Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

THUNDERBIRD PILIPINAS HOTELS AND RESORTS, INC., Petitioner,	**G.R. No. 211327** Present:
-versus-	LEONEN, *J., Chairperson,* HERNANDO, INTING*, DELOS SANTOS, and ROSARIO, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** November 11, 2020

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DECISION

LEONEN, *J.*:

Strictly construed, Section 13(2)(b) of Presidential Decree No. 1869 means that the Philippine Amusement and Gaming Corporation (PAGCOR)'s income tax exemptions only extend to entities or individuals in a contractual relationship with PAGCOR in connection with its casino operations. A PAGCOR licensee authorized to operate its own casino does not fall within the purview of Section 13(2)(b). Its income from its casino operations, therefore, is not tax-exempt.

This Court resolves a Petition for Review on Certiorari[1] assailing the Decision[2] of the Court of Tax Appeals *En Banc*, which affirmed the Decision[3] and Resolution[4] of the First Division. The Court of Tax Appeals

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* On wellness leave.

1 *Rollo*, pp. 11–112. Filed under Rule 45

2 Id. at 158–181; The January 29, 2014 Decision was penned by Associate Justice Lovell R. Bautista and concurred in by Presiding Justice Roman G. Del Rosario and Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Caesar A. Casanova, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla, Amelia R. Cotangco-Manalastas and Ma. Belen M. Ringpis-Liban.

3 Id. at 114–149; The Decision dated July 18, 2012 was penned by Presiding Justice Ernesto D. Acosta and concurred in by Associate Justices Erlinda P. Uy and Esperanza R. Fabon-Victorino.

found Thunderbird Pilipinas Hotels and Resorts, Inc. (Thunderbird Pilipinas) liable for deficiency income and expanded withholding taxes totaling ₱17,929,817.09, inclusive of surcharge and interest, plus delinquency interest of 20% from April 10, 2009 until full payment.

Thunderbird Pilipinas is a domestic corporation with address at VOA Pennsylvania Avenue, Poro Point, San Fernando City, La Union. It is registered with the Poro Point Management Corporation as a Poro Point Special Economic and Freeport Zone enterprise.[5]

Thunderbird Pilipinas operates a casino and resort complex within the Poro Point Special Economic and Freeport Zone in San Fernando City, La Union by virtue of the Memorandum of Agreement[6] dated April 11, 2006 and the License[7] dated October 31, 2006 issued by PAGCOR.

On April 16, 2007, Thunderbird Pilipinas filed its annual income tax return for taxable year 2006 with the BIR RDO No. 3, Revenue Region No. 1. Its 2006 income tax return showed a deferred rent expense of ₱14,201,733.00 as a reconciling item on the company's net income per books against its taxable income.[8]

On November 19, 2008, the Bureau of Internal Revenue, through the Office of the Regional Director, Revenue Region No. 1 (Calasiao, Pangasinan), issued Assessment Notice Nos. IT-03-06-241-973-218 and WE-03-06-241-973-218 for deficiency income tax and expanded withholding tax, respectively, together with a Formal Letter of Demand against Thunderbird Pilipinas.[9]

The Bureau of Internal Revenue assessed Thunderbird Pilipinas for deficiency taxes in the aggregate amount of ₱15,331,711.00, inclusive of interest and penalties,[10] computed as follows:

I. Income Tax	
Gross taxable income per Return	P 151,683,405.43
Add: Purchases Paid not in the name of Thunderbird	11,068,373.43
Taxable Income	162,751,778.43
Tax Due	8,137,588.92
Less: Basic Tax Paid	553,418.67
Basic Income Tax Deficiency	7,584,170.25

4 Id. at 150–156. The Resolution dated December 11, 2012 was penned by Presiding Justice Ernesto D. Acosta and concurred in by Associate Justices Erlinda P. Uy and Esperanza R. Fabon-Victorino.

5 Id. at 159. *See also* PPSEFZ Enterprise Certificate No. 2006-01 dated April 7, 2006 (*rollo*, p. 212) and PPFZ Enterprise Certificate No. 2007-03 dated April 7, 2007 (*rollo*, p. 277).

6 Id. at 183–196.

7 Id. at 202–211.

8 Id. at 159.

9 Id.

10 Id. at 116.

Interest (4.16.07 to 10.30.08)		2,333,431.01
Total Deficiency Income Tax		**9,917,601.26**
II. Expanded Withholding Tax		
Deficiency Withholding Tax on Outside Services		38,305.93
Deficiency Withholding Tax on Rent		1,134,402.22
Deficiency Withholding Tax on Legal and Professional Fees		759,895.33
Deficiency Withholding Tax on Marketing and Promotions		62,761.90
Deficiency Withholding Tax on Director's Fee		10,279.99
Deficiency Withholding Tax on Management Fee		1,979,199.86
Total Expanded Withholding Tax Deficiency		3,984,845.23
Add: Interest (1.16.07 to 10.30.08)	P 1,425,264.51	
Compromise Penalty (No January to March 1601-E and 1604-E with Alphabetical List of Payees	4,000.00	1,429,264.51
Total Deficiency Expanded Withholding Tax		**P 5,414,109.74**
Total Tax Deficiency		**P 15,331,711.00**[11]

Thunderbird Pilipinas protested the assessments through a letter dated December 23, 2008 and a supplemental protest dated February 18, 2009. The protest was denied by the Regional Director.[12]

On March 30, 2009, Thunderbird Pilipinas received a collection letter from the Revenue District Officer of San Fernando City, La Union, directing the payment of the assessed tax within 10 days from receipt. Thunderbird Pilipinas replied on April 1, 2009 that it would appeal the Regional Director's decision to the Court of Tax Appeals and requested for deferment of the collection.[13]

On April 3, 2009, Thunderbird Pilipinas filed its Petition for Review before the Court of Tax Appeals,[14] seeking to cancel the deficiency income and expanded withholding tax assessments for 2006.[15]

In his Answer, the Commissioner of Internal Revenue interposed the following defenses, among others:

1. Thunderbird Pilipinas failed to submit the documents as required in the letters dated September 21, 2007, October 23, 2007, and December 17, 2007;[16]

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11 Id.
12 Id. at 160.
13 Id.
14 Id.
15 Id. at 12.
16 Id. at 161–162.

2. Thunderbird Pilipinas was assessed deficiency income and expanded withholding taxes based on the best evidence obtainable;[17]

3. Its protest on the assessments was denied for lack of supporting documentary evidence;[18] and

4. It was afforded due process in the assessment of its tax liabilities for 2006.[19]

Upon motion and posting of surety bond, the Court of Tax Appeals on November 13, 2009 enjoined the Commissioner of Internal Revenue from collecting the deficiency taxes.[20]

Trial followed. Both parties presented their respective evidence and memoranda, and the case was later submitted for decision.[21]

On July 18, 2012, the Court of Tax Appeals First Division rendered its Decision,[22] finding Thunderbird Pilipinas liable for deficiency income and expanded withholding taxes. It held that since PAGCOR was no longer exempt from income tax, pursuant to the rulings in *Abakada Guro Party List v. Ermita*[23] and *PAGCOR v. Bureau of Internal Revenue*,[24] Thunderbird Pilipinas—a the licensee/contractee of PAGCOR—is likewise subject to income tax from its casino operations.[25] For lack of evidence, it also rejected Thunderbird Pilipinas's contention that it was not liable for deficiency expanded withholding tax.[26] The dispositive portion of its Decision reads:

> **WHEREFORE**, premises considered, the assessments against petitioner covering deficiency income tax and EWT for taxable year 2006 are hereby **AFFIRMED** with some modifications.
>
> Accordingly, petitioner is hereby **ORDERED** to pay respondent deficiency income tax and EWT for taxable year 2006 in the respective amounts of **P12,488,946.65 and P5,440,870.44**, inclusive of 25% surcharge and 20% deficiency interest imposed pursuant to Section 248(A)(3) and 249(B) of the NIRC of 1997, computed as follows:

Deficiency Income Tax	

17 Id. at 167.
18 Id. at 164–165.
19 Id. at 166.
20 Id. at 168.
21 Id.
22 Id. at 114–149.
23 506 Phil. 1 (2005) [Per J. Austria-Martinez, En Banc].
24 660 Phil. 636 (2011) [Per J. Peralta, E Banc].
25 *Rollo*, pp. 128–134.
26 Id. at 138–139; and 142–147.

	Basic Tax Due	P 7,584,170.25
	Add: 25% Surcharge	1,896,042.56
	20% Interest (04/16/07 to 04/09/09)	3,008,733.84
	Total Amount Due	**P 12,488,946.65**
Deficiency EWT		
	Basic Tax Due	P3,208,008.58
	Add: 25% Surcharge	802,002.15
	20% Interest (01/16/07 to 04/09/09)	1,430,859.72
	Total Amount Due	**P5,440,870.44**
GRAND TOTAL – DEFICIENCY INCOME TAX AND EWT		**P 17,929,817.09**

Likewise, petitioner is **ORDERED** to pay delinquency interest at the rate of 20% per annum on the total deficiency taxes of **P17,929,817.09** computed from April 10, 2009 until full payment thereof pursuant to Section 249(C)(3) of the 1997 NIRC.

SO ORDERED.[27] (Emphasis in the original)

Thunderbird Pilipinas moved for reconsideration, but the First Division denied it in a December 11, 2012 Resolution.[28]

On appeal, the Court of Tax Appeals *En Banc* affirmed in its January 29, 2014 Decision[29] the First Division's rulings.

Hence, Thunderbird Pilipinas filed this Petition. In compliance with this Court's July 9, 2014 Resolution,[30] respondent Commissioner of Internal Revenue filed a Comment,[31] to which petitioner filed its Reply.[32]

Petitioner argues that the 2005 case of *Abakada Guro Party List v. Ermita*[33] and the 2011 case of *PAGCOR v. Bureau of Internal Revenue*[34] did not effectively repeal the tax exemptions of PAGCOR under Presidential Decree No. 1869.[35]

It asserts that the opinion in *Abakada* that PAGCOR was no longer exempt from income tax is a mere *obiter dictum*, and thus, not binding.[36] As for *PAGCOR*, it claims that the ruling must be revisited,[37] because Republic

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27 Id. at 148–149.
28 Id. at 150–156.
29 Id. at 158–181.
30 Id. at 486.
31 Id. at 496–514.
32 Id. at 522–537.
33 506 Phil. 1 (2005) [Per J. Austria-Martinez, En Banc].
34 660 Phil. 636 (2011) [Per J. Peralta, En Banc].
35 *Rollo*, p. 29.
36 Id.
37 Id. at 57.

Act No. 9337 is not the proper legislative procedure to repeal PAGCOR's income tax exemption privilege.[38] It argues that Republic Act No. 9337, a general law on the income taxation of all government-owned or controlled corporations, did not repeal Presidential Decree No. 1869, a special law referring only to PAGCOR.[39] It finds no clear repugnancy between the two laws,[40] noting that Republic Act No. 9937 did not include the pertinent provisions of Presidential Decree No. 1869 in the list of laws it repeals.[41]

Even if the ruling in the *PAGCOR* case were to be upheld, petitioner argues that it must be applied prospectively,[42] because it reversed the standing doctrine in *Commissioner of Internal Revenue v. Acesite (Philippines) Hotel Corporation*[43] on the blanket exemption of PAGCOR from taxes.[44] Petitioner insists that at the time it filed its 2006 tax returns, the controlling ruling was *Acesite*, which was promulgated in 2007 after the enactment of Republic Act No. 9337 in 2005.[45]

Furthermore, petitioner asserts that it is not affected by the 2011 *PAGCOR* ruling, because it was not a party to the case, and it is a mere PAGCOR contractee.[46] Petitioner points out that it was only in Revenue Memorandum Circular No. 33-2013,[47] effective April 17, 2013, where the licensees and contractees of PAGCOR were declared liable for income tax.[48] If at all, petitioner contends, PAGCOR should be the one to pay the deficiency income tax, based on their Memorandum of Agreement.[49]

Assuming that it was liable for income tax, petitioner says it is only liable to pay 3% of its gross income to the national government, instead of 5%, as it is registered as a Poro Point Special Economic and Freeport Zone enterprise. In any case, it submits that its payment to PAGCOR of 25% license fee on gross gaming revenue for the period from April 28 to December 31, 2006 is essentially payment of the 5% gross income earned.[50]

Finally, petitioner claims that it is not liable for deficiency expanded withholding tax on payments of fees to Fortun Narvasa & Salazar Law Firm and Punongbayan & Araullo, rental fees to Poro Point Management Corporation, and management fees for services rendered by Thunderbird

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38 Id. at 40.
39 Id. at 43.
40 Id. at 54.
41 Id. at 49.
42 Id. at 57.
43 545 Phil. 1 (2007) [Per J. Velasco, Jr., Second Division].
44 *Rollo*, p. 60.
45 Id. at 59.
46 Id. at 66.
47 Entitled, "Income Tax and Franchise Tax Due from the Philippine Amusement and Gaming Corporation (PAGCOR), its Contractees and Licensees."
48 *Rollo*, p. 69.
49 Id. at 75–76.
50 Id. at 84.

Resorts, Inc. It also maintains that the 25% surcharge imposed by the Court of Tax Appeals has no basis in law and in fact.[51]

In her Comment,[52] respondent asserts that the pronouncement in the 2011 *PAGCOR* case merely interpreted Section 1 of Republic Act No. 9337, specifically the removal of PAGCOR's exemption from income tax.[53] Hence, it is deemed part of the law as of the date of its passage.[54] Respondent further asserts that petitioner failed to present substantial evidence to show: (1) that the payment of 25% license fee is inclusive of the 5% income tax;[55] and (2) that petitioner is not subject to deficiency expanded withholding taxes on rental payments, legal and professional fees, and management fees.[56]

For resolution are the following issues:

First, whether or not the Decision in the 2011 case of *PAGCOR v. Bureau of Internal Revenue* should be applied prospectively;

Second, assuming that the 2011 *PAGCOR* case may be applied retroactively, whether or not it is binding on petitioner Thunderbird Pilipinas Hotels and Resorts, Inc., a licensee of PAGCOR;

Third, whether petitioner Thunderbird Pilipinas Hotels and Resorts, Inc. is liable for deficiency income tax for taxable year 2006;

Fourth, assuming that petitioner Thunderbird Pilipinas Hotels and Resorts, Inc. is subject to income tax, whether or not it is liable to pay only 3% of its gross income to the national government instead of 5% pursuant to its registration as a Poro Point Special Economic and Freeport Zone enterprise;

Fifth, whether or not its payment to PAGCOR of 25% of its gross gaming revenue can be applied against its deficiency income tax;

Sixth, whether or not petitioner Thunderbird Pilipinas Hotels and Resorts, Inc. is liable for deficiency expanded withholding tax on legal fees paid to Fortun Narvasa & Salazar Law Office and Punongbayan & Araullo, rental payments to Poro Point Management Corporation, and management fees paid to Thunderbird Resorts, Inc.; and

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51 Id. at 85–96.
52 Id. at 496–514.
53 Id. at 504.
54 Id. at 505.
55 Id. at 507.
56 Id. at 508–510.

Seventh, whether or not the 25% surcharge imposed by the Court of Tax Appeals on alleged deficiency taxes is valid.

The Petition is denied.

I

The first and second issues essentially boil down to whether PAGCOR's income tax exemption under its charter, Presidential Decree No. 1869,[57] is deemed repealed by Section 1[58] of Republic Act No. 9337,[59] which amended Section 27(c)[60] of the National Internal Revenue Code of 1997 by removing PAGCOR from the list of government-owned or controlled corporations exempt from the corporate income tax.

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[57] SECTION 13. *Exemptions.* —
(1) *Customs Duties, Taxes and Other Imposts on Importations.* — . . .
(2) *Income and Other Taxes.* — (a) Franchise Holder: *No tax of any kind or form, income or otherwise, as well as fees, charges or levies of whatever nature, whether National or Local, shall be assessed and collected under this Franchise from the Corporation; nor shall any form of tax or charge attach in any way to the earnings of the Corporation*, except a Franchise Tax of five (5%) percent of the gross revenue or earnings derived by the Corporation from its operation under this Franchise. Such tax shall be due and payable quarterly to the National Government and shall be in lieu of all kinds of taxes, levies, fees or assessments of any kind, nature or description, levied, established or collected by any municipal, provincial, or national government authority.
(b) Others: The exemption herein granted for earnings derived from the operations conducted under the franchise specifically from the payment of any tax, income or otherwise, as well as any form of charges, fees or levies, shall inure to the benefit of and extend to corporation(s), association(s), agency(ies), or individual(s) with whom the Corporation or operator has any contractual relationship in connection with the operations of the casino(s) authorized to be conducted under this Franchise and to those receiving compensation or other remuneration from the Corporation or operator as a result of essential facilities furnished and/or technical services rendered to the Corporation or operator.
The fee or remuneration of foreign entertainers contracted by the Corporation or operator in pursuance of this provision shall be free of any tax. (Emphasis supplied)

[58] SECTION 1. Section 27 of the National Internal Revenue Code of 1997, as amended, is hereby further amended to read as follows:
"SEC. 27. *Rates of Income Tax on Domestic Corporations.* —
. . . .
(C) *Government-owned or -Controlled Corporations, Agencies or Instrumentalities.* — The provisions of existing special or general laws to the contrary notwithstanding, all corporations, agencies, or instrumentalities owned or controlled by the Government, *except the Government Service and Insurance System (GSIS), the Social Security System (SSS), the Philippine Health Insurance Corporation (PHIC), and the Philippine Charity Sweepstakes Office (PCSO),* shall pay such rate of tax upon their taxable income as are imposed by this Section upon corporations or associations engaged in a similar business, industry, or activity. (Emphasis supplied)

[59] Value Added Tax (VAT) Reform Act, May 24, 2005.

[60] SECTION 27. *Rates of Income tax on Domestic Corporations.* —
. . . .
(C) Government-owned or Controlled Corporations, Agencies or Instrumentalities — The provisions of existing special or general laws to the contrary notwithstanding, all corporations, agencies, or instrumentalities owned or controlled by the Government, *except the Government Service Insurance System (GSIS), the Social Security System (SSS), the Philippine Health Insurance Corporation (PHIC), the Philippine Charity Sweepstakes Office (PCSO) and the Philippine Amusement and Gaming Corporation (PAGCOR),* shall pay such rate of tax upon their taxable income as are imposed by this Section upon corporations or associations engaged in a similar business, industry, or activity. . . (Emphasis supplied)

This issue has already been settled in the 2014 case of *PAGCOR v. Bureau of Internal Revenue*,[61] where this Court *En Banc* clarified the Decision in the 2011 *PAGCOR* case by ruling, among others, that only PAGCOR's income from other related services was removed from the tax privilege by Republic Act No. 9337.

To recall, in the 2011 *PAGCOR* case, this Court *En Banc*, in a March 15, 2011 Decision, upheld the validity of Section 1 of Republic Act No. 9337. It ruled that the withdrawal of PAGCOR's exemption from corporate income tax by Section 1 of Republic Act No. 9337 was not repugnant to the equal protection and non-impairment clauses of the Constitution.[62]

Following the March 15, 2011 Decision, the Bureau of Internal Revenue issued Revenue Memorandum Circular No. 33-2013 on April 17, 2013, entitled, "Income Tax and Franchise Tax Due from the Philippine Amusement and Gaming Corporation (PAGCOR), its Contractees and Licensees."[63] This circular stated that: (1) PAGCOR's income from licensing of casinos, gaming, and other related operations, as well as other income not connected to its casino operations, are subject to corporate income tax; and (2) PAGCOR is subject to a 5% franchise tax on its gaming and other related operations.[64]

PAGCOR requested for a reconsideration of the tax treatment of its income from casino, gaming, and other related operations, but its request was denied by the Commissioner of Internal Revenue.[65]

Consequently, PAGCOR filed a Motion for Clarification before this Court. It argued that Revenue Memorandum Circular No. 33-2013 was an

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61 749 Phil. 1010 (2014) [Per J. Peralta, En Banc].

62 Id. at 1014.

63 Id. at 1017.

64 Id. at 1017–1020.

65 Id. at 1020.
RMC 33-2013 classifies the income of PAGCOR as follows:

1. PAGCOR's income from its operations and licensing of gambling casinos, gaming clubs and other similar recreation or amusement places, gaming pools, includes, among others:

(a) Income from its casino operations;
(b) Income from dollar pit operations;
(c) Income from regular bingo operations; and
(d) Income from mobile bingo operations operated by it, with agents on commission basis. Provided, however, that the agents' commission income shall be subject to regular income tax, and consequently, to withholding tax under existing regulations.

2. *Income from "other related operations"* includes, but is not limited to:

(a) Income from licensed private casinos covered by authorities to operate issued to private operators;
(b) Income from traditional bingo, electronic bingo and other bingo variations covered by authorities to operate issued to private operators;
(c) Income from private internet casino gaming, internet sports betting and private mobile gaming operations;
(d) Income from private poker operations;
(e) Income from junket operations;
(f) Income from SM demo units; and
(g) Income from other necessary and related services, shows and entertainment. (Emphasis supplied)

erroneous interpretation and application of the March 15, 2011 Decision, and sought to clarify the following:

> 1. Whether PAGCOR's tax privilege of paying 5% franchise tax *in lieu* of all other taxes with respect to its gaming income, pursuant to its Charter — P.D. 1869, as amended by R.A. 9487, is deemed repealed or amended by Section 1 (c) of R.A. 9337.
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> 2. If it is deemed repealed or amended, whether PAGCOR's gaming income is subject to both 5% franchise tax and income tax.
>
> 3. Whether PAGCOR's income from operation of related services is subject to both income tax and 5% franchise tax.
>
> 4. Whether PAGCOR's tax privilege of paying 5% franchise tax inures to the benefit of third parties with contractual relationship with PAGCOR in connection with the operation of casinos.[66] (Citation omitted)

In a November 25, 2014 Resolution, this Court resolved to treat the Motion for Clarification as a new Petition for Certiorari under Rule 65 of the Rules of Court.[67]

After the submission of the parties' respective pleadings and payment of appropriate docket fees, this Court *En Banc* promulgated its Decision on December 10, 2014, declaring that PAGCOR's "income from gaming operations is subject only to five percent (5%) franchise tax under [Presidential Decree No.] 1869, as amended, while its income from other related services is subject to corporate income tax pursuant to [Presidential Decree No.] 1869, as amended, as well as [Republic Act] No. 9337."[68]

This Court noted that under Presidential Decree No. 1869, as amended, PAGCOR's income is classified into two: "(1) income from its operations conducted under its Franchise, pursuant to Section 13(2)(b) *(income from gaming operations)*; and (2) income from its operation of necessary and related services under Section 14(5) thereof *(income from other related services)*."[69]

This Court held that the income tax exemption under Section 27(c) of the 1997 National Internal Revenue Code, which was subsequently withdrawn by Republic Act No. 9337, could only pertain to PAGCOR's income from other related services:

> ***First.*** Under P.D. 1869, as amended, petitioner is subject to income tax only with respect to its operation of related services. Accordingly, the income tax exemption ordained under Section 27 (c) of R.A. No. 8424

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66 Id. at 1021.
67 Id. at 1015.
68 Id. at 1022.
69 Id. at 1021.

clearly pertains only to petitioner's income from operation of related services. Such income tax exemption could not have been applicable to petitioner's income from gaming operations as it is already exempt therefrom under P.D. 1869, as amended[.]

. . . .

In other words, there was no need for Congress to grant tax exemption to petitioner with respect to its income from gaming operations as the same is already exempted from all taxes of any kind or form, income or otherwise, whether national or local, under its Charter, save only for the five percent (5%) franchise tax. The exemption attached to the income from gaming operations exists independently from the enactment of R.A. No. 8424. . . .

. . . .

Second. Every effort must be exerted to avoid a conflict between statutes; so that if reasonable construction is possible, the laws must be reconciled in that manner.

As we see it, there is no conflict between P.D. 1869, as amended, and R.A. No. 9337. The former lays down the taxes imposable upon petitioner, as follows: (1) *a five percent (5%) franchise tax* of the gross revenues or earnings derived from its operations conducted under the Franchise, which shall be due and payable *in lieu* of all kinds of taxes, levies, fees or assessments of any kind, nature or description, levied, established or collected by any municipal, provincial or national government authority; (2) *income tax* for income realized from other necessary and related services, shows and entertainment of petitioner. With the enactment of R.A. No. 9337, which withdrew the income tax exemption under R.A. No. 8424, petitioner's tax liability on income from other related services was merely reinstated.

. . . .

Third. Even assuming that an inconsistency exists, P.D. 1869, as amended, which expressly provides the tax treatment of petitioner's income prevails over R.A. No. 9337, which is a general law. It is a canon of statutory conxstruction that a special law prevails over a general law — regardless of their dates of passage — and the special is to be considered as remaining an exception to the general. . . .

. . . .

. . . we agree with petitioner that if the lawmakers had intended to withdraw petitioner's tax exemption of its gaming income, then Section 13 (2) (a) of P.D. 1869 should have been amended expressly in R.A. No. 9487, or the same, at the very least, should have been mentioned in the repealing clause of R.A. No. 9337. However, the repealing clause never mentioned petitioner's Charter as one of the laws being repealed. On the other hand, the repeal of other special laws, namely, Section 13 of R.A. No. 6395 as well as Section 6, fifth paragraph of R.A. No. 9136, is categorically provided under Section 24 (a) (b) of R.A. No. 9337[.]

. . . .

> When petitioner's franchise was extended on June 20, 2007 without revoking or withdrawing its tax exemption, it effectively reinstated and reiterated all of petitioner's rights, privileges and authority granted under its Charter. Otherwise, Congress would have painstakingly enumerated the rights and privileges that it wants to withdraw, given that a franchise is a legislative grant of a special privilege to a person. Thus, the extension of petitioner's franchise under the same terms and conditions means a continuation of its tax exempt status with respect to its income from gaming operations. Moreover, all laws, rules and regulations, or parts thereof, which are inconsistent with the provisions of P.D. 1869, as amended, a special law, are considered repealed, amended and modified, consistent with Section 2 of R.A. No. 9487, thus:
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> > SECTION 2. *Repealing Clause*. — All laws, decrees, executive orders, proclamations, rules and regulations and other issuances, or parts thereof, which are inconsistent with the provisions of this Act, are hereby repealed, amended and modified.
>
> It is settled that where a statute is susceptible of more than one interpretation, the court should adopt such reasonable and beneficial construction which will render the provision thereof operative and effective, as well as harmonious with each other.[70] (Citations omitted)

In sum, this Court held that:

> 1. [PAGCOR's] tax privilege of paying five percent (5%) franchise tax *in lieu* of all other taxes with respect to its income from gaming operations, pursuant to P.D. 1869, as amended, is *not* repealed or amended by Section 1 (c) of R.A. No. 9337;
>
> 2. [PAGCOR's] income from gaming operations is subject to the five percent (5%) franchise tax only; and
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> 3. [PAGCOR's] income from other related services is subject to corporate income tax only.[71] (Emphasis in the original)

Accordingly, this Court ordered the Commissioner of Internal Revenue to desist from implementing Revenue Memorandum Circular No. 33-2013 insofar as it imposes: (1) corporate income tax on PAGCOR's income derived from its gaming operations; and (2) franchise tax on PAGCOR's income from other related services.

II

The next question to be resolved is whether PAGCOR's income tax exemption, except the payment of 5% franchise tax, inures to the benefit of PAGCOR's contractees or licensees in connection with the operation of

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[70] Id. at 1022–1026.
[71] Id. at 1028–1029.

casinos. This Court *En Banc* refused to pass upon this question in the 2014 Decision, saying that the case was "limited to clarifying the tax treatment of [PAGCOR's] income *vis-à-vis* our Decision dated March 15, 2011."[72]

The pertinent legal provision is Section 13 of Presidential Decree No. 1869, which states:

> SECTION 13. *Exemptions.* —
>
> . . . .
>
> (2) Income and other taxes. — (a) Franchise Holder: *No tax of any kind or form, income or otherwise, as well as fees, charges or levies of whatever nature, whether National or Local, shall be assessed and collected under this Franchise from the Corporation*; nor shall any form of tax or charge attach in any way to the earnings of the Corporation, *except a Franchise Tax of five (5%) percent of the gross revenue or earnings derived by the Corporation from its operation under this Franchise.* Such tax shall be due and payable quarterly to the National Government and shall be in lieu of all kinds of taxes, levies, fees or assessments of any kind, nature or description, levied, established or collected by any municipal, provincial, or national government authority.
>
> (b) Others: *The exemptions herein granted for earnings derived from the operations conducted under the franchise specifically from the payment of any tax, income or otherwise, as well as any form of charges, fees or levies,* ***shall inure to the benefit of and extend to corporation(s), association(s), agency(ies), or individual(s) with whom the Corporation or operator has any contractual relationship in connection with the operations of the casino(s) authorized to be conducted under this Franchise and to those receiving compensation or other remuneration from the Corporation or operator as a result of essential facilities furnished and/or technical services rendered to the Corporation or operator.*** (Emphasis supplied)

The proper interpretation of Section 13(2)(b) can be found in *Commissioner of Internal Revenue v. Acesite (Philippines) Hotel Corporation.*[73] In that case, respondent Acesite incurred value-added tax on its rental income and sales of food and beverages to PAGCOR relative to the latter's casino operations. Acesite tried to shift the tax to PAGCOR, but the latter refused to pay. Later, Acesite filed a claim for refund with the Bureau of Internal Revenue, asserting that its transaction with PAGCOR was subject to zero rate as it was rendered to a tax-exempt entity. Upon the Bureau of Internal Revenue's inaction, Acesite filed a petition before the Court of Tax Appeals.[74]

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72 Id. at 1028.
73 545 Phil. 1 (2007) [Per J. Velasco, Jr., Second Division].
74 Id. at 6.

Agreeing with Acesite, the Court of Tax Appeals held that Acesite's gross income from rentals and sales to PAGCOR is subject to 0% tax, as PAGCOR is a tax-exempt entity by virtue of a special law. The Court of Appeals affirmed the Court of Tax Appeals' ruling. It held that "PAGCOR was not only exempt from direct taxes but was also exempt from indirect taxes like the [value-added tax] and consequently, the transactions between respondent Acesite and PAGCOR were 'effectively zero-rated' because they involved the rendition of services to an entity exempt from indirect taxes."[75]

On the Commissioner of Internal Revenue's petition for review, this Court held that PAGCOR's tax exemption privilege includes the indirect tax of value-added tax, such that Acesite is entitled to 0% value-added tax rate:

> A close scrutiny of the above provisos clearly gives PAGCOR a blanket exemption to taxes with no distinction on whether the taxes are direct or indirect. We are one with the CA ruling that PAGCOR is also exempt from indirect taxes, like VAT, as follows:
>
> > Under the above provision [Section 13 (2) (b) of P.D. 1869], the term "Corporation" or operator refers to PAGCOR. Although the law does not specifically mention PAGCOR's exemption from indirect taxes, *PAGCOR is undoubtedly exempt from such taxes because the law exempts from taxes persons or entities contracting with PAGCOR in casino operations.* Although, differently worded, the provision clearly exempts PAGCOR from indirect taxes. *In fact, it goes one step further by granting tax exempt status to persons dealing with PAGCOR in casino operations.* The unmistakable conclusion is that PAGCOR is not liable for the P30,152,892.02 VAT and neither is Acesite as the latter is effectively subject to zero percent rate under Sec. 108 B (3). R.A. 8424[.]
>
> Indeed, by extending the exemption to entities or individuals dealing with PAGCOR, the legislature clearly granted exemption also from indirect taxes. It must be noted that the indirect tax of VAT, as in the instant case, can be shifted or passed to the buyer, transferee, or lessee of the goods, properties, or services subject to VAT. *Thus, by extending the tax exemption to entities or individuals dealing with PAGCOR in casino operations, it is exempting PAGCOR from being liable to indirect taxes.*[76] (Emphasis supplied)

This Court further explained that the rationale for Section 13(2)(b), in extending the exemption to entities or individuals dealing with PAGCOR in casino operations, is to proscribe any indirect tax, like value-added tax, that may be shifted to PAGCOR:

> The rationale for the exemption from indirect taxes provided for in P.D. 1869 and the extension of such exemption to entities or individuals

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[75] Id. at 7.
[76] Id. at 9.

> dealing with PAGCOR in casino operations are best elucidated from the 1987 case of *Commissioner of Internal Revenue v. John Gotamco & Sons, Inc.* where the absolute tax exemption of the World Health Organization (WHO) upon an international agreement was upheld. We held in said case that the exemption of contractee WHO should be implemented to mean that the entity or person exempt is the contractor itself who constructed the building owned by contractee WHO, and such does not violate the rule that tax exemptions are personal because the manifest intention of the agreement is to exempt the contractor so that no contractor's tax may be shifted to the contractee WHO. Thus, *the proviso in P.D. 1869, extending the exemption to entities or individuals dealing with PAGCOR in casino operations, is clearly to proscribe any indirect tax, like VAT, that may be shifted to PAGCOR.*[77] (Emphasis supplied, citation omitted)

Indeed, the presumption is that an exemption from "*all taxes*" or the exempting "*in lieu of all taxes*" clause embraces only those taxes for which the taxpayer is directly liable, unless the exempting statute specifically includes indirect taxes that are shifted to the taxpayer as part of the purchase price.[78] Section 13(2)(b) of Presidential Decree No. 1869 is one such provision specifically granting exemption from indirect taxes.

Tax exemptions are strictly construed against the taxpayer.[79] For an exemption to be deemed conferred, it must be clearly and distinctly stated in the language of the law.[80] Tax exemptions "are not to be extended beyond the ordinary and reasonable intendment of the language actually used by the legislative authority in granting the exemption."[81]

Nonetheless, while the tax exemption under Section 13(2)(b) of Presidential Decree No. 1869 inures to the benefit of entities with whom PAGCOR has a contractual relationship, the law adds a qualification: this contractual relationship must be "in connection with the operations of the casino(s) authorized to be conducted under this Franchise[.]" Stated differently, the tax exemption is made available only to those in a contractual relationship with PAGCOR in connection with PAGCOR's casino operations.

We are not unmindful of *Bloomberry Resorts and Hotels, Inc. v. Bureau of Internal Revenue*,[82] which declared that under Section 13(2)(b), all contractees and licensees of PAGCOR are likewise exempt from all other taxes, including corporate income tax, on earnings realized from the operation of casinos.

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77 Id. at 10–11.
78 *CIR v. Philippine Long Distance Telephone Co.*, 514 Phil. 255 (2005) [Per J. Garcia, Third Division].
79 Id. at 268.
80 *Philippine Acetylene Co., Inc. v. CIR*, 127 Phil. 461, 472 (1967) [Per J. Castro, En Banc].
81 *Paper Industries Corp. v. Court of Appeals*, 321 Phil. 1, 34 (1995) [Per J. Feliciano, En Banc].
82 792 Phil. 751 (2016) [Per J. Perez, Third Division].

In that case, Bloomberry, a grantee of a provisional license to operate a casino on April 8, 2009, was required by the Bureau of Internal Revenue to pay income tax pursuant to Revenue Memorandum Circular No. 33-2013. Bloomberry sought to annul Revenue Memorandum Circular No. 33-2013 in a petition for certiorari and prohibition directly filed before this Court.[83] Ruling in Bloomberry's favor, this Court held that PAGCOR contractees and licensees are exempt from taxes on income derived from their casino operations, pursuant to Section 13(2)(b) of Presidential Decree No. 1869. This Court stated:

> Section 13 of PD No. 1869 evidently states that payment of the 5% franchise tax by PAGCOR and its *contractees and licensees* exempts them from payment of any other taxes, including corporate income tax, quoted hereunder for ready reference:
>
> . . . .
>
> As previously recognized, the above-quoted provision providing for the said exemption was neither amended nor repealed by any subsequent laws (*i.e.,* Section 1 of R.A. No. 9337 which amended Section 27 (C) of the NIRC of 1997); thus, it is still in effect. Guided by the doctrinal teachings in resolving the case at bench, it is without a doubt that, like PAGCOR, its *contractees and licensees* remain exempted from the payment of corporate income tax and other taxes since the law is clear that said exemption inures to their benefit.
>
> . . . .
>
> As the PAGCOR Charter states in unequivocal terms that exemptions granted for earnings derived from the operations conducted under the franchise specifically from the payment of any tax, income or otherwise, as well as any form of charges, fees or levies, *shall inure to the benefit of and extend to* corporation(s), association(s), agency(ies), or individual(s) with whom the PAGCOR or operator has any contractual relationship in connection with the operations of the casino(s) authorized to be conducted under this Franchise, so it must be that all *contractees and licensees* of PAGCOR, upon payment of the 5% franchise tax, shall likewise be exempted from all other taxes, including corporate income tax realized from the operation of casinos.[84] (Emphasis supplied, citations omitted)

Accordingly, this Court in *Bloomberry* ordered the Commissioner of Internal Revenue to desist from implementing Revenue Memorandum Circular No. 33-2013 insofar as it imposed corporate income tax on Bloomberry's income derived from its gaming operations.[85]

Bloomberry, however, is not squarely congruent with this case. The facts in *Bloomberry* occurred after amendments to Presidential Decree No.

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83 Id. at 753–754.
84 Id. at 766–768.
85 Id. at 768.

1869 were introduced by Republic Act No. 9487, which took effect in 2007. This case, on the other hand, pertains to petitioner's tax liabilities for taxable year 2006.

Republic Act No. 9487, in amending Presidential Decree No. 1869, not only extended PAGCOR's franchise to operate casinos for another 25 years, but also granted PAGCOR the authority to license casinos and other gaming operations. Thus, although not specifically mentioned or explained, *Bloomberry* may have been resolved in light of this amendatory law.

A more deliberate reading of Section 13(2)(b) of Presidential Decree No. 1869 and the amendments under Republic Act No. 9487 provides more formidable support for the conclusion in this case. The amendments merely pertained to giving PAGCOR the authority to issue licenses for casino operations. Had Congress also intended to extend the tax exemptions to PAGCOR licensees, it could have easily done so by expanding Section 13(2)(b) and adding words such as "licensees of PAGCOR" and the like. There must be a positive provision, not merely a vague implication, of the law creating that exemption.

Presidential Decree No. 1869[86] was issued to centralize the operation of casinos into one corporate entity, PAGCOR. Section 1 states:

> SECTION 1. *Declaration of Policy.* — It is hereby declared to be the policy of the State to centralize and integrate all games of chance not heretofore authorized by existing franchises or permitted by law in order to attain the following objectives:
>
> *(a) To centralize and integrate the right and authority to operate and conduct games of chance into* ***one corporate entity*** *to be controlled, administered and supervised by the Government;*
>
> (b) To establish and operate clubs and casinos, for amusement and recreation, including sports gaming pools (basketball, football, lotteries, etc.) and such other forms of amusement and recreation including games of chance, which may be allowed by law within the territorial jurisdiction of the Philippines and which will: (1) generate sources of additional revenue to fund infrastructure and socio-civic projects, such as flood control programs, beautification, sewerage and sewage projects, Tulungan ng Bayan Centers, Nutritional Programs, Population Control and such other essential public services; (2) create recreation and integrated facilities which will expand and improve the country's existing tourist attractions; and (3) minimize, if not totally eradicate, the evils, malpractices and corruptions that are normally prevalent in the conduct and operation of gambling clubs and casinos without direct government involvement. (Emphasis supplied)

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[86] Consolidating and Amending Presidential Decree Nos. 1067-a, 1067-b, 1067-c, 1399 and 1632, Relative to the Franchise and Powers of the Philippine Amusement and Gaming Corporation (PAGCOR).

Thus, when the tax exemptions were granted under Section 13 of Presidential Decree No. 1869, the legislature contemplated a scenario where the casino operations would be centralized under the sole and exclusive authority of PAGCOR.

Under Section 13(2)(a), PAGCOR was granted tax exemption on earnings derived from its casino operations. This tax exemption was, under Section 13(2)(b), also extended to entities that have a contractual relationship with PAGCOR in connection with its operation of casinos.

In other words, the clause "operations of the casino(s) authorized to be conducted under this Franchise" under Section 13(2)(b) referred to casinos operated by PAGCOR itself.

The legislature, then, could not have envisioned that the clause would cover casinos operated by PAGCOR licensees since, at that time, PAGCOR had the sole and exclusive authority to operate casinos. Had that been its intention, Congress should have unequivocally provided in the amendatory law, Republic Act No. 9487, that tax exemptions extend to PAGCOR licensees.

As stated earlier, it is a settled rule that tax exemptions are strictly construed and must be couched in clear language. This Court has held that "if an exemption is found to exist, *it must not be enlarged by construction*, since the reasonable presumption is that the state has granted in express terms all it intended to grant at all[.]"[87]

Again, the ruling in *Acesite*[88] is more applicable.

There, this Court construed Section 13(2) of Presidential Decree No. 1869 to resolve the issue of "whether PAGCOR's tax exemption privilege includes the indirect tax of VAT to entitle Acesite to zero percent (0%) [value-added tax] rate."[89] Upon examining Section 13(2), this Court ruled that PAGCOR is exempt from both direct taxes (under paragraph a) and indirect taxes (under paragraph b). It categorically explained that "*the proviso in [Presidential Decree No.] 1869, extending the exemption to entities or individuals dealing with PAGCOR in casino operations, is clearly to proscribe any indirect tax, like [value-added tax], that may be shifted to PAGCOR.*"[90] Ultimately, the tax exemptions granted under Section 13 were primarily meant to favor only PAGCOR, and not any other entity.

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87 *CIR v. Philippine Long Distance Telephone Co.*, 514 Phil. 255, 272 (2005) [Per J. Garcia, Third Division].

88 *CIR v. Acesite (Philippines) Hotel Corp.*, 545 Phil. 1 (2007) [Per J. Velasco, Jr., Second Division].

89 Id. at 7.

90 Id. at 11.

Thus, following this Court's pronouncement in *Acesite*, we construe Section 13(2)(b) of Presidential Decree No. 1869 to mean that ***the tax exemption of PAGCOR extends only to those individuals or entities that have contracted with PAGCOR in connection with PAGCOR's casino operations. The exemption does not include private entities that were licensed to operate their own casinos.***

Here, petitioner was authorized and licensed by PAGCOR to construct and operate a casino complex, by virtue of the April 11, 2006 Memorandum of Agreement[91] and the October 31, 2006 License.[92] Petitioner does not fall within the purview of Section 13(2)(b). Therefore, revenues derived by petitioner from its casino operations are not exempt from income tax.

III

Petitioner contends that even if it were liable for income tax, it is only liable to pay 3%, instead of 5%, of its gross income to the national government. Moreover, it says its payment to PAGCOR of 25% license fee on gross gaming revenue for the period from April 28 to December 31, 2006 is essentially the payment of the 5% of gross income earned.[93]

It is now undisputed that petitioner, as a Poro Point Special Economic and Freeport Zone enterprise, is entitled to the 5% preferential tax rate on its gross income earned pursuant to Section 5[94] of Proclamation No. 216, series of 1993, in relation to Section 12(c)[95] of Republic Act No. 7227, or the Bases Conversion and Development Act of 1992.

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91 *Rollo*, pp. 183–196.

92 Id. at 202–211.

93 Id. at 84.

94 SECTION 5. *Investment Climate in the Poro Point Special and Economic and Freeport Zone.* — Pursuant to Section 5 (m) and Section 15 of R.A. 7227, BCDA shall promulgate all necessary policies, rules and regulations governing Poro Point including investment incentives, in consultation with the local government units and pertinent government departments for implementation by BCDA. Among others, *Poro Point shall have all the applicable incentives in the Subic Special Economic and Freeport Zone under R.A. 7227 and those applicable incentives granted in the Export Processing Zones, the Omnibus Investment Code of 1987, the Foreign Investment Act of 1991 and new investment laws which may hereinafter be enacted.* (Emphasis supplied)

95 (c) The provisions of existing laws, rules and regulations to the contrary notwithstanding, no taxes, local and national, shall be imposed within the Subic Special Economic Zone. In lieu of paying taxes, three percent (3%) of the gross income earned by all businesses and enterprises within the Subic Special Economic Zone shall be remitted to the National Government, one percent (1%) each to the local government units affected by the declaration of the zone in proportion to their population area, and other factors. In addition, there is hereby established a development fund of one percent (1%) of the gross income earned by all businesses and enterprises within the Subic Special Economic Zone to be utilized for the development of municipalities outside the City of Olongapo and the Municipality of Subic, and other municipalities contiguous to the base areas.

In case of conflict between national and local laws with respect to tax exemption privileges in the Subic Special Economic Zone, the same shall be resolved in favor of the latter;

We agree with the Court of Tax Appeals' ruling that Section 58 of the Implementing Rules and Regulations[96] of Republic Act No. 7227 governs the manner of collection of the 5% preferential tax.[97] Section 58 states:

> SECTION 58. *Returns and Payment of Tax.* —
>
> . . . .
>
> c. Payment of the Tax. —
>
> (1) *The amount representing the five (5%) percent final tax of the gross income earned* by the SBF Enterprise directly from the operation of its registered activity *shall be paid at the same time the return is filed with the Revenue District Officer or the collecting agent/accredited bank* in the City of Olongapo; provided, that (i) 1% of the above amount shall be allocated to the representative local government units affected by the declaration of the SBF in accordance with the formula set forth in Section 57 (a) of these Rules, and (ii) the other 1%, which is intended for the Special Development fund, shall be kept in trust. (Emphasis supplied)

On March 20, 2007, Republic Act No. 9400[98] was approved. It amended certain provisions of Republic Act No. 7227, including the insertion of a new Section 15-A, thus:

> SECTION 3. A new Section 15-A is hereby inserted, amending Republic Act No. 7227, as amended, to read as follows:
>
> SECTION 15-A. *Poro Point Freeport Zone (PPFZ).* — The two hundred thirty-six and a half-hectare (236.5 has.) secured area in the Poro Point Special Economic and Freeport Zone created under Proclamation No. 216, series of 1993, shall be operated and managed as a freeport and separate customs territory ensuring free flow or movement of goods and capital equipment within, into and exported out of the PPFZ. The PPFZ shall also provide incentives such as tax and duty-free importation of raw materials and capital equipment. However, exportation or removal of goods from the territory of the PPFZ to the other parts of the Philippine territory shall be subject to customs duties and taxes under the Tariff and Customs Code of the Philippines, as amended, the National Internal Revenue Code of 1997, as amended, and other relevant tax laws of the Philippines.
>
> The provisions of existing laws, rules and regulations to the contrary notwithstanding, no national and local taxes shall be imposed on registered business enterprises within the PPFZ. *In lieu of said taxes, a five*

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96 Approved tby the SBMA Board on November 3, 1992. Published in The Philippine Star on May 28, 1995.

97 *Rollo*, pp. 153–154.

98 Published in The Manila Times on April 4, 2007.

> *percent (5%) tax on gross income earned shall be paid by all registered business enterprises within the PPFZ and shall be directly remitted as follows: three percent (3%) to the National Government, and two percent (2%) to the treasurer's office of the municipality or city where they are located.*
>
> The governing body of the PPFZ shall have no regulatory authority over public utilities, which authority pertains to the regulatory agencies created by law for the purpose, such as the Energy Regulatory Commission created under Republic Act No. 9136 and the National Telecommunications Commission created under Republic Act No. 7925. (Emphasis supplied)

Subsequently, Department of Finance Order No. 03-08 was issued on February 13, 2008 to implement the provisions of Republic Act No. 9400. Its Section 6 provides the procedure for payment and remittance of the 5% income tax:

> SECTION 6. *Payment and Remittance of the 5% Tax on Gross Income Earned* –
>
> A. The 5 % Tax on Gross Income Earned shall be paid and remitted by Ecozone Enterprises and Freeport Enterprises as follows:
>
> . . . .
>
> 2. For Ecozone Enterprises in the MSEZ, JHSEZ and Freeport Enterprises in CFZ and PPFZ that are registered with CDC and PPMC, respectively:
>
> a. 3% to the National Government;
>
> b. 2% to the local government units (LGUs) through the Treasurer's Office of the Municipality or City where the Ecozone Enterprise or Freeport Enterprise is located.

However, as the Court of Tax Appeals correctly ruled, this case involves deficiency income tax for taxable year 2006. Department of Finance Order No. 03-08, then, is not applicable, as it was only issued on February 13, 2008, and took effect 15 days after its publication in two newspapers of general circulation.[99]

Thus, petitioner is liable to pay 5% of its gross income to the national government, subject to the condition provided in the Implementing Rules and Regulations of Republic Act No. 7227.

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[99] *Rollo*, pp. 153–154.

Likewise, the Court of Tax Appeals correctly rejected petitioner's argument that its payment of the 25% license fee is already inclusive of the 5% income tax. It stated:

> The 25% license fee/gross gaming revenue paid by petitioner is different and distinct form the income tax to which petitioner is being assessed. The 25% gross gaming revenue is being paid by virtue of the License entered into by petitioner with PAGCOR. It is based on the aggregate gross gaming revenue of the Fiesta Casino. On the other hand, 5% income tax is based on the total gross revenues originating from the Fiesta Casino.[100] (Citations omitted)

In consideration of the authority granted by PAGCOR to petitioner to establish and operate a casino at the Poro Point, petitioner agreed to pay a license fee to PAGCOR based on its gross revenues or earnings from casino operations. Section 9 of the License provides:

> 9. LICENSE FEE. As an essential condition for the License issued by PAGCOR to THUNDERBIRD PILIPINAS to establish and operate a casino at the PPSEFZ, THUNDERBIRD PILIPINAS must remit to PAGCOR starting from the date the casino commences operations, the following:
>
> Twenty five percent (25%) of the monthly aggregate gross gaming revenue of the FIESTA CASINO excluding junket/chipwashing operations plus 25% of the monthly gross gaming revenue generated from third-party chipwashing and/or junket operations;
>
> - or -
>
> a Monthly Minimum License Fee of UNITED STATES DOLLARS: SEVENTY FIVE THOUSAND (US$75,000.0) for the first six (6) months period of operation, whichever is higher. The Monthly Minimum License Fee shall be increased to UNITED STATES DOLLARS: ONE HUNDRED TWENTY FIVE THOUSAND (US$125,000.00) for the next six (6) month period.[101]

The 25% license fee is clearly distinct from the 5% income tax being collected by the Bureau of Internal Revenue. As clearly stated in the License, 25% of the gross gaming revenue is being paid by virtue of the License to establish and operate a casino at the Poro Point Special Economic and Freeport Zone. Nothing in the License's terms would show that such amount includes 5% income tax from petitioner's gaming operations. Besides, under the General Provisions of the License, Section 13(f) states:

> f. THUNDERBIRD PILIPINAS shall hold PAGCOR absolutely free and harmless from any claim, damage or liability, including tax liabilities, which may arise from its business operations, including the operation of

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[100] Id. at 136.
[101] Id. at 205.

> the casino, or any agreement or transaction that THUNDERBIRD PILIPINAS may have with the National Government or any entity thereof, and with any third party.[102]

IV

Petitioner further submits that it is not liable to pay deficiency expanded withholding taxes on rental payments in the total amount of ₱19,484,697.00 (instead of the ₱14,201,733.00 found by the Court of Tax Appeals) paid to the Poro Point Management Corporation and the Bases Conversion and Development Authority. It further contends that it had sufficiently proven: (1) the amount of professional fees paid to Fortun Narvasa & Salazar Law Office and Punongbayan & Araullo;[103] and (2) that the management fees paid to Thunderbird Resorts, Inc., a non-resident foreign corporation, were in consideration for services rendered outside the Philippines, and thus, not subject to expanded withholding tax.[104]

These assertions raise questions of facts that will entail an evaluation of evidence, which are beyond the scope of a judicial review under Rule 45 of the Rules of Court. Settled is the rule that the factual findings of the Court of Tax Appeals are binding on this Court[105] and can only be disturbed on appeal if not supported by substantial evidence.[106]

Petitioner argued before the Court of Tax Appeals First Division that the "Deferred Rent Expense" of ₱14,201,733.00 was recorded as expense in its books of accounts purely for compliance with the Philippine Accounting Standards, and was never claimed as deduction from its gross income for taxable year 2006. The Court of Tax Appeals agreed with petitioner's assertion, saying:

> Section 2.57.4 of RR No. 2-98, as amended, prescribes the time of withholding of the subject EWT as follows:
>
> . . . .
>
> Accordingly, petitioner is required to withhold EWT on its rental when it is either paid, becomes payable or was accrued or claimed as expense for income tax purposes, whichever comes first.
>
> The Deferred Rent Expense of P14,201,733.00 was not yet paid or payable in 2006 but was reported in petitioner's audited financial statements for financial statement purposes to comply with PAS No. 17. Moreover, it appears that petitioner did not accrue or claimed the amount

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102 Id. at 209.
103 Id. at 90.
104 Id. at 92–93.
105 *Far East Bank and Trust Co. v. CIR,* 522 Phil. 434 (2006) [Per J. Tinga, Third Division].
106 *Po v. Court of Tax Appeals,* 247 Phil. 487 (1988) [Per J. Sarmiento, Second Division]; and *Chu Hoi Horn v. Court of Tax Appeals,* 134 Phil. 756 (1968) [Per J. Fernando, En Banc].

> of P14,201,733.00 as deductible expense for income tax purposes. Thus, pursuant to Section 2.57.4 of RR No. 2-98, petitioner is not mandated to withhold 5% EWT on the Deferred Rent of P14,201,733.00. Consequently, said amount of P14,201,733.00 should be deducted from the total tax base of P23,622,249.00 reducing the basic deficiency EWT on rent to P424,315.57, computed as follows:
>
> | | |
> |---|---|
> | **Rent reflected as part of:** | |
> | Direct cost | P 1,606,845.00 |
> | Gen & Admin Expenses | 18,012,117.00 |
> | Other Expenses | 4,003,287.00 |
> | Total Rentals | P 23,622,249.00 |
> | Less: Deferred rent expense | 14,201,733.00 |
> | Total Rent subject to EWT | P 9,420,516.00 |
> | Tax Rate | 5% |
> | Basic Deficiency EWT | P 471,025.80 |
> | Less: Tax Paid per Return | 46,710.23 |
> | **Adjusted Basic Deficiency EWT** | **P 424,315.57**[107] |

The ₱19,484,697.00 amount of rental fees asserted by petitioner would require us to sift through all the evidence presented, a task that was for the lower courts to undertake, not this Court in a Rule 45 review. This Court's review power is generally limited to "cases in which only an error or question of law is involved."[108] This Court cannot depart from this limitation if a party fails to invoke a recognized exception.[109]

On professional fees paid to Fortun Narvasa & Salazar Law Office, the Court of Tax Appeals held that the "Transaction Reprint Journal" and "Manual Payments Reprint Journal" submitted by petitioner were insufficient to prove actual payment of ₱216,223.38. Petitioner, it ruled, should have presented billing statements, invoices, or official receipts issued by the law firm.[110]

As to professional fees accrued and/or paid to Punongbayan & Araullo, the Court of Tax Appeals found that Bill No. 128026 issued by the firm to petitioner shows an audit fee of ₱400,000.00 for the audit of petitioner's 2006 financial statements and a monthly retainer fee of ₱15,000.00 for October, November, and December 2006. Thus, the Court of Tax Appeals held that audit fees due to Punongbayan & Araullo for the year 2006 amounted to ₱445,000.00.[111]

As to the management fees paid to Thunderbird Resorts, Inc., the Court of Tax Appeals was unconvinced that the services rendered by

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[107] *Rollo*, pp. 140–141.

[108] CONST., art. VIII, sec. 5(2)(e). The enumeration under Article VIII, Section 5 (1) and (2) of the Constitution generally involves a question of law, except for criminal cases where the penalty imposed is *reclusion perpetua* or higher.

[109] *Philippine Airlines, Inc. v. CIR*, 823 Phil. 1043 (2018) [Per J. Leonen, Third Division].

[110] *Rollo*, p. 143.

[111] Id.

Thunderbird Resorts, Inc. were indeed performed outside the Philippines. While its office is not in the Philippines, the Court of Tax Appeals pointed out, its services can actually be performed here in the Philippines, considering that the subject of the services, which is the casino, is located in the country. The Court of Tax Appeals held that petitioner failed to prove that services were performed outside the Philippines.[112]

A taxpayer has the burden of proving entitlement to a claimed deduction or exemption.[113] The pieces of evidence presented by petitioner have been extensively and judiciously examined by the Court of Tax Appeals, both in Division and *En Banc*. We affirm the Court of Tax Appeals in ruling that petitioner's entitlement to the claimed deduction or exemption was not adequately shown.

This Court accords the highest respect to the Court of Tax Appeals' factual findings. We recognize its developed expertise on the subject, being the court solely dedicated to considering tax issues, unless there is a showing of abuse in the exercise of authority.[114] We find no compelling reason to overturn its factual findings on the amounts of deficiency expanded withholding tax assessments.

V

Finally, petitioner assails the imposition of a 25% surcharge, contending that the deficiency income and expanded withholding tax assessments have not yet become final.[115] It adds that the timely filing of its protest necessarily delayed its obligation to pay the tax assessments until the final resolution of its case.[116]

Respondent counters that Section 248(A)(3) of the 1997 National Internal Revenue Code does not require the assessment to become final and collectible before a surcharge can be imposed. What is only required is that the taxpayer failed to pay the deficiency tax within the time prescribed for its payment, as provided in the notice of assessment.

This Court finds the imposition of the 25% surcharge to be proper.

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112 Id. at 145–146.

113 *CIR v. Isabela Cultural Corp.*, 544 Phil. 488 (2007) [Per J. Ynares-Santiago, Third Division]; *CIR v. General Foods (Phils.) Inc.*, 449 Phil. 576 (2003) [Per J. Corona, Third Division]; *Cyanamid Philippines, Inc. v. Court of Appeals*, 379 Phil. 689 (2000) [Per J. Quisumbing, Second Division]; and *Paper Industries Corp. v. Court of Appeals*, 321 Phil. 1 (1995) [Per J. Feliciano, En Banc].

114 *CIR v. Mirant (Phils) Operations, Corp.*, 667 Phil. 208, 222 (2011) [Per J. Mendoza, Second Division] *citing Toshiba Information Equipment (Phils.), Inc. v. CIR*, 628 Phil. 430 (2010) [Per J. Leonardo-De Castro, First Division].

115 *Rollo*, p. 99.

116 Id. at 100.

Section 248 (A)(3) of the 1997 National Internal Revenue Code, as amended, provides:

> SECTION 248. *Civil Penalties.* —
>
> (A) There shall be imposed, in addition to the tax required to be paid, a penalty equivalent to twenty-five percent (25%) of the amount due, in the following cases:
>
> . . . .
>
> (3) Failure to pay the deficiency tax within the time prescribed for its payment in the notice of assessment[.]

A fundamental rule of statutory construction is that "where the terms of the statute are clear and unambiguous, no interpretation is called for, and the law is applied as written, for application is the first duty of courts, and interpretation [arises] only where literal application is impossible or inadequate."[117]

Section 248(A)(3) makes no distinctions nor establish exceptions. It directs the collection of the surcharge at the rate of 25% on the amount due and unpaid after the date prescribed in the assessment notice. The provision, therefore, is mandatory in case of delinquency.[118]

In one case involving a substantially similar provision on surcharges and interest in the old Tax Code, this Court found that the Court of Tax Appeals erred in reckoning the date for the payment of the deficiency tax "within 30 days from the finality of the decision." The Court of Tax Appeals' disposition, held this Court, "ha[d] the effect of fixing a new date for the payment of surcharges and interests[.]"[119]

This Court held that the law is clear in requiring the payment of the surcharge in case of nonpayment within 30 days after notice and demand. The surcharge and interest "are invariably considered as 'part of the tax,' so that the rule governing payment of taxes on the dates fixed by law would apply, and would leave no room for discretion on the part of revenue officials, or the Court of Tax Appeals[.]"[120] It explained the purpose of imposing surcharge and interest, thus:

> The intention of the law is precisely to discourage delay in the payment of taxes due to the State and, in this sense, the surcharge and interest charged

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117 *CIR v. Limpan Investment Corp.*, 145 Phil. 191, 194 (1970) [Per J. Castro, En Banc].

118 *Bank of the Philippine Islands v. CIR*, 528 Phil. 993 (2006) [Per J. Chico-Nazario, First Division]; *CIR v. Limpan Investment Corp.*, 145 Phil. 191, 194 (1970) [Per J. Castro, En Banc]; and *CIR v. Royal Interocean Lines*, 145 Phil. 10 (1970) [Per C.J. Concepcion, En Banc].

119 *CIR v. Limpan Investment Corp.*, 145 Phil. 191, 193 (1970) [Per J. Castro, En Banc].

120 Id. at 194.

> are not penal but compensatory in nature. They are compensation to the State for the delay in payment, or for the concomitant use of the funds by the taxpayer beyond the dates he should have paid them to the State.[121] (Citation omitted)

In *Philippine Refining Company v. Court of Appeals*,[122] the taxpayer assailed the imposition of the 25% surcharge and the 20% delinquency interest on the ground that "the assessment of the Commissioner was modified by the [Court of Tax Appeals] and the decision of said court has not yet become final and executory."[123] This Court, however, upheld the imposition of the 25% surcharge and 20% interest, since the taxpayer defaulted in paying the deficiency tax within the period prescribed in the Commissioner's demand letter.[124] This Court further explained:

> *The fact that petitioner appealed the assessment to the CTA and that the same was modified does not relieve petitioner of the penalties incident to delinquency. The reduced amount of P237,381.25 is but a part of the original assessment of P1,892.584.00.*
>
> Our attention has also been called to two of our previous rulings and these we set out here for the benefit of petitioner and whosoever may be minded to take the same stance it has adopted in this case. *Tax laws imposing penalties for delinquencies, so we have long held, are intended to hasten tax payments by punishing evasions or neglect of duty in respect thereof. If penalties could be condoned for flimsy reasons, the law imposing penalties for delinquencies would be rendered nugatory, and the maintenance of the Government and its multifarious activities will be adversely affected.*
>
> We have likewise explained that *it is mandatory to collect penalty and interest at the stated rate in case of delinquency. The intention of the law is to discourage delay in the payment of taxes due the Government and, in this sense, the penalty and interest are not penal but compensatory for the concomitant use of the funds by the taxpayer beyond the date when he is supposed to have paid them to the Government.* Unquestionably, petitioner chose to turn a deaf ear to these injunctions.[125] (Emphasis supplied, citations omitted)

Petitioner contends that Section 5.4 of Revenue Regulations No. 12-99[126] provides that "as a rule, no surcharge is imposed on deficiency tax." Petitioner, however, left out the rest of the provision, which states that "if the amount due . . . is not paid on or before the due date stated on the demand letter, the corresponding surcharge shall be imposed." Section 5.4 of Revenue Regulations No. 12-99 provides:

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121 Id.

122 326 Phil. 680 (1996) [Per J. Regalado, Second Division].

123 Id. at 690.

124 Id. at 691.

125 Id. at 691–692.

126 Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty, September 6, 1996.

> SECTION 5. *Mode of Procedures in Computing for the Tax and/or Applicable Surcharge.* — Shown hereunder are illustrative cases for the computation and assessment of the tax, inclusive of surcharge (if applicable) and interest:
>
> . . . .
>
> 5.4 *Penalty or penalties for deficiency tax. — As a rule, no surcharge is imposed on deficiency tax and on the basic tax. However, if the amount due inclusive of penalties is not paid on or before the due date stated on the demand letter, the corresponding surcharge shall be imposed.* (Emphasis supplied)

It is clear that there is no 25% surcharge imposed in computing the deficiency tax assessment if paid on or before the date specified in the assessment notice. However, if the deficiency tax is not paid within the required period of time, the surcharge becomes automatically due.[127]

We are not unmindful of several cases[128] where this Court deleted the imposition of surcharges and interests because of the taxpayer's good faith and the Bureau of Internal Revenue's previous erroneous interpretations of the law. In those cases, the taxpayers relied on a specific ruling issued by the Bureau of Internal Revenue to the effect that they were exempt from the payment of the assessed deficiency tax.

Those facts, however, are not present here. Thus, the surcharge imposition, as mandated by the law, should be upheld.

WHEREFORE, the Petition for Review on Certiorari is **DENIED**. The assailed January 29, 2014 Decision of the Court of Tax Appeals *En Banc* is **AFFIRMED**.

SO ORDERED.

MARVIC M.V.F. LEONEN
Associate Justice

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[127] *CIR v. Air India,* 241 Phil. 689 (1988) [Per J. Gancayco, First Division].

[128] *CIR v. St. Luke's Medical Center, Inc.,* 695 Phil. 867 (2012) [Per J. Carpio, Second Division]; *Michel J. Lhuillier Pawnshop, Inc. v. CIR,* 533 Phil. 101 (2006) [Per J. Ynares-Santiago, First Division]; *Connell Bros. Co. (Phil.) v. CIR,* 119 Phil. 40 (1963) [Per J. Makalintal, En Banc]; *Tuason, Jr. v. Lingad,* 157 Phil. 159 (1974) [Per J. Castro, First Division]; and *CIR v. Republic Cement Corp.,* 209 Phil. 31 (1983) [Per J. Plana, En Banc].

WE CONCUR:

RAMON PAUL L. HERNANDO
Associate Justice

On wellness leave
HENRI JEAN PAUL B. INTING
Associate Justice

EDGARDO L. DELOS SANTOS
Associate Justice

RICARDO R. ROSARIO
Associate Justice

ATTESTATION

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

MARVIC M.V.F. LEONEN
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

DIOSDADO M. PERALTA
Chief Justice