REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

NATIONAL TRANSMISSION CORPORATION,
Petitioner,

- versus -

PROVINCE OF AGUSAN DEL NORTE, REPRESENTED BY ITS PROVINCIAL TREASURER, MR. LEOPOLDO L. AVILA,
Respondent.

CTA EB No. 950
(CTA AC No. 75)

Present:

Del Rosario, PJ,
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Cotangco-Manalastas, and
Ringpis-Liban, JJ.

Promulgated:

MAR 17 2014 9:00 a.m.

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DECISION

COTANGCO-MANALASTAS, J.:

Before the Court *En Banc* is a *Petition for Review* filed by petitioner, National Transmission Corporation (TRANSCO), assailing the *Decision*[1] dated June 5, 2012 and the *Amended Decision*[2] dated October 3, 2012 of the former Second Division of the Court, the dispositive portions of which are as follows:

Decision dated June 5, 2012:

> "**WHEREFORE**, premises considered, the instant Petition for Review is hereby **DENIED**. Accordingly, the Decision promulgated on March 5, 2010 and the Order

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[1] *Rollo*, pp. 22-49.
[2] *Rollo*, pp. 50-58.

promulgated on February 14, 2011 by the RTC-Butuan City in SP. Civil Case No. 1357 are hereby **AFFIRMED**.

SO ORDERED."

Amended Decision dated October 3, 2012:

"**WHEREFORE**, premises considered, petitioner's **Motion for Reconsideration** is hereby **PARTIALLY GRANTED** and the Court's Decision dated June 5, 2012 is hereby **MODIFIED**. Accordingly, the Decision promulgated on March 5, 2010 and the Order promulgated on February 14, 2011 by the RTC-Butuan City in SP. Civil Case No. 1357 are hereby **AFFIRMED WITH MODIFICATION**. The Notice of Assessment dated January 19, 2009 issued against National Transmission Corporation by the Province of Agusan del Norte is hereby **AFFIRMED**, except the assessed franchise tax for 2003 in the amount of P111,038.23 for being barred by prescription.

SO ORDERED."

The Facts

The facts, as culled from the records[3], are as follows:

Petitioner National Transmission Corporation (TRANSCO) is a government instrumentality, created pursuant to Republic Act (R.A.) No. 9136, otherwise known as the 'Electric Power Industry Reform Act of 2001' (EPIRA), with principal office address at Power Center, EDSA corner Quezon Avenue, Diliman, Quezon City.

On the other hand, respondent Province of Agusan del Norte is a local government unit duly created and organized under the laws of the Philippines, with capacity to sue and be sued. It is represented herein by Mr. Leopoldo L. Avila, the Provincial Treasurer, with office address at Provincial Hall, Agusan del Norte, Butuan City.

On February 12, 2009, petitioner received a letter entitled "Notice of Franchise Tax Delinquency in the Province of Agusan del Norte" dated January 19, 2009 from respondent, through Mr. Leopoldo L. Avila, the Provincial Treasurer. In the said notice, respondent assessed petitioner in the aggregate

[3] *Rollo*, pp. 22-30, citations omitted.

amount of P3,401,001.92, inclusive of surcharge and interest, representing franchise tax due for the years 2003 to 2008 pursuant to the provision of Sections 14 and 17 of the Agusan del Norte Revenue Code of 1993 under Provincial Ordinance No. 008-93 as amended by Provincial Revenue Code No. 195-2006 and Section 3, paragraph (b), item 1, 2 and 3 of the Local Finance Circular No. 1-07 issued by the Department of Finance, Manila, computed as follows:

Year (A)	Annual Gross Receipts Preceding Year (B)	Rate of Tax 50% of 1% (C)	Tax Due (D=50% of 1% of B)	Surcharge E=25% of D)	Interest (F=D+E x 72%)	Total Tax Delinquency (G=D+E+F)
2003	10,329,137.65	50% of 1%	51,645.69	12,911.42	46,481.12	111,038.23
2004	61,349,056.00	50% of 1%	306,745.28	76,686.32	276,070.75	659,502.35
2005	62,504,959.31	50% of 1%	312,524.80	78,131.20	281,272.32	671,928.32
2006	66,143,307.99	50% of 1%	330,716.54	82,679.13	297,644.89	711,040.56
2007	71,850,639.45	50% of 1%	359,253.20	89,813.30	215,551.92	664,618.42
2008	75,209,553.86	50% of 1%	376,047.77	94,011.94	112,814.33	582,874.04
TOTAL	**347,386,654.26**		**1,736,933.28**	**434,233.31**	**1,229,835.33**	**3,401,001.92**

On April 3, 2009, petitioner wrote its formal protest addressed to Mr. Leopoldo L. Avila, the Provincial Treasurer. Petitioner argued that franchise tax for gross receipts derived from Agusan del Norte Electric Cooperative (ANECO) be set aside on the following grounds:

> 1. Pursuant to Article 226(a) of the Implementing Rules and Regulations of the Local Government Code, the liability of TRANSCO to pay franchise tax accrues only from Gross Receipts from its operation within the province's territorial jurisdiction. The said territorial jurisdiction excludes the territorial limits of any city located in the province. The said rule was affirmed by the Supreme Court in the case of National Power Corporation vs. City of Cabanatuan (G.R. No. 149110, 9 April 2003);
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> 2. Considering that ANECO is located within the City of Butuan which is outside the territorial jurisdiction of the Province of Agusan del Norte, we respectfully submit that the Province of Agusan del Norte has no authority to collect Franchise Tax from the gross receipt of ANECO.

The protest was denied by respondent, through the Office of the Provincial Treasurer, in a Decision dated April 24, 2009, received by petitioner on May 14, 2009.[4] The Decision held that franchise tax impositions are exclusively granted to provinces and cities. Taxing powers of component and highly-urbanized cities are distinct and separate from the province.

[4] Par. 3, Statement of Material Facts, Petition for Review, division docket, p. 6.

The province should not levy any tax within the taxing jurisdiction of any city. Hence, Butuan City was not included in the franchise tax base; the imposition of franchise tax was based on the annual gross receipts reported by ANECO from its provincial operations in the eleven (11) municipalities (*i.e.*, Las Nieves, Kitcharao, Magallanes, Cabadbaran, Tubay, Santiago, Jabonga, RTR, Carmen, Nasipit, and Buenavista) within the territorial jurisdiction of the province.

On June 15, 2009, petitioner filed its appeal through registered mail with the Regional Trial Court, Branch 3 of Butuan City (RTC-Butuan City), docketed as SP. Civil Case No. 1357 entitled "National Transmission Corporation (TRANSCO) vs. The Provincial Government of Agusan del Norte, represented by its Provincial Treasurer, Mr. Leopoldo L. Avila."

In the Decision dated March 5, 2010, the RTC-Butuan City denied petitioner's appeal and affirmed the Notice of Assessment dated January 19, 2009 issued against petitioner by respondent.

On June 2, 2010, petitioner filed through registered mail its Motion for Reconsideration dated June 1, 2010, praying that the assessment by the Provincial Treasurer dated January 19, 2009 be declared null and void. The said Motion was denied in an Order dated February 14, 2011. Petitioner received a copy of said order on March 22, 2011.[5]

On April 19, 2011, petitioner filed a petition for review docketed as CTA AC No. 75 assailing the Decision and Order of the RTC-Butuan City.

The former Second Division, in its *Decision*[6] dated June 5, 2012, affirmed the franchise tax assessment of the Province of Agusan del Norte against petitioner for the years 2003 to 2008. The Court in Division held, in part, that the *situs* of taxation does not depend on where the head office of petitioner's customer, ANECO, is located. The fact that the principal office of ANECO is within the territorial jurisdiction of Butuan City, a separate local government unit that also imposes franchise tax on petitioner, does not prevent the Province of Agusan del Norte from exercising the situs of taxation on franchise tax authorized under Section 137 of R.A.

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[5] Annex "B", Petition for Review, division docket, p. 32.
[6] *Supra*, Note 1.

No. 7160 (Local Government Code of 1991). ANECO's satellite offices are located and operating within the territorial jurisdiction of the Province of Agusan del Norte, and the sources of revenue from such locations are incoming receipt and/or realized within respondent's territorial jurisdiction.

The Court in Division partially granted petitioner's Motion for Reconsideration in the *Amended Decision*[7] dated October 3, 2012. The Court in Division modified the decision such that the assessed franchise tax for 2003 was excluded from petitioner's total franchise tax liability for being barred by prescription.

Aggrieved, petitioner filed the instant *Petition for Review*[8] on October 19, 2012 by registered mail and received by this Court on October 24, 2012.

Respondent was ordered to file its comment within ten (10) days from receipt of the Resolution[9] dated November 26, 2012. Respondent filed by registered mail its Comments (To Petitioner's Petition for Review)[10] on January 14, 2013 and received by this Court on January 30, 2013.

Considering the issues raised by both parties in their respective pleadings, this Court resolved to require the parties to submit their respective memoranda[11].

Petitioner filed its Memorandum[12] on June 28, 2013 while respondent filed by registered mail its Memorandum[13] on July 15, 2013 and received by this Court on July 23, 2013. Thus, the above-captioned case was submitted for decision on August 22, 2013.

The Issues

Petitioner raises its sole assignment of error, *to wit*:

> "CTA SECOND DIVISION GRAVELY ERRED IN RULING THAT TRANSCO IS LIABLE TO PAY

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[7] *Supra*, Note 2.
[8] *Rollo*, pp 1-19.
[9] *Rollo*, pp. 181-182.
[10] *Rollo*, pp. 184-188.
[11] *Rollo*, pp. 199-200, Resolution dated May 22, 2013.
[12] *Rollo*, pp. 201-213.
[13] *Rollo*, pp. 215-221.

FRANCHISE TAX INCLUDING SURCHARGES AND PENALTIES IN THE AGGREGATE AMOUNT OF PHP 3,289,963.69 FROM 2004 TO 2008 DESPITE AGUSAN'S LACK OF AUTHORITY TO ASSESS AND COLLECT THEM."[14]

The Ruling of the Court

Petitioner asserts that the Province of Agusan del Norte cannot impose franchise tax based on gross receipts realized outside its territorial jurisdiction.

Petitioner contends that Section 5 of the EPIRA divided the electric power industry into four sectors, namely: generation, transmission, distribution and supply. Petitioner was created to assume the "transmission" functions while the "distribution" function shall be undertaken by private distribution utilities, cooperatives, local government units presently undertaking this function and other duly authorized entities (Section 22, EPIRA). Hence, petitioner does not deal with individual households; its customers being "private distribution utilities, cooperatives and local government units" undertaking the distribution of electricity. Distribution of electricity to households or any end-user is the distribution utilities' function. As a transmission corporation, petitioner derived gross receipts from its transmission of electricity to ANECO, a distribution utility. Petitioner has no knowledge of or control as to where ANECO distributes the electricity transmitted to it.

Petitioner argues that under Section 137 of R.A. No. 7160, reinforced by Articles 226 (a) and (b) of R.A. No. 7160's Implementing Rules and Regulations (IRR), the local franchise tax that may be collected shall be limited to those realized within a local government's territorial jurisdiction. Applying the ruling in *National Power Corporation vs. City of Cabanatuan*[15], petitioner's liability to pay franchise tax accrues only upon the concurrence of all the following requisites: (a) TRANSCO's substation must be within the territorial jurisdiction of the province and must not be within the territorial jurisdiction of any city located within the said province, or vice versa; and (b) TRANSCO's customer must be operating within the territorial jurisdiction of the province and

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[14] *Rollo,* pp. 6-7.
[15] G.R. No. 149110, April 9, 2003.

must not be within the territorial jurisdiction of any city located within the said province, or vice versa. Since ANECO is located in Butuan City, outside Agusan del Norte's territorial jurisdiction, petitioner's gross receipts are realized outside of Agusan del Norte's jurisdiction. Applying law and jurisprudence, Agusan del Norte has no authority to impose franchise tax on petitioner based on gross receipts from ANECO. The fact that ANECO exercises its franchise in the whole Agusan del Norte cannot be basis in computing for petitioner's franchise tax liability. Such becomes important in computing for ANECO's franchise tax liability but not that of petitioner's.

Petitioner also contends that the Court in Division erred in stating that there is no conflict in its decision with that rendered in CTA AC No. 78 (*National Transmission Corporation vs. Province of Bataan and City of Balanga*)[16]. Contrary to the Division's findings, the issue presented herein and in CTA AC No. 78 are distinctly similar. In both cases, a province assessed franchise tax on petitioner based on gross receipts from its customer which is located in the city. However, in CTA AC No. 78, the Second Division ruled that while petitioner has exercised its rights and privileges under its franchise within the Province of Bataan, including the City of Balanga in connection with its electrical transmission function, nevertheless, the Province of Bataan is not authorized to impose franchise tax on petitioner's gross receipts from PENELCO, which is located in the City of Balanga. The one authorized to impose such franchise tax on petitioner's gross receipts from PENELCO is the City of Balanga.

In its Memorandum, petitioner likewise cites the case of *City of Iriga vs. Camarines Sur III Electric Cooperative, Inc.* (CASURECO III) [17] where the Supreme Court held that CASURECO III is liable to Iriga City for franchise tax based on all its gross receipts from Iriga City and the Rinconada area (municipalities of the Province of Camarines Sur) since the situs of taxation is the place where the privilege is exercised, in this case in Iriga City, where CASURECO III has its principal office and from where it operates, regardless of the place where its services or products are delivered.

In its Comments (To Petitioner's Petition for Review), respondent counter-argues that the franchise tax imposed on

[16] CTA AC No. 78, December 16, 2011.
[17] G.R. No. 192945, September 5, 2012.

petitioner is based on the gross receipts received by petitioner within the territorial jurisdiction of the province of Agusan del Norte. The respondent never imposed any taxes on the gross receipts derived by petitioner in Butuan City.

Under Section 134 of R.A. No. 7160, or the Local Government Code (LGC) of 1991, the province is authorized, among others, to impose a franchise tax. Section 137 of the LGC of 1991 provides:

> "SEC. 137. *Franchise Tax.* — Notwithstanding any exemption granted by any law or other special law, the **province may impose a tax on businesses enjoying a franchise**, at a rate not exceeding fifty percent (50%) of one percent (1%) of the gross annual receipts for the preceding calendar year **based on the incoming receipt, or realized, within its territorial jurisdiction**. . . ." (Emphasis supplied)

The city may likewise impose a franchise tax pursuant to Section 151[18] of the LGC.

In this connection, Article 226(a) and (b) of the IRR of the LGC of 1991, provides:

> ARTICLE 226. *Franchise Tax.*— (a) Notwithstanding any exemption granted by any law or other special law, the **province may impose a tax on businesses enjoying a franchise**, at a rate not exceeding fifty percent (50%) of one percent (1%) **of the gross annual receipts, which shall include both cash sales and sales on account realized during the preceding calendar year within its territorial jurisdiction, excluding the territorial limits of any city located in the province.**
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> (b) **The province shall not impose the tax on business enjoying franchise operating within the territorial jurisdiction of any city located within the province**." (Emphasis supplied)

Significantly, the Sangguniang Panlalawigan of Agusan del Norte adopted and approved Provincial Tax Ordinance No. 008-93 (Agusan del Norte Revenue Code of 1993), as amended by Provincial Ordinance No. 195-2006, which imposes a tax on business enjoying a franchise tax, at a rate of fifty percent

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[18] SEC. 151. *Scope of Taxing Powers.* — Except as otherwise provided in this Code, the city, may levy the taxes, fees, and charges which the province or municipality may impose: *Provided, however,* That the taxes, fees and charges levied and collected by highly urbanized and independent component cities shall accrue to them and distributed in accordance with the provisions of this Code. xxx

(50%) of one percent (1%) of the gross annual receipts, which shall include both cash sales and sales on account realized during the preceding calendar year within the province.

From the foregoing, there is no dispute that the Province of Agusan del Norte is authorized to impose a tax on "businesses enjoying a franchise" based on the incoming receipt, or realized, within its territorial jurisdiction. However, it cannot impose a tax on business enjoying a franchise operating within the territorial jurisdiction of any city located within the province.

Thus, the pivotal issue involved herein is whether or not petitioner is considered a business enjoying a franchise within the territorial jurisdiction of the Province of Agusan del Norte.

In *National Power Corporation vs. City of Cabanatuan*[19] the Supreme Court discussed the nature of a franchise tax and laid down two requisites to be liable for local franchise tax, *to wit*:

> "...As commonly used, a franchise tax is **"a tax on the privilege of transacting business in the state and exercising corporate franchises granted by the state."** It is not levied on the corporation simply for existing as a corporation, upon its property or its income, but on its **exercise of the rights or privileges granted to it by the government**. Hence, a corporation need not pay franchise tax from the time it ceased to do business and exercise its franchise. It is within this context that the phrase "tax on businesses enjoying a franchise" in Section 137 of the LGC should be interpreted and understood. Verily, **to determine whether the petitioner is covered by the franchise tax in question, the following requisites should concur: (1) that petitioner has a "franchise" in the sense of a secondary or special franchise; and (2) that it is exercising its rights or privileges under this franchise within the territory of the respondent city government**." (Emphasis supplied)

In the above case, the National Power Corporation (NPC) was tasked to undertake the "development of hydroelectric generations of power and the production of electricity from nuclear, geothermal and other sources, as well as, the transmission of electric power on a nationwide basis." Concomitant to its mandated duty, NPC has, among others,

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

the power to construct, operate and maintain power plants, auxiliary plants, power stations and substations for the purpose of developing hydraulic power and supplying such power to the inhabitants. For many years, NPC was selling electric power to the residents of Cabanatuan City. Pursuant to a 1992 ordinance, the City of Cabanatuan assessed NPC a franchise tax. The Supreme Court held, among others, that NPC fulfilled the two requisites to be covered by the franchise tax. Anent the first requisite, Commonwealth Act No. 120, as amended by R.A. No. 7395, constitutes NPC's primary and secondary franchises and anent the second requisite, NPC is operating within the city government's territorial jurisdiction pursuant to the powers granted to it by Commonwealth Act No. 120, as amended.

In this case, there is no dispute that petitioner complied with the first requisite, *i.e.*, petitioner has a franchise in the sense of a secondary or special franchise. Petitioner was created by virtue of EPIRA. It assumed the electrical transmission function of the NPC as well as the authority and responsibility of NPC for the planning, construction and centralized operation and maintenance of its high voltage transmission facilities, including grid interconnections and ancillary services.[20]

Anent the second requisite, *i.e.*, that it is exercising its rights or privileges under the franchise within the territory of the respondent province, the Supreme Court, in *City of Iriga vs. Camarines Sur III Electric Cooperative, Inc.* (CASURECO III)[21], explained that the *situs* of local franchise taxation is the place where the privilege is exercised, *i.e.*, where the principal office is located, which is where it operates, regardless of the place where its services or products are delivered.

In the above-mentioned case, CASURECO III is engaged in the business of electric power distribution to various end-users and consumers within the City of Iriga and the municipalities of Nabua, Bato, Baao, Buhi, Bula and Balatan of the Province of Camarines Sur, otherwise known as the "Rinconada area." The City of Iriga assessed CASURECO III for franchise tax. CASURECO III argued, among others, that its liability to pay franchise tax, if any, should be limited to gross receipts received from the supply of the electricity within

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[20] Section 8, EPIRA.
[21] G.R. No. 192945, September 5, 2012.

the City of Iriga and not those from the Rinconada area. The Supreme Court, applying *National Power Corporation vs. City of Cabanatuan*, held that the two requisites to be liable for local franchise tax were met, *to wit*: by virtue of Presidential Decree No. 269, the National Electrification Administration granted CASURECO III a franchise to operate an electric light and power service, and it is undisputed that CASURECO III operates within Iriga City and the Rinconada area.

However, in holding CASURECO III liable for franchise tax to the City of Iriga on gross receipts within Iriga City and Rinconada area, the Supreme Court explained that:

> "It should be stressed that what the petitioner seeks to collect from CASURECO III is a franchise tax, which as defined, is a tax on the exercise of a *privilege*. As Section 137 of the LGC provides, franchise tax shall be based on gross receipts precisely because it is a tax on *business*, rather than on persons or property. Since it partakes of the nature of an excise tax, the *situs* of taxation is the place where the privilege is exercised, in this case in the City of Iriga, where CASURECO III has its principal office and from where it operates, regardless of the place where its services or products are delivered. Hence, franchise tax covers all gross receipts from Iriga City and the Rinconada area."

In sum, even though CASURECO III was held to be operating within Iriga City and the Rinconada area, nevertheless, it was held liable for franchise tax to the City of Iriga, where its principal office is located and from where it operates, based on all its gross receipts from Iriga City and the Rinconada area.

However, strict reliance in the above case will result to an absurd conclusion. If the above jurisprudence would be applied literally to the instant case, then petitioner would be liable to Quezon City for franchise tax since that is where petitioner's principal office is located. Clearly, that should not be the case. Moreover, there is one significant difference in the factual milieu of said case from the present case. The petitioner therein is engaged in electric power *distribution* to various end-users and consumers while in the present case, the petitioner is engaged in the *transmission* of electrical power to private distribution utilities, cooperatives and local government units.

It is likewise important to note that in *NPC vs. City of Cabanatuan* cited earlier, NPC was tasked, at that time, with the generation, *transmission* and *distribution* of electricity. It was imposed a local franchise tax by the City of Cabanatuan based on its gross receipts from sales of electric power to the residents of Cabanatuan City. In other words, NPC paid the local franchise tax to the local government unit where the services were sold (delivered). In contrast, the *City of Iriga vs. CASURECO III* case held that the place where the services or products are delivered is immaterial. Either way, with respect to this aspect, both cases cannot be applied squarely to the instant case as petitioners involved therein are tasked with the *distribution* of electricity to end-users while petitioner herein is tasked with the *transmission* of electricity.

Significantly, there are two cases decided by this Court with similar facts which may serve as a judicial guide.

In the case of CTA AC No. 78 (*National Transmission Corporation vs. Province of Bataan and City of Balanga*)[22], the Province of Bataan assessed petitioner for franchise tax on its receipts from Peninsula Electric Cooperative (PENELCO), an electric cooperative located in Balanga City which provides electrical power to customers in the entire Province of Bataan, including those in Balanga City, which is the capital of the Province of Bataan and a component city thereof. The Province of Bataan has eleven towns and one component city. Petitioner has a sub-station in the Province of Bataan. It is of public knowledge that the electric posts and wires strung thereto which run at the side of the whole length of the national highway from the foot, at Dinalupihan town, to the tip, at the town of Mariveles, of the Bataan Peninsula, and passing through the City of Balanga, are maintained and used by petitioner to transmit electric power to its customers in the entire Province of Bataan, including the City of Balanga. Petitioner contends that it cannot be considered to be operating or performing its privilege under its franchise within the Province of Bataan based on the gross receipts of PENELCO because although it has a substation in the said Province, its customer, PENELCO, is in the City of Balanga, which is outside the territorial jurisdiction of the Province. In addressing said argument, the CTA Second Division held that contrary to petitioner's view, the presence of a substation/district/branch/regional office is certainly not a

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[22] CTA AC No. 78, December 16, 2011.

condition for the exercise of the rights or privileges under the franchise. It is enough that an income is realized within the territory of the local government concerned as a result of the exercise of the said rights and privileges under the franchise. Petitioner has exercised its rights and privileges under its franchise by its use of streets within the Province of Bataan and the City of Balanga to erect poles and string wires in connection with its electrical transmission function.

However, the CTA Second Division held that the Province of Bataan cannot impose a franchise tax on the gross receipts realized by petitioner from PENELCO, which is located in the City of Balanga, *to wit*:

> "Therefore, while petitioner has exercised its rights and privileges under its franchise within the Province of Bataan, including the City of Balanga in connection with its electrical transmission function, nevertheless, the Province of Bataan is not authorized to impose franchise tax on petitioner's gross receipts from PENELCO. The one authorized to impose such franchise tax on petitioner's gross receipts from PENELCO is the City of Balanga pursuant to the afore-quoted provision [Article 226] of the Implementing Rules and Regulations of the LGC."

Notably, in the assailed Amended Decision, reliance on the above case was held to be misplaced since in the above case, it was not shown, except for a finding that PENELCO was located in Balanga City, that the gross revenues or receipts used as tax base for franchise tax imposed by the Province of Bataan were derived from PENELCO's customers outside Balanga City; hence, Balanga City's jurisdiction to impose the tax was upheld over that of the Province.

However, it is equally important to note that from the facts of the case, it is clear that PENELCO provides electrical power to customers in the entire Province of Bataan, including those in Balanga City and that the franchise tax was assessed based on "receipts to [*sic*] Penelco which (are) derived from the schedule of monthly payments to Transco by Penelco." Hence, it can be reasonably inferred that the receipts came from PENELCO's supply of electrical power to customers in the entire Province of Bataan, including Balanga City. Even granting that the gross receipts used as tax base were only derived from PENELCO's customers in Balanga City, such fact is of no moment as will be discussed later.

In the case of CTA OC No. 13 *(Provincial Government of Cagayan vs. National Transmission Corporation)*[23], petitioner transmits and sells electric power to CAGELCO I and CAGELCO II, both situated in the province of Cagayan. Its substation is located in Tuguegarao City. The Provincial Government of Cagayan assessed petitioner for the payment of franchise tax based on the gross receipts from CAGELCO I, and CAGELCO II. Petitioner contends that while CAGELCO I and CAGELCO II are within the territorial jurisdiction of the Province of Cagayan, its Tuguegarao substation is not within the territorial jurisdiction of the province, but within the City of Tuguegarao, hence, the Province of Cagayan cannot impose a franchise tax on business enjoying a franchise operating within the territorial jurisdiction of any city located within the province. In rejecting petitioner's contention, the CTA Third Division held that:

> "...The law, however, does not provide an exemption from paying franchise tax merely because defendant's "Tuguegarao substation is not within the territorial jurisdiction of the province, but within the City of Tuguegarao". As provided in Section 137 of R.A. No. 7160, the province may impose a tax on businesses enjoying a franchise, at the rate not exceeding fifty percent (50%) of one percent (1%) of the gross annual receipts for the preceding calendar year **based on the incoming receipt, or realized, within its territorial jurisdiction.**
>
> There is no showing that the presence of the said substation within the City of Tuguegarao deprives and/or negates the authority of the Province of Cagayan from exercising the *situs* of taxation. Defendant does not dispute that its customers are within the territorial jurisdiction of the province; and as a consequence, defendant necessarily receives or realizes gross annual receipts **within plaintiff's territorial jurisdiction**, which is what the law requires.
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> xxx xxx xxx
>
> From the foregoing provision, it is clear that defendant TRANSCO **shall assume the authority and responsibility of NPC for the planning, construction and centralized operation and maintenance of its high voltage transmission facilities, including grid interconnections and ancillary services.** Even granting that the substation referred to by defendant is located in the City of Tuguegarao, there is nothing on record which shows that its high voltage transmission facilities, including grid interconnections and

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[23] CTA OC Case No. 013, January 27, 2011.

ancillary services in operating the business to its customers are not within the territory of the Province of Cagayan."

From the foregoing cases, it was established that the location of petitioner's substation is not determinative of the *situs* of the franchise tax, *i.e.*, the place where the privilege is exercised, since petitioner's franchise is not limited to the construction and maintenance of substations, rather it was created to assume the electrical transmission function of the NPC, which includes the authority and responsibility for planning, construction and centralized operation and maintenance of its high voltage transmission facilities, including grid[24] interconnections and ancillary services.[25]

In other words, since petitioner's franchise involves the transport of power from the generation plant to its customers (distribution utilities, electric cooperatives, etc.), then the transmission function is exercised starting from the places where the generation plants are located up to the location of its customers and in the places where the transmission lines traverse and where the substations and related facilities are located.

Hence, even if petitioner's substation is located in the City of Butuan, there is nothing on record which shows that its high voltage transmission facilities, including grid interconnections and ancillary services in operating the business to its customers are not within the territory of the Province of Agusan del Norte.

Therefore, petitioner exercised its privileges under its franchise, with respect to its electrical transmission function, within the Province of Agusan del Norte, including the City of Butuan.

However, as also established in the above-mentioned CTA cases, to be liable to the local franchise tax, aside from the fact that the franchisee is exercising its electrical transmission function within the territorial jurisdiction concerned, the franchisee should likewise realize its gross annual receipts within the same territorial jurisdiction pursuant to Section 137 of the LGC which provides that the franchise tax shall be

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[24] "Grid" refers to the high voltage backbone system of interconnected transmission lines, substations and related facilities [Section 4(z), EPIRA].
[25] Section 8, EPIRA.

"based on the incoming receipt, or realized, within its territorial jurisdiction."

The question now is whether petitioner's gross receipts from ANECO were realized in Butuan City, where the latter's principal office is located, or in the Province of Agusan del Norte, where ANECO distributes electricity (ANECO distributes electricity to the Province of Agusan del Norte including Butuan City).

Petitioner argues that since ANECO's principal office is located in Butuan City, then its gross receipts from ANECO are realized within Butuan City. On the other hand, respondent contends that since the gross receipts remitted by ANECO to petitioner came from ANECO's operation within the province (excluding receipts from Butuan City), then the same were realized within the province.

In corporation law, the principal office of the corporation is the place where the books of the corporation are kept, where its officers usually and ordinarily meet for the purpose of managing the affairs and transacting the business of the corporation.[26] Likewise, in corporation law, the residence of a corporation is the place where its principal office is established.[27] Also, applying the doctrine in the *City of Iriga vs. CASURECO III, supra*, by analogy, the place where the company's principal office is located is from where it operates.

From the foregoing, ANECO is deemed to be located within the City of Butuan.

In this case, petitioner's gross receipts were received from ANECO, the principal office of which is located in the City of Butuan, hence, the one authorized to impose the franchise tax on petitioner's gross receipts from ANECO is the City of Butuan. Consequently, the Province of Agusan del Norte cannot impose the franchise tax on petitioner's gross receipts from ANECO pursuant to Article 226 of the Implementing Rules and Regulations of the LGC which provides that the province shall not impose the tax on business enjoying franchise operating within the territorial jurisdiction of any city located within the province.

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[26] Jose Agaton R. Sibal, *Philippine Legal Encyclopedia* (1996), p.768.
[27] *Clavecilla Radio System vs. Antillo,* G.R. No. L-22238, February 18, 1967

It is of no moment that the electricity transmitted to ANECO is subsequently distributed to end-users located in both the City of Butuan and the municipalities of the Province of Agusan del Norte since petitioner derives its gross receipts from its transmission of electricity to ANECO, a distribution utility, and not from the end-users.

In view of the above ruling, the Court finds it no longer necessary to discuss whether the computation of the gross receipts upon which the franchise tax was based is erroneous.

WHEREFORE, premises considered, the instant Petition for Review is hereby **GRANTED**. The Decision of the Former Second Division dated June 5, 2012 and the Amended Decision dated October 3, 2012 in CTA AC No. 75 are hereby **REVERSED** and **SET ASIDE**. Accordingly, the Notice of Franchise Tax Delinquency for calendar years 2003 to 2008 dated January 19, 2009 issued by the Provincial Treasurer of Agusan del Norte is hereby ordered **CANCELLED** and **WITHDRAWN**.

SO ORDERED.

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

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

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice