REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SAN FERNANDO ELECTRIC LIGHT
AND POWER CO., INC.,
Petitioner,

- versus - C.T.A. CASE NO. 1561

THE COMMISSIONER OF INTERNAL
REVENUE,
Respondent.
x - - - - - - - - - - - - - - x

10/23

D E C I S I O N

This is a claim for refund or tax credit in the amount of P11,392.20, representing the total amount overpaid by petitioner as franchise tax for the quarters, Oct.-Dec., 1962, and Jan.-March, 1963.

Petitioner is the grantee of a municipal franchise for an electric light heat and power system, granted by the Municipal Council of San Fernando, Pampanga, sometime in 1927, pursuant to Act 667, and which franchise was amended by Legislative franchise, Republic Act 3660, which took effect on January 22, 1963.

On January 16, 1963, as required by respondent Commissioner of Internal Revenue, petitioner paid a 5% franchise tax of P8,947.21, corresponding to the last quarter, Oct.-Dec., 1962 under BIR O.R. No. B-1283176 issued on January 16, 1963.

On April 19, 1963, petitioner again paid to respondent a 5% franchise tax of P10,039.79, corresponding to the 1st quarter, Jan.-March, 1963, for which BIR O.R. No. C-0849115 was issued on the said date.

In a letter dated July 18, 1963, *(Exh. A)* respondent wrote petitioner demanding the payment of P42,457.45, as alleged deficiency franchise tax plus surcharge, representing the difference between the 2% franchise tax paid by petitioner and the 5% franchise tax being claimed by respondent Commissioner corresponding to the period from January 1, 1961 to December 31, 1962.

In reply to said letter, petitioner on August 4, 1963, *(Exh. B)* wrote respondent stating that because of the approval and effectivity on June 22, 1963 of its legislative franchise, R.A. No. 3660, providing for the payment of a franchise tax of 2% retroactive upon the date its original franchise was granted, and no other tax of any kind shall be assessed or levied, petitioner requested that respondent cancel and withdraw the said assessment for deficiency franchise tax.

On December 14, 1963 *(Exh. C)* petitioner through its accountant wrote respondent requesting for the refund/or tax credit of the overpayment of P5,368.33 for the quarter, Oct.-Dec. 1962, and P6,023.87 for the quarter, Jan.-March 1963, or a total of P11,392.20 representing the difference between the 5% franchise tax it had paid, and the 2% franchise tax it is only liable under its legislative franchise, R.A. No. 3660.

On January 2, 1964, respondent Commissioner in answer to petitioner's letter of August 4, 1963, wrote petitioner *(Exh. D)*, on which letter respondent accepted petitioner's assertion that it is liable only to 2% and not to 5% franchise tax and therefore withdraw and cancel the alleged deficiency franchise tax assessment from January 1, 1961 to December 31, 1963, this ruling of respondent being in consonance with the decision of this Court in the case of Lingayen Gulf Electric Co., Inc. vs. Commissioner of Internal Revenue, CTA Cases Nos. 581 and 1302.

Included in said cancelled assessment is the amount corresponding to the quarter Oct.-Dec. 1962 for which quarter petitioner paid on the basis of 5% instead of only 2% or had made an overpayment in the sum of P5,368.33.

When petitioner paid 5% instead of only 2% for the next quarter January-March, 1963, petitioner also overpaid P6,023.87.

Respondent Commissioner of Internal Revenue did not act or did not reply to petitioner's written request for refund and/or tax credit contained on petitioner's letter dated December 14, 1963; hence, petitioner again wrote respondent another letter on November 12, 1964 *(Annex E)* representing its request for refund/tax credit of the said amount of P11,392.20.

Until this date respondent Commissioner of Internal Revenue has not rendered his decision on petitioner's claim for refund and/or tax credit. Hence, this appeal.

The only issue to be determined in the case is whether petitioner is subject to a 5% franchise tax under Republic Act No. 418, or to only 2% franchise tax as provided in petitioner's franchise, R.A. No. 3660, dated January 22, 1963, and consequently whether or not petitioner is entitled to the total refund/or tax credit of P11,392.20.

In a decision dated July 15, 1988, in the case of San Fernando Electric Light and Power Co., Inc., CTA Case No. 1300, this Court sustained the contention that petitioner is subject only to 2% and not 5% franchise tax as claimed by respondent Commissioner of Internal Revenue. This Court said in that case, and we quote:

> Section 2-A of petitioner's franchise, Republic Act No. 3660, quoted above, which amended Republic Act No. 3207, is very specific and mandatory. It merely calls for application as thus worded: "Provision of laws to the contrary notwithstanding, the franchise tax equal to two per centum of the gross earnings of the grantee shall be respected. Effective upon the date the original franchise was granted, no other tax upon its capital stock, franchise, right of way, earnings and all other property owned or operated by the grantee under this concession or franchise shall be levied or assessed on the herein grantee except the franchise tax of two per centum of the gross earnings mentioned in the said original franchise". There is no room for interpretation. It is well-settled that a statute, free from any constitutional infirmity, must be enforced as written.
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> Republic Act No. 3660 which imposes 2% franchise tax on the gross earnings of petitioner expressly and clearly provides that it shall take effect upon the date the original franchise was granted, provision of laws to the contrary notwithstanding. As a rule, revenue laws are prospective in operation, unless, as in this case, the legislative intent that the statute operate retrospectively is intently expressed or necessarily implied. (51 Am. Jur. 359; Lorenzo vs. Posadas, 64 Phil. 353; Commissioner of Internal Revenue vs. Filipinas Cia de Seguros, 107 Phil. 1055) It can be said therefore that the amendatory legislation has the effect of precluding the

imposition of a higher tax as provided in Section 259, as amended by Republic Act No. 39, of the then applicable National Internal Revenue Code.

WHEREFORE, respondent Commissioner is hereby ordered to refund and/or grant a tax credit to petitioner, San Fernando Electric Light and Power Co., Inc., in the sum of P11,392.20 as overpaid franchise tax.

Without pronouncement as to costs.

SO ORDERED.

Quezon City, Metro Manila, October 23, 1990.

CONSTANTE C. ROAQUIN
Associate Judge

I CONCUR:

ALEX Z. REYES
Associate Judge

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

I hereby certify that this decision was reached after due consultation between the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

CONSTANTE C. ROAQUIN
Associate Judge
Court of Tax Appeals