

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

PRIME INVESTMENT KOREA, CTA EB NO. 2483
INC., (CTA Case No. 9814)
Petitioner,

-versus-

COMMISSIONER OF INTERNAL **Present:**
REVENUE, **DEL ROSARIO, P.J.,**
Respondent. **UY,**
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID, and
FERRER-FLORES, JJ.

Promulgated:

JAN 09 2023

4:05 pm

x ----- x

DECISION

MODESTO-SAN PEDRO, J.:

The Case

Before the Court *En Banc* is a **Petition for Review**,¹ filed by petitioner Prime Investment Korea, Inc. on 2 July 2021, seeking the reversal and setting aside of the Decision dated 19 November 2020² (“Assailed Decision”) and Resolution dated 19 May 2021³ (“Assailed Resolution”) both rendered by the Court in Division.⁴ Petitioner prays that it be declared not liable for corporate income tax on revenues derived from its junket gaming operations for taxable year 2015 and order respondent to refund or issue tax credit certificate (TCC) in favor of petitioner for the amount of ₱14,126,817.00.

¹ *EB* Records, pp. 7-103, with annexes.

² Division Records Vol. 2, pp. 958-974.

³ *Id.*, pp. 1024-1026.

⁴ CTA-First Division.

representing erroneously, wrongfully, illegally, or excessively paid corporate income tax on junket and e-junket gaming revenues for taxable year 2015.

The Parties

Petitioner Prime Investment Korea, Inc. is a corporation organized and existing under the laws of the Philippines, with office address at 2702 Roxas Boulevard, Barangay 076, Pasay City, Philippines.⁵ Petitioner is authorized, among others, to conduct, maintain and operate the business of recreation, games and amusement.⁶ Petitioner is registered with the Bureau of Internal Revenue ("BIR") as a taxpayer in accordance with *Section 236 of the National Internal Revenue Code of 1997 ("Tax Code"), as amended*, with BIR Certificate of Registration No. OCN 8RC0001164461E dated 29 August 2017 issued by the Large Taxpayers Service, Revenue District Office ("RDO") No. 126-Regular Large Taxpayers Audit Division ("RLTAD") III.⁷ Petitioner is authorized, among others, to conduct, maintain, and operate the business of recreation, games, and amusement.⁸

Respondent is the duly appointed Commissioner of Internal Revenue ("CIR") who holds office at the BIR National Office Building located at BIR Road, Diliman, Quezon City.⁹

The Facts

The relevant factual antecedents as found by the Court in Division and culled from the records of the case follow.

On 3 July 2013, petitioner entered into a Junket Agreement¹⁰ with the Philippine Amusement and Gaming Corporation ("PAGCOR"), designating petitioner as PAGCOR's agent and providing petitioner with a Grant of Authority¹¹ pursuant to *Presidential Decree ("P.D.") No. 1869* to conduct junket gaming operations at the designated junket Gaming Rooms at PAGCOR's Casino Filipino-Midas. In exchange for such Grant of Authority, petitioner shall pay PAGCOR a monthly Minimum Guaranteed Fee ("MGF") of US\$10,000 per gaming table or 10% of monthly gross winnings generated from petitioner's Junket Gaming Operations, whichever is higher.¹² The MGF is subject to an annual escalation rate of 10% starting from the second year of operations and every year thereafter.¹³ The Junket Agreement likewise

⁵ See Stipulation of Facts, Pre-Trial Order, Division Records Vol. 1, pp. 436-444.

⁶ Joint Stipulation of Facts and Issues, Division Records Vol. 1, p. 413.

⁷ *Ibid.*

⁸ *Ibid.*

⁹ *Ibid.*

¹⁰ Exhibit "P-3", Division Records Vol. 2, pp. 709-722.

¹¹ Exhibit "P-3-a", *id.*, pp. 710-712.

¹² Exhibit "P-3", Division Records Vol. 2, pp. 709-722.

¹³ Exhibit "P-3", Division Records Vol. 2, pp. 709-722.

stipulates that petitioner, as PAGCOR's agent, shall shoulder the 5% franchise tax due on gross winnings on the Junket Gaming Rooms and shall remit the said franchise tax to PAGCOR for the latter's remittance to the BIR.¹⁴ The Junket Agreement was to be effective for a period of three (3) years unless sooner revoked, commencing on Day 1 of the gaming operations at the designated gaming rooms, and subject to renewal at the option of PAGCOR.¹⁵

On 13 September 2013, PAGCOR and petitioner executed a Supplement to Junket Agreement,¹⁶ granting petitioner with authority to introduce and offer Supplementary Services for its junket gaming operations at PAGCOR's Casino Filipino-Midas.¹⁷ Such Supplementary Services consist of operating gaming tables equipped with high-definition video cameras and appropriate voice telephony facilities.¹⁸ Pursuant to the Supplement to Junket Agreement, petitioner agreed to pay PAGCOR a monthly MGF of US\$10,000 per gaming table where the Supplementary Services are offered or 10% of monthly gross winnings generated from the operation of such gaming tables, whichever is higher.¹⁹ In excess of the minimum number of 10 gaming tables, the monthly MGF was to be US\$5,000 per table.²⁰ The MGF was subject to an annual escalation rate of 10% starting from the second year of operations of the Supplementary Services and every year thereafter.²¹ Petitioner agreed to shoulder the 5% franchise tax due on gross winnings from the operation of Supplementary Services and to remit the same to PAGCOR for the latter's remittance to the BIR.²² The Term/Effectivity of the Supplement to Junket Agreement was co-terminus with the term of the Junket Agreement dated 3 July 2013.²³

On 10 June 2016, petitioner and PAGCOR executed another Junket Agreement and Supplement to Junket Agreement²⁴ to renew the Junket Agreement, dated 3 July 2013, and Supplement to Junket Agreement, dated 13 September 2013, for another three (3) years.²⁵ The parties agreed to the same terms insofar as the payment of monthly MGF to PAGCOR in consideration of the Grant of Authority and, in addition to the said MGF, for petitioner to shoulder and remit to PAGCOR the 5% franchise tax due on the monthly gross winnings derived from operations of the Junket Gaming and

¹⁴ *Ibid.*

¹⁵ *Ibid.*

¹⁶ See Stipulation of Facts, Pre-Trial Order, Division Records Vol. 1, pp. 436-444; Exhibit "P-4", Division Records Vol. 2, pp. 723-727.

¹⁷ Exhibit "P-4-a", *id.* pp. 723-724.

¹⁸ Exhibit "P-4", Division Records Vol. 2, pp. 723-727.

¹⁹ *Ibid.*

²⁰ *Ibid.*

²¹ *Ibid.*

²² *Ibid.*

²³ *Ibid.*

²⁴ See Stipulation of Facts, Pre-Trial Order, Division Records Vol. 1, pp. 436-444; Exhibits "P-5" and "P-6", Division Records Vol. 2, pp. 728-744.

²⁵ Exhibits "P-5" and "P-6", Division Records Vol. 2, pp. 728-744.

Supplementary Services, as required under *P.D. No. 1869, as amended* ("*PAGCOR Charter*").²⁶

On 14 April 2016, petitioner filed its Annual Income Tax Return for taxable year 2015²⁷ reflecting total income tax due of ₱14,126,817.00.²⁸ After deduction of total credits/payments of ₱1,316,329.00, it reflected an income tax payable of ₱12,810,488.00,²⁹ which petitioner paid on 15 April 2016.³⁰

On 12 April 2018, petitioner filed with BIR Large Taxpayers Service an administrative claim for refund or issuance of tax credit certificate in the amount of ₱14,126,817.00 allegedly representing erroneously, wrongfully, illegally, or excessively paid corporate income tax on e-junket gaming revenues for taxable year 2015.³¹

Claiming inaction on its administrative claim for refund or issuance of tax credit certificate, petitioner filed the Petition for Review on 13 April 2018.³² The case was docketed as CTA Case No. 9814 and raffled to the CTA-Second Division.

In view of the reorganization of the three (3) Divisions of the CTA, the case was transferred to the CTA-First Division pursuant to CTA Administrative Circular No. 02-2018 dated 18 September 2018.³³

On 19 November 2020, the Court in Division rendered the Assailed Decision denying petitioner's claim for refund or issuance of tax credit certificate.³⁴

On 11 December 2020, petitioner filed its Motion for Reconsideration [of Decision dated November 19, 2020],³⁵ which the Court in Division denied in the Assailed Resolution dated 19 May 2021.³⁶ 

²⁶ Exhibits "P-5" and "P-6", Division Records Vol. 2, pp. 728-744.

²⁷ See Stipulation of Facts, Pre-Trial Order, Division Records Vol. 1, pp. 436-444; Exhibit "P-8", Division Records Vol. 2, pp. 750-758.

²⁸ Exhibit "P-8", *id.*, pp. 750-758.

²⁹ *Ibid.*

³⁰ Exhibit "P-8-b", *id.*, p. 759

³¹ See Stipulation of Facts, Pre-Trial Order, Division Records Vol. 1, pp. 436-444; Exhibits "P-15" and "P-16", Division Records Vol. 2, pp. 792-800.

³² Division Records Vol. 1, pp. 19-109, with annexes.

³³ *Id.*, p. 156.

³⁴ Division Records Vol. 2, pp. 958-974.

³⁵ *Id.*, pp. 975-998.

³⁶ *Id.*, pp. 1024-1026.

Aggrieved, petitioner filed the instant Petition for Review³⁷ on 2 July 2021 within the extended period granted by the Court *En Banc*.³⁸

On 27 July 2021, the Court issued a Resolution ordering respondent to file Comment to petitioner's Petition from Review within ten (10) days from receipt of the Resolution. Records show that respondent received the Court *En Banc*'s Resolution dated 27 July 2021 on 30 July 2021.³⁹ Counting ten (10) days from 30 July 2021, respondent had until 10 August 2021 to file its Comment. Thus, respondent's Comment/ Opposition filed 26 October 2021⁴⁰ was clearly filed out of time.

On 24 November 2021, the Court *En Banc* issued a Resolution submitting this case for decision.⁴¹

Hence, this Decision.

Issues⁴²

The issues submitted for resolution of the Court *En Banc* are as follows:

- (1) Whether the Court in Division erred in ruling that petitioner is liable for corporate income tax on its revenues from junket gaming operations; and
- (2) Whether petitioner is entitled to the refund, or issuance, of tax credit certificate, of ₱14,126,817.00, representing erroneously, wrongfully, illegally, and excessively paid corporate income tax on gaming revenues for taxable year 2015.

Arguments of Petitioner⁴³

Petitioner chiefly argues that the income from junket gaming operations is properly classified as income from casino operations which falls under ***Section 13(2) of P.D. No. 1869, as amended*** which is exempt from corporate income tax. *g*

³⁷ *EB Records*, pp. 7-103, with annexes.

³⁸ *Id.*, pp. 1-6.

³⁹ *Id.*, p. 104-106.

⁴⁰ *Id.*, pp. 107-126.

⁴¹ *Id.*, pp. 127-129.

⁴² *See Statement of Issues, Petition for Review, EB Records*, p. 16.

⁴³ *See Arguments and Discussion, Petition for Review, id.*, pp. 16-36.

Petitioner faults the Court in Division's classification of its income from junket gaming operations under "Other Related Operations". It maintains that such classification is inconsistent with the **PAGCOR Charter**. Consequently, the Court in Division's reliance on **Revenue Memorandum Circular ("RMC") No. 33-2013** is misplaced.

Finally, petitioner claims that it is entitled to the refund or issuance of tax credit certificate in the amount of ₱14,126,817.00 representing erroneously, wrongfully, illegally, or excessively paid corporate income tax on e-junket gaming revenues for taxable year 2015. It insists that petitioner is a PAGCOR licensee/contractee by virtue of the Junket Agreement and Supplement to Junket Agreement where it was granted authority to conduct junket and e-junket gaming operations at PAGCOR's Casino Filipino-Midas.

The Ruling of the Court *En Banc*

The Petition for Review is partly meritorious.

Petitioner's income from casino gaming operations pursuant to the Junket Agreements with PAGCOR is not subject to corporate income tax.

Crucial to the resolution of the present case is the determination of the nature of income derived by petitioner from its Junket Agreement, dated 3 July 2013,⁴⁴ Supplement to Junket Agreement, dated 13 September 2013,⁴⁵ Junket Agreement, dated 10 June 2016,⁴⁶ and Supplement to Junket Agreement, dated 10 June 2016,⁴⁷ (collectively, "Junket Agreements") with PAGCOR. Relative thereto, the Court shall determine the proper classification of the income derived from such Junket Agreements—whether it is income derived from gaming operations pursuant to **Section 13(2) of the PAGCOR Charter**, which is not subject to corporate income tax, or income derived from other related services pursuant to **Section 14(5) of the PAGCOR Charter**, which is subject to corporate income tax.

Section 13(2) of the PAGCOR Charter sets forth that income derived by PAGCOR from its franchise is not subject to income tax. Such income is subject only to a franchise tax of 5% of the gross revenue or earnings derived from the operations conducted under its franchise. This inures to the benefit of entities with whom PAGCOR or its operator has a contractual relationship 

⁴⁴ Exhibit "P-3", Division Records Vol. 2, pp. 709-722.

⁴⁵ Exhibit "P-4" *id.*, pp. 723-727.

⁴⁶ Exhibit "P-5", *id.*, pp. 728-739.

⁴⁷ Exhibit "P-6", *id.*, pp. 740-744.

in connection with the operation of casinos. *Section 13(2)* pertinently provides:

“SEC. 13. Exemptions. —

(2) Income and other taxes. — (a) Franchise Holder: **No tax of any kind or form, income or otherwise**, as well as fees, charges or levies of whatever nature, whether National or Local, **shall be assessed and collected under this Franchise from the Corporation; nor shall any form of tax or charge attach in any way to the earnings of the Corporation, except a Franchise Tax of five (5%) percent of the gross revenue or earnings derived by the Corporation from its operation under this Franchise.** Such tax shall be due and payable quarterly to the National Government and shall be **in lieu of all kinds of taxes, levies, fees or assessments** of any kind, nature or description, levied, established or collected by any municipal, provincial, or national government authority.

(b) Others: The exemptions herein granted for earnings derived from the operations conducted under the franchise specifically from the payment of any tax, income or otherwise, as well as any form of charges, fees or levies, shall **inure to the benefit of and extend to corporation(s), association(s), agency(ies), or individual(s) with whom the Corporation or operator has any contractual relationship in connection with the operations of the casino(s) authorized to be conducted under this Franchise and to those receiving compensation or other remuneration from the Corporation or operator as a result of essential facilities furnished and/or technical services rendered to the Corporation or operator.**

The fee or remuneration of foreign entertainers contracted by the Corporation or operator in pursuance of this provision shall be free of any tax.”
(Emphasis supplied.)

Meanwhile, *Section 14(5) of the PAGCOR Charter* qualifies that any income derived by PAGCOR from the operation of any necessary and related services shall be considered as its separate income that is subject to income tax, viz.:

“SEC. 14. Other Conditions. —

...

(5) Operation of related services — The Corporation is authorized to operate **such necessary and related services, shows and entertainment.** Any **income that may be realized from these related services** shall not be included as part of the income of the Corporation for the purpose of applying the franchise tax, but the same shall be considered as a separate income of the Corporation and **shall be subject to income tax.**”
(Emphasis supplied.)

Relevant thereto, *Philippine Amusement and Gaming Corp. v. Bureau of Internal Revenue*⁴⁸ (“*PAGCOR Case*”) explains that PAGCOR’s income may be classified into two: (1) income from gaming operations, which is subject only to 5% franchise tax in lieu of all taxes; and (2) income from other *g*

⁴⁸ G.R. No. 215427, 10 December 2014.

related services, which is subject to corporate income tax pursuant to the **PAGCOR Charter**. Pertinent portions of the **PAGCOR Case** are as follows:

“For clarity, it is worthy to note that under P.D. 1869, as amended, PAGCOR's income is classified into two: (1) income from its operations conducted under its Franchise, pursuant to Section 13 (2) (b) thereof (income from gaming operations); and (2) income from its operation of necessary and related services under Section 14 (5) thereof (income from other related services). In RMC No. 33-2013, respondent further classified the aforesaid income as follows:

1. PAGCOR's *income from its operations and licensing of gambling casinos, gaming clubs and other similar recreation or amusement places, gaming pools*, includes, among others:

- (a) Income from its casino operations;
- (b) Income from dollar pit operations;
- (c) Income from regular bingo operations; and
- (d) Income from mobile bingo operations operated by it, with agents on commission basis. Provided, however, that the agents' commission income shall be subject to regular income tax, and consequently, to withholding tax under existing regulations.

2. *Income from “other related operations”* includes, but is not limited to:

- (a) Income from licensed private casinos covered by authorities to operate issued to private operators;
- (b) Income from traditional bingo, electronic bingo and other bingo variations covered by authorities to operate issued to private operators;
- (c) Income from private internet casino gaming, internet sports betting and private mobile gaming operations;
- (d) Income from private poker operations;
- (e) Income from junket operations;
- (f) Income from SM demo units; and
- (g) Income from other necessary and related services, shows and entertainment.

After a thorough study of the arguments and points raised by the parties, and in accordance with our Decision dated March 15, 2011, we sustain petitioner's contention that **its income from gaming operations is subject only to five percent (5%) franchise tax** under P.D. 1869, as amended, while **its income from other related services is subject to corporate income tax** pursuant to P.D. 1869, as amended, as well as R.A. No. 9337. ...”

(Emphasis supplied)

In *Bloomberry Resorts and Hotels, Inc. v. Bureau of Internal Revenue*,⁴⁹ (“*Bloomberry Case*”) the Supreme Court clarified that the payment of the 5% franchise tax by PAGCOR and its contractees and licensees exempts them from payment of any other taxes, including corporate income tax for earnings derived from operations conducted under its

⁴⁹ G.R. No. 212530, 10 August 2016.

franchise. The *Bloomberry Case* categorically states that the exemption extends to PAGCOR's contractees/licensees, viz.:

"Section 13 of PD No. 1869 evidently states that payment of the 5% franchise tax by PAGCOR and its contractees and licensees exempts them from payment of any other taxes, including corporate income tax, quoted hereunder for ready reference:

...

As previously recognized, the above-quoted provision providing for the said exemption was neither amended nor repealed by any subsequent laws (i.e., Section 1 of R.A. No. 9337 which amended Section 27 © of the NIRC of 1997); thus, it is still in effect. Guided by the doctrinal teachings in resolving the case at bench, it is without a doubt that, **like PAGCOR, its contractees and licensees remain exempted from the payment of corporate income tax and other taxes since the law is clear that said exemption inures to their benefit.**

We adhere to the cardinal rule in statutory construction that when the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation. As has been our consistent ruling, where the law speaks in clear and categorical language, there is no occasion for interpretation; there is only room for application.

As the PAGCOR Charter states in unequivocal terms that exemptions granted for earnings derived from the operations conducted under the franchise specifically from the payment of any tax, income or otherwise, as well as any form of charges, fees or levies, shall inure to the benefit of and extend to corporation(s), association(s), agency(ies), or individual(s) with whom the PAGCOR or operator has any contractual relationship in connection with the operations of the casino(s) authorized to be conducted under this Franchise, so it must be that all contractees and licensees of PAGCOR, upon payment of the 5% franchise tax, shall likewise be exempted from all other taxes, including corporate income tax realized from the operation of casinos.

For the same reasons that made us conclude in the 10 December 2014 Decision of the Court sitting En Banc in G.R. No. 215427 that PAGCOR is subject to corporate income tax for "other related services", we find it logical that its contractees and licensees shall likewise pay corporate income tax for income derived from such "related services."

(Emphasis supplied; Citations omitted)

From the foregoing, the rules are as follows with respect to income derived by PAGCOR or any of its contractees/licensees: (1) Income derived from gaming operations is exempt from corporate income tax as the 5% franchise tax shall be paid in lieu of all taxes; and (2) Income derived from the operation of other related services is subject to corporate income tax as it is not covered by the 5% franchise tax.

2

Guided by these, this Court ruled in the earlier case of *Prime Investment Korea, Inc. v. Commissioner of Internal Revenue*,⁵⁰ that income from junket gaming operations is classified as income from “other related services” and, thus, subject to corporate income tax.

However, the said ruling did not yet take into consideration respondent’s recent issuance in *RMC No. 32-2022* where respondent clarified *RMC No. 33-2013* that only regulatory/license fees received from junket operations is classified as income from “other related operations/services”. *RMC No. 32-2022* pertinently provides:

“II. TAX TREATMENT OF PAGCOR

“P.D. No. 1869, as amended, classified PAGCOR's income into two: (1) income from its operations conducted under its Franchise, pursuant to Section 13 (2) (a) thereof (income from gaming operations); and (2) income from its operation of necessary and related services under Section 14 (5) thereof (income from other related services).

In *PAGCOR vs. BIR, et al.*, the Supreme Court held that PAGCOR's income from its gaming operations shall be subject to the five percent (5%) franchise tax while its income from other related services shall be subject to the corporate income tax rate provided in the NIRC. The Court ruled as follows:

“[PAGCOR's] income from gaming operations is subject only to five percent (5%) franchise tax under P.D. 1869, as amended, while its income from other related services is subject to corporate income tax pursuant to P.D. 1869, as amended, as well as R.A. No. 9337. x x x” (Underscoring and emphasis ours)

Accordingly, PAGCOR's income from its operations and licensing of gambling casinos, gaming clubs and other similar recreation or amusement places, gaming pools are, in lieu of all taxes, subject to the five percent (5%) franchise tax pursuant to P.D. No. 1869, as amended. This includes, among others:

1. Income from its casino operations;
2. Income from dollar pit operations;
3. Income from bingo operations, including all variations thereof; and
4. Income from mobile bingo operations operated by it, with agents on commission basis. Provided, however, that the agent's commission income shall be subject to regular income tax, and consequently, to withholding tax under existing regulations.

It is noteworthy to mention that Section 13 (2) (a) of P.D. No. 1869, as amended, clearly gives PAGCOR a blanket exemption to taxes on its income from its operations conducted under its Franchise (income from gaming operations) with no distinction on whether the taxes are direct or indirect, like Value-Added Tax (VAT). 

⁵⁰ CTA EB Case No 2129, 8 January 2021.

On the other hand, **income from "other related operations/services" shall be subject to corporate income tax, VAT and other applicable taxes under the NIRC, as amended.** This includes, among others, but is not limited to:

1. Regulatory/license fees from licensed private casinos;
2. Regulatory/license fees from private bingo operations, including all variations thereof;
3. Regulatory/license fees from private internet casino gaming, internet sports betting and private mobile gaming operations;
4. Regulatory/license fees from private poker operations
5. **Regulatory/license fees from private junket operations;**
6. Regulatory/license fees from SM demo units;
7. Regulatory/license fees from all other electronic derivatives of brick and mortar games regulated by PAGCOR;
8. Income from other necessary and related services, shows and entertainment.

...

VI. REMITTANCE OF THE 5% FRANCHISE TAX

The **license/regulatory fees paid by Licensees to PAGCOR is different and distinct from the 5% franchise tax payable to the BIR.** The license fee is being paid to PAGCOR by virtue of the license to establish and operate a casino and does not include the franchise tax mandated to be paid to the government under Section 13 (2) (a) of PD No. 1869, as amended. Such franchise tax is payable directly to the BIR, specifically to the concerned Revenue District Office (RDO) where the Licensee is registered. The Licensee shall remit the franchise tax to the BIR using BIR Form 2553 indicating the Alphanumeric Tax Code (ATC) OT 010.”
(Emphasis supplied; Citations omitted)

In the present case involving taxable year 2015, petitioner again insists that its income derived from the Junket Agreements with PAGCOR is income from gaming operations and thus, exempt from corporate income tax.

Petitioner’s contention is meritorious.

Perusal of the Junket Agreements shows that it allows petitioner to engage in casino gaming operations as PAGCOR’s agent—an activity that is exempt from corporate income tax. Pertinently, the Junket Agreement provides that PAGCOR, as an entity with the exclusive right, privilege, and authority to establish, operate, and maintain gaming facilities within the territorial jurisdiction of the Philippines, accepted petitioner’s proposal to conduct junket gaming operations together with PAGCOR within PAGCOR’s Casino Filipino-Midas.⁵¹ 

⁵¹ Exhibit “P-3”, Division Records Vol. 2, p. 709-720; *see also* Exhibit “P-5”, *id.*, p. 728-739.

The following provisions in the Junket Agreements also establish that petitioner can actually and directly conduct junket gaming operations at PAGCOR's Casino Filipino-Midas pursuant to the Grants of Authority issued by PAGCOR in accordance with *Section 13(2)(b) of the PAGCOR Charter*:

The Junket Agreements also show that petitioner is actually and directly engaged in the conduct casino gaming operations at PAGCOR's Casino Filipino-Midas. Pursuant to the Junket Agreement, petitioner agreed and warranted to commence gaming operations at the Gaming Rooms within a period of thirty (30) days for junket gaming and one hundred twenty days (120) for e-junket gaming upon the signing of the agreement; otherwise, the agreement shall be deemed revoked unless otherwise extended in writing by PAGCOR.⁵² Petitioner is liable for the settlement of collectibles from losing players, as well as the payment of the players' winnings for the Junket Gaming Rooms.⁵³ Petitioner is also responsible for the maintenance and repair of the Gaming Rooms and other gaming paraphernalia, shoulder salaries and other benefits of PAGCOR personnel, provide surveillance equipment in accordance with the standards of PAGCOR, be solely accountable for all playing chips wagered, and comply with PAGCOR's operation, surveillance, and security policies at all times.⁵⁴

More importantly, the Junket Agreement provides that petitioner shall shoulder the 5% franchise tax due on the gross winnings on the Junket Gaming Rooms and shall remit the franchise tax to PAGCOR for remittance to the BIR.⁵⁵

In exchange for PAGCOR's grant of authority, petitioner shall pay PAGCOR a monthly MGF based on the higher between US\$10,000 per gaming table or 10% of monthly gross winnings generated from petitioner's Junket Gaming Operations.⁵⁶ For e-junket operations, in excess of the minimum number of 10 gaming tables, the monthly MGF shall be US\$5,000 per table.⁵⁷ The monthly MGF is subject to an annual escalation rate of 10% starting from the second year of operations and every year thereafter.⁵⁸

During trial, the PAGCOR representative testified that the role of PAGCOR is limited to regulating the conduct of junket gaming operations, viz.:⁵⁹

⁵² Exhibit "P-3-a", *id.*, pp. 710-711; Exhibit "P-4-a", *id.*, p. 724;

⁵³ Exhibit "P-3-a", *id.*, pp. 710-711;

⁵⁴ Exhibit "P-5-a", *id.*, pp. 729-732; *see also* Exhibit "P-6-a", *id.*, pp. 741-742

⁵⁵ Exhibit "P-3", *id.*, p. 712; Exhibit "P-4", *id.*, p. 725; Exhibit "P-5", *id.*, p. 732; Exhibit "P-6", *id.*, p. 742.

⁵⁶ Exhibit "P-3", *id.*, pp. 709-722; Exhibit "P-4", *id.*, pp. 723-727; Exhibits "P-5", *id.*, pp. 728-739; Exhibit "P-6", *id.*, pp. 740-744.

⁵⁷ Exhibit "P-4", *id.*, pp. 723-727; Exhibit "P-6", *id.*, pp. 740-744.

⁵⁸ Exhibit "P-3", *id.*, pp. 709-722; Exhibit "P-4", *id.*, pp. 723-727; Exhibits "P-5", *id.*, pp. 728-739; Exhibit "P-6", *id.*, pp. 740-744.

⁵⁹ Exhibits "P-31" and "P-31-a", Division Records Vol. 1, pp. 618-624.

Q-11: What is the role of PAGCOR, if any, in the conduct of junket gaming operations and e-junket gaming operations?

A-11: In my understanding, **PAGCOR's role is to regulate and monitor** the conduct of junket gaming operations by PAGCOR's contractees, such as petitioner in this case.

Q-12: What kind of regulatory and monitoring functions does PAGCOR undertake with regard to junket gaming operations?

A-12: In my understanding as a member of PJMT, we countercheck daily reports together with the counterpart representatives from the junket operator, such as petitioner in this case.

The PJMT monitoring is undertaken round-the-clock every "trading day" from 6:00 a.m. until 6 a.m. of the following day.

During the "trading day", the PJMT continuously monitors the movement in each gaming table by personally witnessing or physically checking the: (a) opening capital per gaming table; (b) "fills and credit" per gaming table, which refers to the replenishment of chips that are used for bets; and (c) closing capital per gaming table. These information are recorded daily by PJMT and shall be compared with the daily "*Win (Loss) Report*" prepared by petitioner's cage cashier for verification of the reported amounts, including the Gross Gaming Revenues for the day.

Thereafter, if such report is found to be in order, the PJMT generates the "*Daily Operation Report*" broken down per table to be submitted to PAGCOR. Then, after a final check, PAGCOR prepares the "*Official Daily Income Report Receipt*" to be given to the junket operator.

Q-14: What happens, if any, after PJMT generates the Daily Operation Report and PAGCOR issues the Official Daily Income Report Receipt to petitioner?

A-14: To my knowledge, PAGCOR issues monthly billing statements to petitioner for the license fees and franchise tax due based on Gross Gaming Revenues derived from junket gaming operations.

Q-15: You mentioned that petitioner's cage cashier prepares the *Win (Loss) Report*. What is a cage cashier, if you know?

A-15: To my knowledge, cage cashiers are those personnel manning the cage, hired by petitioner.

Q-16: Who is responsible in the collection of bets and pay-out of winnings to players, if you know?

A-16: **Petitioner is responsible for the collection of bets and pay-out of winnings to players.**

As mentioned in A11 above, **all PAGCOR has to do is to regulate, authorize and monitor the conduct of junket gaming operations and collect the fees and franchise tax due from petitioner on the grant of authority to conduct junket operations.** *g*

When propounded with clarificatory questions, the PAGCOR representative explained that junket operation is actually the same as a operation of an ordinary casino, viz.:⁶⁰

JUSTICE MANAHAN

So, my question is, in your observation of the petitioner's conduct of said gaming operations, was there full compliance by Prime Investment Korea to the PAGCOR's rules and regulations?

MR. VALENTINO:

A. Yes, your Honors.

JUSTICE VICTORINO

How is junket gaming operation being done?

MR. VALENTINO:

A. Yes, your Honors, junket operation is being done, it's actually the same as the regular casino, but junket operates, they only be in foreign players, they are not allowed to, the players of them are not Filipino nationals only what you call this, ah, foreign passport holders.

...

JUSTICE VICTORINO

What do they do there? What games?

MR. VALENTINO:

A. Your Honors, they offer the Baccarat game.

JUSTICE VICTORINO

Baccarat?

MR. VALENTINO:

A. Yes, your Honors.

JUSTICE VICTORINO

So, just like an ordinary casino, except that only foreigners could play?

MR. VALENTINO:

A. Yes, your Honors.

From all the foregoing, this Court is convinced that petitioner's income from the operation of casino pursuant to the Junket Agreements are not subject to corporate income tax as these are classified as "income derived from gaming operations" pursuant to *Section 13(2) of the PAGCOR Charter*. Meanwhile, petitioner's payment of monthly MGF to PAGCOR forms part of PAGCOR's "income from the operation of other related services" which is subject to corporate income tax pursuant to *Section 14(5) of the PAGCOR Charter*. 

⁶⁰ Transcript of Stenographic Notes of the hearing held on 8 October 2019, pp. 16-18.

In view of the foregoing, a remand to the Division is necessitated to determine the refundable amount.

WHEREFORE, in light of the foregoing considerations, the Petition for Review filed by Prime Investment Korea, Inc. is hereby **GRANTED**. The Decision, dated 19 November 2020 and Resolution, dated 19 May 2021, are hereby **SET ASIDE**.

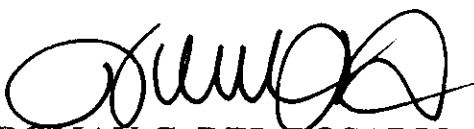
Let the case be remanded to the First Division for determination of the refundable amount.

SO ORDERED.



MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:



ROMAN G. DEL ROSARIO
Presiding Justice



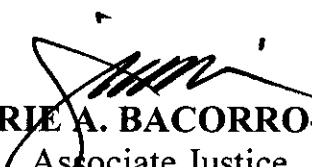
ERLINDA P. UY
Associate Justice



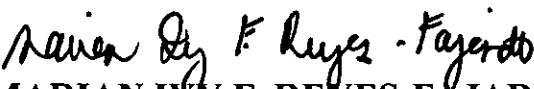
MA. BELEN M. RINGPIS-LIBAN
Associate Justice



CATHERINE T. MANAHAN
Associate Justice



JEAN MARIE A. BACORRO-VILLENA
Associate Justice


MARIAN IVY F. REYES-FAJARDO
Associate Justice


LANEE S. CUI-DAVID
Associate Justice


CORAZON G. FERRER-FLORES
Associate Justice

C E R T I F I C A T I O N

Pursuant to *Article VIII, Section 13 of the Constitution*, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.


ROMAN G. DEL ROSARIO
Presiding Justice 