REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

SM PRIME HOLDINGS, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 7347

Members:

CASTAÑEDA, JR., *Chairperson*
UY, *and*
PALANCA-ENRIQUEZ, *JJ.*

Promulgated:
MAR 17 2008
11:05 a.m.

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DECISION

UY, J.:

This Petition for Review seeks the reversal of the Decision dated August 25, 2005 of the Commissioner of Internal Revenue holding petitioner liable for deficiency value-added taxes (VAT) on its gross receipts derived from cinema ticket sales in the amount of **ONE HUNDRED THIRTY SIX MILLION SEVEN HUNDRED EIGHTY THOUSAND SIX HUNDRED THIRTY SIX PESOS AND 10/100 CENTAVOS (P136,780,636.10)** under Assessment Notice No. 011-02 for the taxable year 2002; and the amount of **ONE HUNDRED TWENTY SEVEN MILLION SIX HUNDRED NINETY FIVE THOUSAND FORTY NINE PESOS AND 30/100 CENTAVOS**

(P127,695,049.30) under Assessment Notice No. 005-03 for the taxable year 2003.

THE FACTS

Petitioner SM Prime Holdings, Inc. is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines, with principal office address at SM Corporate Offices, Bldg. A, 1000 Bay Blvd., SM Central Business Park, Bay City, Pasay City.[1] It is authorized by the Securities and Exchange Commission to engage in the operation of movie houses.[2]

Respondent, on the other hand, is the duly-appointed Commissioner of the Bureau of Internal Revenue (BIR), with office address at the 5th Floor, BIR National Office Building, BIR Road, Diliman, Quezon City.[3]

On September 8, 2004, respondent issued a Preliminary Assessment Notice[4] against petitioner for deficiency value-added tax covering the taxable year 2003 in the amount of P125,908,305.41, including increments, due to petitioner's failure to pay the value-added tax on its theater income, in violation of Revenue Memorandum Circular (RMC) No. 28-2001 in relation to Sections 108 and 125 of the National Internal Revenue Code (NIRC) of 1997, as amended. On September 23, 2004, petitioner protested the Preliminary Assessment Notice.[5]

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[1] Petition for Review, Docket, p. 1.
[2] Joint Stipulation of Facts and Issues, Docket, p. 193.
[3] *Ibid.*, Docket, p. 194.
[4] Annex "F", Petition for Review, p. 81.
[5] Annex "I", Petition for Review, pp. 97 – 103.

A Formal Letter of Demand/Assessment Notice No. 005-03[6] covering the taxable year 2003 deficiency VAT was subsequently issued on October 29, 2004. This was likewise formally protested to by petitioner on November 11, 2004.[7]

On October 29, 2004, respondent issued another Preliminary Assessment Notice[8] informing petitioner that, after verification of its returns filed with the BIR, there has been found due from petitioner deficiency VAT on its cinema operations for the taxable year 2002 in the amount of P135,131,674.98, including increments. This was due to petitioner's failure to declare in its VAT returns the gross receipts it derived from cinema ticket sales for the said period, as well as its failure to pay the corresponding VAT due thereon, in violation of RMC No. 28-2001 in relation to Section 108 of the NIRC of 1997, as amended, and Revenue Regulations No. 7-95.

In a letter[9] dated November 11, 2004, petitioner filed its protest to the Preliminary Assessment Notice.

A Formal Letter of Demand/Assessment Notice No. 011-02[10] dated November 19, 2004 covering the aforementioned deficiency value-added tax was issued against petitioner. On December 14, 2004, petitioner formally protested the assessment.[11]

On August 25, 2005, respondent rendered his Decision[12] upholding the disputed assessments; thus, effectively denying petitioner's two written

[6] Annex "H", Petition for Review, p. 94.
[7] Annex "G", Petition for Review, pp. 84 – 93.
[8] Annex "B", Petition for Review, pp. 56 – 57.
[9] Annex "C", Petition for Review, pp. 58 – 59.
[10] Annex "D", Petition for Review, p. 68.
[11] Annex "E", Petition for Review, pp. 71 – 80.
[12] Annex "A", Petition for Review, pp. 45 – 55.

protests covering its alleged deficiency VAT on its gross receipts derived from cinema ticket sales for taxable years 2002 and 2003.

Petitioner then filed this instant "Petition for Review With Prayer for Suspension of Collection" on October 20, 2005, questioning the Decision of respondent. It likewise prayed that, pending the final resolution of the case, the collection of taxes be suspended.

Respondent filed his Answer on December 28, 2005.

During the hearing of the case, petitioner's counsel manifested that petitioner will no longer present evidence considering that the instant case involved legal issues only. Respondent's counsel, on the other hand, reserved his right to present evidence. The parties then filed their "Joint Stipulation of Facts and Issues"[13] on September 1, 2006.

However, in a Resolution[14] dated June 12, 2007, respondent was deemed to have waived his right to present evidence due to his counsel's failure to appear during the scheduled presentation dates.

On September 1, 2006, petitioner filed its "Motion for Consolidation" praying that this instant case be consolidated with CTA Case Nos. 7079 (*SM Prime Holdings, Inc. vs. Commissioner of Internal Revenue*), 7085, 7111, and 7272 (*First Asia Realty Development Corp vs. Commissioner of Internal Revenue*). This Motion, however, was denied in a Resolution[15] promulgated on November 17, 2006, because the First Division where the aforementioned cases were raffled, had already rendered a Decision; thus, the consolidation of this instant case with the other cases can no longer be allowed.

[13] Docket, pp. 193 – 199.
[14] Docket, p. 221.
[15] Docket, pp. 207-208.

Upon the filing of petitioner's Memorandum, this case was considered submitted for decision on August 7, 2007.

THE ISSUES

As jointly stipulated by the parties, the issues[16] are the following:

"1. Whether the exhibition of movies to the paying public is a 'sale of service' under Section 108 of the National Internal Revenue Code.

2. Whether the exhibition of movies to the paying public is a sale of service subject to VAT.

3. Whether petitioner is being taxed under Revenue Memorandum Circular No. 28-2001."

The first and second issues basically relate to the issue of whether or not the gross receipts derived by operators/proprietors of cinema/theater houses from the admission tickets are subject to 10% value-added tax.

In support of its claim, petitioner advances the following arguments[17]:

1. Historically, by the nature of their business, the gross receipts of proprietors or operators of cinemas/theaters derived from public admission have always been subject to amusement tax, not to VAT or any business tax. They have never been included in the coverage of, nor intended to be subject to, the original VAT law and all its succeeding amendments.

2. There is no provision of law which imposes 10% VAT on gross receipts from admissions to cinemas/theaters in addition to the 30% amusement tax imposed under the Local Government Code of 1991.

3. The business of proprietors, lessees or operators of cinemas/theaters is not within the coverage of the VAT under the National Internal Revenue Code (NIRC), as amended.

4. It is erroneous for respondent to interpret the provisions of R.A. 7160, otherwise known as the "Local Government Code of 1991", in its favor (i) when the intention of the law was to

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[16] Stipulation of Issues, Joint Stipulation of Facts and Issues, Docket, p. 198.
[17] Petitioner's Memorandum, Docket, pp. 229-230.

devolve the power to impose amusement tax on cinemas/theaters to the local government units concerned to the exclusion of the national taxing authority, and (ii) where the power thus devolved has not been revoked or restored to the National Government.

5. The laws do not intend to subject the same revenue source under the simultaneous administration of both the national and local governments.

6. The unilateral action on the part of the BIR in imposing VAT – a national tax – on gross receipts from cinema/theater admissions on top of the amusement tax imposed by the local government units make this industry the highest taxed industry and the most discriminated against amusement business in the country, which threatens its viability. It therefore violates petitioner's right to substantive due process.

7. Further, the unexpected and inexplicable imposition of 10% VAT on cinemas/theater admission through an unpublished ruling of general application – without benefit of public hearing, without notice of the affected sector, and with retroactive effectivity and attendant penal liability – is not only in utter violation of the requirements of due process but is also highly irregular and confiscatory.

8. RMC No. 28-2001 constitutes administrative legislation which is prohibited.

Respondent, on the other hand, submits the following arguments:

1. Respondent is not assessing petitioner for amusement taxes, rather, the assessment is one for VAT.

2. Contrary to petitioner's allegations, respondent does not look to the LGC for a grant of the power to impose VAT on sales of services.

3. The subsequent enactment of R.A. 7716 ("EVAT Law") on January 1, 1996 which amended Section 102 (now Section 108 of the NIRC) of the old NIRC enlarged the coverage of VAT to embrace all sales of goods, property or services, unless expressly exempted.

4. Currently, the pertinent provision relating to the Value-Added Tax on Sale of Services is Section 108 of the NIRC.

5. The exhibition of movies is in itself a service provided by operators or proprietors of cinema/theater houses to anyone who wants to watch a particular movie.

6. There is no valid, existing law exempting the operation of a cinema/theater from VAT.

7. By providing an expansive definition and non-exhaustive enumeration, obviously, Congress intended to subject other services in the area of commerce that were not expressly mentioned to VAT.

8. RMC No. 28-2001 was issued primarily to regulate the conduct of all internal revenue officers concerned, that is, to inform and guide them regarding the VAT treatment on admission receipts derived by operators of cinema/movie houses. It solely informed BIR revenue officers of what was already a pre-existing VAT law, which law taxes petitioner and others similarly situated to VAT.

9. The fundamental rule in taxation is that exemptions are highly disfavored and he who claims exemption must be able to justify his claim by the clearest grant of organic or statute law.

10. It is a well-settled rule in taxation that assessments are *prima facie* presumed correct and made in good faith.

Weighing the arguments of both parties, applicable laws and jurisprudence, this Court finds for petitioner.

In the case of **First Asia Realty Development Corporation and SM Prime Holdings, Inc. vs. Commissioner of Internal Revenue**[18], which is similar in facts and circumstances to this instant case; this Court judiciously and thoroughly discussed the history and implications of the VAT law, to quote:

> "The early form of VAT, known as Philippine sales tax system, was characterized with a single-stage tax from the period 1936 to 1978.

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[18] CTA Case Nos. 7079, 7085, 7111, and 7272, September 22, 2006.

In 1978, P.D. No. 1358 was issued as there was a need to restructure the sales tax system to make it more progressive and responsive to the requirements of a developing economy. It adopted the tax credit method in computing sales tax.

In 1980, P.D. 1705 was issued empowering the President, upon recommendation of the Ministry of Finance, to subject second sale of any article taxable under the 1977 Tax Code to a value added tax at rates not exceeding twenty percent (20%).

In 1981, P.D. 1773 was issued empowering the President, upon recommendation of the Ministry of Finance, to subject second sale of any article taxable under the Tax Code to a value-added tax at rates not exceeding fifty percent (50%) based on the gross selling price or gross value of any of the article sold, bartered, exchanged or transferred, less the cost of the article.

In 1985, P.D. 1991 was issued as there was the imperative need to simplify and restructure certain provision of the Tax Code, particularly those imposing sales tax.

In 1986, P.D. 2006 was issued with the primary purpose of reducing the tax impact on second sale and to make the tax burden more equitably distributed at every stage of subsequent sale.

Subsequently, former President Corazon C. Aquino issued E.O. 273 as one of the structural reforms provided in the 1986 Tax Reform Program. E.O. 273 rationalized the system of taxing goods and services by imposing a multi-stage value-added tax to replace the tax on original and subsequent sales tax and percentage tax or certain services. It reads:

> SECTION 1. The provisions of Title IV governing excise taxes are hereby transferred to Title VI and replaced with new provisions imposing a value-added tax to read as follows:
>
> TITLE VI. — VALUE-ADDED TAX
> Chapter 1. — IMPOSITION OF TAX
>
> SECTION 99. Persons liable. — Any person who, in the course of trade or business, sells, barters or exchanges goods, renders services, or engages in similar transactions and any person who imports goods shall be subject to the value-added tax (VAT) imposed in Sections 100 to 102 of this Code.

xxx xxx xxx

SEC. 102. Value-added tax on sale of services. — (a) Rate and base of tax. — There shall be levied, assessed and collected, a value-added tax equivalent to 10% percent of gross receipt derived by any person engaged in the sale of services. The phrase 'sale of services' means of performance of all kinds of services for others for a fee, remuneration or consideration, including those performed or rendered by construction and service contractors; stock, real estate, commercial, customs and immigration brokers; lessors of personal property; lessors or distributors of cinematographic films; persons engaged in milling, processing, manufacturing or repacking goods for others; and similar services, regardless of whether or not the performance thereof calls for the exercise or use of the physical or mental faculties: Provided, That the following services performed in the Philippines by VAT-registered persons shall be subject to 0%.

(1) Processing, manufacturing or repacking goods for other persons doing business outside the Philippines which goods are subsequently exported, where the services are paid for in acceptable foreign currency, inwardly remitted to the Philippines and accounted for in accordance with the rules and regulations of the Central Bank of the Philippines.

(2) Services other than those mentioned in the preceding sub-paragraph, the consideration for which is paid for in acceptable foreign currency which is remitted inwardly to the Philippines and accounted for in accordance with the rules and regulations of the Central Bank of the Philippines.

(3) . . .

'Gross receipts' means the total amount of money or its equivalent representing the contract price, compensation of service fee, including the amount charged for materials supplied with the services and deposits of advance payments actually or constructively receive during the taxable quarter for the services performed or to be performed for another person, excluding the value-added tax.

SEC. 103. Exempt Transactions. — The following shall be exempt from the value-added tax;

xxx xxx xxx

(j) Services rendered by persons subject to percentage tax under Title V;

xxx xxx xxx

In 1992, R.A. No. 7643 was enacted empowering the Commissioner of Internal Revenue to require the payment of the value-added tax every month.

To restructure the value-added tax system in the country, R.A. No. 7716 was enacted in 1994. xxx

xxx xxx xxx

In 1997, R.A. 8241 (or Improved VAT Law) was enacted, which made remedial amendments to some provisions of R.A. 7716. xxx

xxx xxx xxx

In 1998, R.A. 8424 (the 'Tax Reform Act of 1997') was enacted.

xxx xxx xxx

Subsequently, R.A. No. 8761 was enacted imposing value-added tax on certain services and deferred the implementation thereof on certain services. And in 2001, R.A. No. 9010 was enacted deferring the imposition of value-added tax on certain services.

The latest law on value-added tax is R.A. No. 9238, which excludes several services from the coverage of value-added tax.

Now, Sections 108 and 109 of the Tax Code read:

SECTION 1. Section 108 of the National Internal Revenue Code of 1997, as amended, is hereby further amended to read as follows:

(A) Rate and Base of Tax. — There shall be levied, assessed and collected, a value-added tax equivalent to ten percent (10%) of the gross receipts, derived from the sale or exchange of services, including the use or lease of properties.

The phrase 'sale or exchange of services' means the performance of all kinds of services in the Philippines for others for a fee, remuneration or consideration, including those performed or rendered by construction and service contractors; stock, real estate, commercial, customs and immigration brokers; lessors of property, whether personal or real; warehousing services; lessors or distributors of cinematographic films; persons engaged in milling, processing, manufacturing or repacking goods for others; proprietors, operators or keepers of hotels, motels, resthouses, pension houses, inns, resorts; proprietors or operators of restaurants, refreshment parlors, cafes and other eating places, including clubs and caterers; dealers in securities; lending investors; transportation contractors on their transport of goods or cargoes, including persons who transport goods or cargoes for hire and other domestic common carriers by land, air and water relative to their transport of goods or cargoes; services of franchise grantees of telephone and telegraph, radio and television broadcasting and all other franchise grantees except those under Section 119 of this Code; and non-life insurance companies (except their crop insurances), including surety, fidelity, indemnity and bonding companies; and similar

> services regardless of whether or not the performance thereof calls for the exercise or use of the physical or mental faculties. The phrase 'sale or exchange of services' shall likewise include:
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> xxx xxx xxx
>
> (7) The lease of motion picture films, films, tapes and discs; and
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> xxx xxx xxx
>
> SECTION 2. Section 109 of the same Code is hereby amended by rewording paragraph (l) and inserting additional paragraphs after (z) which shall now read as follows:
>
> SEC. 109. Exempt Transactions. — The following shall be exempt from the value-added tax:
>
> xxx xxx xxx
>
> (j) Services subject to percentage tax under Title V;
>
> xxx xxx xxx"

Going over the provisions of law, past and present, if it was the intention of the legislature to subject the gross receipts derived by operators of cinema/theater houses from admission tickets to VAT, it would have done so in a clear and unambiguous manner.

Apparently, the activity of showing cinematographic films had not been considered as a "service" that is to be covered by the value-added tax. Instead, it is considered as an "amusement activity" subject to amusement tax, in consonance with Section 131 of the Republic Act No. 7160, otherwise known as the Local Government Code of 1991; which defines "amusement places" as "to include theaters, cinemas, concert halls, circuses, and other

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places of amusement where one seeks admission to entertain oneself by seeing or viewing the show or performances".

Prior thereto, operators of cinemas/theaters were originally subjected to "amusement tax" under Section 260 (now Section 195) of Commonwealth Act (C.A.) No. 466[19]; the first codification of the National Internal Revenue Code of 1939. However, upon the issuance of Presidential Decree (P.D.) No. 231, otherwise known as the Local Tax Code[20], the collection from the proprietors, lessees, or operators of theaters, cinemas, concert halls, circuses and other places of amusement of the amusement tax on the paid admissions

[19] **SECTION 260.** *Amusement Taxes.* — There shall be collected from the proprietor, lessee, or operator of theaters, cinematographs, concert halls, circuses. boxing exhibitions, and other places of amusement the following taxes:

(a) When the amount paid for admission exceeds twenty centavos but does not exceed twenty-nine centavos, two centavos on each admission;
(b) When the amount paid for admission exceeds twenty-nine centavos but does not exceed thirty-nine centavos, three centavos on each admission;
(c) When the amount paid for admission exceeds thirty-nine centavos but does not exceed forty-nine centavos, four centavos on each admission;
(d) When the amount paid for admission exceeds forty-nine centavos but does not exceed fifty-nine centavos, five centavos on each admission;
(e) When the amount paid for admission exceeds fifty-nine centavos but does not exceed sixty-nine centavos, six centavos on each admission;
(f) When the amount paid for admission exceeds sixty-nine centavos but does not exceed seventy-nine centavos, six centavos on each admission;
(g) When the amount paid for admission exceeds seventy-nine centavos but does not exceed eighty-nine centavos, eight centavos on each admission;
(h) When the amount paid for admission exceeds eighty-nine centavos but does not exceed ninety-nine centavos, nine centavos on each admission; and
(i) When the amount paid for admission exceeds ninety-nine centavos, ten centavos on each admission.

In the case of theaters or cinematographs, the taxes herein prescribed shall first be deducted and withheld by the proprietors, lessees, or operators of such theaters or cinematographs and paid to the Collector of Internal Revenue before the gross receipts are divided between the proprietors, lessees, or operators of the theaters or cinematographs and the distributors of the cinematographic films.

In the case of cockpits, race tracks, and cabarets, there shall be collected from the proprietor, lessee, or operator a tax equivalent to ten per centum of the gross receipts, irrespective of whether or not any amount is charged or paid for admission: *Provided, however,* That in the case of race tracks, this tax is in addition to the privilege tax prescribed in section 193. For the purpose of the amusement tax, the term "gross receipts" embraces all the receipts of the proprietor, lessee, or operator of the amusement place, excluding the receipts derived by him from the sale of liquors, beverages, or other articles subject to specific tax, or from any business subject to tax under this Code.

[20] June 28, 1973.

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was transferred to the provincial government, to the exclusion of the national or municipal governments.[21] Corollary to this, the revisions made on the National Internal Revenue Code, particularly from the issuance of Presidential Decree (P.D.) No. 1158[22], or the NIRC of 1977, the provision imposing an "amusement tax" on the "proprietor, lessee, or operator of theaters or cinematographs" previously provided under C.A. No. 466 can no longer be found.

Subsequently, the Local Tax Code was repealed by R.A. No. 7160, or the Local Government Code of 1991. R.A. No. 7160 retained the provision on "amusement tax" and likewise authorized the local government units concerned to levy and collect from proprietors/operators of theaters and

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[21] **SECTION 11.** *Taxes Transferred.* — The imposition of the taxes provided in Sections 12, 13, 14, 15 and 16 of this Code heretofore exercised by the national government or the municipal government, shall henceforth be exercised by the provincial government, **to the exclusion of the national or municipal government**. To avoid any revenue loss, the province shall levy and collect such taxes as provided in said Sections 12, 13 and 14. (*Emphasis supplied*)

SECTION 13. *Amusement Tax on Admission.* — The province shall impose a tax on admission to be collected from the proprietors, lessees, or operators of theaters, cinematographs, concert halls, circuses and other places of amusement at the following rates:

(a) When the amount paid for admission is one peso or less, twenty per cent; and

(b) When the amount paid for admission exceeds one peso, thirty per cent.

In the case of theaters or cinematographs, the taxes herein prescribed shall first be deducted and withheld by the proprietors, lessees, or operators of the theaters or cinematographs and paid to the provincial treasurer concerned thru the municipal treasurer before the gross receipts are divided between the proprietors, lessees, or operators of the theaters or cinematographs and the distributors of the cinematographic films.

The holding of operas, concerts, dramas, recitals, painting and art exhibitions, flower shows, musical programs, literary and oratorical presentations, except film exhibitions and radio or phonographic records thereof, shall be exempt from the payment of the taxes herein imposed.

The taxes hereinabove imposed shall be due and payable within the first twenty days of the month following each quarter, by the proprietor, lessee, or operator concerned, and such taxes to be determined on the basis of a true and complete return of the amount of gross receipts derived during the preceding quarter. If the tax is not paid within the time fixed hereinabove, the taxpayer shall be subject to such surcharges, interests and penalties prescribed by this Code. In case of willful neglect to file the return and pay the tax within the time required or in case fraudulent return is filed or a false return is willfully made, the taxpayer shall be subject to a surcharge of fifty per cent of the correct amount of the tax due in addition to the interest and penalties provided by this Code.

[22] June 3, 1977.

cinemas an "amusement tax" on their gross receipts from admission tickets.

Section 140 of R.A. No. 7160 reads:

> "**SEC. 140. Amusement Tax.** — (a) **The province may levy an amusement tax to be collected from** the proprietors, lessees, or **operators of theaters, cinemas**, concert halls, circuses, boxing stadia, and other places of amusement at a rate of not more than thirty percent (30%) of the gross receipts from admission fees.
>
> (b) In the case of theaters or cinemas, the tax shall first be deducted and withheld by their proprietors, lessees, or operators and paid to the provincial treasurer before the gross receipts are divided between said proprietors, lessees, or operators and the distributors of the cinematographic films.
>
> (c) The holding of operas, concerts, dramas, recitals, painting and art exhibitions, flower shows, musical programs, literary and oratorical presentations, except pop, rock, or similar concerts shall be exempt from the payment of the tax herein imposed.
>
> (d) The sangguniang panlalawigan may prescribe the time, manner, terms and conditions for the payment of tax. In case of fraud or failure to pay the tax, the sangguniang panlalawigan may impose such surcharges, interests and penalties as it may deem appropriate.
>
> (e) The proceeds from the amusement tax shall be shared equally by the province and the municipality where such amusement places are located." (*Emphasis supplied*)

We take note from the afore-quoted provision, the deletion of the phrase "to the exclusion of both the national and municipal governments", originally found in Section 11 of P.D. No. 231, which transferred the right to levy and collect amusement taxes by the national government to the provincial government. This removal, however, did not automatically

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empower or authorize the National Government or the municipal government to levy and collect taxes on the gross receipts from admission fees collected by the operators/proprietors of theaters, cinemas and other amusement places, without the Congress enacting a statute enabling them to do so.

Equally noteworthy is the removal of the phrase "gross receipts from admission tickets collected by the owners, proprietors or operators of movie theaters or cinema houses" in the provision[23] of the NIRC of 1997 that relates to amusement tax. This is indicative of the legislature's clear intention that there will be only one form of tax to be imposed on proprietors/operators of theaters or cinemas and, that is, the "amusement tax" found in the Local Government Code. It is a well-settled principle that a tax cannot be imposed unless it is expressly provided in clear and unequivocal terms for that purpose.

Anent the applicability of Section 108 of the NIRC of 1997 to petitioner's cinema/theater activity, this Court finds the said section inapplicable.

The VAT on sales of services, from E.O No. 273 to R.A. No. 9238, remained practically unchanged, *viz.*, a valued-added tax is levied, assessed and collected on the gross receipts derived from the sale or exchange of services. The term "sale or exchange of services" has been defined as the performance of all kinds of services in the Philippines for others for a fee, remuneration or consideration. However, subsequent amendments[24] to the

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[23] Section 125, NIRC of 1997.

[24] R.A. No. 7716 "An Act Restructuring the Value-Added Tax (VAT) System, Widening its Tax Base and Enhancing its Administration and for these Purposes Amending and Repealing the Relevant Provisions of the National Internal Revenue Code , As Amended, and for Other Purposes", May

VAT law provided a modified definition of the phrase "sale or exchange of services" to mean the performance of all kinds of services in the Philippines for others for a fee, remuneration or consideration and an enumeration of the kinds of services covered. The phrase "sale or exchange of services" may have been qualified at the end of the enumerations with the phrase "and other similar services"; however, under the principle of *ejusdem generis*, "*where general words follow an enumeration of persons or things, by words of a particular and specific meaning, such general words are not to be construed in their widest extent, but are to be held as applying only to persons or things of the same kind or class as those specifically mentioned.*"[25]

While the meaning of the phrase "sales or exchange of services" remained the same; the intention of the legislature to subject to VAT specific kinds of sales of services is clear. Congress did not have the intention to use the general terms in their unrestricted sense, otherwise, it would have not have made an enumeration of particular subjects. Obviously, our tax laws, past and present, did not intend to include the showing of films in public by the owners, operators or proprietors of cinema houses or theaters as subject to value-added tax on sales of services.

Moreover, this Court's ruling that petitioner is not liable to pay value-added tax under Section 108 of the NIRC of 1997 finds support in the House of Representatives' House Resolution No. 975, submitted by the Committee

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1994; R.A. No. 8241 "An Act Amending Republic Act No. 7716, Otherwise known as the Expanded Value-Added Tax Law and Other Pertinent Provisions of the National Internal Revenue Code As Amended", January 1, 1997; R.A. No. 8424 "An Act Amending The National Internal Revenue Code, as Amended, and for Other Purposes", January 1, 1998; R.A. No. 8761 "An Act Imposing Value-Added Tax on Certain Services Beginning January 1, 2001, Amending for the Purpose Section 5 of Republic Act No. 8424 and For Other Purposes", January 1, 2000.

[25] Republic of the Philippines vs. Sandiganbayan, *et.al.*, G.R. No. 104768, July 21, 2003.

on Rules on October 11, 2005, recommending its approval by the House of Representatives as House Joint Resolution No. 13[26], which reads:

> "WHEREAS, it is imperative for the State to promote and support the development and growth of the theater and local film industry as a medium for the dissemination of aesthetic, cultural and social values for the better understanding and appreciation of the Filipino identity;
>
> WHEREAS, theaters and/or movie houses are the primary media through which the output or artistic creation of the local film industry is exhibited;
>
> WHEREAS, the viability of the cinema/theater industry is now under threat due to continuous operational losses brought about by low patronage and high taxation regime;
>
> WHEREAS, both theater owners and local movie producers are greatly prejudiced by cheaper home movie alternatives like television and cable programs, as well as by rampant film piracy which turns out inexpensive and untaxed films in VCD or DVD formats and severely undercut the cost of movie tickets;
>
> WHEREAS, the industry is now suffering from the wrong collection of two business taxes, each imposed by the national government and local government units on ticket sales;
>
> WHEREAS, when the collection of the amusement tax on admission to theaters was transferred by the old Local Tax Code of 1973 from the national government to the local government, the industry has been subject to the top rate of thirty percent (30%) amusement tax imposed by the local government units to the exclusion of the national government until the Bureau of Internal Revenue erroneously appreciated the Local Government Code of 1991 and imposed a business tax of ten percent (10%) on the same gross receipts by way of the value-added tax (VAT).
>
> WHEREAS, such erroneous interpretation of the law will result to the imposition of a total top rate of forty percent (40%) business taxes (30% local and 10% national) on gross receipts

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[26] Joint Resolution Expressing the True Intent of Congress with Respect to the Prevailing Tax Regime in the Theater and Local Film Industry Consistent with the State's Policy to have a Viable, Sustainable and Competitive Theater and Film Industry as One of its Partners in National Development, pp. 278 – 279.

which, under the circumstances, is unjust, oppressive and confiscatory;

WHEREAS, the foregoing tax imposition, which is consistent with the State's policy to have a viable, sustainable and competitive theater and film industry, will surely lead to the demise of the industry. Now, therefore, be it

Resolved, as it is hereby resolved by the House of Representatives, That it is the sense of Congress that there should only be one business tax applicable to theaters and movie houses, same being the top rate of thirty percent (30%) amusement tax imposed by cities and provinces under the Local Government Code of 1991, and that consistent with the State's policy to have a viable, sustainable and competitive theater and film industry, it is the intent of Congress under prevailing laws, that the national government be precluded from imposing its own business tax in addition to that already imposed and collected by local government units." (*Emphasis supplied*)

As regards the last issue raised, it is worthy to note that the Bureau of Internal Revenue did not simply interpret the law when it issued Revenue Memorandum Circular (RMC) No. 28-2001 entitled "Taxability of Movie/Cinema House Operators for VAT Purposes", but in fact legislated under its quasi-legislative authority which requires notice, hearing, and publication. In connection thereto, Revenue Memorandum Circular (RMC) No. 20-86 entitled "Notice, publication and effectivity of internal revenue tax rules and regulations" enjoins revenue officers strict compliance with the prescribed procedures of due notice, hearing, and publication, the pertinent portions of which read as follows:

"It has been observed that one of the problem areas bearing on compliance with internal revenue tax rules and regulations is lack or insufficiency of due notice to the tax-paying public. Unless there is due notice, due compliance therewith may not be reasonably expected. And most importantly, their strict enforcement could possibly suffer from legal infirmity in the light of the Constitutional provision on 'due process of law' and the essence of the Civil Code provision concerning effectivity of laws, whereby due notice is a basic requirement (Sec. 1, ART. IV, Constitution; ART. 2, New Civil Code).

In order that there shall be a just enforcement of rules and regulations, in conformity with the said basic element of due process, the following procedures are hereby prescribed for the drafting, issuance and implementation of the said Revenue Tax Issuances:

1. **This circular shall apply only to** (a) Revenue Regulations; (b) Revenue Audit Memorandum Orders; and (c) **Revenue Memorandum Circulars** and Revenue Memorandum Orders bearing on internal revenue tax rules and regulations.

2. **Except when the law otherwise expressly provides, the aforesaid internal revenue tax issuances shall not begin to be operative until after due notice thereof may be fairly presumed**.

Due notice of the said issuances may be fairly presumed only after the following procedures have been taken:

2.1 The Records Division of the National Office shall furnish, thru registered mail, all of the following business and professional organizations with the corresponding revenue tax issuance:

a. Philippine Institute of Certified Public Accountants;
b. Integrated Bar of the Philippines;
c. Philippine Chamber of Commerce and Industry;
d. American Chamber of Commerce;
e. Federation of Filipino-Chinese Chamber of Commerce and Industry; and cdtai
f. The Japanese Chamber of Commerce & Industry of the Philippines, Inc.

2.2 The provisions of paragraph 2.1 shall not be deemed an exclusion of other person or persons who may request for a copy of the corresponding revenue issuance from the Bureau of Internal Revenue.

2.3 **The Bureau shall issue a press release about the new revenue issuance in any newspaper or newspapers of general**

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> **circulation. The press release shall cover the highlights or features thereof.**
>
> 2.4 **Effectivity date for enforcement of the new revenue issuance shall take place thirty (30) days from the date the revenue issuance has been sent thru registered mail to the organizations enumerated under paragraph 2.1 hereof.**
>
> 3. xxx.
>
> 4. **Proof of (a) mailing of the revenue issuance to the organizations enumerated under paragraph 2.1 hereof, and (b) copy of the required press release, shall be attached to the original copy of the revenue issuance, which shall be filed by the Records Division for future reference.**
>
> 5. **Strict compliance with the foregoing procedures is enjoined.**" *(Emphasis Supplied)*

From the foregoing, it is clear that non-compliance therewith renders the revenue issuance/s inoperative.

In the case at bench, there is no showing that the required notice, hearing and publication in accordance with RMC No. 20-86 has been complied with. Therefore, RMC No. 28-2001 cannot be given force and effect. Consequently, respondent cannot subject petitioner's gross receipts derived from their cinemas/theaters admission ticket sales under RMC No. 28-2001.

WHEREFORE, premises considered, the instant Petition for Review is hereby **GRANTED**. Accordingly, respondent's Decision denying petitioner's protest letters against its alleged deficiency value-added taxes on gross receipts derived from its cinema/theater admission ticket sales for the taxable years 2002 and 2003 is hereby **REVERSED**. Effectively, Assessment Notice Nos. 011-02 and 005-03 in the amounts of P136,780,636.10 and

P127,695,049.30, respectively, are hereby **ORDERED CANCELLED and SET ASIDE**.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

ATTESTATION

I attest 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.

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, 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.

ERNESTO D. ACOSTA
Presiding Justice