Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NEW VISION SATELLITE NETWORK, INC.,	**G.R. No. 248840**
Petitioner,	**Present:**
	LEONEN, *J.*, Chairperson,
	HERNANDO,
	INTING,
- versus -	GAERLAN,*
	LOPEZ, J., *JJ.*
THE PROVINCIAL GOVERNMENT OF CAGAYAN, represented by HONORABLE GOVERNOR ALVARO T. ANTONIO, and EMILIA L. IRINGAN in her capacity as PROVINCIAL TREASURER,	**Promulgated:**
Respondent.	July 5, 2021
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DECISION

LOPEZ, J., *J.*:

This Court resolves the Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court seeking to reverse and set aside the February 12, 2019 Decision[2] and July 29, 2019 Resolution[3] of the Court of Appeals (CA) in CA-G.R. SP No. 152385, which dismissed the petitioner's appeal from the November 24, 2015 Order and September 5, 2016 Order of the Regional

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* Designated as Additional Member per Special Order No. 2833-A dated July 2, 2021.
1 *Rollo*, pp. 16-30.
2 Penned by Associate Justice Perpetua T. Atal-Paño, with the concurrence of Associate Justices Ricardo R. Rosario (now a member of the Supreme Court) and Nina G. Antonio-Valenzuela; *id.* at 37-48.
3 *Id.* at 56-58.

Trial Court (RTC) of Ballesteros, Cagayan, Branch 33, in Special Proceedings No. 33-493-2015.[4] The RTC in the said orders dismissed the petitioner's Petition for Review on *Certiorari* and Prohibition with Application for Temporary Restraining Order and its motion for reconsideration of the said dismissal.[5]

The Facts

The petitioner New Vision Satellite Network, Inc. (New Vision) is a corporation duly organized and existing under and by virtue of the laws of the Philippines. It is a holder of a Certificate of Authority issued by the National Telecommunications Commission (NTC) to operate and maintain a Cable Television System (CATV) in the municipalities of Ballesteros and Abulug in the Province of Cagayan.[6]

On December 19, 2013, the Sangguniang Panlalawigan of the Province of Cagayan issued Provincial Ordinance No. 2013-8-008, dated December 19, 2013 or "*An Ordinance Revising the Provincial Revenue Code of 2005 of the Province of Cagayan*" (Provincial Revenue Code), which contains, among others, the following pertinent provisions:[7]

> Section 57. Coverage of franchise tax. All public utilities and businesses holding franchises from the national, provincial or other local governments or their agencies shall pay the **franchise tax** based on their gross receipts obtained within the province. Among others, the following shall be subject to this tax:
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> x x x x
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> (e) ***Community Antenna Television (CATV)*** – This shall include any person who in any manner receive, amplify and rebroadcast television signals of different program sources of local, national or international origination.
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> x x x x
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> Section 108. Imposition of fee. There shall be collected an **annual fee** at the rates provided hereunder for the issuance of a Governor's permit to every person that shall conduct a business, or activity within this province.
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> x x x x
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> c. On business enjoying a **franchise**[.][8] (Emphasis supplied)

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4 As mentioned in the CA decision; *id.* at 37.
5 *Id.*
6 *Id.* at 19.
7 *Id.* at 67-69.
8 *Id.* at 68.

By virtue of the foregoing provisions of the Provincial Revenue Code, Emilia Iringan (Iringan), Provincial Treasurer of the Provincial Government of Cagayan (Cagayan Provincial Govt.), sent a Demand Letter dated August 20, 2014 to New Vision, reminding it of its tax obligations, from 2001 to 2014, amounting to ₱360,094.00.[9]

As New Vision did not heed the demand letter, a Final Demand dated January 22, 2015 was sent by the Cagayan Provincial Govt., through its Governor, Atty. Alvaro T. Antonio.[10]

On February 9, 2015, New Vision filed a Petition for *Certiorari* and Prohibition with Application for Temporary Restraining Order and/or Writ of Preliminary Injunction before the RTC, seeking to declare Sections 57(e) and 108(c) of the Provincial Revenue Code as null and void. New Vision alleged that Sections 57(e) and 108(c) of the Provincial Revenue Code are an *ultra vires* act and done with grave abuse of discretion and manifest error because the imposition of franchise tax under Section 57(e) and the annual permit fee under Section 108(c) is unjust, excessive, oppressive, confiscatory and contrary to law and declared national policy. New Vision further argued that it was merely granted a Certificate of Authority by the NTC because it operates only within the area of Abulug and Ballesteros, Cagayan; and that a legislative franchise is needed for those cable operators operating in and between different provinces, cities, municipalities and between the Philippines and other countries. New Vision proffered that not every privilege granted by a government is a franchise and it differs from a license or authority, which is merely a personal privilege.[11] It is the New Vision's view that the franchise tax and the annual permit fee are applicable only to the recipients of a legislative franchise.[12]

On November 24, 2015, the RTC issued an Order dismissing New Vision's petition. The RTC ruled that New Vision failed to exhaust administrative remedies when it filed the petition instead of filing a protest under Section 195 of the Local Government Code (LGC) with the local treasurer. The dispositive portion of the Order states:

> WHEREFORE, premises considered, this court hereby orders the dismissal of the instant petition and hereby directs [New Vision] to pay franchise tax and governor's permit fee to [Cagayan Provincial Govt.].[13]

New Vision filed a motion for reconsideration of the aforesaid Order, but was denied by the RTC in its September 5, 2016 Order.[14] Undaunted, New Vision filed an appeal before the CA.

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9 *Id.* at 289-290.
10 *Id.* at 291.
11 CA decision; *rollo*, p. 38-39.
12 *Id.* at 38.
13 *Id.* at 41.
14 *Id.*

The CA dismissed the appeal, ruling that New Vision failed to exhaust administrative remedies. The dispositive portion of the Decision states:

> **WHEREFORE**, the appeal is **DISMISSED**. The Orders dated November 24, 2015 and September 5, 2016 of the Regional Trial Court, Second Judicial Region, Branch 33, Ballesteros, Cagayan, in Spl. Proc. No. 33-493-2015, are hereby **AFFIRMED**.
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> SO ORDERED.[15] (Emphasis in the original)

New Vision filed a motion for reconsideration of the aforesaid Order, but was denied by the CA in its July 29, 2019 Order.[16]

Hence, New Vision filed the instant petition.

Petitioner argues that: (i) it did not fail to exhaust administrative remedies as it already held a dialogue with the Office of the Provincial Governor and Provincial Vice Governor to discuss, among others, its request for a review and evaluation of the old Provincial Ordinance No. 2005-07; and (ii) it is not subject to local franchise tax, since the latter only covers legislative franchises, and the Certificate of Authority issued by the NTC to operate and maintain a CATV system is not a legislative franchise.[17]

Respondent Cagayan Provincial Government argues that: (i) petitioner failed to exhaust administrative remedies, as petitioner should have complied with the mandatory requirement under Section 187 of the Local Government Code; and (ii) petitioner is subject to local franchise tax, since the Certificate of Authority to operate and maintain CATV system is considered a franchise, being a privilege granted by government upon petitioner as a private corporation to operate and maintain a CATV system in the territorial jurisdiction of the respondent.[18]

The Issues

I. Procedural Issue

Whether the petitioner failed to comply with the principle of administrative remedies, particularly in relation to Section 187 of the Local Government Code.

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15 *Id.* at 48.
16 *Id.* at 17.
17 *Id.* at 25.
18 *Id.* at 298-299.

II. Substantive Issue

Whether the Certificate of Authority issued by the NTC for the operation and maintenance of a CATV system is a franchise, which subjects petitioner to local franchise tax.

The Court's Ruling

The petition is denied on both procedural and substantive grounds.

I. Procedural Issue: Failure to Exhaust Administrative Remedies under Section 187 of the Local Government Code

We uphold the respondent.

Parties are generally precluded from immediately seeking the intervention of courts when the law provides for remedies against the action of an administrative board, body, or officer. The practical purpose behind the principle of exhaustion of administrative remedies is to provide an orderly procedure by giving the administrative agency an opportunity to decide the matter by itself correctly and to prevent unnecessary and premature resort to the courts.[19]

Section 187 of the Republic Act No. 7160 or the *Local Government Code of 1991* (Local Government Code) provides that any question on the constitutionality or legality of tax ordinances or revenue measures may be reraised on appeal within thirty (30) days from the effectivity thereof to the Secretary of Justice who shall render a decision within sixty (60) days from the date of receipt of the appeal. It provides:

> Section 187. *Procedure for Approval and Effectivity of Tax Ordinances and Revenue Measures; Mandatory Public Hearings.* — The procedure for approval of local tax ordinances and revenue measures shall be in accordance with the provisions of this Code: *Provided*, That public hearings shall be conducted for the purpose prior to the enactment thereof: *Provided, further*, That any question on the constitutionality or legality of tax ordinances or revenue measures may be raised on appeal within thirty (30) days from the effectivity thereof to the Secretary of Justice who shall render a decision within sixty (60) days from the date of receipt of the appeal: *Provided, however*, That such appeal shall not have the effect of suspending the effectivity of the ordinance and the accrual and payment of the tax, fee, or charge levied therein: *Provided, finally*, That within thirty (30) days after receipt of the decision or the lapse of the sixty-day period

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19 *Aala, et al. v. Uy, et al.*, 803 Phil 36, 59 (2017).

> without the Secretary of Justice acting upon the appeal, the aggrieved party may file appropriate proceedings with a court of competent jurisdiction.

Prior resort to the Secretary of Justice in questioning the constitutionality or legality of tax ordinances or revenue measures is mandatory. In *Reyes v. Court of Appeals*,[20] We held:

> Clearly, the law requires that the dissatisfied taxpayer who questions the validity or legality of a tax ordinance must file his appeal to the Secretary of Justice, within 30 days from effectivity thereof. In case the Secretary decides the appeals, a period also of 30 days is allowed for an aggrieved party to go to court. But if the Secretary does not act thereon, after the lapse of 60 days, a party could already proceed to seek relief in court. These three separate periods are clearly given for compliance as a prerequisite before seeking redress in a competent court. Such statutory periods are set to prevent delays as well as enhance the orderly and speedy discharge of judicial functions. For this reason the courts construct these provisions of statutes as **mandatory**.[21] (Citations omitted and emphasis supplied)

Petitioner assailed the legality of Sections 57(e) and 108(c) of the Provincial Revenue Code; hence, it should have filed an appeal with the Secretary of Justice within 30 days from its enactment on December 19, 2013. However, such was not availed of by petitioner. Instead, petitioner filed a petition for *certiorari* before the RTC.[22]

Petitioner alleged in the instant petition that it held a dialogue before the Office of the Provincial Governor and Provincial Vice Governor to discuss, among others, its request for a review and evaluation of the old Provincial Ordinance No. 2005-07. We do not consider this as compliant with the mandatory administrative remedies under Section 187 of the Local Government Code. Moreover, as correctly pointed out by the CA, what is in issue here is Provincial Ordinance No. 2013-8-008, and not the old Provincial Ordinance No. 2005-07.[23]

Accordingly, We rule that petitioner failed to comply with the principle of exhaustion of administrative remedies, particularly in relation to Section 187 of the Local Government Code.

II. Substantive Issue: The Certificate of Authority issued by the NTC for the Operation and Maintenance of a CATV System is a Franchise for the purpose of the Local Franchise Tax

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20 378 Phil. 232 (1999).
21 *Id.* at 237-238.
22 *Rollo*, p. 46.
23 *Id.*

We uphold the respondent.

Section 137 of the Local Government Code provides:

> Section 137. *Franchise Tax.* — Notwithstanding any exemption granted by any law or other special law, the province may impose a tax on businesses enjoying a franchise, at a rate not exceeding fifty percent (50%) of one percent (1%) of the gross annual receipts for the preceding calendar year based on the incoming receipt, or realized, within its territorial jurisdiction.
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> In the case of a newly started business, the tax shall not exceed one-twentieth (1/20) of one percent (1%) of the capital investment. In the succeeding calendar year, regardless of when the business started to operate, the tax shall be based on the gross receipts for the preceding calendar year, or any fraction thereon, as provided herein.

To implement the above provision, Article 226 of Administrative Order No. 270 or the *Implementing Rules and Regulations of Local Government Code of 1991* provides:

> Article 226. *Franchise Tax.* — (a) Notwithstanding any exemption granted by any law or other special law, the province may impose a tax on businesses enjoying a franchise, at a rate not exceeding fifty percent (50%) of one percent (1%) of the gross annual receipts, which shall include both cash sales and sales on account realized during the preceding calendar year within its territorial jurisdiction, excluding the territorial limits of any city located in the province.
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> (b) The province shall not impose the tax on business enjoying franchise operating within the territorial jurisdiction of any city located within the province.
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> (c) The term businesses enjoying franchise shall not include holders of certificates of public convenience for the operation of public utility vehicles for reason that such certificates are not considered as franchises.
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> (d) In the case of a newly started business, the tax shall not exceed one twentieth (1/20) of one percent (1%) of the capital investment. In the succeeding calendar year, regardless of when the business started to operate, the tax shall be based on the gross receipts for the preceding calendar year, or any fraction thereof, as provided in this Article.

Section 131(m) of the Local Government Code defines a franchise, as follows:

> (m) "Franchise" is a right or privilege, affected with public interest which is conferred upon private persons or corporations, under such terms and conditions as the government and its political subdivisions may impose in the interest of public welfare, security, and safety[.]

The Province of Cagayan promulgated the Provincial Revenue Code, which: (i) states the coverage of franchise tax in relation to Section 137 of the Local Government Code, (ii) imposes local franchise tax on CATV operators, and (iii) imposes an annual permit fee for those business entities subject to franchise tax.[24]

Under Executive Order (E.O.) No. 205, Series of 1987, entitled "*Regulating the Operation of Cable Antenna Television (CATV) Systems in the Philippines, and for Other Purposes*," only a Certificate of Authority granted by the NTC is necessary to operate a CATV system. Section 1 of E.O. No. 205 states:

> Section 1. The operation of Cable Antenna Television (CATV) system in the Philippines shall be open to all citizens of the Philippines, or to corporations, cooperatives or associations wholly-owned and managed by such citizens under a Certificate of Authority granted by the National Telecommunications Commission, hereinafter referred to as the Commission.

Petitioner does not have a franchise issued by the Philippine Congress. It only has a Certificate of Authority issued by NTC to operate a CATV system in the areas of Abulug and Ballesteros, Province of Cagayan, pursuant to E.O. No. 205.[25]

The core substantive issue in this case is whether the petitioner is liable for franchise tax. To resolve this, We must first answer the threshold question of whether the Certificate of Authority issued by the NTC to operate a CATV system is a franchise. If it is a franchise, then the petitioner is subject to franchise tax under Section 137 of the Local Government Code in relation to Section 57 of the Provincial Revenue Code; otherwise, it is not.

At the onset, We note that there is *prima facie* basis to characterize the Certificate of Authority issued by the NTC to operate a CATV system as a franchise. This is based on the text of E.O. No. 205 and the Provincial Revenue Code.

First, Section 5 of E.O. No. 205 states:

> Section 5. The grantee shall pay the income tax levied under Title II of the National Internal Revenue Code, as amended, and a franchise tax equivalent to three per centum (3%) of all gross receipts from business transacted under the Certificate of Authority

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24 *Id.* at 38.
25 *Id.* at 39.

As Section 5 of E.O. No. 205 subjects the CATV system operator to a national franchise tax, it logically follows that operating a CATV system is considered a franchise as far as the National Government is concerned. Note that the subject in this present case is a local franchise tax.

E.O. No. 205 was issued pursuant to the legislative powers of the then incumbent President before the first Congress was convened under Section 6, Article XVIII of the 1987 Philippine Constitution.

Second, Section 57 of the Provincial Revenue Code, as quoted above, expressly defines the coverage of franchise tax to include CATV systems.

These two provisions constitute prior textual and legislative determinations that give rise to a presumption that the Certificate of Authority granted by the NTC is a franchise. By challenging this presumption, the petition has the burden of showing that based on law and jurisprudence, the said Certificate of Authority should not be considered a franchise.

This Court has previously ruled on the nature and scope of a franchise. It has, in several instances, reviewed whether a particular authority from government indeed constitutes a franchise. Therefore, We are not precluded from reviewing whether the NTC Certificate of Authority subject of this case is in the nature of a franchise, for the purpose of the imposition of a local franchise tax.

There are four well-established doctrines that are key to the resolution of this case: (i) the jurisprudential definition of a franchise, (ii) the distinction between general or primary franchise and special or secondary franchise; (iii) the distinction between legislative franchise and administrative franchise; and (iv) the distinction between franchise and a mere secondary license or permit. After considering these doctrines, We shall then discuss the novel issue raised in this case: the distinction between an administrative franchise and a secondary license or permit.

The Definition and Nature of a Franchise

In *ABS-CBN Corp. v. National Telecommunications Commission*,[26] We defined a franchise as follows:

> Broadly speaking, "a franchise is defined to be a special privilege to do certain things conferred by government on an individual or corporation, and which does not belong to citizens generally of common right." Insofar

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26 G.R. No. 252119, August 25, 2020.

> as the great powers of government are concerned, "[a] franchise is basically a legislative grant of a special privilege to a person." In *Associated Communications & Wireless Services v. NTC (Associated Communications)*, the Court defined a "franchise [as] the privilege granted by the State through its legislative body x x x subject to regulation by the State itself by virtue of its police power through its administrative agencies[.][27]

In *Associated Communications & Wireless Services v. NTC*,[28] citing the earlier case of *Radio Communication of the Phils, Inc. v. National Telecommunications Commission*,[29] We defined a franchise as a grant or privilege from the sovereign power. We stated:

> A franchise started out as a "royal privilege or (a) branch of the King's prerogative, subsisting in the hands of a subject." This definition was given by Finch, adopted by Blackstone, and accepted by every authority since (State v. Twin Village Water Co., 98 Me 214, 56 A 763 [1903]). Today, a franchise, being merely a privilege emanating from the sovereign power of the state and owing its existence to a grant, is subject to regulation by the state itself by virtue of its police power through its administrative agencies.[30]

In sum, the elements of a franchise are: (i) it is a special privilege belonging to an individual or corporation to do certain acts; (ii) the said privilege does not belong to citizens generally as a matter of common right; (iii) it is issued by the government; (iv) it is a grant or privilege from the sovereign power; (v) it is legislative in nature; and (vi) it is subject to regulation by the State by virtue of its police power through its administrative agencies.

Interpreted literally, the definition of a franchise in Section 131(m) of the Local Government Code is worded so broadly that it could practically cover almost all regulatory licenses or permits issued by government agencies. However, the concept of a franchise has a particular meaning in jurisprudence (as discussed above) and does not mean any ordinary license to do business activities. Hence, Section 131(m) of the Local Government Code must be harmonized with the above jurisprudential definition of a franchise.

Distinction between general or primary franchise and special or secondary franchise

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27 *Id.*
28 445 Phil. 621 (2003).
29 234 Phil. 443 (1987).
30 *Id.* at 49.

Jurisprudence recognizes the distinction between general or primary franchise and special or secondary franchise. In *National Power Corp. v. City of Cabanatuan*,[31] We stated:

> In its specific sense, a franchise may refer to a general or primary franchise, or to a special or secondary franchise. The former relates to the right to exist as a corporation, by virtue of duly approved articles of incorporation, or a charter pursuant to a special law creating the corporation. The right under a primary or general franchise is vested in the individuals who compose the corporation and not in the corporation itself. On the other hand, the latter refers to the right or privileges conferred upon an existing corporation such as the right to use the streets of a municipality to lay pipes of tracks, erect poles or string wires. The rights under a secondary or special franchise are vested in the corporation and may ordinarily be conveyed or mortgaged under a general power granted to a corporation to dispose of its property, except such special or secondary franchises as are charged with a public use.
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> In Section 131(m) of the LGC, Congress unmistakably defined a franchise in the sense of a secondary or special franchise. This is to avoid any confusion when the word franchise is used in the context of taxation. As commonly used, a *franchise tax* is "a tax on the privilege of transacting business in the state and exercising corporate franchises granted by the state." It is not levied on the corporation simply for existing as a corporation, upon its property or its income, but on its exercise of the rights or privileges granted to it by the government. Hence, a corporation need not pay franchise tax from the time it ceased to do business and exercise its franchise. It is within this context that the phrase "*tax on businesses enjoying a franchise*" in section 137 of the LGC should be interpreted and understood. Verily, to determine whether the petitioner is covered by the franchise tax in question, the following requisites should concur: (1) that petitioner has a "franchise" in the sense of a secondary or special franchise; and (2) that it is exercising its rights or privileges under this franchise within the territory of the respondent city government.[32] (Citations omitted)

In sum, the definition of a franchise for the purpose of the imposition of franchise tax does not include the general or primary franchise, which is simply the authority giving rise to the juridical capacity of a corporation. Rather, it only includes the special or secondary franchise to do particular business activities. Moreover, the said special or secondary franchise must enable the taxpayer to operate within the territorial jurisdiction of the respondent province. Furthermore, by special or secondary franchise, We understand this to exclude general business and local permits which are applicable to all types of businesses, such as the barangay clearance, Mayor's Permit, from Certificate of Registration of the Bureau of Internal Revenue, and others of similar kind. A special or secondary franchise includes a particular kind of regulated business.

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[31] 449 Phil. 233 (2003).
[32] *Id.* at 251-253.

Distinction between legislative franchise and administrative franchise

There are two types of franchise based on the grantor: legislative franchise and administrative franchise. A legislative franchise is granted by the Congress of the Philippines. An administrative franchise is granted by an administrative agency of the government, pursuant to the principle of subordinate legislation or delegation of legislative power. In a plethora of cases, this Court has recognized the concept of an administrative franchise. In *Francisco, Jr. v. Toll Regulatory Board*,[33] We held:

> A franchise is basically a legislative grant of a special privilege to a person. Particularly, the term, franchise, "includes not only authorizations issuing directly from Congress in the form of statute, but also those granted by administrative agencies to which the power to grant franchise has been delegated by Congress." The power to authorize and control a public utility is admittedly a prerogative that stems from the Legislature. Any suggestion, however, that only Congress has the authority to grant a public utility franchise is less than accurate. As stressed in *Albano v. Reyes*—a case decided under the aegis of the 1987 Constitution—there is nothing in the Constitution remotely indicating the necessity of a congressional franchise before "each and every public utility may operate," thus:
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> > That the Constitution provides x x x that the issuance of a franchise, certificate or other form of authorization for the operation of a public utility shall be subject to amendment, alteration or repeal by Congress **does not necessarily imply x x x that only Congress has the power to grant such authorization. Our statute books are replete with laws granting specified agencies in the Executive Branch the power to issue such authorization** for certain classes of public utilities.
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> In such a case, therefore, a special franchise directly emanating from Congress is not necessary if the law already specifically authorizes an administrative body to grant a franchise or to award a contract. This is the same view espoused by the Secretary of Justice in his opinion dated January 9, 2006, when he stated:
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> > That the administrative agencies may be vested with the authority to grant administrative franchises or concessions over the operation of public utilities under their respective jurisdiction and regulation, without need of the grant of a separate legislative franchise, has been upheld by the Supreme Court x x x.
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> Under the 1987 Constitution, Congress has an explicit authority to grant a public utility franchise. However, it may validly delegate its legislative authority, under the power of subordinate legislation, to issue franchises of certain public utilities to some administrative agencies.

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33 648 Phil. 54 (2010).

In *Kilusang Mayo Uno Labor Center v. Garcia, Jr.*, We explained the reason for the validity of subordinate legislation, thus:

> **Such delegation of legislative power to an administrative agency is permitted in order to adapt to the increasing complexity of modern life.** As subjects for governmental regulation multiply, so does the difficulty of administering the laws. Hence, specialization even in legislation has become necessary. [34] (Citations omitted; Emphasis in the original)

In sum, an administrative franchise is still essentially a franchise, although issued by an administrative agency pursuant to a delegated legislative power from Congress. Hence, it is still subject to local franchise tax.

Distinction between franchise and a mere license or permit

The Court of Tax Appeals in at least two cases[35] specific on franchise tax distinguishes between a franchise and a license, as follows:

> "A 'franchise' is a right or privilege granted by the sovereignty to one or more parties to do some act or acts, which they could not do without this grant from the sovereign power; a privilege which emanates from the sovereign power of the state government; a branch of the sovereign power of the state, subsisting in a person or corporation by grant from the state." (17 Words and Phrases 471, 482, 469)
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> A "license" on the other hand, confers no right or estate nor vested interest, nor does it constitute a binding contract between the parties, but it is a mere leave to be enjoyed as matter of indulgence at the will of the party granting it. It is in no sense a contract between the state and the licensee, but is a mere personal permit, neither transferable nor vendible (25 Words and Phrases 150, 174).

In *Republic Broadcasting System, Inc. v. Commissioner of Internal Revenue*,[36] the Court of Tax Appeals, for purpose of the imposition of franchise tax, further distinguished franchise and license as follows:

> A license is a license and a franchise, a franchise, this Court cannot see two sides of a coin at a time. There has to be demarcation line to this effect. A franchise is a vested right protected by the Constitution while a

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34 *Id.* at 91-92.

35 *ABS-CBN Broadcasting Corp. v. Commissioner of Internal Revenue*, C.T.A. Case No. 5060, April 8, 1997; and *Republic Broadcasting System, Inc. v. Commissioner of Internal Revenue*, C.T.A. Case No. 4630, July 27, 1993.

36 C.T.A. Case No. 4630, July 27, 1993.

> license is a mere personal privilege and is revocable. In a franchise, the rights, privileges and obligations of both the contracting parties (the franchise holder and the state) are well defined and serves as the contract between them. Such matters like extent of operation, area of responsibilities, franchise tax to be paid to the state, and tax exemption privileges are recited.[37] (Citations omitted)

In sum, a franchise is subject to local franchise tax, while a mere license or permit is not.

Distinction between Administrative Franchise and Secondary License or Permit

The resolution of this case would have been simple if the scope of local franchise tax only covers legislative franchises. However, as discussed above, Congress can delegate the authority to issue a franchise to an administrative agency, giving rise to that species of franchise called "administrative franchise." As We have ruled above, an administrative franchise is still in the nature of a franchise, albeit issued by an administrative agency pursuant to subordinate legislation or delegated legislative powers. This does not detract from the nature of a franchise as being legislative in nature; it remains to be so, albeit in a delegated form.

This provides an additional layer of complexity to the resolution of this case, because the next question is: *what is the demarcating line between an administrative franchise and a secondary license or permit?* Both are issued by administrative agencies. Both are mere privileges, as opposed to demandable rights. Both confer the right to construct, install or operate a certain asset or business activity (as the case may be), and to this extent, both confer special concessions to the grantees of the franchise or license. Both are required by the government pursuant to a law; there must be a law requiring the prior grant of a franchise, in the same way that there must be a law requiring the prior grant of a license. In terms of subject matter, both are conferred to specific persons or entities, and not conferred generally to a class of persons or entities.

Surely, the difference between these two concepts is not merely semantic. There is nothing in *Francisco, Jr. v. Toll Regulatory Board*,[38] *Albano v. Hon. Reyes*,[39] and other similar cases recognizing the concept of an administrative franchise that ruled that all secondary licenses are in the nature of an administrative franchise. If it were so, then practically all secondary permit-holders would be subject to franchise tax—an absurd situation. If there is no distinction between an administrative franchise and an ordinary secondary license, then even financing companies, lending

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37 *Id.*

38 *Supra* note 33.

39 256 Phil. 718 (1989).

companies, pawnshops, virtual currency exchanges, and similar entities requiring special, secondary or regulatory permits in addition to general business and local permits, would be subject to franchise tax. This overly expansive view of the scope of an administrative franchise could not possibly have been within the contemplation of the law.

There must be some set of standards or indicators by which the public can demarcate the line between an administrative franchise and a secondary license.

First, a survey of franchises recognized in jurisprudence shows that they involve: (i) public utilities and common carriers; (ii) economic activities which are in the nature of natural monopolies, or industries where the most efficient number of operators is one or only a few; (iii) industries where the first entrants or incumbents have near-monopoly status because of prohibitive fixed costs, economies of scale, and network effects, such that the first entrants or incumbent market players have a high degree of market dominance that impose an insurmountable barrier on potential entrants to enter the market and compete; and (iv) industries that require the use of natural resources or other scarce resources (such as the airwaves), which utilization thereof necessitates the exclusion of other persons or entities.[40]

This is why tollway operation requires a franchise, while a financing company does not. This is why the operation of a broadcast system requires a franchise, while a virtual currency platform operator does not. This is why the operation of a light railway requires a franchise, while a lending company does not. This is why the operation of a telecommunication system requires a franchise, while a pawnshop does not. Once the tollway operator constructs an expressway, it would be practically impossible, if not economically unfeasible, for a rival tollway operator to build a competing infrastructure in the same area. Once the broadcast operator utilizes a particular radio frequency in the radio spectrum, no other broadcast operator can utilize the same frequency. Once the light railway operator constructs a railroad track, it would not make economic sense for a competing railway operator to construct a similar structure in the same area. Once the telecommunication operator excavates cables in common public areas, it would confer a first incumbent status and it would impose insurmountable barriers for other competing telecommunication operators to again request the local government to allow excavations in the said common public areas.

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40 *ABS-CBN Corp. v. NTC*, G.R. No. 252119, August 25, 2020; *Associated Communications & Wireless Services v. NTC*, 445 Phil. 621 (2003); *Radio Communication of the Phils., Inc. v. National Telecommunications Commission, supra* note 29, 234 Phil. 443 (1987); *National Power Corp. v. City of Cabanatuan*, 449 Phil. 233 (2003); *Francisco, Jr. v. Toll Regulatory Board, supra* note 33; *Albano v. Reyes, supra* note 39; among others.

In the case of a financing company, lending company, virtual currency exchange operator, pawnshops, and other similar regulated entities requiring a secondary license in addition to general business and local permits, there can be as many market players as are qualified and eligible under the specific laws regulating the business activity. This is because these entities are not engaged in industries which are natural monopolies, or industries where first entrants do not have monopoly or near-monopoly status. Succeeding market players are free to enter the market as long as they comply with the requirements for the issuance of the administrative license to operate these businesses. Moreover, the requirement of obtaining a prior government permit to operate in these businesses is merely within the dictates of general welfare, and not because the economic reality of the industry involves scarce resources.

These are by no means an exclusive list of features of a franchise. Nevertheless, these are helpful aids to discover indicators that a particular government authority is in the nature of a franchise, rather than an ordinary secondary license or permit.

Second, economic activities covered by franchises are typically charged with public use. In *National Power Corp. v. City of Cabanatuan*,[41] We stated:

> On the other hand, [a franchise] refers to the right or privileges conferred upon an existing corporation such as the right to use the streets of a municipality to lay pipes of tracks, erect poles or string wires. The rights under a secondary or special franchise are vested in the corporation and may ordinarily be conveyed or mortgaged under a general power granted to a corporation to dispose of its property, except such special or secondary franchises as are charged with a public use.[42] (Citations omitted)

While there are many types of regulated business activities, there are certain businesses the activities of which are so essential and of such importance to the public that they necessarily involve the construction, installation and operation of infrastructure facilities that disturb or limit the uses of public and private properties on a communal or societal level, such as power distribution utilities and telecommunication networks. The operation of a distribution utility requires the construction of poles on public and private lands, and the operation of a telecommunication network requires the excavation in the streets for the laying of cables and wires. These businesses are not simply regulated for the purpose of general welfare, but regulated more strictly by the State through the franchise system to regulate activities charged with public use.

Third, the delegation of the authority to exercise the sovereign power

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41 *Supra* note 31

42 *Id.* at 252.

of eminent domain is unmistakably a grant of franchise. This is typical in public utilities where certain public infrastructure facilities require the compulsory sale of lands and acquisition of rights of way and other properties to give way to public use. The power of eminent domain can only be exercised when it is for "public use", and therefore, if a law delegates that power to a private entity, then that private entity can only exercise it for public use, which means that the private entity's business activity itself is charged with public use.

Having discussed the framework for our analysis distinguishing the administrative franchise and a secondary license or permit, We shall now proceed to apply the foregoing standards to the facts in the case at bar.

NTC Certificate of Authority to Operate CATV Systems is an Administrative Franchise Subject to Local Franchise Tax

Based on the jurisprudential definition of a franchise, the NTC Certificate of Authority to operate a CATV system fulfills all the elements of a franchise. *First*, it is a special privilege belonging to the petitioner as a corporation to operate a CATV system. *Second*, this privilege to operate a CATV system does not belong to citizens generally as a matter of common right. *Third*, it is issued by the NTC, a government agency tasked pursuant to E.O. No. 205, Series of 1987, to issue the said authority. *Fourth*, it is a grant or privilege from the sovereign power, particularly with respect to Section 3 of E.O. No. 205, which authorizes the grantee to "exercise the right of eminent domain for the efficient maintenance and operation" of the CATV system. *Fifth*, the grant of authority is legislative in nature, since the NTC Certificate of Authority was issued pursuant to the principle of delegated legislative power under E.O. No 205, which was exercised under the legislative powers of the incumbent President before the first Congress was convened under Section 6, Article XVIII of the 1987 Constitution. *Sixth*, the Certificate of Authority is subject to regulation by the NTC and by the State. In particular, Section 4 of E.O. No. 2015 reserves a special right on the part of the President of the Philippines, in times of war, rebellion, public peril or other national emergency and/or when public safety requires, to cause the closure of any grantee's CATV system or to authorize the use or possession thereof by the government without compensation.

Moreover, the NTC Certificate of Authority is unmistakably a special or secondary franchise, and not just a general or primary franchise. It confers on the petitioner a special privilege to operate a CATV system, a privilege which is in addition to its primary franchise of existing as a corporate entity and in addition to general business and local permits that are applicable to all other businesses.

Furthermore, the absence of a legislative franchise to operate the CATV system does not preclude the characterization of the Certificate of Authority as a franchise. The authority to operate the CATV system bears the hallmarks of an administrative franchise. *First*, the CATV system is a market in which the first entrants or incumbents necessarily have a first incumbent advantage by virtue of prohibitive fixed costs, economies of scale, and network effects. The installation of wires and cables for the operation of the CATV system requires the excavation and use of roads and public properties in a massive geographic scale, an economic reality that necessarily limits the operators to only one or only a few market players. *Second*, the CATV services are charged with public use, and the installation of wires and cables is of such massive geographic scale that it disturbs or restricts the use of public or private properties on a communal or societal level. *Third*, the petitioner, being the grantee of the Certificate of Authority, has the authority to "exercise the right of eminent domain for the efficient maintenance and operation" of the CATV system, a right which is clearly a delegation of an inherent sovereign power. Thus, it cannot be said that the Certificate of Authority is merely a secondary permit. Based on these indicators, it is an administrative franchise.

Being in the nature of an administrative franchise, the NTC Certificate of Authority to operate a CATV system requires the imposition of a local franchise tax. Thus, petitioner is liable for a local franchise tax under Section 137 of the Local Government Code in relation to Section 57(e) of the Provincial Revenue Code. Moreover, petitioner is also liable for annual permit fee under Section 108(c) of the Provincial Revenue Code, which is imposed on businesses enjoying a franchise.

WHEREFORE, the Petition for Review on *Certiorari* is **DENIED** for lack of merit. The February 12, 2019 Decision and July 29, 2019 Resolution of the Court of Appeals in CA-G.R. SP No. 152385 are **AFFIRMED**. New Vision Satellite Network Inc. is DIRECTED to pay franchise tax and governor's permit fee to the Provincial Government of Cagayan.

SO ORDERED.

JHOSEP Y. LOPEZ
Associate Justice

WE CONCUR:

MARVIC M.V.F. LEONEN
Associate Justice

RAMON PAUL L. HERNANDO
Associate Justice

HENRI JEAN PAUL B. INTING
Associate Justice

SAMUEL H. GAERLAN
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, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Third 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.

ALEXANDER G. GESMUNDO
Chief Justice