REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

THE CITY GOVERNMENT OF TAYABAS, represented by HON. ERNIDA A. REYNOSO, City Mayor, BRENDA SUMALABE, City Assessor, RENATO CALUPIG, City Treasurer, MARK JAY SUMILANG, Business Permit and Licensing Officer, *Petitioner,*	**CTA AC No. 254**
	Members:
-versus-	**BACORRO-VILLENA,** *Acting Chairperson, and* **CUI-DAVID,** JJ.
ST. JUDE MULTI-PURPOSE COOPERATIVE, represented by its Manager, MELANIE FONTARUM, *Respondent.*	Promulgated: SEP 06 2023 3:40 p.m.

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DECISION

CUI-DAVID, J.:

Before this Court is a *Petition for Review* filed on October 20, 2021, by petitioner, The City Government of Tayabas[1] (**"Petitioner"**), against respondent, St. Jude Multi-Purpose Cooperative (**"Respondent"**), under Section 3(a), Rule 8,[2] in

[1] Dated July 23, 2019, received by the Court on July 26, 2019; Docket – Vol. 1, pp. 12-23.
[2] *Section 3. Who May Appeal; Period to File Petition.* — (a) A party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes,

relation to Section 3(a)(3), Rule 4[3] of the Revised Rules of the Court of Tax Appeals[4] ("**RRCTA**"). Petitioner assails the *Decision* of Branch 167 of the Regional Trial Court of Lucena City, Quezon Province ("**RTC**") partially granting respondent's *Petition* for Prohibition and Mandamus ("**assailed *Decision***") and the *Order* denying petitioner's *Motion for Reconsideration* ("**assailed *Order***").

THE PARTIES

Petitioner is the City Government of Tayabas, represented by Hon. Ernida A. Reynoso, former City Mayor,[5] Brenda Sumalabe, City Assessor, Renato Calupig, City Treasurer, and Mark Jay Sumilang, Business Permit and Licensing Officer. The representatives are all acting in their official capacities as officers of the Local Government of Tayabas City. All have their official address at Tayabas Municipal Hall, J.P. Rizal Street, Tayabas City.[6]

Respondent is St. Jude Multi-Purpose Cooperative, a primary cooperative, duly registered with the Cooperative Development Authority ("**CDA**") with Registration No. 9520-04000409.[7] Respondent is represented by Ms. Melanie Fontarum, its General Manager, with principal office at Purok Tulungan, Brgy. Cotta, Lucena City.[8]

THE FACTS

Petitioner is the registered owner of a property located at Barangay Isabang, Tayabas City, where one of its businesses, St. Jude Coop Hotel and Event Center ("**Coop Hotel**") is located and doing business. The Coop Hotel is also registered with the CDA under Letter of Authority No. LA-40000000101 dated January 4, 2017.

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or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes.

[3] *Section 3. Cases Within the Jurisdiction of the Court in Divisions.* — The Court in Divisions shall exercise:
(a) Exclusive original or appellate jurisdiction to review by appeal the following:
(3) Decisions, resolutions or orders of the Regional Trial Courts in local tax cases decided or resolved by them in the exercise of their original jurisdiction

[4] A.M. No. 05-11-07-CTA.

[5] Current mayor of Tayabas City is Maria Lourdes R. Pontioso, former Vice Mayor of Tayabas City.

[6] *Petition for Review*, p. 2.

[7] *Petition*, p.1, RTC Records, p. 4.

[8] *Id.*, p. 3.

We quote the RTC in its narration of facts:

> On May 13, 2016, the Business Permit and Licensing Office ("**BPLO**") of the City of Tayabas, assessed [respondent] for the business permit to operate the Coop Hotel, in the amount of P38,268.36. [Respondent] was likewise assessed a property tax in the amount of P182,793.00. [Respondent] paid said amounts under protest, otherwise, [petitioner] will not issue the required business permit of the Coop Hotel. In 2017, [respondent] again applied for a business permit to operate said Coop Hotel and was assessed a business tax in the amount of P7,538.50. The central office of the CDA, having issued a Memorandum Circular on the exemption of registered cooperatives from the payment of local taxes, fees, and charges, [respondent] sent a demand letter for refund of the business and property taxes it paid to the [petitioner] under protest. The Office of the City Treasurer of Tayabas City replied that it will conduct an examination and verification of the actual transaction of the [respondent] before it will decide on the refund. A copy of the Report on the examination and verification from the City Treasurer of Tayabas City recommended the refund of the property tax paid under protest but not the business tax paid. [Respondent] sent another demand letter for the refund of the real property tax paid but in a letter dated September 26, 2017, the office of the Local Chief Executive of Tayabas City replied that no refund can be granted due to an ongoing review of the Report. In the same year, [respondent] was assessed by the City Treasurer of Tayabas City realty taxes of P1,264,609.44 for the years 2015 to 2017 on its land where the Coop Hotel is operating. [Respondent] reiterated its demand for a refund instead. In 2018, petitioner applied for renewal of business permit and unlike in 2017, no assessment of realty and business tax was made by the [petitioner]. In 2019, [Respondent] again applied for business permit for the operation of the Coop Hotel but was assessed with business and realty taxes. Despite the endorsement of the CDA Regional Director for the tax exemption privileges of registered cooperatives, the City Treasurer of Tayabas City came up with a Business Tax Billing Statement of real properties and business tax (of the Coop Hotel) for the year 2019 in the amount of P989,142.50. As [petitioner] refused to issue a business permit unless it pays the assessed business tax, [respondent] again paid the assessed amount under protest. [Respondent] refused to pay the realty tax of P3,074,806.38 assessed for the years 2015 to 2019 and again sent a demand letter for refund of the taxes paid under protest in 2016 and 2019. The letter reply, jointly signed by private respondents BPLO Mark Jay B. Sumilang, City Treasurer Renato P. Calupig, City Assessor and noted by City Mayor Ernida Agpi Reynoso, stated that "the matter (refund) cannot be acted upon at the moment, pending resolution by the Bureau of Local Government Finance ("**BLGF**") of the relevant issues that we elevated to the said

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> Bureau thru a letter dated 22 May, 2019, a photo is herewith attached". On November 19, 2019, [petitioner], through a letter jointly signed by BPLO Mark Jay B. Sumilang, City Treasurer Renato P. Calupig, City Assessor Brenda B. Sumalabe and noted by City Mayor Ernida Agpi Reynoso, demanded from [respondent] the payment of alleged unpaid business tax (of P176,989.22) for the year 2019. In January 2020, [respondent] applied for the renewal of the Coop Hotel's business permit, but the City Treasurer of Tayabas issued a January 21, 2020 Business Tax Billing Statement requiring the [respondent] to pay business tax (for 2020) in the amount of P192,357.12. [*Brackets supplied.*]

On March 6, 2020, respondent filed a *Petition* for Mandamus and Prohibition, and Permanent Injunction with a prayer for the issuance of temporary restraining order before the RTC Branch 167, Lucena City. The case was docketed as Special Civil Action Case No. 2020-03.

An *Answer* dated July 2, 2020, was then filed by petitioner.[9]

Petitioner filed its *Memorandum* on July 6, 2020,[10] and respondent filed its *Memorandum* on July 21, 2020.[11] The RTC submitted the case for decision in an *Order* dated February 15, 2021.[12]

On May 12, 2021, the RTC promulgated a *Decision*, partially granting respondent's *Petition*. The dispositive portion reads:

> WHEREFORE, the Petition for Prohibition and Mandamus is Partially Granted. [Petitioner] is hereby perpetually enjoined and prohibited from further assessing and collecting business taxes from [respondent] in accordance with the provisions of Republic Act Numbers 9520 and 7160 and shall refund the [Respondent] the business taxes paid in 2016, 2017, 2019 and 2020 in the total amount of One Million Two Hundred Twenty-One Thousand Three Hundred Six Pesos and Forty-eight centavos (Php 1,221,306.48) plus six percent (6%) per annum legal interest, reckoned from the time of finality of this Decision until fully paid.
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> There being no compliance with Section 206 of Republic Act No. 7160, the Petition for Prohibition and Mandamus on the assessment and collection of Real Property Tax is Denied.

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[9] RTC Records, pp. 154-170.
[10] RTC Records, pp. 225-251.
[11] RTC Records, pp. 183-189.
[12] RTC Records, pp. 486-493.

> The award of exemplary damages, attorney's fees and cost of suit is likewise Denied.
>
> SO ORDERED. [*Brackets supplied.*]

On August 17, 2021, the RTC promulgated the assailed *Order*, partially granting respondent's *Motion for Reconsideration* while denying petitioner's *Motion for Reconsideration*. The dispositive portion reads:

> WHEREFORE, in view of all the foregoing, considering the express exemption granted, specifically under Section 61 (3) of R.A. No. 9520, and R.A No. 7160, [Petitioners'] Motion for Reconsideration is denied.
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> [Respondent's] Motion for Reconsideration is partially granted. The assailed May 12, 2021 Decision is affirmed with the following modification in the dispositive portion-
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>> "WHEREFORE, the Petition for Prohibition and Mandamus is Partially Granted. [Petitioner] is hereby perpetually enjoined and prohibited from further assessing and collecting business taxes from [respondent] in accordance with the provisions of Republic Act Numbers 9520 and 7160 and shall refund the [Respondent] the business taxes paid in 2016, 2017, 2019, 2020 <u>and (Fist [sic] and Second Quarter of) 2021</u> in the total amount of <u>One Million, Five Hundred Twenty-One Thousand, Eight Hundred Fifty-Six Pesos and Forty-three centavos (Php 1,521,856.43)</u> plus six percent (6%) per annum legal interest, reckoned from the time of finality of this Decision until fully paid.
>>
>> There being no compliance with Section 206 of Republic Act No. 7160, the Petition for Prohibition and Mandamus on the assessment and collection of Real Property Tax is Denied. The award of exemplary damages, attorney's fees and cost of suit is likewise Denied."
>>
>> SO ORDERED. [*Brackets supplied.*]

PROCEEDINGS BEFORE THE COURT

On October 20, 2021, the Court received petitioner's *Petition for Review (Appellant's Brief)* posted on September 15, 2021.[13]

[13] Docket, pp. 6-37.

On November 12, 2021, the Court promulgated a *Resolution* ordering petitioner to take appropriate action regarding the observations of the Court on the *Petition for Review.*[14]

With this, on March 3, 2022, the Court received petitioner's *Compliance.*[15]

On March 16, 2022, the Court promulgated a *Resolution*[16] noting petitioner's *Compliance.* On the same *Resolution,* respondent was ordered to comment and the Branch Clerk of Court of RTC Branch 167, Lucena City, was directed to elevate the entire original records of Special Civil Action No. 2020-03 to this Court.

On May 20, 2022, the Court received respondent's *Comment (on the Petition for Review (Appellant's Brief).* [17] However, considering that only one (1) copy was received by the Court, respondent was ordered to file three (3) additional copies through a *Minute Resolution* dated May 27, 2022.[18]

On June 1, 2022, the Court received the photocopy of *RTC Records.*[19] The Officer-in-Charge/Clerk III of the RTC stated that they could not submit the original case records as such have been elevated to the Court of Appeals following an appeal filed by respondent. Related thereto, on June 17, 2022, the Branch Clerk of Court of the RTC was ordered to submit the certified true copy of the entire case records of Special Civil Action No. 2020-03.[20]

On July 5, 2022, the Court received petitioner's *Reply to the Comment by St. Jude Multi-Purpose Cooperative.*[21]

On August 9, 2022, the Court received respondent's *Comment [on the Petition for Review (Appellant's Brief)],*[22] and respondent's *Compliance (of the Order quoted in the Minute Resolution dated May 27, 2022)* with attached three (3) additional copies of *Comment (on the Petition for Review).*[23]

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[14] *Id.*, pp. 84-86.
[15] *Id.*, pp. 87-88.
[16] *Id.*, pp. 129-130.
[17] *Id.*, pp. 132-137.
[18] *Id.*, p. 145.
[19] *Id.*, p. 147.
[20] *Id.*, pp. 157-158.
[21] *Id.*, pp. 160-166.
[22] *Id.*, pp. 167-168.
[23] *Id.*, pp. 169-170.

On August 16, 2022, a *Transmittal Letter* forwarding the certified true copy of the entire case records of Special Civil Action No. 2020-03 was filed.[24]

The case was then submitted for decision on September 6, 2022.[25]

Hence, this *Decision*.

ISSUES

Petitioner assigned the following errors in its *Petition for Review*:

I. The Regional Trial Court erred in concluding that the City Government of Tayabas was perpetually enjoined and prohibited by Mandamus and Prohibition from further assessing and collecting business taxes from St. Jude Multi-Purpose Cooperative (SJMPC for brevity) in accordance with Article 61 paragraph 2 and 3 of Republic Act no. 9520 without taking the following considerations:

A. The uncontradicted facts that SJMPC was transacting business with members and non-members and has accumulated reserves and undivided net savings which exceeded ten million pesos (P 10,000,000.00).

B. The power to tax businesses granted to local government units like the City of Tayabas under the provision of Article 143(h) of the 1991 Local Government Code (Republic Act no. 7160), allowing the imposition of percentage tax on sales and services vis-å-vis the national government.

II. The Regional Trial Court erred in its interpretation that cooperatives dealing with non-members with undivided net savings and accumulated reserves of more than Ten Million Pesos (P 10,000,000.00), are liable to pay national taxes exclusively such as income tax, value-added tax, donations and all other taxes as mentioned under Article 61(2)(c) at full rate, to the exclusion of local taxes in the enumeration of all other taxes.

[24] *Id.*, p. 184.
[25] *Id.*, pp. 185-186.

III. The Regional Trial Court erred in granting the refund of business taxes for the years 2016, 2017, 2019, and 2020 to St. Jude Multi-Purpose Cooperative despite the failure of St. Jude Multi-Purpose Cooperative to file a refund within the reglementary period as prescribed under Sections 195 and 196 of the 1991 Local Government Code.

IV. The Regional Trial Court ruled that the respondent committed gross abuse of discretion, manifest injustice, or palpable excess of authority to justify the applicability of the writ of mandamus as remedy to stop the assessment and collections of business tax but not the real property tax.

PETITIONER'S ARGUMENTS

Petitioner maintains that every local government unit ("**LGU**"), including petitioner, is vested with the constitutional right to impose and collect taxes. It further forwards that exemption from taxation is never presumed and shall be construed against the one who asserts the claim of exemption.

Anent its first assignment of error, petitioner alleges that respondent merely invokes that it is a duly registered cooperative as the basis for its exemption. However, petitioner argues that the same "cannot be granted as exempted cooperatives unless and until it secures a Certificate of Tax Exemption in consonance with Joint Rules and Regulations for Articles 60, 61, and 144 of Republic Act ("**RA**") No. 9520[26] and RMO No. 076-2010.[27] [*sic*]"

Petitioner further argues that there must be a determination as to "whether the cooperative has transacting business actually and exclusively with members only, and with both members and non-members and whether the accumulated reserves and undivided net savings exceeds or not exceeds ... P10,000,000.00. [*sic*]" Petitioner alleges that no documentary evidence as to its exemption was filed by respondent.

Petitioner also points out that respondent is not exempted from paying local taxes on transactions with non-members and the general public, for being contrary to its charter and being outside the exemption provided under Article 61 of RA No. 9520.

[26] Philippine Cooperative Code of 2008, February 17, 2009.
[27] Prescribing the Policies and Guidelines in the Issuance and Monitoring of Certificate of Tax Exemption of Cooperatives, September 27, 2010.

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According to petitioner, respondent may be taxed under Section 143(h) of the Local Government Code ("**LGC**").

Petitioner argues that RA No. 9520 will prevail over the LGC. Petitioner posits that RA No. 9520 is a special law and the LGC is a general law. According to petitioner, RA No. 9520 should be regarded as the exception to or a qualification of the LGC.

Anent its second assignment of error, petitioner alleges that the term "other tax laws" as mentioned in Articles 60 and 61 of RA No. 9520 shall be interpreted to include local taxes and not just national taxes.

Anent its third assignment of error, petitioner alleges that the RTC erred in granting the refund of business taxes for the years 2016, 2017, 2019, and 2020, considering that respondent did not follow the procedure provided under Sections 195 and 196 of the LGC. According to petitioner, following the periods provided under Sections 195 and 196 of the LGC, petitioner's claim has already lapsed.

Anent its fourth assignment of error, petitioner argues that there is no evidence of gross abuse of discretion, manifest injustice, or palpable excess of authority to justify the assailed *Decision*. Petitioner makes known its effort of coordinating with the BLGF about the taxability of respondent. Petitioner also argues that the local treasurer is authorized by the LGC to examine respondent's books.

RESPONDENT'S ARGUMENTS

Anent petitioner's first and second assignment of errors, respondent quotes the RTC in stating that there is no necessity to determine the amount of accumulated reserves and undivided net savings as Article 61 of RA No. 9520 exempts respondent from the payment of local taxes. Further, respondent asserts that percentage taxes are outside of the power of the LGU to impose as provided under Section 133 of the LGC.

Anent petitioner's third assignment of errors, respondent states that petitioner "may have missed the fact that in the years that respondent was assessed business taxes, [respondent has] filed a formal letter of protest with the City

Treasurer before the payment of business tax" to which petitioner even responded.

Anent petitioner's fourth assignment of errors, petitioner argues that the writ of mandamus and prohibition is the proper remedy to stop or enjoin petitioner from further assessing and collecting business tax from respondent.

RULING OF THE COURT

The *Petition* is partly meritorious.

The Court has jurisdiction over the instant Petition.

Before the Court delves into the merits of the case, We shall first resolve whether the *Petition* was timely filed.

Section 7(a)(3) of RA No. 9282,[28] amending RA No. 1125,[29] reads:

> Section 7. *Jurisdiction.* — The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
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> ... ...
>
> **(3) <u>Decisions, orders or resolutions of the Regional Trial Courts in local tax cases</u>** originally decided or resolved by them in the exercise of their original or appellate jurisdiction [*Emphasis and underscoring supplied.*]

Section 3(a)(3), Rule 4 of the RRCTA implementing the above provision states:[30]

> Section 3. *Cases within the jurisdiction of the Court in Division.* — The Court in Division shall exercise:
>
> (a) Exclusive original or appellate jurisdiction to review by appeal the following:
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> ... ...

[28] An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating Its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging Its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, as Amended, Otherwise Known as the Law Creating the Court of Tax Appeals, and for Other Purposes, 30 March 2004.
[29] An Act Creating the Court of Tax Appeals, 16 June 1954.
[30] A.M. No. 05-11-07-CTA, 22 November 2005.

> (3) **Decisions, resolutions or orders of the Regional Trial Courts in local tax cases** decided or resolved by them in the exercise of their original jurisdiction [*Emphasis and underscoring supplied.*]

Records show that the assailed *Order* was received by petitioner on August 18, 2021. Under Section 3(a), Rule 8[31] of the RRCTA, petitioner had thirty (30) days from receipt of the denial of its *Motion for Reconsideration* on August 18, 2021, or until September 17, 2021, to file a *Petition for Review* before the CTA.

Petitioner posted its *Petition of Review* on September 15, 2021,[32] which is within the reglementary period.

Having settled that the *Petition* was timely filed, We likewise rule that We have the requisite jurisdiction to take cognizance of this case under Section 3(a)(3), Rule 4[33] of RRCTA.

We now proceed to the merits of the case.

Respondent, being a duly registered cooperative, is exempt from real property tax and local business tax.

We deem it proper to discuss the first and second assigned errors jointly, as they are interrelated.

Section 133(n) of the LGC, as amended, provides for the cooperative's exemption from *local business taxes*, to wit:

> Section 133. Common Limitation on the Taxing Powers of Local Government Units. —

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[31] Section 3. Who May Appeal; Period to File Petition. — (a) A party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes.
[32] Docket, p. 81.
[33] Section 3. Cases Within the Jurisdiction of the Court in Divisions. — The Court in Divisions shall exercise:
(a) Exclusive original or appellate jurisdiction to review by appeal the following:
(3) Decisions, resolutions or orders of the Regional Trial Courts in local tax cases decided or resolved by them in the exercise of their original jurisdiction.

Unless otherwise provided herein, the exercise of the taxing powers of provinces, cities, municipalities, and barangays shall *not* extend to the levy of the following:

. . . (n) Taxes, fees, or charges on Countryside and Barangay Business Enterprises and **<u>cooperatives duly registered</u>** . . . [*Emphasis and underscoring supplied.*]

On the other hand, Section 234 of the same law provides for the cooperative's exemption from *real property taxes*, to wit:

Section 234. Exemptions from Real Property tax. —

The following are exempted from payment of the real property tax:

. . . (d) **<u>All real property owned by duly registered cooperatives as provided for under R.A. No. 6938</u>**; . . ."

Finally, Article 61 of RA No. 9520[34] provides in more detail the exemptions afforded to cooperatives. Thus:

ART. 61. Tax and Other Exemptions. — Cooperatives transacting business with both members and non-members shall not be subject to tax on their transactions with members. In relation to this, the transactions of members with the cooperative shall not be subject to any taxes and fees, including but not limited to final taxes on members' deposits and documentary tax. Notwithstanding the provisions of any law or regulation to the contrary, such cooperatives dealing with nonmembers shall enjoy the following tax exemptions:

"(1) Cooperatives with accumulated reserves and undivided net savings of not more than Ten million pesos (P10,000,000.00) shall be *exempt* from all national, city, provincial, municipal or barangay taxes of whatever name and nature. Such cooperatives shall be exempt from customs duties, advance sales or compensating taxes on their importation of machineries, equipment and spare parts used by them and which are not available locally as certified by the Department of Trade and Industry (DTI). All tax-free importations shall not be sold nor the beneficial ownership thereof be transferred to any person until after five (5) years, otherwise, the cooperative and the transferee or assignee shall be solidarily liable to pay twice the amount of the imposed tax and/or duties.

"(2) Cooperatives with accumulated reserves and undivided net savings of more than Ten million pesos (P10,000,000.00) shall pay the following taxes at the full rate:

[34] *Supra* at note 26.

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"(a) Income Tax — ...;

"(b) Value-Added Tax — ...;

"(c) All other taxes unless otherwise provided herein; and

"(d) ...

"(3) **All cooperatives, regardless of the amount of accumulated reserves and undivided net savings shall be exempt from payment of local taxes and taxes on transactions with banks and insurance companies**: Provided, **That all sales or services rendered for non-members shall be subject to the applicable percentage taxes except sales made by producers, marketing or service cooperatives**: Provided, further, That nothing in this article shall preclude the examination of the books of accounts or other accounting records of the cooperative by duly authorized internal revenue officers for internal revenue tax purposes only, after previous authorization by the Authority. [*Emphasis and underscoring supplied.*]

With the above-quoted provisions, cooperatives are exempt from the payment of local business taxes and real property taxes, both under the LGC and under RA No. 9520.[35]

This is supported by the interpretations of administrative agencies. In the Department of Interior and Local Government ("**DILG**") Memorandum Circular No. 120-10,[36] the DILG noted these exemptions, and only provided that cooperatives are liable for the following:

1. Obtain or secure a Mayor's permit and pay the commensurate cost of regulation, inspection and surveillance of the operation of its business but not exceeding One Thousand Pesos (₱1,000.00);

2. Secure a Community Tax Certificate, as a juridical entity and pay the basic tax of Five Hundred Pesos (₱500.00); and

3. Pay service charges or rentals for the use of property and equipment or public utilities owned by the local government such as charges for actual water consumption, electric power, toll fees for the use of public roads and bridges, and the like.

[35] *Supra* at note 26.
[36] Exemption of Duly Registered Cooperatives from Payment of Applicable Taxes, Fees and Charges, October 20, 2010.

Even more compelling is BLGF Opinion No. 026-2016 CO-LFPS-PPPSD, entitled Tax Exemption Privileges of St. Jude Multi-Purpose Cooperative of Lucena City, issued on September 16, 2016, specifically for respondent. The *Opinion* provides:

> Premises considered, it is our view that, **irrespective of the amount of accumulated reserves and undivided net savings, the SJMPC enjoys the tax exemption privileges afforded to it by law**.
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> However, it is reiterated that said cooperative and all cooperatives registered with the Cooperative Development Authority are required to secure Mayor's permit and Community Tax Certificate, and pay the corresponding fees provided under BLGF MC No. 31-2009, which was reinstated under BLGF MC No. 58-2012 dated 20 August 2012, thus:
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> ... ...
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> Further, it is respectfully informed that this Bureau, through a letter of even date addressed to the City Treasurer of Tayabas City, instructed to verify the actual transactions of SJMPC. The instruction was given to determine the veracity of SJMPC's representation that it is doing business exclusively with its members. Once the examination is concluded, a report together with the supporting documents must be submitted the soonest possible time to this Bureau.
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> Thus, this opinion is rendered without prejudice to the outcome of the examination to be conducted by the Office of the City Treasurer of Tayabas City. If the exclusivity of the transactions of the cooperative is proven to the contrary, then the appropriate tax treatment would be applied accordingly. [*Emphasis and underscoring supplied.*]

Petitioner points out that BLGF Opinion No. 026-2016 CO-LFPS-PPPSD seems to condition respondent's exemption on the fact that respondent only has sales to its members. In addition, petitioner forwards its theory that the exemption under Section 61(3) of RA No. 9520[37] is conditioned on the fact that the sale of respondent will be exclusive to its members.

Petitioner fails to convince the Court.

For ease of reference, We quote again Section 61(3) of RA No. 9520:

[37] *Supra* at note 26.

> ART. 61. Tax and Other Exemptions. — Cooperatives transacting business with both members and non-members **shall not be subject to tax on their transactions with members**. In relation to this, the transactions of members with the cooperative shall not be subject to any taxes and fees, including but not limited to final taxes on members' deposits and documentary tax. Notwithstanding the provisions of any law or regulation to the contrary, **such cooperatives dealing with nonmembers shall enjoy the following tax exemptions**:
>
> "(1) ... ...
>
> "(2) ... ...
>
> "(3) **All cooperatives, regardless of the amount of accumulated reserves and undivided net savings shall be exempt from payment of local taxes and taxes on transactions with banks and insurance companies**: Provided, **That all sales or services rendered for non-members shall be subject to the applicable percentage taxes except sales made by producers, marketing or service cooperatives**: Provided, further, That nothing in this article shall preclude the examination of the books of accounts or other accounting records of the cooperative by duly authorized internal revenue officers for internal revenue tax purposes only, after previous authorization by the Authority. [*Emphasis and underscoring supplied.*]

From the structure of the quoted provision, sales of a cooperative to its members are exempted from taxes. However, cooperatives dealing with non-members may still enjoy specific tax exemptions. Considering that respondent failed to show that its accumulated reserves and undivided net savings are below ₱10,000,000, the exemption found under Section 61(3) above is applicable.

Accordingly, respondent is **exempt from local taxes**. The proviso in Section 61(3) of RA No. 9520 that "all sales or services rendered for non-members shall be **subject to the applicable percentage taxes** except sales made by producers, marketing or service cooperatives" does not pertain to local business tax, but pertains to percentage tax under the NIRC. Nowhere in the LGC did the law pertain to local business taxes as "percentage taxes." Hence, We cannot construe the proviso allowing the imposition of percentage tax as granting petitioner the power to impose local business taxes on a cooperative selling to non-members such as respondent herein.

Anent respondent's exemption from real property taxes, it has already been settled by the Supreme Court in *Provincial Assessor of Agusan Del Sur vs. Filipinas Palm Oil Plantation, Inc.*[38] that "all real property owned by cooperatives" are exempt "without distinction." The Supreme Court continues that "nothing in the law suggests that the real property tax exemption only applies when the property is used by the cooperative itself. Similarly, the instance that the real property is leased to either an individual or corporation is not a ground for withdrawal of tax exemption."

Petitioner argues that respondent failed to secure a Certificate of Tax Exemption under the Joint Rules and Regulations for Articles 60, 61, and 144 of RA No. 9520 ("**Joint Rules**")[39] and RMO No. 76-2010.[40]

Petitioner's contention is unmeritorious.

The said Joint Rules and RMO No. 76-2010 pertain to the requirement to avail of tax incentives involving national taxes administered by the Bureau of Internal Revenue ("**BIR**"). This conclusion is supported by the provisions of the Joint Rules and RMO No. 76-2010. Section 8 of the Joint Rules only enumerates national taxes, without reference to local taxes, [41] while Section

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[38] G.R. No. 183416, October 5, 2016, 796 PHIL 547-573.
[39] Dated February 5, 2010.
[40] Prescribing the Policies and Guidelines in the Issuance and Monitoring of Certificate of Tax Exemption of Cooperatives, September 27, 2010.
[41] SECTION 8. Taxability/Exemption of Duly Registered Cooperatives Which Transact Business with Members and Non-Members. —
a) Cooperatives with accumulated reserves and undivided net savings of not more than Ten Million (Php10,000,000.00) — Exemption from all national internal revenue taxes for which these cooperatives are liable as enumerated under Section 7 of this Joint Rules and Regulations.
b) Cooperatives with accumulated reserves and undivided net savings of more than Ten Million Pesos (Php10,000,000.00)
b.1) Business transactions with members — Business activities engaged in by such cooperatives with its members where said cooperative generates revenues shall be exempt from all national internal revenue taxes for which it is liable as enumerated in Section 7 of this Joint Rules and Regulations;
b.2) Business transactions with non-members — Cooperatives with accumulated reserves and undivided net savings of more than Php10,000,000.00 which transact with non-members shall:
b.2.1) Pay the following taxes at the full rate:
b.2.1.1) Income Tax — On the amount allocated for interest on capitals: Provided, That the same tax is not consequently imposed on interest individually received by the members. The tax base for all cooperatives liable to income tax shall be the net surplus arising from the business transactions with non-members after deducting the amounts for the statutory reserve funds as provided for in the Cooperative Code and other laws.

b.2.1.2) Value Added Tax (VAT) — On transactions with non-members: Provided, however, That cooperatives, pursuant to Section 109, par. (L), (M) and (N) of the NIRC, as amended by RA 9337, shall be exempt from the imposition of VAT, namely the following:
i. Sales by agricultural cooperatives duly registered and in good standing with the CDA to their members, as well as sale of their produce, whether in its original state or processed form, to non-members, their importation of direct farm inputs, machineries and equipment, including spare parts thereof, to be used directly and exclusively in the production and/or processing of their produce (Sec. 109 (1) (L) of the NIRC, as amended).
... ...
ii. Gross receipts from lending activities by credit or multi-purpose cooperatives duly registered with the CDA (Sec. 109 (1) (M) of the NIRC, as amended); or

12 thereof provides that it is the BIR that will issue the Certificate of Tax Exemption.[42] Further, RMO No. 76-2010 is an issuance of the BIR, an agency that does not concern itself with the assessment and collection of local taxes by the LGUs.

Therefore, reliance on the Joint Rules and RMO No. 76-2010 to require respondent herein to secure a Certificate of Tax Exemption for purposes of exemption for local tax purposes is utterly misplaced.

From the foregoing, We rule that respondent is exempt from local business tax and real property taxes.

Respondent failed to comply with the administrative remedies set forth under the LGC.

Having ruled in favor of respondent's exemption from the taxing power of petitioner, We proceed to the determination of whether the RTC is correct in entertaining respondent's petition and partially granting such by entitling respondent to a refund of the taxes it paid to petitioner.

By way of recall, respondent filed a petition for mandamus, prohibition, and permanent injunction before the RTC. Petitioner argues that respondent did not follow the procedures outlined under Sections 195, 196, 226, 229(c), and 252 of the LGC.

We find for petitioner.

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iii. Sales by non-agricultural, non-electric and non-credit cooperatives duly registered with the CDA: Provided, That the share capital contribution of each member does not exceed fifteen thousand pesos (P15,000) and regardless of the aggregate capital and net surplus ratably distributed among members (Sec. 109 (1) (N) of the NIRC, as amended); or
iv. Transactions of cooperatives as may be deemed VAT-exempt under the NIRC.
b.2.1.3) Percentage Tax — all sales of goods and/or services rendered to non-members shall be subject to the applicable percentage taxes imposed by Title V of the NIRC, as amended, except sales made by producers, marketing or service cooperatives;
b.2.1.4) All other Internal Revenue Taxes unless otherwise provided by the law; and
b.2.2) Be entitled to limited or full deductibility of donations to duly accredited charitable, research and educational institutions and reinvestment to socio-economic projects within the area of operation of such cooperative. TAacIE
b.2.3) Pursuant to Article 61 (3) be entitled to an exemption on taxes on transactions with insurance companies and banks, including but not limited to 20% final tax on interest deposits and 7.5% final income tax on interest income derived from a depository bank under the expanded foreign currency deposit system.

[42] SECTION 12. Certificate of Tax Exemption/Ruling. — All cooperatives which were issued a new certificate of registration by the CDA in compliance to Article 144 (1) of RA 9520 and subsequent new cooperatives to be registered under the same Act shall secure their certificate of tax exemption from the BIR by way of confirmatory ruling to be issued by the Regional Director or by the Assistant Commissioner of Internal Revenue (ACIR), Legal Service, as the case may be, in accordance with the delegated authority granted to them by RDAO No. 3-2009. ...

First, We examine respondent's compliance with the procedure laid down in the LGC for a claim for refund of erroneously paid or illegally collected tax, fee, or charge.

Sections 195 and 196 of the LGC provide:

> Section 195. Protest of Assessment. - When the local treasurer or his duly authorized representative finds that correct taxes, fees, or charges have not been paid, he shall issue a notice of assessment stating the nature of the tax, fee, or charge, the amount of deficiency, the surcharges, interests and penalties. Within sixty (60) days from the receipt of the notice of assessment, the taxpayer may file a written protest with the local treasurer contesting the assessment; otherwise, the assessment shall become final and executory. The local treasurer shall decide the protest within sixty (60) days from the time of its filing. If the local treasurer finds the protest to be wholly or partly meritorious, he shall issue a notice cancelling wholly or partially the assessment. However, if the local treasurer finds the assessment to be wholly or partly correct, he shall deny the protest wholly or partly with notice to the taxpayer. The taxpayer shall have thirty (30) days from the receipt of the denial of the protest or from the lapse of the sixty (60) day period prescribed herein within which to appeal with the court of competent jurisdiction otherwise the assessment becomes conclusive and unappealable.
>
> Section 196. Claim for Refund of Tax Credit. - No case or proceeding shall be maintained in any court for the recovery of any tax, fee, or charge erroneously or illegally collected until a written claim for refund or credit has been filed with the local treasurer. No case or proceeding shall be entertained in any court after the expiration of two (2) years from the date of the payment of such tax, fee, or charge, or from the date the taxpayer is entitled to a refund or credit.

In the *City of Manila vs. Cosmos Bottling Corporation*[43] (*Cosmos*), the Supreme Court distinguished Sections 195 and 196 of the LGC in this wise:

> [Section 195] provides the procedure for contesting an assessment issued by the local treasurer; whereas [Section 196] provides the procedure for the recovery of an erroneously paid or illegally collected tax, fee or charge. Both Sections 195 and 196 mention an administrative remedy that the taxpayer should first exhaust before bringing the appropriate action in court. **In Section 195, it is the written protest with the local treasurer that constitutes the administrative remedy**; while **in Section 196, it is the written claim for refund or credit with the same office**. As to form, the law

[43] G.R. No. 196681, June 27, 2018.

does not particularly provide any for a protest or refund claim to be considered valid. It suffices that the written protest or refund is addressed to the local treasurer expressing in substance its desired relief. The title or denomination used in describing the letter would not ordinarily put control over the content of the letter.

Obviously, the application of **Section 195 is triggered by an assessment made by the local treasurer or his duly authorized representative for nonpayment of the correct taxes, fees or charges.** Should **the taxpayer** find the assessment to be erroneous or excessive, he **may contest it by filing a written protest before the local treasurer within the reglementary period of sixty (60) days from receipt of the notice;** otherwise, the assessment shall become conclusive. The local treasurer has sixty (60) days to decide said protest. **In case of** denial of the protest or **inaction by the local treasurer, the taxpayer may appeal with the court of competent jurisdiction**; otherwise, the assessment becomes conclusive and unappealable.

On the other hand, **Section 196 may be invoked by a taxpayer who claims to have erroneously paid a tax, fee or charge, or that such tax, fee or charge had been illegally collected from him. The provision requires the taxpayer to <u>first</u> file a <u>written claim for refund</u> before bringing a suit in court which must be initiated within two years from the date of payment.** By necessary implication, **the <u>administrative remedy of claim for refund</u> with the local treasurer must be initiated also within such two-year prescriptive period but <u>before</u> the judicial action.**

Unlike Section 195, however, **Section 196 does not expressly provide a specific period within which the local treasurer must decide the written claim for refund or credit**. It is, therefore, possible for a taxpayer to submit an administrative claim for refund very early in the two-year period and initiate the judicial claim already near the end of such two-year period due to an extended inaction by the local treasurer. In this instance, **the taxpayer cannot be required to await the decision of the local treasurer any longer, otherwise, his judicial action shall be barred by prescription**.

Additionally, Section 196 does not expressly mention an assessment made by the local treasurer. This simply means that its applicability does not depend upon the existence of an assessment notice. By consequence, a taxpayer may proceed to the remedy of refund of taxes even without a prior protest against an assessment that was not issued in the first place. This is not to say that an application for refund can never be precipitated by a previously issued assessment, for **it is entirely possible that the taxpayer, who had received a**

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> **notice of assessment, paid the assessed tax, fee or charge believing it to be erroneous or illegal. Thus, under such circumstance, the taxpayer may subsequently direct his claim pursuant to <u>Section 196</u> of the LGC**. (*Emphasis supplied*)

In fine, both sections require that the taxpayer should first exhaust the administrative remedies referred therein before bringing the appropriate action in court, such as a *written protest* with the local treasurer, in the case of Section 195, and a ***written claim for refund or credit*** with the same office, in case of Section 196.

Section 196 may be invoked by a taxpayer who claims to have erroneously paid a tax, fee or charge, or that such tax, fee or charge had been illegally collected from him. The provision requires the taxpayer to first file a ***written claim for refund*** before bringing a suit in court which must be initiated *within two years from the date of payment.* By necessary implication, the administrative remedy of a claim for refund with the local treasurer must be initiated also within such two-year prescriptive period but before the judicial action.[44]

The judicial claim for refund is by way of filing an ***ordinary*** *civil action*, not a ***special*** *civil action* for Prohibition and Mandamus before the court of competent jurisdiction. This is because, as will be exhaustively discussed below, the requirements for a special civil action to prosper have not been met in the instant case.

We review the factual antecedents and determine compliance with the applicable provision of the LGC.

Respondent, in its *Petition* before the RTC, alleges that, in 2016, it "was assessed and paid under protest the business tax per Official Receipt ("**OR**") No. 6855972," dated May 25, 2016,[45] amounting to ₱38,628.36 ... which are the subject of several demands, verbal and written, for refund."[46] It likewise paid business taxes in 2017 amounting to ₱7,538.50, as evidenced by OR No. 8835582 dated January 20, 2017,[47] and in 2018 amounting to ₱927,877.01 as evidenced by OR No. 7578302

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[44] *Id.*
[45] Annex "I", Petition; RTC Records, p. 31.
[46] Petition, p. 7; RTC Records, p. 10.
[47] RTC Records, p. 39.

dated September 2, 2019.[48] As respondent is seeking a refund of the amounts paid, Section 196 of the LGC applies.

As found by the trial court, respondent filed a "demand letter for refund of the business and property taxes." However, subsequently, a letter reply was received by respondent on September 28, 2017. On a separate demand, another letter reply was received by respondent sometime in 2019. We quote the findings of the trial court:

> The letter reply, jointly signed by private respondents BPLO Mark Jay B. Sumilang, City Treasurer Renato P. Calupig, City Assessor and noted by City Mayor Ernida Agpi Reynoso, stated that "the matter (refund) cannot be acted upon at the moment, pending resolution by the Bureau of Local Government Finance ("BLGF") of the relevant issues that we elevated to the said Bureau thru a letter dated 22 May, 2019, a photo is herewith attached".

The letters were not elevated before any court. It was the January 21, 2020 Business Tax Billing Statement,[49] which was issued when respondent was about to renew its business permit, that was elevated by respondent before the court a quo not by way of an ordinary civil action, but by way of a special civil action, which respondent has captioned merely as *Petition*. The petition prays for the issuance of the writs of mandamus and prohibition, a special civil action, and in addition, a writ of permanent injunction and a prayer for the grant of its claim for refund.

Thus, We rule that the filing of a special civil action, and the prayer for the writ of mandamus and prohibition for respondent to be refunded, is procedurally infirm. Tax refunds are not within the ambit of the special civil actions for the issuance of writs of mandamus and prohibition. As will be further discussed, respondent should have filed an ordinary civil action before the court *a quo*.

Second, We examine respondent's compliance with the administrative procedure required for real property tax.

Section 252 of the LGC provides:

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[48] Annex "JJ", Petition; RTC Records, p. 86.
[49] No date of receipt is available on the records. However, it can be presumed that the billing statements were received on the date of issuance itself, *i.e.*, January 21, 2020, or on the next day, January 22, 2022, as respondent was able to pay under protest the amounts due on the billing statement on January 22, 2022.

SECTION 252. Payment Under Protest.— (a) No protest shall be entertained unless the taxpayer first pays the tax. There shall be annotated on the tax receipts the words "paid under protest." The protest in writing must be filed within thirty (30) days from payment of the tax to the provincial, city treasurer or municipal treasurer, in the case of a municipality within Metropolitan Manila Area, who shall decide the protest within sixty (60) days from receipt.

(b) The tax or a portion thereof paid under protest shall be held in trust by the treasurer concerned.

(c) In the event that the protest is finally decided in favor of the taxpayer, the amount or portion of the tax protested shall be refunded to the protestant, or applied as tax credit against his existing or future tax liability.

(d) In the event that the protest is denied or upon the lapse of the sixty-day period prescribed in subparagraph (a), the taxpayer may avail of the remedies as provided for in Chapter 3, Title II, Book II of this Code.

In relation thereto, Sections 226 and 229(c) of the LGC provide:

SECTION 226. Local Board of Assessment Appeals.— **Any owner or person having legal interest in the property who is not satisfied with the action of the provincial, city or municipal assessor in the assessment of his property may, within sixty (60) days from the date of receipt of the written notice of assessment, appeal to the Board of Assessment Appeals** of the province or city by filing a petition under oath in the form prescribed for the purpose, together with copies of the tax declarations and such affidavits or documents submitted in support of the appeal.

SECTION 229. Action by the Local Board of Assessment Appeals.— (a) ... ...

(b) ... ...

(c) The secretary of the Board shall furnish the owner of the property or the person having legal interest therein and the provincial or city assessor with a copy of the decision of the Board. In case the provincial or city assessor concurs in the revision or the assessment, it shall be his duty to notify the owner of the property or the person having legal interest therein of such fact using the form prescribed for the purpose. **The owner of the property or the person having legal interest therein or the assessor who is not satisfied with the decision of the Board, may, within thirty (30) days after receipt of the decision of said Board, appeal to the Central Board of Assessment Appeals, as herein provided.**

<u>The decision of the Central Board shall be final and executory</u>. [*Emphases and underscoring added.*]

In this regard, the taxpayer must first pay the tax "under protest" and then file a protest with the Local Treasurer within thirty (30) days from the date of payment of tax. If the protest is denied or upon the lapse of the sixty (60)-day period to decide the protest, the taxpayer may appeal to the Local Board of Assessment Appeals ("**LBAA**") within sixty (60) days from the denial of the protest or the lapse of the sixty (60)-day period to decide the protest. The LBAA has 120 days to decide the appeal. If the taxpayer is unsatisfied with the LBAA's decision, the taxpayer may appeal before the Central Board of Assessment Appeals ("**CBAA**") within thirty (30) days from receipt of the LBAA's decision. The decision of the CBAA is appealable before the Court of Tax Appeals *En Banc*.[50]

Although separate protests were filed by respondent against its RPT payments for 2017[51] and 2019,[52] there is no showing that these protests have been elevated to the LBAA in accordance with Section 226 of the LGC.[53]

Further, to reiterate, respondent filed a "demand letter for refund of the business and property taxes" to which a *Letter Reply* denying the claim was issued by petitioner. Such was not elevated before any court. It was the January 21, 2020 Business Tax Billing Statement that was elevated by respondent before the court *a quo* by way of a special civil action for the issuance of the writs of mandamus and prohibition.

At the risk of being repetitive, the filing of a special civil action for respondent to be refunded is procedurally infirm.

Thus, We rule that respondent failed to comply with the administrative remedies provided under the LGC.

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[50] *City of Lapu-Lapu vs. Philippine Economic Zone Authority and Province of Bataan, represented by Governor Enrique T. Garcia, Jr., et al., Philippine Economic Zone Authority*, G.R. No. 184203 and G.R. No. 187583, November 26, 2014.
[51] Annex "W", Petition; RTC Records, p. 55.
[52] Annex "LL", Petition; RTC Records, pp. 88-91.
[53] SECTION 226. Local Board of Assessment Appeals.— Any owner or person having legal interest in the property who is not satisfied with the action of the provincial, city or municipal assessor in the assessment of his property may, within sixty (60) days from the date of receipt of the written notice of assessment, appeal to the Board of Assessment Appeals of the province or city by filing a petition under oath in the form prescribed for the purpose, together with copies of the tax declarations and such affidavits or documents submitted in support of the appeal.

Respondent's petition before the RTC involves a question of fact; the rule on exhaustion of administrative remedies must be followed.

The foregoing notwithstanding, exhaustion of an available administrative remedy is not an ironclad rule before judicial recourse may be taken. In truth, jurisprudence allows certain exceptions to the rule, as **when the issue involved is purely a legal question.**[54]

At this juncture, this Court needs to determine whether the instant case is an exception to the general rule of exhaustion of administrative remedies. With this, We make a tedious survey of related jurisprudence.

In several cases,[55] most notably in *Olivares vs. Marquez,*[56] the Supreme Court has settled that a claim for exemption from payment of real property tax does not question the assessor's authority to assess and collect such taxes, but pertains to the reasonableness or correctness of the assessment by the local assessor, a **question of fact** which should be resolved, at the very first instance, by the LBAA.

This is likewise the ruling of the Supreme Court in the case of *National Power Corporation vs. The Provincial Treasurer of Benguet, et al.*, (*2016 NPC* case)[57] *viz.*:

> "... As settled in jurisprudence, a claim for exemption from the payment of real property taxes does not actually question the assessor's authority to assess and collect such taxes, but pertains to the reasonableness or correctness of the assessment by the local assessor, **a question of fact which should be resolved, at the very first instance, by the LBAA**. The same may be inferred in Section 206 of the LGC of 1991, to wit:

[54] *Banco De Oro, et al. vs. Republic of the Philippines, et al.*, G.R. No. 198756, January 13, 2015.
[55] *National Power Corporation vs. Province of Quezon and Municipality of Pagbilao*, G.R. No. 171586, January 25, 2010; *Camp John Hay Development Corporation vs. Central Board of Assessment Appeals, et al.*, G.R. No. 169234, October 2, 2013; *National Power Corporation vs. The Provincial Treasurer of Benguet, et al.*, G.R. No. 209303, November 14, 2016.
[56] *Dr. Pablo R. Olivares, et al. vs. Mayor Joey Marquez, et al.*, G.R. No. 155591, September 22, 2004.
[57] G.R. No. 209303, November 14, 2016.

> SEC. 206. Proof of Exemption of Real Property from Taxation. — Every person by or for whom real property is declared, who shall claim tax exemption for such property under this Title shall file with the provincial, city or municipal assessor within thirty (30) days from the date of the declaration of real property sufficient documentary evidence in support of such claim including corporate charters, title of ownership, articles of incorporation, by-laws, contracts, affidavits, certifications and mortgage deeds, and similar documents.
>
> If the required evidence is not submitted within the period herein prescribed, the property shall be listed as taxable in the assessment roll. However, if the property shall be proven to be tax exempt, the same shall be dropped from the assessment roll.

Section 206 of the LGC categorically provides that every person by or for whom real property is declared, who shall claim exemption from payment of real property taxes imposed against said property, shall file with the provincial, city or municipal assessor sufficient documentary evidence in support of such claim. The burden of proving exemption from local taxation is upon whom the subject real property is declared. By providing that real property not declared and proved as tax-exempt shall be included in the assessment roll, the above quoted provision implies that the local assessor has the authority to assess the property for realty taxes, and any subsequent claim for exemption shall be allowed only when sufficient proof has been adduced supporting the claim. Thus, if the property being taxed has not been dropped from the assessment roll, taxes must be paid under protest if the exemption from taxation is insisted upon." (Emphasis supplied)

This was also echoed by the Supreme Court in *Camp John Hay Development Corp. vs. Central Board of Assessment Appeals* (*Camp John Hay* case)[58] where it was ruled that "a claim for tax exemption, whether full or partial, does not question the authority of local assessor to assess real property tax, but merely raises a question of the reasonableness or correctness of such assessment, which requires compliance with Section 252 of the LGC of 1991. Such an argument which may involve a question of fact should be resolved, at the first instance, by the LBAA.

[58] G.R. No. 169234, October 2, 2013, 718 PHIL 543-574.

Stemming from the *Olivares*,[59] *2016 NPC*,[60] and *Camp John Hay*[61] cases, this Court similarly states that a claim for exemption from payment of local business tax does not question the local treasurer's authority to assess and collect such taxes but pertains to the reasonableness or correctness of the assessment by the local treasurer, also a **question of fact.**

On the contrary, the Supreme Court has likewise held in *Ty vs. Trampe* (*Ty* case)[62] that when the issues involved are not factual, the taxpayer need not pay under protest. Incidentally, the petitioner therein elevated the case to the Regional Trial Court and not before the LBAA.

We note that in the *Ty* case, the Supreme Court held that jurisdiction over the case was properly vested with the trial court because what was being questioned was the very authority and power of the assessor, acting solely and independently, to impose the assessment and of the treasurer to collect the tax, and not merely of amounts of the increase in the tax. The petitioners in *Ty* were questioning the increased real estate taxes imposed by and being collected in Pasig City effective from the year 1994, premised on the legal question of whether or not Presidential Decree ("**PD**") No. 921[63] was repealed by the LGC. PD No. 921, particularly Section 9 thereof, requires that the schedule of values of real properties in the Metropolitan Manila area shall be prepared jointly by the city assessors in the districts created therein; while Sec. 212 of the LGC states that the schedule shall be prepared by the provincial, city, or municipal assessors of the municipalities within the Metropolitan Manila Area for the different classes of real property situated in their respective local government units for enactment by ordinance of the *sanggunian* concerned.

This is the same ruling in *Metropolitan Waterworks and Sewerage System vs. Central Board of Assessment Appeals* (*MWSS* case).[64] In the said case, the Supreme Court said that if the arguments and allegations reveal that the issue of whether a local government is authorized to assess and collect real property taxes from a government entity is a pure question of law, which is beyond the LBAA's and the CBAA's jurisdiction. We quote:

[59] *Supra* at note 56.
[60] *Supra* at note 57.
[61] *Supra* at note 58.
[62] G.R. No. 117577, December 1, 1995, 321 PHIL 81-105.
[63] Administration of Local Financial Services in Metro Manila, April 12, 1976.
[64] G.R. No. 215955, January 13, 2021.

> The CA palpably erred in dismissing MWSS's appeal solely on the ground of the alleged non-exhaustion of administrative remedies under the LGC. A careful reading of MWSS's arguments and allegations reveals that **it is neither challenging the reasonableness or correctness of the City Assessor's assessment nor asserting error on the part of the City Treasurer's computation of the assessed tax. Plainly, MWSS is assailing the authority of the city assessor and treasurer to assess and collect real property taxes against it**. The issue of whether a local government is authorized to assess and collect real property taxes from a government entity is a pure question of law, which is beyond the LBAA and CBAA's jurisdiction.
>
> In the oft-cited case of *Ty vs. Hon. Trampe*, the Court held that **the rule on exhaustion of administrative remedies does not apply when the controversy does not involve questions of fact but only of law**. The protest contemplated under Section 252 of the LGC is required when there is question as to the reasonableness or correctness of the amount assessed, while **an appeal to the LBAA under Section 226 is fruitful only where questions of fact are involved**. Accordingly, when the very authority and power of the assessor to impose the assessment, and of the treasurer to collect real property taxes are in question, the proper recourse is a judicial action.
>
> Thus, despite the alleged non-exhaustion of administrative remedies, we give due course to the instant Petition on the ground that the controversy only involves a question of law.

The Supreme Court ruled similarly in *Light Rail Transit Authority vs. City of Pasay* (*LRTA* case),[65] *viz.*:

> In the instant case, LRTA is questioning the very authority of the herein respondents to impose and collect real property tax on the properties registered in its name. It never questioned the assessments made by the city assessor or the amounts being collected by the city treasurer. A reading of its original petition would readily show that LRTA, while claiming to be a government instrumentality instead of a government-owned or controlled corporation (GOCC), is questioning the power of the assessor to assess, and the authority of the treasurer to collect, taxes against it.
>
> We rule for LRTA.

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[65] G.R. No. 211299, June 28, 2022.

In general, where administrative remedies are available, petitions for the issuance of the extraordinary writs should not be granted by the courts in order to give the administrative body the opportunity to decide the matter by itself correctly, and to prevent unnecessary and premature resort to courts. However, this principle of exhaustion of administrative remedies is not without exception.

Jurisprudence would reveal that the Court has set aside such rule: (1) when there is a violation of due process, (2) when the issue involved is purely a legal question, (3) when the administrative action is patently illegal amounting to lack or excess of jurisdiction, (4) when there is estoppel on the part of the administrative agency concerned, (5) when there is irreparable injury, (6) when the respondent is a department secretary whose acts as an alter ego of the President bears the implied and assumed approval of the latter, (7) when to require exhaustion of administrative remedies would be unreasonable, (8) when it would amount to a nullification of a claim, (9) when the subject matter is a private land in land case proceedings, (10) when the rule does not provide a plain, speedy and adequate remedy, and (11) when there are circumstances indicating the urgency of judicial intervention.

From the records, it can be clearly seen that the circumstances of the instant case necessitate that We set aside the general rule.

The Court likewise ruled in *National Power Corp. vs. Municipal Government of Navotas* (*2014 NPC* case)[66]

Accordingly, **if the only issue is the legality or validity of the assessment — a question of law — direct recourse to the RTC is warranted**.

In the case at bar, the claim of petitioner essentially questions the very authority and power of the Municipal Assessor to impose the assessment and of the Municipal Treasurer to collect the real property tax with respect to the machineries and equipment located in the Navotas I and II power plants. Certainly, it does not pertain to the correctness of the amounts assessed but attacks the validity of the assessment of the taxes itself.

The well-established rule is that the allegations in the complaint and the character of the relief sought determine the nature of an action. Here, it is not disputed that the machineries and equipment are being used for power generation. The primordial issue, however, is whether these machineries and equipment are actually, directly and exclusively used by petitioner within the purview of Section

[66] G.R. No. 192300, November 24, 2014, 747 PHIL 744-761.

> 234 of the LGC, which exempts it from payment of real property taxes, to wit:
>
> > Section 234. Exemptions from Real Property Tax. — The following are exempted from payment of the real property tax:
> >
> > ... ...
>
> As can be gleaned from the foregoing, the issue is clearly legal given that it involves an interpretation of the contract between the parties vis-à-vis the applicable laws, *i.e.*, which entity actually, directly and exclusively uses the subject machineries and equipment. The answer to such question would then determine whether petitioner is indeed exempt from payment of real property taxes. Since the issue is a question of law, the jurisdiction was correctly lodged with the RTC.

Regarding local business taxes, the Supreme Court, in *International Container Terminal Services, Inc. vs. City of Manila* (*ICTSI* case)[67] allowed the taxpayer to immediately invoke the power of courts in its claim for refund. According to the Supreme Court, "the filing of written claims with respondent City Treasurer for every collection of tax under Section 21(A) of Manila Ordinance No. 7764 ... would have yielded the same result every time. This is bolstered by the City Treasurer's September 1, 2005 Letter, in which it stated that it could not act favorably on petitioner's claim for refund until there would have been a final judicial determination of the invalidity of Section 21(A)." However, the Supreme Court noted the compliance of petitioner with the two-year period to file a claim for refund under Section 196 of the LGC.

Finally, in the *City of Lapu-Lapu vs. Philippine Economic Zone Authority* (*PEZA* case)[68] the Supreme Court once again discussed:

> Exhaustion of administrative remedies under the Local Government Code is necessary in cases of erroneous assessments where the correctness of the amount assessed is assailed. The taxpayer must first pay the tax then file a protest with the Local Treasurer within 30 days from date of payment of tax. If protest is denied or upon the lapse of the 60-day period to decide the protest, the taxpayer may appeal to the Local Board of Assessment Appeals within 60 days from the denial of the protest or the lapse of the 60-day period to decide

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[67] G.R. No. 185622, October 17, 2018.
[68] G.R. Nos. 184203 & 187583, November 26, 2014, 748 PHIL 473-568.

> the protest. The Local Board of Assessment Appeals has 120 days to decide the appeal.
>
> If the taxpayer is unsatisfied with the Local Board's decision, the taxpayer may appeal before the Central Board of Assessment Appeals within 30 days from receipt of the Local Board's decision.
>
> The decision of the Central Board of Assessment Appeals is appealable before the Court of Tax Appeals En Banc. The appeal before the Court of Tax Appeals shall be filed following the procedure under Rule 43 of the Rules of Court.
>
> The Court of Tax Appeals' decision may then be appealed before this court through a petition for review on certiorari under Rule 45 of the Rules of Court raising pure questions of law.
>
> In case of an illegal assessment where the assessment was issued without authority, exhaustion of administrative remedies is not necessary and the taxpayer may directly resort to judicial action. The taxpayer shall file a complaint for injunction before the Regional Trial Court to enjoin the local government unit from collecting real property taxes.
>
> The party unsatisfied with the decision of the Regional Trial Court shall file an appeal, not a petition for certiorari, before the Court of Tax Appeals, the complaint being a local tax case decided by the Regional Trial Court. The appeal shall be filed within fifteen (15) days from notice of the trial court's decision.

The question that this Court is now required to answer is whether the ruling in *Olivares* or *Ty* applies in the instant case.

After our painstaking survey of jurisprudence relating to the doctrine of exhaustion of administrative remedies as applied to local tax cases, this Court is now tasked to reconcile the seemingly conflicting pronouncements of the Supreme Court.

This Court thus rules that the *Olivares*,[69] *2016 NPC*,[70] and *Camp John Hay*[71] cases remain to be the **general rule**. The general rule remains that compliance with and exhaustion of administrative remedies, as provided under pertinent sections of the LGC, is required to question an assessment of local business tax and real property tax. The *Olivares*, *2016 NPC*, and *Camp John Hay* cases affirm the long-settled rule that a claim

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[69] *Supra* at note 56.
[70] *Supra* at note 57.
[71] *Supra* at note 58.

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for tax exemption necessarily involves a question of fact, for it pertains to the reasonableness or correctness of the assessment by the local assessor.

Consequently, the Court then must **strictly apply** the *Ty*,[72] *MWSS*,[73] *LRTA*,[74] *2014 NPC*,[75] and *PEZA*[76] cases, taking into account the peculiar factual milieu of each case.

For one, the *MWSS*, *LRTA*, *2014 NPC*, and *PEZA* cases involved taxpayers who are claiming exemption by virtue of these corporations allegedly being government instrumentalities. Clearly, this pertains to the authority of the local assessor to assess their real properties or to the authority of the local treasurer to collect real property taxes and local business taxes, for it is a settled dictum that the local government, being a mere statutory creation, is not empowered to impose taxes against the national government.

On the other hand, *Ty*[77] applies to a very specific issue, which is whether or not PD No. 921 was repealed by the LGC, particularly as to the requirement that the schedule of values of real properties in the Metropolitan Manila area shall be prepared jointly by the city assessors in the districts created therein. It goes to the very authority of the city assessor to determine the values of real properties.

Being guided by the delineation of the application of the *Olivares*,[78] *2016 NPC*,[79] and *Camp John Hay*[80] cases on one hand, and of the *Ty*,[81] *MWSS*,[82] *LRTA*,[83] *2014 NPC*,[84] and *PEZA*[85] cases on the other, We now determine whether the doctrine of exhaustion of administrative remedies applies to this case.

To recall, respondent's prayer before the RTC[86] is as follows:

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[72] *Supra* at note 62.
[73] *Supra* at note 64.
[74] *Supra* at note 65.
[75] *Supra* at note 66.
[76] *Supra* at note 68.
[77] *Supra* at note 62.
[78] *Supra* at note 56.
[79] *Supra* at note 57.
[80] *Supra* at note 58.
[81] *Supra* at note 62.
[82] *Supra* at note 64.
[83] *Supra* at note 65.
[84] *Supra* at note 66.
[85] *Supra* at note 68.
[86] RTC Records, p. 14.

That after due hearing, it is further prayed --

a. That defendants be ordered to immediately refund to herein petitioner the total amount of PhP 1,227,306.48 it has already paid for business Tax and PhP 182,793.00 for realty tax in taxes or a total of ONE MILLION FOUR HUNDRED TEN THOUSAND NINETY-NINE PESOS & 48/100 (PhP 1,410,099.480) plus interests due in the form of actual damages jointly and severally imposable upon the respondents, from the time the written demands were made by the petitioner until the same were paid in full;

b. That defendants be perpetually enjoined and prohibited from further assessing and collecting taxes from petitioner in accordance with the provisions of RA 9520 and RA 7160;

c. That defendants be ordered to jointly and severally pay the amount of Php300,000.00 to petitioner as Exemplary Damages;

d. That defendants be ordered to jointly and severally pay the Attorneys Fees amounting to Php 200,000.00.

e. That defendants be ordered to pay the costs of this litigation.

Other reliefs that are just and equitable under the premises are likewise prayed for.

To further recall, respondent asserts its exemption on the basis of an application of Article 61 of RA No. 9520.

First, the *Ty*,[87] *MWSS*,[88] *LRTA*,[89] *2014 NPC*,[90] and *PEZA*[91] cases cannot be applied, for respondent herein is not a government instrumentality nor is respondent assailing the authority of the local assessor to make such assessments. Accordingly, the general and well-settled rule as provided in the *Olivares*,[92] *2016 NPC*,[93] and *Camp John Hay*[94] cases shall apply.

Second, by providing that real property not declared and proved as tax-exempt shall be included in the assessment roll, Section 206 of the LGC implies that the local assessor has the authority to assess the property for realty taxes, and any

[87] *Supra* at note 62.
[88] *Supra* at note 64.
[89] *Supra* at note 65.
[90] *Supra* at note 66.
[91] *Supra* at note 68.
[92] *Supra* at note 56.
[93] *Supra* at note 57.
[94] *Supra* at note 58.

subsequent claim for exemption shall be allowed only when sufficient proof has been adduced supporting the claim.

In the same vein, and as stated above, a claim for exemption from payment of local business taxes does not question the local treasurer's authority to assess and collect such taxes but pertains to the reasonableness or correctness of the assessment by the local treasurer, **a mixed question of law and fact.**

Third, the determination of the amount to be refunded to petitioner is not a question of law but necessitates the examination of any erroneous or illegal payments made by petitioner and the amount thereof. Such clearly involves a question of fact.

Fourth, the determination of exemplary damages and attorney's fees, as prayed for by petitioner, likewise involves a consideration of factual circumstances. These are clearly questions of fact.

Having settled that respondent's petition before the RTC involves a question of fact, then compliance with the administrative remedies provided by law shall follow.

Parties are generally precluded from immediately seeking the intervention of courts when "the law provides for remedies against the action of an administrative board, body, or officer." The practical purpose behind the principle of exhaustion of administrative remedies is to provide an orderly procedure by giving the administrative agency an "opportunity to decide the matter by itself correctly [and] to prevent unnecessary and premature resort to the courts."[95]

In *Confederation for Unity, Recognition and Advancement of Government Employees vs. Commissioner, Bureau of Internal Revenue,*[96] the Supreme Court ruled:

> The doctrine of exhaustion of administrative remedies is not without practical and legal reasons. For one thing, availment of administrative remedy entails lesser expenses and provides for a speedier disposition of controversies. It is no less true to state that courts of justice for reasons of comity and convenience will shy away from a dispute until the system

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[95] *Aala, et al. vs. Hon. Rey T. Uy*, in his capacity as the City Mayor of Tagum City, Davao del Norte, et al., G.R. No. 202781, January 10, 2017.
[96] G.R. Nos. 213446 & 213658, July 3, 2018.

> of administrative redress has been completed and complied with so as to give the administrative agency concerned every opportunity to correct its error and to dispose of the case. While there are recognized exceptions to this salutary rule, petitioners have failed to prove the presence of any of those in the instant case. [*Citations omitted.*]

This Court notes, however, that even if We rule to the contrary, *i.e.*, that this case falls under any of the exceptions to the doctrine of exhaustion of administrative remedies, the instant *Petition* is still bound to fail for availing of the improper judicial remedies.

A writ of mandamus may not be availed; respondent failed to satisfy the requisites for the issuance of a writ of mandamus.

We note that respondent's claim for refund should not have prospered due to the improper remedy that respondent used in lodging its judicial claim before the RTC.

By way of recall, respondent filed its *Petition* for mandamus, prohibition, and permanent injunction with a prayer for the issuance of a temporary restraining order before the RTC on March 6, 2020. Respondent's petition is governed by Rule 65 of the Rules of Court.

Section 3, Rule 65 of the Revised Rules of Court provides:

> SEC. 3. *Petition for mandamus.* - **When any** tribunal, corporation, board, ***officer*, or *person* unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office**, trust, or station, or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled, **and there is no other plain, speedy and adequate remedy in the ordinary course of law, the person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent**, immediately or at some other time to be specified by the court, **to do the act required to be done to protect the rights of the petitioner**, and to pay the damages sustained by the petitioner by reason of the wrongful acts of the respondent.

> The petition shall also contain a sworn certification of non-forum shopping as provided in the third paragraph of Section 3, Rule 46. (*Emphases supplied*)

Accordingly, before a writ of mandamus may be issued, the following requisites must concur: (1) petitioner must show a clear legal right to the act demanded; (2) respondent must have the duty to perform the act because the same is mandated by law; (3) respondent unlawfully neglects the performance of the duty enjoined by law; (4) the act to be performed is ministerial, not discretionary; and (5) there is no other plain, speedy, and adequate remedy in the ordinary course of law.[97]

We rule that mandamus will not lie.

First, the act to be performed is **not ministerial**. The reliefs prayed for by the petitioners involve purely administrative and discretionary functions.[98] If it requires an examination of documents presented and necessarily requires the exercise of discretion, then such is not ministerial.[99] Clearly, the grant of refund is subject to the examination and judgment of the authority deciding over the refund claim.

Second, there exists a plain, speedy, and adequate remedy in the ordinary course of law, precisely as what is laid down by Sections 196 and 252 of the LGC, for the refund of local business taxes and real property taxes, respectively.

Succinctly, the Supreme Court's ruling in *San Juan vs. Castro*[100] is on point, *viz.*:

> In the case at bar, the condition that "there is no other plain, speedy and adequate remedy in the ordinary course of law" is absent.
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> Under Section 195 of the [LGC] which is quoted immediately below, a taxpayer who disagrees with a tax assessment made by a local treasurer may file a written protest thereof:
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> SECTION 195. Protest of Assessment. — ... ...

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[97] *Philippine Statistics Authority (Formerly National Statistics Office) and Philippine Statistics Authority-Legazpi City vs. Ferolino*, G.R. No. 238021, June 14, 2021; *Malingin vs. Sandagan, et al.*, G.R. No. 240056, October 12, 2020; *Datu Malingin (Lemuel Talingting Y Simborio), et al., vs. PO3 Sandagan, et al.*, G.R. No. 240056, October 12, 2020.
[98] *Abines vs. Duque III*, G.R. No. 235891, September 20, 2022.
[99] *Bases Conversion and Development Authority vs. Callangan, Jr.*, G.R. No. 241168, August 22, 2022.
[100] G.R. No. 174617, December 27, 2007, 565 SCRA 810-818.

> That petitioner protested in writing against the assessment of tax due and the basis thereof is on record as in fact it was on that account that respondent sent him the above-quoted July 15, 2005 letter which operated as a denial of petitioner's written protest.
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> Petitioner should thus have, following the earlier above-quoted Section 195 of the Local Government Code, either appealed the assessment before the court of competent jurisdiction or paid the tax and then sought a refund.
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> Petitioner did not observe any of these remedies available to him, however. He instead opted to file a petition for mandamus to compel respondent to accept payment of transfer tax as computed by him.
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> **Mandamus lies only to compel an officer to perform a ministerial duty (one which is so clear and specific as to leave no room for the exercise of discretion in its performance) but not a discretionary function (one which by its nature requires the exercise of judgment). Respondent's argument that "[m]andamus cannot lie to compel the City Treasurer to accept as full compliance a tax payment which in his reasoning and assessment is deficient and incorrect" is thus persuasive**. [*Emphasis and underscoring supplied.*]

From the foregoing, we rule that a petition for mandamus is not proper and should not have prospered before the RTC.

A writ of prohibition may not be availed; respondent failed to satisfy the requisites for the issuance of a writ of prohibition.

Section 2, Rule 65 of the Revised Rules of Court provides:

> Section 2. Petition for prohibition. — When the proceedings of any tribunal, corporation, board, officer or person, whether exercising judicial, quasi-judicial or ministerial functions, are without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and **there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law**, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent to desist from further proceedings in the action or matter specified therein, or otherwise granting such incidental

reliefs as law and justice may require. [*Emphasis and underscoring supplied.*]

For a party to be entitled to a writ of prohibition, he must establish the following requisites: (a) it must be directed against a tribunal, corporation, board or person exercising functions, judicial[, quasi-judicial] or ministerial; (b) the tribunal, corporation, board or person has acted without or in excess of its jurisdiction, or with grave abuse of discretion; and (c) there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law.[101]

The Supreme Court noted in *Consular Area Residents Association, Inc. vs. Casanova,*[102] citing a dissenting opinion in *Nuclear Free Philippine Coalition vs. National Power Corp.*,[103] that prohibition is not the same as injunction. It was said therein that "[l]awyers often make the mistake of confusing prohibition with injunction. Basically, prohibition is a remedy to stop a tribunal from exercising power beyond its jurisdiction."

Accordingly, prohibition is an extraordinary prerogative writ of a preventive nature, its proper function being to prevent courts or other tribunals, officers, or persons from usurping or exercising a jurisdiction with which they are not vested.

As stated, similar to mandamus, a writ of prohibition requires that there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law. As discussed above, Sections 196 and 252 of the LGC, for the refund of local business taxes and real property taxes, respectively, provide for the plain, speedy, and adequate remedy that respondent should have availed.

It bears to mention the pronouncement of the Supreme Court in *Amalia Vda. De Suan, et al. vs. Eriberto A. Unson, et al.*,[104] where it was categorically stated that "special civil actions of certiorari and prohibition do not lie where the remedy by appeal has been lost because said special civil actions cannot take the place of an appeal."

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[101] *Consular Area Residents Association, Inc. vs. Casanova*, G.R. No. 202618, April 12, 2016, 784 SCRA 400-417.
[102] *Ibid.*
[103] G.R. No. L-68474, 70632, February 11, 1986, 225 PHIL 266-279.
[104] G.R. No. 30716, May 18, 1990.

Correlatively, the Court *En Banc* has ruled that a "Petition for Prohibition is not an adequate remedy when administrative remedies are outlined clearly by law. In order that prohibition will lie against an executive officer, the petitioner must first exhaust all administrative remedies, as prohibition is available only when there is no other plain, speedy, and adequate remedy in the ordinary course of law."[105]

As we have stated above, the extraordinary remedy of prohibition and mandamus may be resorted to when there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law.

Perforce, a petition for prohibition should likewise fail and should not have prospered before the RTC.

Respondent is entitled to a writ of permanent injunction

Notwithstanding these procedural lapses, we nevertheless rule that respondent is entitled to a writ of permanent injunction.

Section 9, Rule 58 of the Rules of Court empowers courts to issue a writ or permanent injunction, to wit:

> Section 9. When final injunction granted. — If after the trial of the action it appears that the applicant is entitled to have the act or acts complained of permanently enjoined the court shall grant a final injunction perpetually restraining the party or person enjoined from the commission or continuance of the act or acts of confirming the preliminary mandatory injunction.

Two requisites must concur for an injunction to issue: *first*, there must be a right to be protected; and *second*, the acts against which the injunction is to be directed are violative of this right.[106]

Anent the *first* requisite, We rule that respondent herein has a right to be protected.

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[105] *National Food Authority vs. Province of Nueva Vizcaya*, CTA *EB* Case No. 2361 (CTA AC No. 192), June 27, 2022.
[106] *Moldex Realty, Inc. vs. Spouses Yu*, G.R. No. 246826, July 28, 2021.

It is axiomatic that there is no vested right in a tax exemption [107] and that it is a mere statutory privilege. [108] However, such pronouncements pertain to the authority of the State to withdraw or revoke tax exemptions. Nevertheless, once a taxpayer has proven its entitlement to the tax exemption under existing laws, the taxpayer should be able to enjoy such privilege as its right. We rule that tax exemption granted by law is a right that may be protected by this Court's injunctive writ.

As discussed above, Section 61(3) of RA No. 9520 and Sections 133(n) and 234 of the LGC all grant respondent herein exemption from local business tax and real property tax.

Second, We likewise find that the acts against which the injunction is to be directed are violative of this right. The continued assessment and collection of local business taxes and real property taxes against respondent, in clear disregard of its statutory exemption, is the proper subject of an injunction, so long as the taxpayer remains a tax-exempt cooperative and so long as the tax exemptions are not modified or revoked by Congress.

The Court cannot grant respondent's claim for refund in a petition for prohibition and mandamus.

As a result of the procedural defects enumerated above, *i.e.*, the failure to exhaust available administrative remedies under Sections 196 and 252 of the LGC, and the improper remedy of writ of mandamus and prohibition, We are constrained to deny respondent's claim for refund.

As discussed above, the claim for refund is essentially a question of fact that requires the exhaustion of administrative remedies, which the Court cannot fully examine and thresh out in a petition for prohibition and mandamus.

An applicant for a tax refund or credit must not only prove entitlement to the claim but also comply with long-established administrative procedures.[109] Well-settled is the rule that tax refunds, just like tax exemptions, are strictly construed against

[107] *Republic vs. Caguioa*, G.R. No. 168584, October 15, 2007, 562 SCRA 187-217.
[108] *Republic vs. Caguioa*, A.M. Nos. RTJ-07-2063, RTJ-07-2064 & RTJ-07-206, June 26, 2009, 608 SCRA 577-609.
[109] *Philippine Gold Processing and Refining Corp. vs. Commissioner of Internal Revenue*, G.R. No. 222904 (Notice), July 15, 2020.

the taxpayer. The burden is on the taxpayer to show that he has strictly complied with the conditions for the grant of the tax refund.[110]

WHEREFORE, in light of the foregoing, the instant *Petition for Review* is **PARTIALLY GRANTED**.

Accordingly, the ruling of Branch 167 of the Regional Trial Court of Lucena City, Quezon Province in Special Civil Action Case No. 2020-03 entitled *ST. JUDE MULTI-PURPOSE COOPERATIVE, Represented by its Manager, MELANIE FONTARUM vs. THE CITY GOVERNMENT OF TAYABAS, represented by HON. ERNIDA A. REYNOSO City Mayor, BRENDA SUMALABE, City Assessor, RENATO CALUPIG, City Treasurer, MARK JAY SUMILANG, Business Permit and Licensing Officer* is **MODIFIED** as follows:

1. Respondent is **DECLARED** exempt from local business taxes pursuant to Section 61(3) of RA No. 9520 and Section 133(n) of the LGC.

2. Respondent's real properties are **DECLARED** exempt from real property taxes pursuant to Section 61(3) of RA No. 9520 and Section 234 of the LGC.

3. Petitioner is perpetually **ENJOINED** and **PROHIBITED** from further assessing and collecting business taxes and real property taxes from respondent pursuant to Section 61(3) of RA No. 9520 and Sections 133(n) and 234 of the LGC.

4. The ruling of Branch 167 of the Regional Trial Court of Lucena City, Quezon Province ordering petitioner to refund respondent the total amount of One Million, Five Hundred Twenty-One Thousand Eight Hundred Fifty-Six Pesos and Forty-Three Centavos (₱1,521,856.43) plus six percent (6%) per annum legal interest is **REVERSED** and **SET ASIDE**.

Further, considering respondent's filing of a separate appeal before the Court of Appeals, let a copy of this *Decision* be **FURNISHED** to the Clerk of Court of the Court of Appeals for its information.

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[110] *Commissioner of Internal Revenue vs. San Roque Power Corp.*, G.R. Nos. 187485, 196113 & 197156, 12 February 2013, 703 SCRA 310-434

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

I CONCUR:

JEAN MARIE A. BACORRO-VILLENA
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.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice
Special 2nd Division Acting Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Special Second Division Acting 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice