REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

AYALA LAND, INC., Petitioner,	**C.T.A. CASE NO. 7261**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson* **UY,** *and* **PALANCA-ENRIQUEZ,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** APR 1 1 2008 4:12 p.m.

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DECISION

UY, *J*.:

This Petition for Review seeks to annul and set aside the final Decision rendered by respondent Commissioner of Internal Revenue[1] holding petitioner, Ayala Land, Inc., liable for deficiency value-added tax (VAT) on its gross receipts derived from cinema/theater ticket sales for calendar year 2003 under Assessment No. 002-03 dated October 29, 2004 in the aggregate amount of P103,346,691.40, allegedly for lack of legal and factual bases.

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[1] Rendered by then Commissioner of Internal Revenue, Guillermo L. Parayno, Jr. on April 25, 2005.

THE FACTS

Petitioner, Ayala Land, Incorporated, is a corporation duly organized and existing under Philippine laws, with principal place of business located at the 29th Floor Tower One, Ayala Triangle, Ayala Avenue, Makati City.[2] It is primarily engaged in the sale and/or lease of real properties, and among others, likewise owns and operates theaters or cinemas.[3]

On the other hand, respondent, Commissioner of Internal Revenue, is the duly-appointed officer of the Bureau of Internal Revenue (BIR), with exclusive and original jurisdiction to: (a) interpret the provisions of the National Internal Revenue Code (NIRC) of 1997, as amended, and other tax laws, subject to review by the Secretary of Finance; and (2) decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the NIRC or other laws or portions thereof administered by the BIR, subject to the exclusive jurisdiction of the Court of Tax Appeals; with office address at the 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.[4]

On November 12, 2004, petitioner received respondent's Formal Letter of Demand and Assessment Notice No. 002-03, both dated October 29, 2004; whereby respondent assessed petitioner for an alleged deficiency ten percent (10%) VAT on its alleged income from cinema operations for

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[2] Par. 1, Joint Stipulation of Facts and Statement of Issues (JSFI), Docket, p. 112.
[3] Par. 3, JSFI, Docket, p. 113.
[4] Par. 2, JSFI, Docket, pp. 112-113.

taxable year 2003 in the aggregate amount of P103,346,691.40, inclusive of twenty percent (20%) interest.[5] The deficiency VAT is computed as follows:

Income from cinema operation	896,424,485.80
Rate of Tax (Sec.108, NIRC)	10%
Basic VAT due	89,642,448.58
Add: 20% interest from 01/26/04 to 10/31/04	13,704,242.82
Total Amount Due	**103,346,691.40**

On December 10, 2004, petitioner filed its protest with the office of respondent contesting the factual and legal bases of the VAT assessment.[6] Subsequently on April 28, 2005, petitioner received respondent's Decision dated April 25, 2005 denying petitioner's protest with a notation that the same constitutes respondent's "Final Decision" on the matter,[7] thus constraining petitioner to file the instant Petition for Review on May 27, 2005.[8]

Respondent filed an Answer on August 25, 2005.[9] After the pre-trial held on September 29, 2005, the parties submitted their Joint Stipulation of Facts and Issues on January 26, 2006, which was approved by this Court in the Resolution dated February 1, 2006.[10]

During trial, petitioner presented testimonial and documentary evidence to prove its case. Upon admission of petitioner's documentary evidence, the Court set the presentation of respondent's evidence on January 31, 2007[11], March 7, 2007[12], and April 25, 2007[13], but respondent's

[5] Par. 4, JSFI, Docket, p. 113; BIR Records, pp. 87-88.
[6] Par. 5, JSFI, Docket, p. 113; BIR Records, pp. 104-112.
[7] Par. 6, JSFI, Docket, p. 113; BIR Records, pp. 123-133.
[8] Docket, pp. 1-15.
[9] Docket, pp. 70-85.
[10] Docket, p. 116.
[11] Minutes of the hearing held on January 31, 2007, Docket, p. 204.
[12] Minutes of the hearing held on March 7, 2007, Docket, p. 206.
[13] Minutes of the hearing held on April 25, 2007, Docket, p. 210.

counsel failed to do so. Upon motion of petitioner's counsel, respondent was declared to have waived the right to present evidence in the Resolution dated April 30, 2007[14] and the parties were directed to submit their respective Memorandum. Both petitioner and respondent submitted the required Memorandum on May 22, 2007 and on July 6, 2007[15], respectively. This case was considered submitted for decision in the Resolution dated July 30, 2007.[16]

In the meantime however, petitioner filed an "Urgent Omnibus Motion"[17] on January 21, 2008 alleging, among others, that respondent's January 11, 2008 Letter, requiring petitioner to settle and pay the alleged deficiency tax liabilities involved in this case on or before January 18, 2008 to prevent the issuance of a Warrant of Distraint and Garnishment and/or Levy, has no basis under existing laws considering that petitioner appealed the instant case to the Honorable Court of Tax Appeals prior to the finality of respondent's assessment, which cannot therefore be considered as delinquent. In said Motion, petitioner prayed for the issuance of an order directing respondent to desist from enforcing its January 11, 2008 letter and collecting the alleged deficiency taxes until the case is decided with finality; requiring respondent not to issue the Warrant of Distraint and Garnishment and/or Levy against the petitioner and suspend the collection of the disputed VAT assessment until this case is decided with finality.

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[14] Docket, p. 212.
[15] Docket, pp. 213-235 and pp. 246-272, respectively.
[16] Docket, p. 274.
[17] Docket, pp. 275-280.

During the hearing of said Motion on January 31, 2008, respondent's counsel interposed no objection to petitioner's Motion to suspend collection of taxes. Thus, the same was correspondingly granted by this Court in the Resolution[18] dated February 7, 2008, for the purpose of preserving the status quo during the pendency of this appeal, and in order not to render ineffective and nugatory the judgment that will be rendered in this case, pursuant to R.A. No. 9282, in relation to Rule 10 of the Revised Rules of the Court of Tax Appeals, subject to the filing of an acceptable surety bond in an amount double the disputed amount or value. On February 22, 2008, petitioner filed the required surety bond and the same was approved in the Resolution dated February 29, 2008.[19]

We now proceed to resolve this case.

THE ISSUES

As jointly stipulated by the parties, the issues[20] are the following:

"(A) Whether or not the gross receipts from admission to petitioner's cinemas are subject to the 10% value-added tax?

(B) Whether or not the gross receipts, or a portion thereof, by cinema/theater proprietors are subject to VAT considering the following:

1. Whether or not there is a provision in the Local Government Code of 1991 (R.A. No. 7160) that expressly excludes the National Government from imposing VAT on the gross receipts of cinema/theater operators or proprietors?

2. Whether or not there is a current, existing provision of law in this jurisdiction which exempts the business, or

[18] Docket, pp. 284-285.
[19] Docket, p. 346.
[20] Statement of the Issues, JSFI, Docket, p. 114.

a portion of the business, of operators or proprietors of cinemas/theater houses from the coverage of VAT?

(C) Whether or not the assessment for deficiency VAT on petitioner's income from cinema operations for the taxable year 2003 in the amount of P103,346,691.40 is valid and accurate?"

Petitioner's Arguments

Petitioner argues that its gross receipts derived from cinema/theater ticket sales is not subject to VAT because the power to impose amusement/business taxes on gross receipts from admission to cinemas/theaters had allegedly been removed from the National Government since 1973 with the enactment of Presidential Decree (P.D.) No. 231 (Local Tax Code); that in spite of the enactment of the VAT Law in 1988, the power to impose business/amusement taxes on gross receipts from admission to cinemas remained exclusively with the Local Government Units, thereby manifesting the intent of lawmakers to exclude gross receipts from admissions to cinema from the coverage of VAT. Even with the passage of the Local Government Code (LGC) in 1991, the National Government was allegedly not given the power to impose business/amusement taxes on gross receipts derived from admission to cinemas/theaters considering that the subsequent amendments to the NIRC do not expressly include gross receipts from admissions to cinemas/theaters as among those subject to VAT.

According to petitioner, respondent erroneously interpreted the LGC, together with the amendments to the VAT provisions of the National Internal Revenue Code, as conferring upon the National Government the power to impose business/amusement taxes on gross receipts derived from admissions to cinemas/theaters. To adopt respondent's position that VAT covers gross receipts from admissions to cinemas allegedly leads to the extremely absurd position that the taxes on cinemas are much higher than the "sin" taxes imposed on alcohol and tobacco.

Furthermore, petitioner invokes that the interpretation as to whether or not to impose VAT on gross receipts derived from admission to cinemas/theaters should be strictly construed against respondent, and liberally in its favor, considering that the promulgation of VAT Ruling No. 031-00 and Revenue Memorandum Circular (RMC) No. 28-01 was without the requisite general publication and conduct of public hearing, and without notice to the affected sector or industry, in derogation of the requirements of due process.

Respondent's Counter-arguments

Respondent, on the other hand, maintains that petitioner's gross receipts from admission to its cinemas are subject to the 10% VAT because the LGC does not carry any provision excluding the National Government from imposing the VAT on the gross receipts of cinema/theater operations; that Section 109 of the NIRC, specifically enumerates transactions which are exempt from the VAT, and evidently, the operation of a cinema/theater is not among those stated in the NIRC as exempt from VAT. Furthermore, respondent contends that there is no provision in the LGC which excuses petitioner from the coverage of the Value Added Tax on sales of services and it is only petitioner that is allegedly interpreting and constructing the provisions of the LGC in its favor by denying its taxability based on a clause or phrase, which simply does not exist in the statute.

Respondent points out that currently, our VAT law embraces all sales of goods, property or service, except those that are expressly exempted. And it is allegedly not difficult to see that the exhibition of movies is a service provided by operators or proprietors of cinema/theater houses, considering the bundle of services they provide; which are, aside from exhibiting the movie, this service includes, among others, providing a secure and acoustically appropriate venue, providing comfortable seating, providing cool environment, providing ready access to a snack bar, and providing a quality video and audio system, all to service the need of customers who want to have a pleasurable experience in watching a movie. This is allegedly the service they provide, thus making it a sale of service subject to VAT.

THE COURT'S RULING

We find the petition meritorious.

In the past, operators of theaters were formerly subjected to amusement tax under Section 260[21] of Commonwealth Act No. 466, the first

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

(a) When the amount paid for admission exceeds twenty centavos but does not exceed twenty-nine centavos, two centavos on each admission;

(b) When the amount paid for admission exceeds twenty-nine centavos but does not exceed thirty-nine centavos, three centavos on each admission;

(c) When the amount paid for admission exceeds thirty-nine centavos but does not exceed forty-nine centavos, four centavos on each admission;

(d) When the amount paid for admission exceeds forty-nine centavos but does not exceed fifty-nine centavos, five centavos on each admission;

(e) When the amount paid for admission exceeds fifty-nine centavos but does not exceed sixty-nine centavos, six centavos on each admission;

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codification of the National Internal Revenue Code of 1939.[22] However, the National Government's right to subject operators of theaters to amusement tax was removed from them with the passage of Presidential Decree (P.D.) No. 231, otherwise known as the Local Tax Code;[23] the relevant provisions of which state:

> "**SECTION 11.** *Taxes Transferred.* — The imposition of the taxes provided in Sections 12, 13, 14, 15 and 16 of this Code heretofore exercised by the national government or the municipal government, shall henceforth be **exercised by the provincial government, to the exclusion of the national or municipal government.** To avoid any revenue loss, the province shall levy and collect such taxes as provided in said Sections 12, 13 and 14." (*Emphasis supplied*)
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> "**SECTION 12.** *Occupation Tax.* – The province shall levy an annual occupation tax on all person engaged in the exercise or practice of their profession or calling as follows:
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> x x x x x x x"
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> "**SECTION 13.** *Amusement Tax on Admission.* — **The province shall impose a tax on admission to be collected from the proprietors, lessees, or operators of theaters, cinematographs, concert halls, circuses and other places of amusement at the following rates:**

(f) When the amount paid for admission exceeds sixty-nine centavos but does not exceed seventy-nine centavos, six centavos on each admission;

(g) When the amount paid for admission exceeds seventy-nine centavos but does not exceed eighty-nine centavos, eight centavos on each admission;

(h) When the amount paid for admission exceeds eighty-nine centavos but does not exceed ninety-nine centavos, nine centavos on each admission; and

(i) When the amount paid for admission exceeds ninety-nine centavos, ten centavos on each admission.

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

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

[22] Promulgated on June 15, 1939.

[23] Promulgated on June 28, 1973.

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

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

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

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

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

"**SECTION 14.** *Fees for sealing and licensing of weights and measures.* - The province shall collect fee for the sealing and licensing of weights and measures in accordance with the following schedule:

x x x x x x x"

Consequently, the power to subject operators of theaters and cinematographs to amusement tax was transferred to, and was solely vested

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with the Local Government. Corollary to this, the revisions made on the National Internal Revenue Code, particularly Presidential Decree (P.D.) No. 1158,[24] otherwise known as the NIRC of 1977, the provision imposing "amusement tax" on the "proprietor, lessee, or operator of theaters or cinematographs" previously provided under C.A. No. 466 can no longer be found.[25]

On October 1, 1991, Republic Act (R.A.) No. 7160, otherwise known as the Local Government Code[26], was enacted repealing the Local Tax Code. Nevertheless, it retained the provision on amusement tax, as follows:

> "**SECTION 140.** *Amusement Tax.* — (a) **The province may levy an amusement tax to be collected from the proprietors, lessees, or operators of theaters, cinemas,** concert halls, circuses, boxing stadia, and other places of amusement at a rate of not more than thirty percent (30%) of the gross receipts from admission fees.
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> (b) **In the case of theaters or cinemas, the tax shall first be deducted and withheld by their proprietors, lessees, or operators and paid to the provincial treasurer** before the gross receipts are divided between said proprietors, lessees, or operators and the distributors of the cinematographic films.

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[24] Promulgated on June 3, 1977.

[25] **SECTION 123.** *Amusement taxes.* — There shall be collected from the proprietor, lessee or operator of cockpits, cabarets, night or day clubs, boxing exhibitions, professional basketball games, Jai-Alai, race tracks and bowling alleys, a tax equivalent to:

1. Eighteen *per centum* in the case of cockpits;
2. Eighteen *per centum* in the case of cabarets, night or day club;
3. Fifteen *per centum* in the case of boxing exhibitions;
4. Fifteen *per centum* in the case of professional basketball games as envisioned in Presidential Decree No. 871. Provided, however, That the tax herein shall be in lieu of all other percentage taxes of whatever nature and description.
5. Thirty *per centum* in the case of Jai-Alai and race tracks; and
6. Fifteen *per centum* in the case of bowling alleys of their gross receipts, irrespective of whether or not any amount is charged or paid for admission. For the purpose of the amusement tax, the term "gross receipts" embraces all the receipts of the proprietor, lessor or operator of the amusement place. Said gross receipts also include income from television, radio and motion picture rights, if any. (A person or entity or association conducting any activity subject to the tax herein imposed shall be similarly liable for said tax with respect to such portion of the receipts derived by him or it.)

[26] Effective starting January 1, 1992.

> (c) The holding of operas, concerts, dramas, recitals, painting and art exhibitions, flower shows, musical programs, literary and oratorical presentations, except pop, rock, or similar concerts shall be exempt from the payment of the tax hereon imposed.
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> (d) The *sangguniang panlalawigan* may prescribe the time, manner, terms and conditions for the payment of tax. In case of fraud or failure to pay the tax, the *sangguniang panlalawigan* may impose such surcharges, interest and penalties as it may deem appropriate.
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> (e) The proceeds from the amusement tax shall be shared equally by the province and the municipality where such amusement places are located." (*Emphasis supplied*)

While the phrase "**to the exclusion of both the national or municipal government**" is no longer found in R.A. 7160, this should not be taken to mean that the National Government is now empowered or authorized to levy and collect tax on the gross receipts from admission fees collected by the operators/proprietors of theaters, cinemas, and other amusement places without the Congress enacting a statute enabling the National Government to do so. When the legislature enacts a provision, it is understood that it is aware of previous statutes relating to the same subject matter and that in the absence of any express repeal or amendment therein, the new provision should be deemed enacted pursuant to the legislative policy embodied in the prior statutes.[27]

This view is confirmed by Section 125 of the NIRC of 1997, which imposes amusement tax on proprietor, lessee or operator of cockpits, cabarets, night or day clubs, boxing exhibitions, professional basketball games, *Jai-alai*, and racetracks; but excludes proprietors/operators of

[27] Legaspi vs. Executive Secretary, L-36153, November 28, 1975.

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theaters or cinemas. This is indicative of the legislature's intention to impose only one form of tax on proprietors/operators of theaters or cinemas, and that is, the amusement tax as found in the Local Government Code.

Moreover, this remains true notwithstanding the passage of Executive Order (E.O.) No. 273, otherwise known as "Adopting a Value-Added Tax, Amending For This Purpose Certain Provisions Of The National Internal Revenue Code And For Other Purposes,[28] which provides that the sales of services that are subject to VAT are as follows:

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

The foregoing provision of the VAT law was further amended by R.A. Nos. 7716[29], 8241[30], 8424[31] and 9238[32] and We shall discuss these amendments with more details later.

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[28] Effective January 1, 1997.

[29] Enacted on May 5, 1994, otherwise known as "*An Act Restructuring the Value-Added Tax (VAT) System, Widening its Tax Base and Enhancing its Administration and for these Purposes Amending and Repealing the Relevant Provisions of the National Internal Revenue Code, As Amended, and for Other Purposes.*"

[30] Effective January 1, 1997, otherwise known as "*An Act Amending Republic Act No. 7716, Otherwise known as the Expanded Value-Added Tax Law and Other Pertinent Provisions of the National Internal Revenue Code As Amended.*"

[31] Effective starting January 1, 1998, otherwise known as the "*Tax Reform Act of 1997.*"

[32] Effective January 1, 2004 otherwise known as "*An Act Amending Certain Sections of the National Internal Revenue Code of 1997, As Amended, By Excluding Several Services from the Coverage of the Value-Added Tax and Re-Imposing the Gross Receipts Tax on Banks and Non-Bank Financial*

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The question now is whether or not the operation of theaters and cinematographs is subject to VAT.

As previously discussed, under Section 102 of E.O. No. 273, any person engaged in the sale of services is levied, assessed and collected a VAT equivalent to 10% percent of gross receipts derived by them. The phrase "*sale of services*" means the performance of all kinds of services for others for a fee, remuneration or consideration, including those performed or rendered by the following:

a) construction and service contractors;
b) stock, real estate, commercial, customs and immigration brokers;
c) lessors of personal property;
d) lessors or distributors of cinematographic films;
e) persons engaged in milling, processing, manufacturing or repacking goods for others; and
f) similar services.

Subsequently, the following amendments were made:

Section 3 of R.A. No. 7716 (otherwise known as "An Act Restructuring the Value-Added Tax (VAT) System, Widening its Tax Base and Enhancing its Administration and for these Purposes Amending and Repealing the Relevant Provisions of the National Internal Revenue Code, As Amended, and for Other Purposes")[33], amended the foregoing provision to add certain sales of services to be subject to VAT, as follows:

> "**SECTION 102.** *Value-added tax on sale of services and use or lease of properties.* — (a) *Rate and base of tax.* — There shall be levied, assessed and collected, a value-added tax equivalent to 10% of gross receipts derived from the sale or exchange of services, including the use or lease of properties.

Intermediaries Performing Quasi-Banking Functions and Other Non-Bank Financial Intermediaries Beginning January 1, 2004."

33 Enacted on May 5, 1994.

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The phrase 'sale or exchange of services' means the performance of all kinds of services in the Philippines for others for a fee, remuneration or consideration, including those performed or rendered by construction and service contractors; stock, real estate, commercial, customs and immigration brokers; **lessors of property, whether personal or real**; **warehousing services**; lessors or distributors of cinematographic films; persons engaged in milling, processing, manufacturing or repacking goods for others; **proprietors, operators or keepers of hotels, models, rest houses, pension houses, inns, resorts; proprietors or operators of restaurants, refreshment parlors, cafes and other eating places, including clubs and caterers**; dealers in securities; lending investors; operators of taxicabs; **utility cars for rent or hire driven by the lessees (rent-a-car companies), tourist buses; and other common carriers by land, air, and sea relative to their transport of goods or cargoes; services of franchise grantees of telephone and telegraph, radio and television broadcasting and all other franchise grantees except those under Section 117 of this Code; services of banks, non-bank financial intermediaries and finance companies; and non-life insurance companies (except their crop insurances) including surety, fidelity and indemnity and bonding companies**; and similar services regardless of whether or not the performance thereof calls for the exercise or use of the physical or mental faculties. The phrase **'sale or exchange of services'** shall likewise include:

(1) **The lease or the use of or the right privilege to use any copyright, patent, design or model, plan, secret formula or process, goodwill, trademark, trade brand or other like property or right**;

(2) **The lease or the use of, or the right to use of any industrial, commercial or scientific equipment**;

(3) **The supply of scientific, technical, industrial or commercial knowledge or information**;

(4) **The supply of any assistance that is ancillary and subsidiary to and is furnished as a means of enabling the application or enjoyment of any such property, or right as is mentioned in subparagraph (2) or any such knowledge or information as is mentioned in subparagraph (3)**; or

(5) **The supply of services by a nonresident person or his employee in connection with the use of property or**

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rights belonging to, or the installation or operation of any brand, machinery, or other apparatus purchased from such nonresident person;

(6) **The supply of technical advice, assistance or services rendered in connection with technical management or administration of any scientific, industrial or commercial undertaking, venture, project or scheme**;

(7) **The lease of motion picture films, films, tapes and discs**; and

(8) **The lease or the use of or the right to use radio, television, satellite transmission and cable television time**.

xxx xxx xxx." (*Emphasis supplied*)

Section 1 of Republic Act No. 8241, otherwise known as "An Act Amending Republic Act No. 7716, Otherwise known as the Expanded Value-Added Tax Law and Other Pertinent Provisions of the National Internal Revenue Code As Amended"[34]; further amended the foregoing provision as follows:

"**SECTION 102.** *Value-added tax on sale of services and use or lease of properties.* — (a) *Rate and base of tax.* — There shall be levied assessed and collected, a value-added tax equivalent to ten percent (10%) of gross receipts derived from the sale or exchange of services, including the use or lease of properties.

The phrase 'sale or exchange of services' means the performance of all kinds of services in the Philippines for others for a fee, remuneration or consideration, including those performed or rendered by construction and service contractors; stock, real estate, commercial, customs and immigration brokers; lessors of property, whether personal or real; warehousing services; lessors or distributors of cinematographic films; persons engaged in milling, processing, manufacturing or repacking goods for others; proprietors, operators or keepers of hotels, motels, rest houses, pension houses, inns, resorts; proprietors or operators of restaurants, refreshment parlors,

[34] Effective January 1, 1997.

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cafes and other eating places, including clubs and caterers; dealers in securities; lending investors; **transportation contractors on their transport of goods or cargoes, including persons who transport goods or cargoes for hire and other domestic common carriers by land, air, and water relative to their transport of goods or cargoes**; services of franchise grantees of telephone and telegraph, radio and television broadcasting and all other franchise grantees except those under Section 117 of this Code; services of banks, non-bank financial intermediaries and finance companies; and non-life insurance companies (except their crop insurances) including surety, fidelity, indemnity and bonding companies; and similar services regardless of whether or not the performance thereof calls for the exercise or use of the physical or mental faculties. The phrase 'sale or exchange of services' shall likewise include:

(1) The lease or the use of or the right or privilege to use any copyright, patent, design or model, plan, secret formula or process, goodwill, trademark, trade brand or other like property or right;

(2) The lease or the use of, or the right to use of any industrial, commercial or scientific equipment;

(3) The supply of scientific, technical, industrial or commercial knowledge or information;

(4) The supply of any assistance that is ancillary and subsidiary to and is furnished as a means of enabling the application or enjoyment of any such property, or right as is mentioned in subparagraph (2) or any such knowledge or information as is mentioned in subparagraph (3);

(5) The supply of services by a nonresident person or his employee in connection with the use of property or rights belonging to, or the installation or operation of any brand, machinery, or other apparatus purchased from such nonresident person;

(6) The supply of technical advice, assistance or services rendered in connection with technical management or administration of any scientific, industrial or commercial undertaking, venture, project or scheme;

(7) The lease of motion picture films, films, tapes and discs and;

(8) The lease or the use of or the right to use radio, television, satellite transmission and cable television time.

xxx xxx xxx." (*Emphasis supplied*)

The foregoing provision was re-numbered as Section 108 under R.A. No. 8424.

Under Section 1 of R.A. No. 8761[35], Section 5 of R.A. No. 8424 was amended to include certain sales of services to be subject to VAT as follows:

"**SECTION 5.** *Transitory Provisions. — Effectivity of the Imposition of VAT on Certain Services.* — The imposition of the value-added tax on the following services shall take effect on January 1, 2001:

(a) Services performed in the exercise of profession or calling subject to the professional tax as provided for under Republic Act No. 7160, otherwise known as the Local Government Code of 1991, and professional services performed by registered general professional partnerships; actors, actresses, talents, singers and emcees; radio and television broadcasters, choreographers; musical, radio, movie, television and stage directors; and professional athletes;

(b) Services rendered by banks, non-bank financial intermediaries, finance companies, and other financial intermediaries not performing quasi-banking functions; and

(c) Services rendered by stock, real estate, commercial, customs and immigration brokers: *Provided*, That, for the year beginning January 1 up to December 31, 2000, the aforementioned brokers shall, in lieu of the value-added tax prescribed under Title IV of the National Internal Revenue Code of 1997, be subject to a tax equivalent to seven percent (7%) based on gross receipts from brokering services which shall be paid in the manner and in accordance with the provisions of Title V of the said Code: *Provided, further*, That beginning January 1, 2001, the aforementioned brokers shall be subject to the value-added tax, in lieu of the seven percent (7%) tax.

[35] Effective January 1, 2000, otherwise known as "*An Act Imposing the Value-Added Tax on Certain Services Beginning January 1, 2001, Amending for the Purpose Section 5 of Republic Act No. 8424 And For Other Purposes*."

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> The taxpayers rendering services mentioned under paragraphs (a) and (b) hereof, shall pay the applicable taxes prescribed under the pertinent provisions of the National Internal Revenue Code, as amended."

While the meaning of the phrase "***sales or exchange of services***" remains unchanged and may appear all-encompassing, the intention of the legislature to subject specific sales of services to VAT is clear. Had Congress intended the phrase to comprehend all kinds of sales of services, it would not have included more types or kinds of sales of services to be subject to VAT in every amendment of the VAT laws. Moreover, the showing of films by operators of cinematographs and theaters is a widely known service too significant to be omitted in the enumeration if the lawmaking body indeed intended to include the same as being subject to VAT.

The same remains true notwithstanding that the phrase "***sale or exchange of services***" is qualified at the end of the enumeration with the phrase "***and other similar services.***" Under the principle of *ejusdem generis*, where general words follow an enumeration of persons or things by words of a particular and specific meaning, such general words are not to be construed in their widest extent, but are to be held as applying only to persons or things of the same kind or class as those specifically mentioned.[36] Its purpose is to give effect to both the particular and general words, by treating the particular words as indicating the class and the general words as including all that is embraced in said class, although not specifically named by the particular words. Had the lawmaking body intended the general terms to be used in

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

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their unrestricted sense, it would have not made an enumeration of particular subjects but would have used only general terms.[37]

Moreover, the exclusion of petitioner's cinema/theater operation from payment of value-added tax under Section 108 of the Tax Code finds affirmation in the House of Representatives' House Resolution No. 975, submitted by the Committee on Rules on October 11, 2005, recommending its approval by the House of Representatives as House Joint Resolution No. 13, which reads:[38]

> "WHEREAS, it is imperative for the State to promote and support the development and growth of the theater and local film industry as a medium for the dissemination of aesthetic, cultural and social values for the better understanding and appreciation of the Filipino identity;
>
> WHEREAS, theaters and/or movie houses are the primary media through which the output or artistic creation of the local film industry is exhibited;
>
> WHEREAS, the viability of the cinema/theater industry is now under threat due to continuous operational losses brought about by low patronage and high taxation regime;
>
> WHEREAS, both theater owners and local movie producers are greatly prejudiced by cheaper home movie alternatives like television and cable programs, as well as by rampant film piracy which turns out inexpensive and untaxed films in VCD or DVD formats and severely undercut the cost of movie tickets;
>
> WHEREAS, the industry is now suffering from the wrong collection of two business taxes, each imposed by the national government and local government units on ticket sales;
>
> WHEREAS, when the collection of the amusement tax on admission to theaters was transferred by the old Local Tax

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[37] National Power Corporation vs. Zain B. Angas, G.R. Nos. 60225-26. May 8, 1992.

[38] *"Joint Resolution Expressing The True Intent Of Congress With Respect To The Prevailing Tax Regime In The Theater And Local Film Industry Consistent With The State's Policy To Have A Viable, Sustainable And Competitive Theater And Film Industry As One Of Its Partners In National Development."*

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> Code of 1973 from the national government to the local government, the industry has been subject to the top rate of thirty percent (30%) amusement tax imposed by the local government units to the exclusion of the national government until the Bureau of Internal Revenue erroneously appreciated the Local Government Code of 1991 and imposed a business tax of ten percent (10%) on the same gross receipts by way of the value-added tax (VAT).
>
> WHEREAS, such erroneous interpretation of the law will result to the imposition of a total top rate of forty percent (40%) business taxes (30% local and 10% national) on gross receipts which, under the circumstances, is unjust, oppressive and confiscatory;
>
> WHEREAS, the foregoing tax imposition, which is consistent with the State's policy to have a viable, sustainable and competitive theater and film industry, will surely lead to the demise of the industry. Now, therefore, be it
>
> ***Resolved, as it is hereby resolved by the House of Representatives,*** **That it is the sense of Congress that there should only be one business tax applicable to theaters and movie houses, same being the top rate of thirty percent (30%) amusement tax imposed by cities and provinces under the Local Government Code of 1991, and that consistent with the State's policy to have a viable, sustainable and competitive theater and film industry, it is the intent of Congress under prevailing laws, that the national government be precluded from imposing its own business tax in addition to that already imposed and collected by local government units.**" (*Emphasis supplied*)

In the light of the foregoing discussions, this Court finds petitioner not liable to pay the assessed value-added tax for its cinema/theater operations. Consequently, it is no longer necessary to resolve the last issue pertaining to the validity and accuracy of the subject assessment, inasmuch as the gross receipts derived from cinema/theater ticket sales are already found not subject to VAT.

WHEREFORE, the instant Petition for Review is hereby **GRANTED** and the assessment against petitioner for deficiency VAT in the amount of

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P103,346,691.40 for calendar year 2003 is hereby **CANCELLED** and **SET ASIDE.**

Accordingly, the Surety Bond[39] posted by petitioner for the suspension of collection of taxes is likewise ordered cancelled.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

[39] No. BD-G16-HOM-0014716 issued by Prudential Guarantee and Assurance Inc. on February 18, 2008 for the amount of P206,693,382.20.

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CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice