REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

First Division

LINBERG PHIIPPINES, INC.,
Petitioner,

- versus -

CITY OF MAKATI and NELIA BARLIS, in her capacity as the TREASURER OF THE CITY OF MAKATI,
Respondents.

CTA AC No. 19
(Civil Case No. 03-754)
(RTC Makati Branch 58)

Members:

Acosta, Chairman,
Bautista, and
Casanova, *JJ.*

Promulgated:

JUN 2 8 2007, 9:05 Am

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DECISION

ACOSTA, PJ.:

This is a Petition for Review filed under Section 11 of Republic Act No. 1125, as amended, brought before this Court on December 19, 2005, seeking the reversal of the Decision and Order dated August 30, 2005 and October 28, 2005, respectively, rendered by Branch 58 of the Regional Trial Court of Makati City, in Civil Case No. 03-754, entitled "Linberg Philippines, Inc. vs. The City of Makati and Luz R. Yamane, in her capacity as the Treasurer of Makati."

The assailed Decision affirmed the legality of the Notice of Assessment against petitioner, for deficiency taxes, fees and charges covering the years 2000, 2001 and 2002 in the amount of Eight Million Seven Hundred Fourteen Thousand Seven Hundred Forty-

Four and 53/100 Pesos (P8,714,744.53), issued by respondents, while the questioned Order denied petitioner's Motion for Reconsideration.

Petitioner is a duly organized corporation, existing under Philippine laws, with principal office at Suite 20-D, Rufino Pacific Tower, corner Herrera Street, Ayala Avenue, Makati City. It is engaged in the business of financing the construction and operation of private power plants primarily through "Build-Operate-Transfer" agreements with its customers.

Petitioner received the questioned Notice of Assessment on March 7, 2003. The alleged deficiency business taxes arose from respondent's reclassification of petitioner's business from a "holding or investment" company to a "contractor".

Not in agreement with the assessment, petitioner, on May 6, 2003 filed a letter-protest dated May 5, 2003. The protest was denied by respondent in a letter dated May 19, 2003, and received by petitioner on June 4, 2003.

On July 3, 2003, in consonance with Section 195 of the Local Government Code, petitioner appealed the denial of the protest to the Regional Trial Court (RTC) of Makati. The appeal was docketed as Civil Case 03-754 and raffled to Branch 58.

The appeal lodged with the RTC was dismissed on August 30, 2005 and the Motion for Reconsideration to the dismissal was denied on October 28, 2005. Having received the Order denying the Motion for Reconsideration on November 18, 2005, the instant Petition for Review was timely filed with this Court on December 19, 2005, since the 30th day, December 18, fell on a Sunday.

On January 12, 2006, respondents filed their Comment. And on January 29, 2007, with the filing of respondents' and petitioner's Memoranda on December 13, 2006 and January 15, 2007, respectively, this case was submitted for decision.

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Petitioner's arguments

Petitioner cannot be held liable to tax by respondent City because all its sales were effected and recorded in its branch offices outside the latter's taxing jurisdiction.

Petitioner maintains that its business consists of investing its capital in building and operating power plants, under either "build-operate-transfer" (BOT) or "build-operate-own" arrangements with certain business partners. And that during the taxable years covered by the Notice of Assessment, petitioner had branch offices in the following localities where the power plants are located:

Philips I, Cabuyao, Laguna
Philips II, Calamba, Laguna
Lepanto Ceramics, Calamba, Laguna
SCA Hygiene Products, Dasmariñas, Cavite
SMC Seaweeds, Cebu
Cebu United Polymer, Cebu
Fiesta Mall, Lipa, Batangas, and
Primo Oleochemicals Inc., Panganiban, Camarines Norte

According to petitioner, most of its employees are stationed at these branch offices and that its principal office in Makati City is only a place where a few administrative staff holds office.

Petitioner avers that under Section 150 of the Local Government Code and Article 243 of the Implementing Rules and Regulations of this code, respondent should not have assessed taxes on petitioner because its sales are made outside the taxing jurisdiction of Makati City.

Petitioner claims that the above provisions are clear, a corporation which maintains or operates branch or sales outlets elsewhere (outside the municipality or city where its principal office is located) should record the sale in the branch or sales outlet making the sale or transaction. In this case, since its power plants and branch offices are located outside

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Makati, and none of petitioner's sales occur in Makati, the tax should accrue and be paid to the municipality or office where its branch or sales outlets are located.

Further, according to petitioner, even assuming, without admitting that it does not maintain branch offices in different municipalities or cities, respondent cannot assess taxes on the entire amount of the revenue it generated. It cites Section 150 (b) of the Local Government Code as basis. The said section provides that only thirty percent (30%) of recorded sales shall be taxable by the municipality or city where the principal office is located and seventy percent (70%) shall be taxable by the municipality or city where the taxpayer's factory, project office, plant and plantation is located.

The existence of a corporation's principal office does not give rise to any legal presumption that the corporation conducts business in the locality where such principal office is located.

Petitioner further argues that the existence of a principal office does not necessarily mean that such is the place where the business of the corporation is transacted. The principal office may be a place where the books and records of the corporation are kept and where its officers meet for the purpose of managing its affairs. It may turn out that the principal office is located at one place and the area of its business operations, at another. Hence, according to petitioner, the RTC erred in holding that there exists a legal presumption that every corporation which maintains a principal office, conducts business in the said place.

Petitioner insists that in its business of building and operating power plants, its services are delivered outside of Makati City. It claims that the sales invoices for the supply of power to its customers are prepared by the branch offices, merely reviewed and approved by the principal office, and then issued and delivered by the branch to its customers, whose business premises are outside Makati City.

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Petitioner has no obligation to show that it had already paid business taxes in the different localities where its branch offices are located.

Petitioner claims that the taxing authority of local governments is based on law, specifically, the Local Government Code, its Implementing Rules and in this case, the Makati Revenue Code.

According to petitioner, these laws provide that if the sale is effected by the branch office, the tax due thereon automatically accrues in favor of the municipality or city where the branch office is located. The tax thereon cannot accrue in favor of any other locality, including the city or municipality where a corporation's principal office is located.

In any case, petitioner avers that it has not avoided the payment of business taxes to the municipalities and cities where its branch offices are located.

Petitioner is not estopped from questioning the authority of respondents to impose business taxes despite paying such taxes in the past.

Its erroneous payment of business taxes to respondent in the past is not tantamount to an admission that such taxes were valid and legal. In this case, petitioner merely committed a mistake in paying such taxes to respondent.

Petitioner is not a contractor and that even assuming that indeed it is a contractor, the tax base used by respondent is incorrect

Section 131 (h) of the Local Government Code defines a "contractor" as including persons, natural and juridical whose activity consists essentially of the sale of all kinds of services for a fee, regardless of whether or not the performance of the service calls for the exercise or use of the physical and mental faculties of such contractor or his employees. And according to petitioner, the essence of "contractorship" is that the income must be derived essentially or primarily from the sale of services. And in this case, its income is not derived from rendering services, but from capital investments in putting up power plants for its business partners.

Further, petitioner argues that the basis of the tax on contractors is gross receipts, not gross sales or revenues. And therefore, even assuming that it is liable for business tax as a contractor, the tax must be reduced by the amount of the uncollected sales. And it should be allowed to deduct materials and labor costs from its gross receipts.

Assuming without admitting that petitioner is liable to pay the alleged deficiency taxes due, surcharge and interest should be excluded in the computation because there is no finding that petitioner willfully neglected to file the correct return.

Petitioner asserts that the Trial Court erred in including surcharge and interest in computing the alleged deficiency taxes, because there is no finding that it willfully neglected to file the correct return. According to petitioner, assuming that it is correct to reclassify it as a "contractor," equity and justice dictate that its reliance in good faith on respondent's own classification and assessment should not make it liable to surcharge or interest.

Respondent's arguments

The existence of petitioner's principal office in Makati City and its admission as to such fact constitute prima facie evidence that it is conducting business in the said jurisdiction.

Respondent argues that by petitioner's own admission, it is doing business and is maintaining its principal office in City of Makati. Moreover, petitioner's claim that very little business is conducted thereat does not negate the fact that it still is conducting business in the said principal office.

Respondent likewise claims that aside from petitioner's bare assertions, it failed to show that it conducts business only at branch offices.

Petitioner is doing business as a contractor and should be liable to pay the deficiency taxes assessed against it by the City of Makati.

According to respondent, under Section 3A.01 (q) of the Makati Revenue Code, the term "contractor" refers to persons, natural or juridical, not subject to professional tax, whose activity consists essentially of the sale of all kinds of service for a fee, regardless of whether or not such performance of the service calls for the exercise or use of the physical and mental faculties of such contractor or his employees. And under Section 3A.02 (f) the terms "contractor" and "independent contractor" is more particularly defined to include owners or operators of an enumeration of business establishments rendering or offering services. Respondent asserts that the nature of petitioner's business squarely fits the aforementioned definition.

Respondent further argues petitioner's primary purpose, as can be seen its Amended Articles of Incorporation, is to carry on the business of managing and operating private power plants. Moreover, its Statements of Income and Retained Earnings For the Years Ended December 31, 1999 and 1998, include revenue from services, cost of services and operating expenses. Also, an item shows cash flows from "operating activities." Even the Notes to Financial Statements of petitioner reveal that it serves as an independent contractor responsible for the management, operation, maintenance and repair of base load power plants which supply the power requirement of third parties. All these illustrate that petitioner is indeed a contractor. Consequently, respondent maintains that petitioner should be held liable to the assessed deficiency taxes.

There is no law supporting petitioner's claim that in computing the taxes due from it, the materials and labor should be deducted from the tax base.

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It is respondent's contention that the definition of "gross sales or receipts" under Section 220 (n) of the Implementing Rules and Regulations of the Local Government Code of 1991 prohibits the deduction of costs of labor and materials. The said provision reads:

> "(n) **Gross Sales or Receipts** include the total amount of money or its equivalent representing the contract price, compensation or service fee, including the amount charged or materials supplied with the services and deposits or advance payments actually and constructively received during the taxable quarter for the services performed or to be performed for another person excluding discounts if determinable at the time of sales, sales return, excise tax and value-added tax (VAT);"

Tax surcharges and interests were applied according to law.

The averment of petitioner that it should not be liable for surcharge and interest principally since it was the City of Makati which classified the former as an investment company is erroneous.

Respondent claims that during the initial application for securing a business permit last January 5, 1995, it was petitioner through a director, who signed, applied and designated itself to be a "holding company".

It was only in the present renewal year 2003 that a change in the business activities of petitioner was noticed by the Business Tax Division of Makati City. And respondent cannot be held entirely responsible for whatever mistake that had transpired because of its misclassification as a "holding company". Petitioner cannot claim good faith since it could have called the attention of the City Treasurer anent the mistake.

The issues raised by the parties can be summed up as follows:

> First, whether petitioner was correctly re-classified as contractor or whether petitioner is indeed holding/investment company, akin to a financial institution. And corollary thereto, if petitioner was correctly re-classified as a contractor, whether the amount of uncollected sales and the expenses for labor and materials should be deducted from the tax base.

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Second, the tax situs, *i.e.*, whether the City of Makati can impose tax on petitioner given the fact that only its principal office is located in Makati.

Whether or not the tax surcharges and interests correctly imposed.

The court will tackle the issues in the respective order that they were presented.

FIRST ISSUE:

Applicable is Section 131 (h) of the Local Government Code, this provision defined the term "contractor". It reads:

> (h) "Contractor" includes persons, natural or juridical, not subject to professional tax under Section 139 of this Code, whose **activity consists essentially of the sale of all kinds of services for a fee,** regardless of whether or not the performance of the service calls for the exercise or use of the physical or mental faculties of such contractor or his employees.
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> As used in this Section, the term "contractor" shall include general engineering, general building and specialty contractors as defined under applicable laws; filling, demolition and salvage works contractors; proprietors or operators of mine drilling apparatus; proprietors or operators of dockyards; persons engaged in the installation of water system, and gas or electric light, heat, or power; proprietors or operators of smelting plants; engraving, plating, and plastic lamination establishments; proprietors or operators of establishments for repairing, repainting, upholstering, washing or greasing of vehicles, heavy equipment, vulcanizing, recapping and battery charging; proprietors or operators of furniture shops and establishments for planning or surfacing and recutting of lumber, and sawmills under contract to saw or cut logs belonging to others; proprietors or operators of dry-cleaning or dyeing establishments, steam laundries, and laundries using washing machines; proprietors or owners of shops for the repair of any kind of mechanical and electrical devices, instruments, apparatus, or furniture and shoe repairing by machine or any mechanical contrivance; proprietors or operators of establishments or lots for parking purposes; proprietors or operators of tailor shops, dress shops, milliners and hatters, beauty parlors, barbershops, massage clinics, sauna, Turkish and Swedish baths, slenderizing and building saloons and similar establishments; photographic studios; funeral parlors; proprietors or operators of hotels, motels, and lodging houses; proprietors or operators of arrastre and stevedoring services, warehousing, or forwarding establishments; master plumbers, smiths, and house or sign painters; printers, bookbinders, lithographers; publishers except those engaged in the publication or printing of any newspaper, magazine, review or bulletin which appears at regular intervals

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> with fixed prices for subscription and sale and which is not devoted principally to the publication and advertisements; business agents, private detective or watchman agencies, commercial and immigration brokers, and cinematographic film owners, lessors and distributors." *(Emphasis Supplied)*

The above definition is so broad, that any service rendered for a fee is covered therein and the only qualification is that the person, natural or juridical, not be subject to professional tax.

In this case, petitioner cannot correctly argue that it is not a contractor for there are pieces of evidence to the contrary. First, per its own admission, it builds power plants for a fee under Build-Operate-Transfer schemes with its customers. Second, its Amended Article of Incorporation states that the primary purpose of the corporation is to manage and operate power plants. As quoted by the RTC, petitioner's Amended Articles of Incorporation partly reads:

> "To carry on the business of managing and operating power plants, including, but not limited to, the acquisition by purchase, exchange, assignment, importation or otherwise, and to sell, assign, transfer, exchange, mortgage, pledge, traffic or otherwise to enjoy and dispose of, machineries, equipment and buildings, and generally perform, preserve, improve or enhance the value of any such machineries, equipment and buildings to the extent permitted by law."

The fact that it later on amended, this already Amended Articles of Incorporation to make its primary purpose "to carry on the business of a holding company" does not make any difference, since its business really consists of building and operating power plants.

Third, as found by the RTC, petitioner's Financial Statements show that it serves as an independent contractor responsible for the management, operation, maintenance and repair of power plants.

Petitioner failed to show that the above RTC findings are incorrect and baseless. On the contrary, petitioner merely argues that it advances capital by employing and paying for services of a "contractor" which will build the power plants. However, petitioner failed to

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show proof of this allegation. Moreover, as stated above, by its own allegation, its business consists of financing the construction and operation of private power plants through "Build-Operate-Transfer" (BOT) arrangements. Needless to state, under BOT arrangements, the contractor not only finances, but actually builds and operates.

Anent the issue of whether, the amount of uncollected sales should be deducted, the Court finds for the petitioner.

"Gross sales or receipts" is defined in the Local Government Code as to "include the **total amount of money or its equivalent representing the contract price, compensation or service fee**, including the amount charged or materials supplied with the services **and deposits or advance payments actually and constructively received** during the taxable quarter for the services performed or to be performed for another person excluding discounts if determinable at the time of sales, sales return, excise tax and value-added tax (VAT)."

The definition of "gross sales or receipts" under the Makati Revenue Code, which was patterned after Section 220 (n) of the Implementing Rules and Regulations of the Local Government Code, as to "include the total amount of money or its equivalent representing the contract price, compensation or service fee, including the amount charged or materials supplied with the services and deposits or the taxable quarter for the services performed or to be performed for another person including discounts if determinable at the time of sales, sales return, excise tax , and value-added tax (VAT)," cannot take precedence over the Local Government Code, which provides that only the amounts actually and constructively received should be covered.

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The decision in *China Banking Corporation vs. Court of Appeals*,[1] may be applied by analogy:

> "As commonly understood, the term 'gross receipts' means the **entire receipts without any deduction. Deducting any amount from the gross receipts changes the result, and the meaning, to net receipts**. Any deduction from gross receipts is inconsistent with a law that mandates a tax on gross receipts, unless the law itself makes an exception. As explained by the Supreme Court of Pennsylvania in Commonwealth of Pennsylvania v. Koppers Company, Inc., Highly refined and technical tax concepts have been developed by the accountant and legal technician primarily because of the impact of federal income tax legislation. However, this in no way should affect or control the normal usage of words in the construction of our statutes; and we see nothing that would require us not to include the proceeds here in question in the gross receipts allocation unless statutorily such inclusion is prohibited. Under the ordinary basic methods of handling accounts, the term gross receipts, in the absence of any statutory definition of the term, must be taken to include the whole total gross receipts without any deductions, . . ." Citations omitted] *(Emphasis supplied)*

Clearly, under the definition provided by the Local Government Code, the total or entirety of the sales of petitioner is subject to tax without deduction, and qualified only by the phrase "payments actually or constructively received".

Stated differently, "gross sales or receipts", include only compensation or fees, which was received, actually or constructively, by petitioner.

It is well-settled that the court may not construe a statute that is clear and free from doubt. Time and time again, it has been repeatedly declared, that where the law speaks in clear and categorical language, there is no room for interpretation. There is only room for application. For nothing is better settled than the first and fundamental duty of courts is to apply the law as they find it, not as they like it. Fidelity to such a task precludes construction or interpretation or interpretation, unless application is impossible or inadequate without it.

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[1] *403 SCRA 647-649*

Where the law is clear and unambiguous, it must be taken to mean exactly what it says and the court has no choice but to see to it that its mandate is obeyed.[2] *(Citations Omitted)*

However, while petitioner is correct that the amount of uncollected sales should be deducted, a perusal of the records will show that it failed to show proof that indeed part of the amount assessed, included uncollected sales. There being no proof to the contrary, the amount of deficiency tax as assessed stands, given the presumption of its correctness.

Further, petitioner's argument that the amount of expenses for labor and materials which it incurred from the construction and operation of the power plants should be deducted from the tax base, is erroneous. The same contradicts the unambiguous definition of gross receipts, provided under the Local Government Code and the Makati Revenue Code.

SECOND ISSUE:

Petitioner argues that the City of Makati cannot impose taxes on them because all of its sales are recorded in their branch offices and under the Local Government Code, a corporation which maintains or operates branch or sales outlets elsewhere (outside the municipality or city where its principal office is located) should records the sale in the branch or sales outlet making the sale or transaction. Accordingly, the tax on such sale should accrue and be paid to the municipality or city where such branch or sales outlet is located.

Situs means the location or place of business; the place where a thing is considered, for example, with reference to jurisdiction over it, or the right or power to tax it.[3]

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[2] *Agpalo, Statutory Construction, 3rd Edition, pages 46-47.*
[3] *Black's Law Dictionary, 5th Edition.*

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By petitioner's own allegations, it maintains its principal office in Makati City for the purpose of ensuring an orderly and centralized system of business administration and the fact that only a few of its employees work at this principal office makes no difference.

The Court notes that all its branches can be found only in the same places where the power plants are actually constructed. Hence, petitioner cannot claim that all its business are conducted in these branch offices, for in the ordinary course of things, before these power plants are built, there should be, to begin with negotiations and plans for such construction.

Moreover, petitioner's assertion that no sales are conducted within the jurisdiction of Makati City, arguing that the sales invoices for the supply of power to its customers are prepared by the branch offices, merely reviewed and approved in the principal office, and are then issued and delivered by the branch office to customers, whose premises are located outside Makati City, does not bolster its claim.

In stark contrast, the same proved its principal office has a hand on its sales, since this office reviews and approves the correctness of invoices issued by branch offices. Naturally, the principal office cannot review or approve these invoices, if the sales are not recorded thereat.

At any rate, if there is truth to its allegation that no business is transacted and recorded in Makati City, petitioner could have easily shown the trial court, the records and books of its principal office in the said city, to show that the sales in the other municipalities are not recorded there, in this it failed.

Petitioner is however correct that Section 150 of the Local Government Code applies. It reads:

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Sec. 150. SITUS OF TAX.-

(a) For purposes of collection of taxes under Section 143 of this Code, manufacturers, assemblers, repackers, brewers, distillers, rectifiers, and compounders of liquor, distilled spirits and wines, millers, producers, exporters, wholesalers, distributors, dealers, **contractors**, banks and other financial institutions, and other businesses maintaining or operating branch or sales outlet elsewhere shall record the sale in the branch or sales outlet making the sale or transaction, and the tax thereon shall accrue and shall be paid to the municipality where such branch or sales outlet is located. In cases where there is no such branch or sales outlet in the city or municipality where the sale or transaction is made, the sale shall be duly recorded in the principal office and the taxes due shall accrue and shall be paid to such city or municipality.

(b) The following **sales allocation** shall apply to manufacturers, assemblers, contractors, producers and exporters with factories, project offices, plants, and plantations in the pursuit of their business:

(1) **Thirty percent (30%)** of all sales recorded in the principal office shall be taxable by the city or municipality where the principal office is located.

(2) **Seventy percent (70%)** of all sales recorded in the principal office shall be taxable by the city or municipality where the factory, project office, plant, or plantation is located.

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(d) In cases where a manufacturer, or assembler, producer, exporter or contractor has **two (2) or more factories, project offices**, plants, or plantations **located in different localities**, the seventy percent (70%) sales allocation mentioned in subparagraph (b) of subsection (2) above shall be **prorated** among the localities where the factories, project offices, plants, and plantations are located in proportion to their respective volumes of production during the period for which the tax is due.

(e) The foregoing sales allocation shall be applied irrespective of whether or not the sales are made in the locality where the factory, project office, plant, or plantation is located. *(Emphasis Supplied)*

Further, Article 243 of the Implementing Rules and Regulations of the Local Government Code provides for the following definition of terms:

Principal Office – the head or main office of the business appearing in the pertinent documents submitted to the Securities and Exchange Commission, or the Department of Trade and Industry, or other appropriate agencies, as the case may be.

> The city or municipality specifically mentioned in the Articles of Incorporation or official registration papers as being the official address of said principal office shall be considered as the situs thereof.
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> **Branch or sales office** – a fixed place in a locality which conducts operations of the business as an extension of the principal office. xxx

The same article also implements the Sales Allocation provision in the Local Government Code.

Thus, the City of Makati where petitioner's principal office is found, can only tax 30% of petitioner's gross sales/receipts.

THIRD ISSUE:

On the third issue the Court finds for the respondent.

As correctly argued by respondent, it was petitioner, during its initial application for securing a business permit, which represented itself as a holding company. Petitioner cannot rightfully claim good faith, having made the representation itself.

Moreover, petitioner could have easily called the attention of the local government anent the mistake. And under Section 168 of the Local Government Code, the sanggunian may impose surcharge not exceeding twenty-five percent (25%) of the total amount of taxes, fees or charges not paid on time and an interest, at the rate not exceeding two percent (2%) per month of the unpaid taxes, fess or charges including surcharges, until such amount is fully paid, but not to exceed thirty-six (36) months.

Applicable are the following provisions of the Makati Revenue Code:

> SECTION 3A.09. Surcharge for late payment. — Failure to pay the tax prescribed in this Article within the time required shall subject the taxpayer to a surcharge of twenty five percent (25%) of the original amount of tax due, such surcharge to be paid at the same time and in the same manner as the tax due.
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> SECTION 3A.10. Interest on unpaid tax. — In addition to the surcharge imposed herein, there shall be imposed an interest of two percent (2%) per month of the unpaid taxes, fees or charges including

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surcharges, until such amount is fully paid but in no case shall be total interest on the unpaid amount or portion thereof exceed thirty-six (36) months.

Where an extension of time for the payment of the tax has been granted and the amount is not paid in full prior to the expiration of the extension, the interest abovementioned shall be collected on the unpaid amount from the date it becomes originally due until fully paid.

Accordingly, the surcharge and penalties were imposed in accordance with law.

On contractors, the Makati Revenue Code provides for the following graduated rates of tax:

With gross sales or receipts for the preceding calendar year in the amount of:	Per Annum	Amount of Tax
less than P50,000.00	Exempt	
P50,000.00 or more but less than	75,000.00	P880.00
75,000.00 or more but less than	100,000.00	1,320.00
100,000.00 or more but less than	150,000.00	1,980.00
150,000.00 or more but less than	200,000.00	2,640.00
200,000.00 or more but less than	250,000.00	3,630.00
250,000.00 or more but less than	300,000.00	4,620.00
300,000.00 or more but less than	400,000.00	6,160.00
400,000.00 or more but less than	500,000.00	8,250.00
500,000.00 or more but less than	750,000.00	9,250.00
750,000.00 or more but less than	1,000,000.00	10,250.00
1,000,000.00 or more but less than	2,000,000.00	11,500.00
2,000,000.00 or more but less than	50,000,000.00	P11,500.00

plus sixty percent (60%) of one percent (1%) of excess over P2.0 million

50,000,000.00 or more P299,500.00
plus
fifty percent (50%) of one percent (1%) for 1993, fifty five percent (55%) of one percent (1%) for 1994 and 1995, and seventy five percent (75%) of one percent (1%) for 1996 and thereafter of the excess over P50 million.

In view of the foregoing, the Petition for Review is **PARTIALLY GRANTED** and the tax due against petitioner is hereby reduced to the amount of Nine Hundred Ninety

Three Thousand Nine Hundred One Pesos 29/100 (P993,901.29), representing unpaid deficiency tax as contractor for the years, 2000, 2001, 2002, including surcharges and interest provided under Section 168 of the Local Government Code computed as follows:

	2000	**2001**	**2002**	**Totals**
Total Service Revenue	212,738,652.00	300,844,703.00	364,410,627.00	877,993,982.00
Allocation	30%	30%	30%	30%
Taxable Base	63,821,595.60	90,253,410.90	109,323,188.10	263,398,194.60
Tax Due				
P50m	299,500.00	299,500.00	299,500.00	898,500.00
Over P50m x 75% of 1%	103,661.97	301,900.58	444,923.91	850,486.46
Total Tax Due	403,161.97	601,400.58	744,423.91	1,748,986.46
Less: Tax Payment	348,523.36	451,267.07	486,916.36	1,286,706.79
Tax Deficiency	54,638.61	150,133.51	257,507.55	462,279.67
Add: Surcharge (25%)	13,659.65	37,533.38	64,376.89	115,569.92
Total	68,298.26	187,666.89	321,884.44	577,849.59
Add: Interest (2% for 36 mos.)	49,174.75	135,120.16	231,756.80	416,051.70
Total Tax Deficiency	117,473.01	322,787.05	553,641.23	**993,901.29**

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII 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's Division.

ERNESTO D. ACOSTA
Presiding Justice