioner's charter and subjected petitioner to corporate income tax and value-added tax (VAT).Nevertheless, the same Section provides that petitioner shall otherwise remain exempt from any taxes, duties, royalties, registration, license, and other fees and charges, as may be provided by their respective franchise agreement. Section 22 of RA No. 9337 states as follows:*

> *'"SECTION 22. Franchises of Domestic Airlines. - The provisions of P.D. No. 1590 on the franchise tax of Philippine Airlines, Inc., R.A. No. 7151 on the franchise tax of Cebu Air, Inc., R.A. No. 7583 on the franchise tax of Aboitiz Air Transport Corporation, R.A. No. 7909 on the franchise tax of Pacific Airways Corporation, R.A. No. 8339 on the franchise tax of Air Philippines, or any other franchise agreement or law pertaining to a domestic airline to the contrary notwithstanding:*
>
> *(A) The franchise tax is abolished;*
>
> *(B) The franchisee shall be liable to the corporate income tax;*
>
> *(C) The franchisee shall register for value-added tax under Section 236, and to account under Title IV of the National Internal Revenue Code of 1997, as amended, for value-added tax on its sale of goods, property or services and its lease of property; and*
>
> *(D) The franchisee shall otherwise remain exempt from any taxes, duties, royalties, registration, license, and other fees and charges, as may be provided by their respective franchise agreement.'*

*Accordingly, petitioner is only left with one option, which is to pay for its basic corporate income tax; the payment of which shall be in lieu of all taxes with the exception of corporate income tax and VAT, and subject to*

> *certain conditions as may be provided under petitioner's charter."*

Likewise, we are not persuaded on petitioner's arguments on the alleged irreconcilable repugnancy on the above mentioned provisions and petitioner's reliance in the Cagayan Case. We find that there is no express repeal, as this Court's Division aptly ruled as follows:

> "In the aforesaid case of Cagayan Electric Power and Light Co., Inc vs. Commissioner of Internal Revenue the Supreme Court, in its narration of facts of the case, stated that RA 5431 amended section 24 of the Tax Code by making liable for income tax all corporate taxpayers not specifically exempt under paragraph (c)(1) of said section and section 27 of the Tax Code notwithstanding the 'provision of existing special or general laws to the contrary.' As regards the effect of RA 5431, the Supreme Court ruled as follows:
>
> > '**Republic Act No. 5431, in amending section 24 of the Tax Code by subjecting to income tax all corporate taxpayers not expressly exempted therein and in section 27 of the Code,** had the effects of withdrawing petitioner's exemption from income tax.' (Emphasis supplied)
>
> The foregoing pronouncement would show that the reason of the Supreme Court in considering RA No. 5431 as amending Section 24 of the Tax Code is not merely because of the use by Congress of the proviso 'the provision of any special or general law to the contrary notwithstanding', but rather, it is for the reason that RA 5431 specifically subjected to income tax all corporate taxpayers not expressly exempted therein and in section 27 of the Code. In other words, there was express repeal in the above-cited case because RA 5431 identified or designated the acts that are intended to be repealed.
>
> In comparison to this case, and as already ruled by the Court, while its is true that Section 6 of RA 9334 states the all-encompassing phrase 'the provision of any special or general law to the contrary notwithstanding', such phrase cannot be considered as an express repeal of the exemptions granted under petitioner's franchise because it fails to identify or designate the acts that are intended to

be repealed. Also, there is nothing in RA No. 9334 which specifically modify, amend or repeal any of the provisions under PD1590, which is being required by Section 24[13] of PD 1590."[14]

In *sum,* there is no cogent reason or justification to disturb the findings and conclusion spelled out in the Assailed 17 April 2012 Decision and 28 June 2012 Resolution of the former Second Division of this Court in CTA Case Nos. 7665 and 7713.

**WHEREFORE,** premises considered, the two (2) consolidated Petitions for Review are hereby **DISMISSED** for lack of merit. Accordingly, the April 17, 2012 Decision and the June 28, 2012 Resolution of the former Second Division in CTA Case Nos. 7665 and 7713 are hereby **AFFIRMED.**

**SO ORDERED.**

Cielito N. Mindaro-Grulla
**CIELITO N. MINDARO-GRULLA**
Associate Justice

WE CONCUR:

(with Dissenting Opinion)
**ROMAN G. DEL ROSARIO**
**Presiding Justice**

[13] Sec.24. This franchise, as amended, or any section or provision hereof may only be modified, amended, or repealed expressly by a special law or decree that shall specifically modify, amend, or repeal this franchise or any provision thereof.
[14] Supra Note 3

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

**LOVELL R. BAUTISTA**
Associate Justice

**ERLINDA P. UY**
Associate Justice

**CAESAR A. CASANOVA**
Associate Justice

**ESPERANZA R. FABON-VICTORINO**
Associate Justice

(On Leave)
**AMELIA R. COTANGCO-MANALASTAS**
Associate Justice

(with Dissenting Opinion)
**MA. BELEN M. RINGPIS-LIBAN**
Associate Justice

## 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 among the members of the Court En Banc before the case was assigned to the writer of the opinion of the Court En Banc.

**ROMAN G. DEL ROSARIO**
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

*En Banc*

**COMMISSIONER OF INTERNAL REVENUE,**
Petitioner,

-versus-

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**(C.T.A. CASE NOS. 7665 & 7713)**

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CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
COTANGCO-MANALASTAS, *and*
RINGPIS-LIBAN, *JJ.*

Promulgated:

SEP 09 2013 ___ 9:00 a.m.

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## DISSENTING OPINION

***RINGPIS-LIBAN, J.:***

With all due respect to the *ponencia* of my esteemed colleage, Justice Cielito N. Mindaro-Grulla, I disagree with the majority opinion.

It is a well-settled principle in statutory construction that, "When there are two statutes, the earlier special and the later general -- the terms of the general broad enough to include the matter provided for in the special -- the fact that one is special and the other is general creates a presumption that the special is to be considered as remaining an exception to the general, one as a general law of the land, the other as the law of a particular case."[1]

In fact, this was determined to be a core issue of the matter at hand -- whether Sections 6 and 10 of RA 9334 (the provisions requiring payment of excise tax on imported articles) have repealed Section 13 of PD 1590 (provisions of tax exemptions under PAL's franchise). It is also on this basis that the *ponencia* upheld the former Second Division's Decision[2] dated April 17, 2012 in CTA Case Nos. 7765 & 7713, and its Resolution[3] dated June 28, 2012.

The majority opinion further holds that although Sec. 6 of RA 9334 states the all-encompassing phrase "the provision of any special or general law to the contrary notwithstanding", such phrase could not be considered an express repeal of the exemptions granted under PAL's franchise because it failed to identify or designate the acts that are intended to be repealed.

On the one hand, we have PD 1590 which granted PAL its franchise and contains tax exemption provisions. Because such enactment is only applicable to PAL, it is, by all means, considered a special law. A special statute, as the term is generally understood, is one which relates to particular person or things of a class[4] or to a particular portion or section of the state only.[5]

On the other hand, we have RA 9334 an act which specifically increases excise tax rates imposed on alcohol and tobacco products and which amended several sections of the National Internal Revenue Code of 1997 (RA 8424), including Section 131 thereof. RA 9334 is considered to be an amendatory statute. Amendments are to be construed together with the original act to which they relate as constituting one law, and also with other statutes on the same subject, as part of a coherent system of legislation.[6] RA 9334, therefore, must be read together with RA 8424 which is a general statute. A general statute is a statute which applies to all of the people of the state or to all of a particular class of person in the state with equal force.[7] It is one which

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[1] Manila Rairoad Co. v. Rafferty, 40 Phil. 224
[2] En Banc docket, pp. 22-50.
[3] En Banc docket, pp. 51-60.
[4] Valera v. Tuason, 80 Phil. 823 (1948).
[5] U.S. v. Serapio, 23 Phil. 584 (1912).
[6] *Statutory Construction*, Rodriguez, Rufus B. 1999, citing 82 C.J.S. Statutes § 384.
[7] U.S. v. Serapio, 23 Phil. 584 (1912).

embraces a class of subjects or places and does not omit any subject or place naturally belonging to such class.[8]

Applying the rules of statutory construction, then the special law -- PD 1590 -- would indeed be considered to remain an exception to RA 8424, the general law, and PAL would still be exempt from the payment of excise taxes on cigars and cigarettes, fermented spirits and wines that it imported.

However, the rule is not absolute and admits of exceptions. I believe that the case at bar falls under those exceptions.

One exception to the principle is where the special law merely establishes a general rule while the general law creates a specific and special rule, in which case the general law prevails over the special law.[9] The principle that a special law on a subject prevails over a general law on the same subject presupposes that the general law refers to the subject in general and the special law treats the same subject in particular. The rule does not apply where the situation is reverse, that is, the general law treats the subject in particular and the special law refers to it in general. In this situation, the general law prevails over the special law in the event of repugnancy or conflict between the two laws.[10]

Under PD 1590, the subject of excise taxes due on its importations of cigars and cigarettes, fermented spirits and wines, are treated generally and are considered encompassed in Section 13 thereof. In that section, in consideration of the franchise granted to PAL, it shall pay either basic corporate income tax or a franchise tax. **Section 13** further denotes the treatment of the tax paid, thus:

> "The tax paid by the grantee under either of the above alternatives **shall be in lieu of all other taxes**, duties, royalties, registration, license, and other fees and charges of any kind, nature, or description, imposed, levied, established, assessed, or collected by any municipal, city, provincial, or national authority or government agency, now or in the future, **including but not limited to the following**:
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> x x x

[8] Valera v. Tuason, 80 Phil. 823 (1948); Villegas v. Subido, G.R. No. 31711, Sept. 30, 1971, 41 SCRA 190 (1971).
[9] City of Manila v. Teotico, G.R. No. 23052, Jan. 29, 1968, 22 SCRA 276 (1968).
[10] Bagatsing v. Ramirez, G.R. No. 41636, Dec. 17, 1976, 74 SCRA 306 (1976).

> 2. **All taxes**, including compensating taxes, duties, charges, royalties, or fees due **on all importations** by the grantee of aircraft, engines, equipment, machinery, spare parts, accessories, commissary and catering supplies, aviation gas, fuel, and oil, whether refined or in crude form and other articles, supplies, or materials; provided, that such articles or supplies or materials are imported for the use of the grantee in its transport and transport operations and other activities incidental thereto and are not locally available in reasonable quantity, quality, or price; x x x"[11]

In fact, PD 1590 does not even mention "cigars and cigarettes, distilled spirits, fermented liquors and wines" with any particularity and such items would only fall under the generic phrase **"and other articles, supplies, or materials"**. In contrast, RA 9334 specifically deals with the excise tax rates imposed on alcohol and tobacco products. The fact that Sec. 6 of RA 9334, in its third paragraph, is preceded by the phrase, **"The provision of any special or general law to the contrary notwithstanding x x x"** evinces a clear intent to withdraw prior exemptions of excise tax when it comes to "cigars and cigarettes, distilled spirits, fermented liquors and wines".

The case at bar therefore falls under the exception where a general law treats the subject in particular and the special law refers to it in general, and in such a case, the general law -- RA 8424 as amended by RA 9334 -- must prevail.

The case of ***Republic of the Philippines v. Caguioa***[12] elucidates the matter further. In that case, the petitioners, via a Petition for Certiorari and Prohibition, sought to annul the orders of Judge Ramon S. Caguioa of the Regional Trial Court (RTC), Branch 74, Olongapo City which granted a writ of preliminary injunction to respondents, in effect staying the implementation of RA 9334. On a head-on collision with RA 9334 was RA 7227 (The Bases Conversion and Development Act of 1992) which, among other things, created the Subic Special Economic and Freeport Zone (SBF) and the Subic Bay Metropolitan Authority (SBMA).

Private respondents in the *Caguioa* case were all domestic corporations doing business at the Subic Bay Freeport. They applied for and were granted Certificates of Registration and Tax Exemption by the SBMA which allowed them to engage in the business either of trading, retailing or wholesaling,

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[11] Section 13, Presidential Decree No. 1509, An Act Granting A New Franchise To Philippine Airlines, Inc. To Establish, Operate, And Maintain Air-Transport Services In The Philippines And Other Countries, June 11, 1978.
[12] G.R. No. 168584, October 15, 2007.

import and export, warehousing, distribution and/or transshipment of general merchandise, **including alcohol and tobacco products**, and **uniformly granted them tax exemptions for such importations** as contained in their respective Certificates.

Although the Supreme Court in the *Caguioa* case limited itself to resolving the most pertinent and justiciable matter at hand, i.e. the propriety of preliminary injunction granted to respondents, it however opined, thus:

> "It is beyond cavil that R.A. No. 7227 granted private respondents exemption from local and national taxes, including excise taxes, on their importations of general merchandise, for which reason they enjoyed tax-exempt status until the effectivity of R.A. No. 9334.
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> By subsequently enacting R.A. No. 9334, however, **Congress expressed its intention to withdraw private respondents' tax exemption privilege on their importations of cigars, cigarettes, distilled spirits, fermented liquors and wines**. Juxtaposed to show this intention are the respective provisions of Section 131 of the NIRC before and after its amendment by R.A. No. 9334:

| **Sec. 131 of NIRC before R.A. No. 9334** | **Sec. 131, as amended by R.A. No. 9334** |
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| Sec. 131. Payment of Excise Taxes on Imported Articles. –<br><br>(A) Persons Liable. – Excise taxes on imported articles shall be paid by the owner or importer to the Customs Officers, conformably with the regulations of the Department of Finance and before the release of such articles from the customs house or by the person who is found in possession of articles which are exempt from excise taxes other than those legally entitled to exemption. | Sec. 131. Payment of Excise Taxes on Imported Articles. –<br><br>(A) Persons Liable. – Excise taxes on imported articles shall be paid by the owner or importer to the Customs Officers, conformably with the regulations of the Department of Finance and before the release of such articles from the customs house or by the person who is found in possession of articles which are exempt from excise taxes other than those legally entitled to exemption. |

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| In the case of tax-free articles brought or imported into the Philippines by persons, entities or agencies exempt from tax which are subsequently sold, transferred or exchanged in the Philippines to non-exempt persons or entities, the purchasers or recipients shall be considered the importers thereof, and shall be liable for the duty and internal revenue tax due on such importation.<br><br>The provision of any special or general law to the contrary notwithstanding, the importation of cigars and cigarettes, distilled spirits, fermented liquors and wines into the Philippines, even if destined for tax and duty free shops, shall be subject to all applicable taxes, duties, charges, including excise taxes due thereon. Provided, however, That **this *shall not apply* to cigars and cigarettes, fermented spirits and wines brought directly into the duly chartered or legislated freeports of the Subic Economic Freeport Zone, created under Republic Act No. 7227**; the Cagayan Special Economic Zone and Freeport, created under Republic Act No. 7922; and the Zamboanga City Special Economic Zone, created under Republic Act No. 7903, and are not transshipped to any other port in the Philippines: *Provided, further*, That importations of cigars and cigarettes, distilled spirits, fermented liquors and | In the case of tax-free articles brought or imported into the Philippines by persons, entities or agencies exempt from tax which are subsequently sold, transferred or exchanged in the Philippines to non-exempt persons or entities, the purchasers or recipients shall be considered the importers thereof, and shall be liable for the duty and internal revenue tax due on such importation.<br><br>**The provision of any special or general law to the contrary notwithstanding, the importation of cigars and cigarettes, distilled spirits, fermented liquors and wines into the Philippines, even if destined for tax and duty free shops, shall be subject to all applicable taxes, duties, charges, including excise taxes due thereon. This shall *apply* to cigars and cigarettes, *distilled spirits*, fermented liquors and wines brought directly into the duly chartered or legislated freeports of the Subic Economic Freeport Zone, created under Republic Act No. 7227**; the Cagayan Special Economic Zone and Freeport, created under Republic Act No. 7922; and the Zamboanga City Special Economic Zone, created under Republic Act No. 7903, and such other freeports as may hereafter be established or created by law: *Provided, further*, That importations of cigars and |

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| wines made directly by a government-owned and operated duty-free shop, like the Duty Free Philippines (DFP), shall be exempted from all applicable duties, charges, including excise tax due thereon; *Provided still further*, That such articles directly imported by a government-owned and operated duty-free shop, like the Duty-Free Philippines, shall be labeled "tax and duty-free" and "not for resale": Provided, still further, That if such articles brought into the duly chartered or legislated freeports under Republic Acts Nos. 7227, 7922 and 7903 are subsequently introduced into the Philippine customs territory, then such articles shall, upon such introduction, be deemed imported into the Philippines and shall be subject to all imposts and excise taxes provided herein and other statutes: Provided, finally, That the removal and transfer of tax and duty-free goods, products, machinery, equipment and other similar articles, from one freeport to another freeport, shall not be deemed an introduction into the Philippine customs territory.<br>x x x x. | cigarettes, distilled spirits, fermented liquors and wines made directly by a government-owned and operated duty-free shop, like the Duty Free Philippines (DFP), shall be exempted from all applicable duties only: *Provided still further*, That such articles directly imported by a government-owned and operated duty-free shop, like the Duty-Free Philippines, shall be labeled "tax and duty-free" and "not for resale": Provided, finally, That the removal and transfer of tax and duty-free goods, products, machinery, equipment and other similar articles other than cigars and cigarettes, distilled spirits, fermented liquors and wines, from one Freeport to another Freeport, shall not be deemed an introduction into the Philippine customs territory.<br>x x x x.<br><br>(Emphasis and underscoring supplied) |

To note, the old Section 131 of the NIRC expressly provided that all taxes, duties, charges, including excise taxes shall not apply to importations of cigars, cigarettes, fermented spirits and wines brought directly into the duly chartered or legislated freeports of the SBF.

On the other hand, Section 131, as amended by R.A. No. 9334, now provides that such taxes, duties and charges, including excise taxes, shall apply to importation of cigars and cigarettes, distilled spirits, fermented liquors and wines into the SBF."[13]

Without necessarily passing upon the validity of the withdrawal of the tax exemption privileges of private respondents, the Supreme Court went on to state several basic principles and observations, the relevant ones of which, I find, should also shed light on the case at bar, to wit:

> "*Second.* There is no vested right in a tax exemption, more so when the latest expression of legislative intent renders its continuance doubtful. Being a mere statutory privilege[14], a tax exemption may be modified or withdrawn at will by the granting authority.[15]
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> To state otherwise is to limit the taxing power of the State, which is unlimited, plenary, comprehensive and supreme. The power to impose taxes is one so unlimited in force and so searching in extent, it is subject only to restrictions which rest on the discretion of the authority exercising it.[16]
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> *Third.* As a general rule, tax exemptions are construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority.[17] The burden of proof rests upon the party claiming exemption to prove that it is in fact covered by the exemption so claimed.[18] In case of doubt, non-exemption is favored.[19]
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> *Fourth.* A tax exemption cannot be grounded upon the continued existence of a statute which precludes its change or

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[13] *Supra.*
[14] *Supra*; citing United Paracale Mining Co. v. De la Rosa, G.R. Nos. 63786-87, April 7, 1993, 221 SCRA 108, 115.
[15] *Supra*; citing Abakada Guro Party List Officers v. Ermita, G.R. Nos. 168056, 168207, 168461 and 168463, September 1, 2005, 469 SCRA 1, 134.
[16] *Supra*; citing Tio v. Videogram Regulatory Board, G.R. No. L-75697, June 18, 1987, 151 SCRA 208, 215.
[17] *Supra*; citing Commissioner of Internal Revenue v. Seagate Technology (Philippines), G.R. No. 153866, February 11, 2005, 451 SCRA 132, 152; Philippine Long Distance Telephone Company, Inc. v. City of Davao, 447 Phil. 571, 584 (2003); Commissioner of Internal Revenue v. Arnoldus Carpentry Shop, Inc., G.R. No. L-71122, March 25, 1988, 159 SCRA 199, 210; City of Baguio v. Busuego, L-29772, September 18, 1980, 100 SCRA 116, 123.
[18] *Supra*; citing Caltex Philippines, Inc. v. Commission on Audit, G.R. No. 92585, May 8, 1992, 208 SCRA 727, 753.
[19] *Supra*; citing Benguet Corporation v. Central Board of Assessment Appeals, G.R. No. 100959, June 29, 1992, 210 SCRA 579, 587.

repeal.[20] Flowing from the basic precept of constitutional law that no law is irrepealable, Congress, in the legitimate exercise of its lawmaking powers, can enact a law withdrawing a tax exemption just as efficaciously as it may grant the same under Section 28(4) of Article VI[21] of the Constitution. There is no gainsaying therefore that Congress can amend Section 131 of the NIRC in a manner it sees fit, as it did when it passed R.A. No. 9334."

Based on the foregoing, I vote to grant the instant Petitions for Review respectively filed by the CIR and the Republic of the Philippines, as represented by the COC.

Ma. Belen M. Li

**MA. BELEN M. RINGPIS-LIBAN**
Associate Justice

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[20] *Supra*; citing Commissioner of Internal Revenue v. Court of Appeals, February 6, 1997, citing Asociacion de Agricultores de Talisay-Silay, Inc. v. Talisay-Silay Milling Co., Inc., 88 SCRA 294, 452.
[21] Sec. 28 (4) No law granting any tax exemption shall be passed without the concurrence of a majority of all the Members of Congress.

REPUBLIC OF THE PHILIPPINES
*Court of Tax Appeals*
QUEZON CITY

## *EN BANC*

**COMMISSIONER OF INTERNAL REVENUE,**
**Petitioner,**

**-versus-**

**PHILIPPINE AIRLINES, INC. (PAL),**
**Respondent.**

**CTA EB NO. 920**
**(CTA Case Nos. 7665 & 7713)**

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**REPUBLIC OF THE PHILIPPINES, represented by the COMMISSIONER OF CUSTOMS,**
**Petitioner,**

**- versus -**

**PHILIPPINE AIRLINES, INC. (PAL),**
**Respondent.**

**CTA EB NO. 922**
**(CTA Case Nos. 7665 & 7713)**

*Present:*

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

**Promulgated:**

SEP 09 2013 9:00 a.m.

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# DISSENTING OPINION

***DEL ROSARIO, PJ.:***

In the *ponencia,* the Petitions for Review respectively filed by the Commissioner of Internal Revenue (CIR) and the Republic of the

Philippines, as represented by the Commissioner of Customs (COC), are both dismissed for lack of merit. The Decision of the former Second Division of this Court ("CTA-Second Division") dated April 17, 2012 and its Resolution dated June 28, 2012 are affirmed. The *ponencia* sustained the findings of the CTA-Second Division that Section 6 of Republic Act (RA) No. 9334[1] did not repeal the tax exemption granted to Philippine Airlines (PAL) under Presidential Decree (PD) No. 1590.[2]

With utmost respect, I dissent on the *ponencia* of my esteemed colleague, Associate Justice Cielito N. Mindaro-Grulla.

The crux of the controversy boils down to whether or not Sections 6 and 10 of RA No. 9334 repealed the tax exemption granted to PAL under PD No. 1590.

On June 11, 1978, PD No. 1590 was issued wherein PAL was granted a franchise to establish, operate and maintain air transport services within the Philippines and other countries. PD No. 1590 explicitly states that the tax paid by PAL under Section 13 (a) or (b) shall be in lieu of all other taxes, duties, royalties, registration, license, other fees and charges, including but not limited to compensating taxes, duties, charges, royalties, or fees due on all importations by the grantee of aircraft, engines, equipment, machinery, spare parts, accessories, commissary and catering supplies, aviation gas, fuel, and oil, whether refined or in crude form and other articles, supplies, or materials.

Relevant portions of Section 13 of PD No. 1590 state as follows:

> "**Section 13.** In consideration of the franchise and rights hereby granted, the grantee shall pay to the Philippine Government during the life of this franchise whichever of subsections (a) and (b) hereunder will result in a lower tax:
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> (a) The basic corporate income tax based on the grantee's annual net taxable income computed in accordance with the provisions of the National Internal Revenue Code; or
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> (b) A franchise tax of two per cent (2%) of the gross revenues derived by the grantee from all sources, without

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[1] AN ACT INCREASING THE EXCISE TAX RATES IMPOSED ON ALCOHOL AND TOBACCO PRODUCTS, AMENDING FOR THE PURPOSE SECTIONS 131,141, 142, 143, 144, 145 AND 288 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED"

[2] AN ACT GRANTING A NEW FRANCHISE TO PHILIPPINE AIRLINES, INC. TO ESTABLISH, OPERATE, AND MAINTAIN AIR-TRANSPORT SERVICES IN THE PHILIPPINES AND OTHER COUNTRIES

> distinction as to transport or nontransport operations; provided, that with respect to international air-transport service, only the gross passenger, mail, and freight revenues from its outgoing flights shall be subject to this tax.
>
> **The tax paid by the grantee under either of the above alternatives shall be in lieu of all other taxes, duties, royalties, registration, license, and other fees and charges of any kind, nature, or description, imposed, levied, established, assessed, or collected by any municipal, city, provincial, or national authority or government agency, now or in the future, including but not limited to the following**:
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> 1. All taxes, duties, charges, royalties, or fees due on local purchases by the grantee of aviation gas, fuel, and oil, whether refined or in crude form, and whether such taxes, duties, charges, royalties, or fees are directly due from or imposable upon the purchaser or the seller, producer, manufacturer, or importer of said petroleum products but are billed or passed on the grantee either as part of the price or cost thereof or by mutual agreement or other arrangement; provided, that all such purchases by, sales or deliveries of aviation gas, fuel, and oil to the grantee shall be for exclusive use in its transport and nontransport operations and other activities incidental thereto;
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> **2. All taxes, including compensating taxes, duties, charges, royalties, or fees due on all importations by the grantee of aircraft, engines, equipment, machinery, spare parts, accessories, commissary and catering supplies, aviation gas, fuel, and oil, whether refined or in crude form and other articles, supplies, or materials; provided, that such articles or supplies or materials are imported for the use of the grantee in its transport and transport operations and other activities incidental thereto and are not locally available in reasonable quantity, quality, or price;"** (Emphases supplied)

On January 1, 1998, RA No. 8424, otherwise known as the *"Tax Reform Act of 1997"* took effect. RA No. 8424 amended the National Internal Revenue Code[3] ("NIRC") which has since been known as the "National Internal Revenue Code of 1997" ("1997 NIRC").

With the amendments introduced by RA No. 8424, importation of cigars and cigarettes, distilled spirits and wines into the Philippines became subject to all applicable taxes, duties, charges, which include excise taxes. Section 131 of the 1997 NIRC provides that: 

[3] "SECTION 3. Presidential Decree No. 1158, as amended by, among others, Presidential Decree No. 1994 and Executive Order No. 273, otherwise known as the National Internal Revenue Code, is hereby further amended to read as follows:

'TITLE I

Organization and Function of the Bureau of Internal Revenue

'SECTION I. Title of the Code. — This Code shall be known as the National Internal Revenue Code of 1997."

"SECTION 131. Payment of Excise Taxes on Imported Articles. —

(A) Persons Liable. — Excise taxes on imported articles shall be paid by the owner or importer to the Customs Officers, conformably with the regulations of the Department of Finance and before the release of such articles from the customshouse, or by the person who is found in possession of articles which are exempt from excise taxes other than those legally entitled to exemption.

In the case of tax-free articles brought or imported into the Philippines by persons, entities, or agencies exempt from tax which are subsequently sold, transferred or exchanged in the Philippines to non-exempt persons or entities, the purchasers or recipients shall be considered the importers thereof, and shall be liable for the duty and internal revenue tax due on such importation.

**The provision of any special or general law to the contrary notwithstanding, the importation of cigars and cigarettes, distilled spirits and wines into the Philippines, even if destined for tax and duty free shops, shall be subject to all applicable taxes, duties, charges, including excise taxes due thereon**: Provided, however, That this <u>shall not apply</u> to cigars and cigarettes, distilled spirits and wines brought directly into the duly chartered or legislated freeports of the Subic Special Economic and Freeport Zone, created under Republic Act No. 7227; the Cagayan Special Economic Zone and Freeport, created under Republic Act No. 7922; and the Zamboanga City Special Economic Zone, created under Republic Act No. 7903, and are not transshipped to any other port in the Philippines: Provided, further, That importations of cigars and cigarettes, distilled spirits and wines by a government-owned and operated duty-free shop, like the Duty-Free Philippines (DFP), shall be exempted from all applicable taxes, duties, charges, including excise tax due thereon: Provided, still further, That such articles directly imported by a government-owned and operated duty-free shop, like the Duty-Free Philippines, shall be labelled 'tax and duty-free' and 'not for resale': Provided, still further, That if such articles brought into the duly chartered or legislated freeports under Republic Acts No. 7227, 7922 and 7903 are subsequently introduced into the Philippine customs territory, then such articles shall, upon such introduction, be deemed imported into the Philippines and shall be subject to all imposts and excise taxes provided herein and other statutes: Provided, finally, That the removal and transfer of tax and duty-free goods, products, machinery, equipment and other similar articles, from one freeport to another freeport, shall not be deemed an introduction into the Philippine customs territory.

Cigars and cigarettes, distilled spirits and wines within the premises of all duty-free shops which are not labelled as hereinabove required, as well as tax and duty-free articles obtained from a duty-free shop and subsequently found in a non-duty-free shop to be offered for resale shall be confiscated, and the perpetrator of such non-labelling or re-selling shall be punishable under the applicable provisions of this Code.

Articles confiscated shall be disposed of in accordance with the rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioners of Customs and Internal Revenue, upon consultation with the Secretary of Tourism and the General Manager of the Philippine Tourism Authority.

The tax due on any such goods, products, machinery, equipment or other similar articles shall constitute a lien on the article itself, and such lien shall be superior to all other charges or liens, irrespective of the possessor thereof.

(B) Rate and Basis of the Excise Tax on Imported Articles. — Unless otherwise specified, imported articles shall be subject to the same rates and basis of excise taxes applicable to locally manufactured articles." (Emphases supplied)

Noticeably, while Section 131 of the 1997 NIRC clearly provides that importation of cigars and cigarettes, distilled spirits and wines into the Philippines are subject to all applicable taxes, duties and charges, which include excise taxes, it also recognizes certain exceptions. Taxes, duties and charges, including excise taxes shall not apply to importations of cigars, cigarettes, distilled spirits and wines brought directly into the duly chartered or legislated freeports of the Subic Special Economic and Freeport Zone, the Cagayan Special Economic Zone and Freeport, and the Zamboanga City Special Economic Zone, and which are not transshipped to any other port in the Philippines. Moreover, importations of cigars and cigarettes, distilled spirits and wines by a government-owned and operated duty-free shop, like the Duty-Free Philippines (DFP) shall also be exempt from taxes, duties, charges, including excise taxes.

On May 24, 2005, Section 131 of the 1997 NIRC was amended by RA No. 9334. Section 131 of the 1997 NIRC, as amended by RA No. 9334 states:

"SEC. 131. Payment of Excise Taxes on Imported Articles. —

(A) Persons Liable. — Excise taxes on imported articles shall be paid by the owner or importer to the Customs Officers, conformably with the regulations of the Department of Finance and before the release of such articles from the customshouse, or by the person who is found in possession of articles which are exempt from excise taxes other than those legally entitled to exemption.

In the case of tax-free articles brought or imported into the Philippines by persons, entities, or agencies exempt from tax which are subsequently sold, transferred or exchanged in the Philippines to non-exempt persons or entities, the purchasers or recipients shall be considered the importers thereof, and shall be liable for the duty and internal revenue tax due on such importation.

**The provision of any special or general law to the contrary notwithstanding, the importation of cigars and cigarettes, distilled spirits, fermented liquors and wines into the Philippines, even if destined for tax and duty-free shops, shall be subject to all applicable taxes, duties, charges, including excise taxes due thereon. This shall apply to cigars and cigarettes, distilled spirits, fermented liquors and wines brought directly into the duly chartered or legislated freeports of the Subic Special Economic and Freeport Zone, created under Republic Act No. 7227; the Cagayan Special Economic Zone and Freeport, created under Republic Act No. 7922; and the Zamboanga City Special Economic Zone, created under Republic Act No. 7903, and such other freeports as may hereafter be established or created by law:** Provided, further, That importations of cigars and cigarettes, distilled spirits, fermented liquors and wines made directly by a government-owned and operated duty-free shop, like the Duty-Free Philippines (DFP), shall be exempted from all applicable duties only: Provided, still further, That such articles directly imported by a government-owned and operated duty-free shop, like the Duty-Free Philippines, shall be labeled 'duty-free' and 'not for resale': Provided, finally, That the removal and transfer of tax and duty-free goods, products, machinery, equipment and other similar articles other than cigars and cigarettes, distilled spirits, fermented liquors and wines, from one freeport to another freeport, shall not be deemed on introduction into the Philippine customs territory.

Cigars and cigarettes, distilled spirits and wines within the premises of all duty-free shops which are not labelled as hereinabove required, as well as tax and duty-free articles obtained from a duty-free shop and subsequently found in a non-duty-free shop to be offered for resale shall be confiscated, and the perpetrator of such non-labelling or re-selling shall be punishable under the applicable provisions of this Code.

Articles confiscated shall be disposed of in accordance with the rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioners of Customs and Internal Revenue, upon consultation with the Secretary of Tourism and the General Manager of the Philippine Tourism Authority.

The tax due on any such goods, products, machinery, equipment or other similar articles shall constitute a lien on the article itself, and such lien shall be superior to all other charges or liens, irrespective of the possessor thereof.

(B) Rate and Basis of the Excise Tax on Imported Articles. — Unless otherwise specified, imported articles shall be subject to the same rates and basis of excise taxes applicable to locally manufactured articles."

While it is expressly provided under Section 131 of the 1997 NIRC that all taxes, duties and charges, including excise taxes shall not apply to importations of cigars, cigarettes, distilled spirits and wines brought directly into the duly chartered or legislated freeports of the Subic Special Economic and Freeport Zone, the Cagayan Special Economic Zone and Freeport, and the Zamboanga City Special Economic Zone, with the subsequent enactment of RA No. 9334, Congress categorically withdrew the tax exemption of importations of cigars, cigarettes, distilled spirits, fermented liquors and wines that are brought directly into the duly chartered or legislated freeports.

Based on the foregoing, the exemption of PAL from excise taxes on its importations of cigars, cigarettes, distilled spirits and wines under Section 13 of PD No. 1590 was actually withdrawn as early as January 1, 1998 with the enactment of RA No. 8424 albeit RA No. 9334 later expanded the list of importations which are subject to excise taxes. Under Section 131 of the NIRC of 1997, as amended by RA No. 9334, any special or general law to the contrary notwithstanding, the importation of cigars and cigarettes, distilled spirits, **fermented liquors** and wines into the Philippines, even if destined for tax and duty-free shops, shall be subject to all applicable taxes, duties, charges, including excise taxes due thereon. Fermented liquor was simply added as among the items subject of taxation.

With the clear wordings of the third paragraph of Section 131 of the 1997 NIRC, I find that the use of the all-encompassing phrase "*[T]he provision of any special or general law to the contrary notwithstanding*" shows the clear intent of the legislature to withdraw the tax exemption granted on PAL's importation under Section 13(2) of PD No. 1590. Suffice it to say, the repealing clause of RA No. 8424 expressly provides that:

> "SECTION 7. Repealing Clauses. — (A) Xxx xxx xxx.
>
> xxx xxx xxx
>
> (B) The provisions of the National Internal Revenue Code, as amended, and all other laws, including charters of government-owned or -controlled corporations, decrees, orders or regulations or parts thereof, that are inconsistent with this Act are hereby repealed or amended accordingly."

The above-cited Section of RA No. 8424 is explicit and clear. In enacting RA No. 8424, specifically Section 131 thereof, Congress intended to repeal other laws, decrees, orders or regulations which are inconsistent therewith. The repeal necessarily includes Section 13(2) of PD No. 1590 as it is inconsistent with Section 131 of the 1997 NIRC.

It may not be amiss to point out that Section 131 of the 1997 NIRC, prior to its amendment by RA No. 9334, specifically identified which importations of cigars, cigarettes, distilled spirits and wines are exempt from applicable taxes, duties, charges, including excise taxes. PAL's importation was not among those identified by Congress as exempt from applicable taxes, duties, fees, charges, including excise taxes. This shows the clear intent of the legislature to withdraw the tax exemption previously granted to PAL on its importation of aforestated articles pursuant to Section 13(2) of PD No. 1590.

In the case of *Cagayan Electric Power & Light Co., Inc. vs. Commissioner of Internal Revenue and Court of Tax Appeals*[4] ("*Cagayan case*"), the Supreme Court essentially ruled that all corporate taxpayers not expressly exempted under Section 24(c)(1) and Section 27 of the Tax Code, as amended by RA No. 5431, shall be subject to corporate income tax. Relevant pronouncements of the Supreme Court in the *Cagayan case* are quoted hereunder:

> "This is about the liability of petitioner Cagayan Electric Power & Light Co., Inc. for income tax amounting to P75,149.73 for the more than seven-month period of the year 1969 in addition to franchise tax.
>
> The petitioner is the holder of a legislative franchise, Republic Act No. 3247, under which its payment of 3% tax on its gross earnings from the sale of electric current is "in lieu of all taxes and assessments of whatever authority upon privileges, earnings, income, franchise, and poles, wires, transformers, and insulators of the grantee, from which taxes and assessments the grantee is hereby expressly exempted" (Sec. 3).
>
> On June 27, 1968, Republic Act No. 5431 amended section 24 of the Tax Code **by making liable for income tax all corporate taxpayers not specifically exempt under paragraph (c) (1) of said section and section 27 of the Tax Code notwithstanding the "provisions of existing special or general laws to the contrary".** Thus, franchise companies were subjected to income tax in addition to franchise tax.
>
> Xxx xxx xxx.
>
> We hold that Congress could impair petitioner's legislative franchise by making it liable for income tax from which heretofore it was exempted by virtue of the exemption provided for in section 3 of its franchise.
>
> The Constitution provides that a franchise is subject to amendment, alteration or repeal by the Congress when the public interest so requires (Sec. 8, Art. XIV, 1935 Constitution; Sec. 5, Art. XIV, 1973 Constitution).

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[4] G.R. No. L-60126, September 25, 1985.

> Section 1 of petitioner's franchise, Republic Act No. 3247, provides that it is subject to the provisions of the Constitution and to the terms and conditions established in Act No. 3636 whose Section 12 provides that the franchise is subject to amendment, alteration or repeal by Congress.
>
> Republic Act No. 5431, in amending section 24 of the Tax Code by subjecting to income tax all corporate taxpayers not expressly exempted therein and in section 27 of the Code, had the effect of withdrawing petitioner's exemption from income tax.
>
> The Tax Court acted correctly in holding that the exemption was restored by the subsequent enactment on August 4, 1969 of Republic Act No. 6020 which reenacted the said tax exemption. Hence, the petitioner is liable only for the income tax for the period from January 1 to August 3, 1969 when its tax exemption was modified by Republic Act No. 5431."(Emphasis supplied)

Applying the principles laid down in the *Cagayan case* to the case at bar, it is my humble view that the all-encompassing phrase *"the provision of any special or general law to the contrary notwithstanding"* should therefore be construed as an express repeal of the exemptions granted under Section 13 of PD No. 1590. In particular, when Section 131 of the 1997 NIRC specifically identified the importations of cigars, cigarettes, distilled spirits and wines which are exempt from applicable taxes, duties, charges, including excise taxes, which identification did not include PAL's importations, there is an express repeal of the exemptions granted under Section 13 of PD No. 1590 insofar as aforestated items of importations are concerned.

Citing Sections 16 and 24 of PD No. 1590, PAL contends that before its franchise can be amended, altered or repealed by competent authority, a special law or decree must be enacted or issued that shall specifically modify, amend, or repeal its franchise or any section or provision thereof. PAL also posits that the legislature is prohibited from repealing its franchise except in the manner stated under Section 24 of PD No. 1590.

Sections 16 and 24 of PD No. 1590 cited by petitioner, provide that:

> **"Section 16.** This franchise is granted with the understanding that it shall be subject to amendment, alteration, or repeal by competent authority when the public interest so requires."
>
> **"Section 24.** This franchise, as amended, or any section or provision hereof may only be modified, amended, or repealed expressly by a special law or decree that shall specifically modify, amend, or repeal this franchise or any section or provision thereof."

OM

I find the arguments raised by PAL bereft of constitutional moorings. PAL proposes to put a limitation on the power of Congress, in the valid exercise of its lawmaking power, to enact a law withdrawing a previously granted tax exemption. PAL's proposition is contrary to the principles emphasized by the Supreme Court in the case of *"Republic of the Philippines vs. Hon. Ramon S. Caguioa, Presiding Judge, Branch 74, RTC, Third Judicial Region, Olongapo City, et al."*[5], *viz*:

> "To note, the old Section 131 of the NIRC expressly provided that all taxes, duties, charges, including excise taxes shall not apply to importations of cigars, cigarettes, fermented spirits and wines brought directly into the duly chartered or legislated freeports of the SBF.
>
> On the other hand, Section 131, as amended by R.A. No. 9334, now provides that such taxes, duties and charges, including excise taxes, shall apply to importation of cigars and cigarettes, distilled spirits, fermented liquors and wines into the SBF.
>
> Without necessarily passing upon the validity of the withdrawal of the tax exemption privileges of private respondents, it behooves this Court to state certain basic principles and observations that should throw light on the propriety of the issuance of the writ of preliminary injunction in this case.
>
> *First.* Every presumption must be indulged in favor of the constitutionality of a statute. The burden of proving the unconstitutionality of a law rests on the party assailing the law. In passing upon the validity of an act of a co-equal and coordinate branch of the government, courts must ever be mindful of the time-honored principle that a statute is presumed to be valid.
>
> ***Second.* There is no vested right in a tax exemption, more so when the latest expression of legislative intent renders its continuance doubtful. Being a mere statutory privilege, a tax exemption may be modified or withdrawn at will by the granting authority.**
>
> **To state otherwise is to limit the taxing power of the State, which is unlimited, plenary, comprehensive and supreme. The power to impose taxes is one so unlimited in force and so searching in extent, it is subject only to restrictions which rest on the discretion of the authority exercising it.**
>
> *Third.* As a general rule, tax exemptions are construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority. The burden of proof rests upon the party claiming exemption to prove that it is in fact covered by the exemption so claimed. In case of doubt, non-exemption is favored.

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[5] G.R. No. 168584, October 15, 2007.

> *Fourth*. **A tax exemption cannot be grounded upon the continued existence of a statute which precludes its change or repeal. Flowing from the basic precept of constitutional law that no law is irrepealable, Congress, in the legitimate exercise of its lawmaking powers, can enact a law withdrawing a tax exemption just as efficaciously as it may grant the same under Section 28 (4) of Article VI of the Constitution. There is no gainsaying therefore that Congress can amend Section 131 of the NIRC in a manner it sees fit, as it did when it passed R.A. No. 9334.**
>
> *Fifth*. The rights granted under the Certificates of Registration and Tax Exemption of private respondents are not absolute and unconditional as to constitute rights in esse — those clearly founded on or granted by law or is enforceable as a matter of law.
>
> These certificates granting private respondents a "permit to operate" their respective businesses are in the nature of licenses, which the bulk of jurisprudence considers as neither a property nor a property right. **The licensee takes his license subject to such conditions as the grantor sees fit to impose, including its revocation at pleasure. A license can thus be revoked at any time since it does not confer an absolute right.**
>
> **While the tax exemption contained in the Certificates of Registration of private respondents may have been part of the inducement for carrying on their businesses in the SBF, this exemption, nevertheless, is far from being contractual in nature in the sense that the non-impairment clause of the Constitution can rightly be invoked."** (Emphases supplied)

Furthermore, in the case of *Pedro M. Duarte vs. Waller H. Dade, Director of Prisons*[6], the Supreme Court clarified that the power of the legislature to make laws includes the power to amend and repeal these laws, and that the present legislature cannot bind a future legislature to a particular mode of repeal, to wit:

> "A state legislature has a plenary law-making power over all subjects, whether pertaining to persons or things, within its territorial jurisdiction, either to introduce new laws or repeal the old, unless prohibited expressly or by implication by the federal constitution or limited or restrained by its own. It cannot bind itself or its successors by enacting irrepealable laws except when so restrained. Every legislative body may modify or abolish the acts passed by itself or its predecessors. This power of repeal may be exercised at the same session at which the original act was passed; and even while a bill is in its progress and

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[6] G.R. No. L-10858, October 20, 1915, 32 Phil. 36, 49 (1915), citing Lewis' Southernland on Statutory Construction, section 244. Also cited in the consolidated cases of Kida vs. Senate of the Philippines, G.R. No. 196271, Mapupuno vs. Brillantes, G.R. No. 196305, Lagman vs. Ochoa, Jr., G.R. No. 197221, Tillah vs. COMELEC, G.R. No. 197280, Macalintal vs. COMELEC, G.R. No. 197282, Biraogo vs. COMELEC, G.R. No. 197392, Paras vs. Ochoa, Jr., G.R. No. 197454, promulgated on February 28, 2012.

> before it becomes a law. **This legislature cannot bind a future legislature to a particular mode of repeal. It cannot declare in advance the intent of subsequent legislatures or the effect of subsequent legislation upon existing statutes.**"

The Congress is indeed vested with the power to amend PD No. 1590 in a manner it deems proper. By expressly stating in Section 131 of the 1997 NIRC the all-encompassing phrase *"[T] provision of any special or general law to the contrary notwithstanding"*, Congress evidently intended to withdraw the tax exemption that was previously granted on PAL's importations.

I take note of Section 22 of RA No. 9337[7], which took effect on July 1, 2005, abolishing the franchise tax provided under PAL's charter and subjecting PAL to corporate income tax and value-added tax (VAT). Section 22(D) of RA No. 9337 provides that PAL shall otherwise remain exempt from any taxes, duties, royalties, registration, license, and other fees and charges, as may be provided by its franchise agreement. Section 22 of RA No. 9337 is quoted hereunder:

> "SECTION 22. Franchises of Domestic Airlines. — The provisions of P.D. No. 1590 on the franchise tax of Philippine Airlines, Inc., R.A. No. 7151 on the franchise tax of Cebu Air, Inc., R.A. No. 7583 on the franchise tax of Aboitiz Air Transport Corporation, R.A. No. 7909 on the franchise tax of Pacific Airways Corporation, R.A. No. 8339 on the franchise tax of Air Philippines, or any other franchise agreement or law pertaining to a domestic airline to the contrary notwithstanding:
>
> (A) The franchise tax is abolished;
>
> (B) The franchisee shall be liable to the corporate income tax;
>
> (C) The franchisee shall register for value-added tax under Section 236, and to account under Title IV of the National Internal Revenue Code of 1997, as amended, for value-added tax on its sale of goods, property or services and its lease of property; and
>
> (D) The franchisee shall otherwise remain exempt from any taxes, duties, royalties, registration, license, and other fees and charges, as may be provided by their respective franchise agreement."

It is my view that at the time of the enactment of RA No. 9337, PAL is no longer exempt from excise taxes on its importations of cigars and cigarettes, distilled spirits, fermented liquors and wines in view of the

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[7] AN ACT AMENDING SECTIONS 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 AND 288 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES

withdrawal of said tax exemption by RA No. 8424 and the amendment introduced by RA No. 9334. There is nothing in RA No. 9337 which shows that the tax exemption on PAL's importation of aforestated articles was reenacted or restored, although it remains exempt from other taxes, duties, royalties, registration, license and other fees and charges not otherwise withdrawn by RA No. 8424, as amended by RA No. 9334.

Based on the foregoing, it is clear that as early as January 1, 1998, the date when RA No. 8424 took effect, the exemption of PAL's importations from taxes, duties, charges, including excise taxes has been withdrawn. Hence, during the period July 2005 to February 2006, when Section 131 of the 1997 NIRC, as amended by RA No. 9334 is effective, PAL is subject to excise tax on its importations of cigars and cigarettes, distilled spirits, fermented liquors and wines. Accordingly, it is my humble opinion that PAL is not entitled to the refund of the amount of Php4,469,199.98, representing PAL's erroneously paid excise tax on its importations of cigars and cigarettes, distilled spirits, fermented liquors and wines for the period covering July 2005 to February 2006.

In this regard, I vote to grant the instant Petitions for Review respectively filed by the CIR and the Republic of the Philippines, as represented by the COC.

**ROMAN G. DEL ROSARIO**
Presiding Justice