



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

CAGAYAN ELECTRIC POWER
AND LIGHT CO., INC.,

Petitioner,

G.R. No. 191761

Present:

CARPIO, *J.*, Chairperson,
BRION,
DEL CASTILLO,
PEREZ, and
PERLAS-BERNABE, *JJ.*

- versus -

CITY OF CAGAYAN DE ORO,
Respondent.

Promulgated:

NOV 14 2012 *H.M. Cabalag*

x ----- x

DECISION

CARPIO, *J.*:

The Case

G.R. No. 191761 is a petition for review¹ assailing the Decision² promulgated on 28 May 2009 as well as the Resolution³ promulgated on 24 March 2010 by the Court of Appeals (appellate court) in CA-G.R. CV No. 01105-Min. The appellate court affirmed the 8 January 2007 Decision⁴ of Branch 18 of the Regional Trial Court of Misamis Oriental (trial court) in

¹ Under Rule 45 of the 1997 Rules of Civil Procedure.
² *Rollo*, pp. 34-47. Penned by Associate Justice Edgardo A. Camello, with Associate Justices Michael P. Elbinias and Ruben C. Ayson, concurring.
³ *Id.* at 48-49. Penned by Associate Justice Edgardo A. Camello, with Associate Justices Danton Q. Bueser and Angelita A. Gacatan, concurring.
⁴ *Id.* at 70-77. Penned by Judge Edgardo T. Lioren.

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Civil Case No. 2005-207.

The trial court upheld the validity of the City of Cagayan de Oro's Ordinance No. 9503-2005 and denied Cagayan Electric Power and Light Co., Inc.'s (CEPALCO) claim of exemption from the said ordinance.

The Facts

The appellate court narrated the facts as follows:

On January 10, 2005, the *Sangguniang Panlungsod* of Cagayan de Oro (City Council) passed Ordinance No. 9503-2005 imposing a tax on the lease or rental of electric and/or telecommunication posts, poles or towers by pole owners to other pole users at ten percent (10%) of the annual rental income derived from such lease or rental.

The City Council, in a letter dated 15 March 2005, informed appellant Cagayan Electric Power and Light Company, Inc. (CEPALCO), through its President and Chief Operation Manager, Ms. Consuelo G. Tion, of the passage of the subject ordinance.

On September 30, 2005, appellant CEPALCO, purportedly on pure question of law, filed a petition for declaratory relief assailing the validity of Ordinance No. 9503-2005 before the Regional Trial Court of Cagayan de Oro City, Branch 18, on the ground that the tax imposed by the disputed ordinance is in reality a tax on income which appellee City of Cagayan de Oro may not impose, the same being expressly prohibited by Section 133(a) of Republic Act No. 7160 (R.A. 7160) otherwise known as the Local Government Code (LGC) of 1991. CEPALCO argues that, assuming the City Council can enact the assailed ordinance, it is nevertheless exempt from the imposition by virtue of Republic Act No. 9284 (R.A. 9284) providing for its franchise. CEPALCO further claims exemplary damages of Php200,000.00 alleging that the passage of the ordinance manifests malice and bad faith of the respondent-appellee towards it.

In its Answer, appellee raised the following affirmative defenses: (a) the enactment and implementation of the subject ordinance was a valid and lawful exercise of its powers pursuant to the 1987 Constitution, the Local Government Code, other applicable provisions of law, and pertinent jurisprudence; (b) non-exemption of CEPALCO because of the express withdrawal of the exemption provided by Section 193 of the LGC; (c) the subject ordinance is legally presumed valid and constitutional; (d) prescription of respondent-appellee's action pursuant to Section 187 of the LGC; (e) failure of respondent-appellee to exhaust administrative remedies under the Local Government Code; (f) CEPALCO's action for

declaratory relief cannot prosper since no breach or violation of the subject ordinance was yet committed by the City.⁵

Ordinance No. 9503-2005 reads:

ORDINANCE IMPOSING A TAX ON THE LEASE OR RENTAL OF ELECTRIC AND/OR TELECOMMUNICATION POSTS, POLES OR TOWERS BY POLE OWNERS TO OTHER POLE USERS AT THE RATE OF TEN (10) PERCENT OF THE ANNUAL RENTAL INCOME DERIVED THEREFROM AND FOR OTHER PURPOSES

BE IT ORDAINED by the City Council (*Sangguniang Panlungsod*) of the City of Cagayan de Oro in session assembled that:

SECTION 1. - Whenever used in this Ordinance, the following terms shall be construed as:

- a. Electric companies include all public utility companies whether corporation or cooperative engaged in the distribution and sale of electricity;
- b. Telecommunication companies refer to establishments or entities that are holders of franchise through an Act of Congress to engage, maintain, and operate telecommunications, voice and data services, under existing Philippine laws, rules and regulations;
- c. Pole User includes any person, natural or juridical, including government agencies and entities that use and rent poles and towers for the installation of any cable, wires, service drops and other attachments[;]
- d. Pole Owner includes electric and telecommunication company or corporation that owns poles, towers and other accessories thereof.

SECTION 2. - There shall be imposed a tax on the lease or rental of electric and/or telecommunication posts, poles or towers by pole owners to other pole users at the rate of ten (10) percent of the annual rental income derived therefrom.

SECTION 3. - The tax imposed herein shall not be passed on by pole owners to the bills of pole users in the form of added rental rates.

SECTION 4. (a) Pole owners herein defined engaged in the business of renting their posts, poles and/or towers shall secure a separate business permit therefor as provided under Article (P), Section 62(a) of Ordinance No. 8847-2003, otherwise known as the Cagayan de Oro City Revenue Code of 2003.

(b) Pertinent provisions of Ordinance No. 8847-2003, covering situs of the tax, payment of taxes and administrative provisions shall apply in the imposition of the tax under this Ordinance.

⁵ Id. at 34-35.

SECTION 5. - This Ordinance shall take effect after 15 days following its publication in a local newspaper of general circulation for at least three (3) consecutive issues.

UNANIMOUSLY APPROVED.⁶

Ordinance No. 9503-2005 was unanimously approved by the City Council of Cagayan de Oro on 10 January 2005.

The Trial Court's Ruling

On 8 January 2007, the trial court rendered its Decision⁷ in favor of the City of Cagayan de Oro. The trial court identified three issues for its resolution: (1) whether Ordinance No. 9503-2005 is valid; (2) whether CEPALCO should be exempted from tax; and (3) whether CEPALCO's action is barred for non-exhaustion of administrative remedies and for prescription.

In ruling for the validity of Ordinance No. 9503-2005, the trial court rejected CEPALCO's claim that the ordinance is an imposition of income tax prohibited by Section 133(a) of the Local Government Code.⁸ The trial court reasoned that since CEPALCO's business of leasing its posts to pole users is what is directly taxed, the tax is not upon the income but upon the privilege to engage in business. Moreover, Section 143(h), in relation to Section 151, of the Local Government Code authorizes a city to impose taxes, fees and charges on any business which is not specified as prohibited under Section 143(a) to (g) and which the city council may deem proper to tax.

⁶ Id. at 50.

⁷ Id. at 70-77.

⁸ Republic Act No. 7160. Took effect on 1 January 1992.

The trial court also rejected CEPALCO's claim of exemption from tax. The trial court noted that Republic Act (R.A.) Nos. 3247,⁹ 3570¹⁰ and 6020,¹¹ which previously granted CEPALCO's franchise, expressly stated that CEPALCO would pay a three percent franchise tax in lieu of all assessments of whatever authority. However, there is no similar provision in R.A. No. 9284, which gave CEPALCO its current franchise.

Finally, the trial court found that CEPALCO's action is barred by prescription as it failed to raise an appeal to the Secretary of Justice within the thirty-day period provided in Section 187 of the Local Government Code.

The dispositive portion of the trial court's decision reads:

WHEREFORE, it is crystal clear that Petitioner CEPALCO failed not only in proving its allegations that City Ordinance 9503-2005 is illegal and contrary to law, and that [it] is exempted from the imposition of tax, but also in convincing the Court that its action is not barred for non-exhaustion of administrative remedy [sic] and by prescription. Hence, the instant petition is DENIED.

SO ORDERED.¹²

⁹ SEC. 3. In consideration of the franchise and rights hereby granted, the grantee shall pay a franchise tax equal to three *per centum* of the gross earnings for electric current sold under this franchise, of which two *per centum* goes into the National Treasury and one *per centum* goes into the city treasury of Cagayan de Oro: *Provided*, That the said franchise tax of three *per centum* of the gross earnings shall be in lieu of all taxes and assessments of whatever authority upon privileges, earnings, income, franchise, and poles, wires, transformers, and insulators of the grantee, from which taxes and assessments the grantee is hereby expressly exempted.

¹⁰ SEC. 3. In consideration of the franchise and rights hereby granted, the grantee shall pay a franchise tax equal to three *per centum* of the gross earnings for electric current sold under this franchise, of which two *per centum* goes into the National Treasury and one *per centum* goes into the treasury of the Municipality of Tagoloan, the Municipality of Opol, and Cagayan de Oro City, as the case may be: *Provided*, That the said franchise tax of three *per centum* of the gross earnings shall be in lieu of all taxes and assessments of whatever authority upon privileges, earnings, income, franchise, and poles, wires, transformers, and insulators of the grantee from which taxes and assessments the grantee is expressly exempted.

¹¹ SEC. 3. In consideration of the franchise and rights hereby granted, the grantee shall pay a franchise tax equal to three *per centum* of the gross earnings for electric current sold under this franchise, of which two *per centum* goes into the National Treasury and one *per centum* goes into the treasury of the Municipalities of Tagoloan, Opol, Villanueva and Jasaan and Cagayan de Oro City, as the case may be: *Provided*, That the said franchise tax of three *per centum* of the gross earnings shall be in lieu of all taxes and assessments of whatever authority upon privileges, earnings, income, franchise, and poles, wires, transformers, and insulators of the grantee from which taxes and assessments the grantee is expressly exempted.

¹² *Rollo*, pp. 76-77.

CEPALCO filed a brief with the appellate court and raised the following errors of the trial court:

- A. The lower court manifestly erred in concluding that the instant action is barred for non-exhaustion of administrative remedies and by prescription.
- B. The lower court gravely erred in finding that Ordinance No. 9503-2005 of the City of Cagayan de Oro does not partake of the nature of an income tax.
- C. The lower court gravely erred in finding that Ordinance No. 9503-2005 of the City of Cagayan de Oro is valid.
- D. The lower court seriously erred in finding that herein appellant is not exempted from payment of said tax.¹³

The Appellate Court's Ruling

On 28 May 2009, the appellate court rendered its Decision¹⁴ and affirmed the trial court's decision.

The appellate court stated that CEPALCO failed to file a timely appeal to the Secretary of Justice, and did not exhaust its administrative remedies. The appellate court agreed with the trial court's ruling that the assailed ordinance is valid and declared that the subject tax is a license tax for the regulation of business in which CEPALCO is engaged. Finally, the appellate court found that CEPALCO's claim of tax exemption rests on a strained interpretation of R.A. No. 9284.

In a Resolution¹⁵ dated 24 March 2010, the appellate court denied CEPALCO's motion for reconsideration for lack of merit. The resolution also denied CEPALCO's 3 August 2009 supplemental motion for reconsideration for being filed out of time.

¹³ Id. at 85-86.

¹⁴ Id. at 34-47.

¹⁵ Id. at 48-49.

CEPALCO filed the present petition for review before this Court on 27 May 2010.

The Issues

CEPALCO enumerated the following reasons for warranting review:

1. In spite of its patent illegality, a City Ordinance passed in violation or in excess of the city's delegated power to tax was upheld;
2. In a case involving pure questions of law, the Court of Appeals still insisted on a useless administrative remedy before resort to the court may be made; and
3. Recent legislation affirming [CEPALCO's] tax exemptions was disregarded.¹⁶

In a Resolution dated 6 July 2011,¹⁷ this Court required both parties to discuss whether the amount of tax imposed by Section 2 of Ordinance No. 9503-2005 complies with or violates, as the case may be, the limitation set by Section 151, in relation to Sections 137 and 143(h), of the Local Government Code.

The Court's Ruling

Failure to Exhaust Administrative Remedies

Ordinance No. 9503-2005 is a local revenue measure. As such, the Local Government Code applies.

SEC. 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

¹⁶ Id. at 14-15.

¹⁷ Id. at 190-191.

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

SEC. 188. *Publication of Tax Ordinances and Revenue Measures.*

– Within ten (10) days after their approval, certified true copies of all provincial, city, and municipal tax ordinances or revenue measures shall be published in full for three (3) consecutive days in a newspaper of local circulation: *Provided, however*, That in provinces, cities and municipalities where there are no newspapers of local circulation, the same may be posted in at least two (2) conspicuous and publicly accessible places.

The *Sangguniang Panlungsod* of Cagayan de Oro approved Ordinance No. 9503-2005 on 10 January 2005. Section 5 of said ordinance provided that the “Ordinance shall take effect after 15 days following its publication in a local newspaper of general circulation for at least three (3) consecutive issues.” Gold Star Daily published Ordinance No. 9503-2005 on 1 to 3 February 2005. Ordinance No. 9503-2005 thus took effect on 19 February 2005. CEPALCO filed its petition for declaratory relief before the Regional Trial Court on 30 September 2005, clearly beyond the 30-day period provided in Section 187. CEPALCO did not file anything before the Secretary of Justice. CEPALCO ignored our ruling in *Reyes v. Court of Appeals*¹⁸ on the mandatory nature of the statutory periods:

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 appeal, 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 construe these

¹⁸ 378 Phil. 232, 237-238 (1999). Citations omitted.

provisions of statutes as mandatory.

A municipal tax ordinance empowers a local government unit to impose taxes. The power to tax is the most effective instrument to raise needed revenues to finance and support the myriad activities of local government units for the delivery of basic services essential to the promotion of the general welfare and enhancement of peace, progress, and prosperity of the people. Consequently, any delay in implementing tax measures would be to the detriment of the public. It is for this reason that protests over tax ordinances are required to be done within certain time frames. In the instant case, it is our view that the failure of petitioners to appeal to the Secretary of Justice within 30 days as required by Sec. 187 of R.A. 7160 is fatal to their cause.

As in *Reyes*, CEPALCO's failure to appeal to the Secretary of Justice within the statutory period of 30 days from the effectivity of the ordinance should have been fatal to its cause. However, we relax the application of the rules in view of the more substantive matters.

**City of Cagayan de Oro's Power to Create Sources of Revenue
vis-a-vis CEPALCO's Claim of Exemption**

Section 5, Article X of the 1987 Constitution provides that “[e]ach local government unit shall have the power to create its own sources of revenues and to levy taxes, fees, and charges subject to such guidelines and limitations as the Congress may provide, consistent with the basic policy of local autonomy. Such taxes, fees, and charges shall accrue exclusively to the local government.” The Local Government Code supplements the Constitution with Sections 151 and 186:

SEC. 151. *Scope of Taxing Powers.* – Except as otherwise provided in this Code, the city may levy the taxes, fees and charges which the province or municipality may impose: *Provided, however,* That the taxes, fees and charges levied and collected by highly urbanized and independent component cities shall accrue to them and distributed in accordance with the provisions of this Code.

The rates of taxes that the city may levy may exceed the maximum rates allowed for the province or municipality by not more than fifty percent (50%) except the rates of professional and amusement taxes.

SEC. 186. *Power to Levy Other Taxes, Fees or Charges.* – Local government units may exercise the power to levy taxes, fees or charges on any base or subject not otherwise specifically enumerated herein or taxed under the provisions of the National Internal Revenue Code, as amended, or other applicable laws: *Provided*, That the taxes, fees, or charges shall not be unjust, excessive, oppressive, confiscatory or contrary to declared national policy: *Provided, further*, That the ordinance levying such taxes, fees, or charges shall not be enacted without any prior public hearing conducted for the purpose.

Although CEPALCO does not question the authority of the *Sangguniang Panlungsod* of Cagayan de Oro to impose a tax or to enact a revenue measure, CEPALCO insists that Ordinance No. 9503-2005 is an imposition of an income tax which is prohibited by Section 133(a)¹⁹ of the Local Government Code. Unfortunately for CEPALCO, we agree with the ruling of the trial and appellate courts that Ordinance No. 9503-2005 is a tax on business. CEPALCO's act of leasing for a consideration the use of its posts, poles or towers to other pole users falls under the Local Government Code's definition of business. Business is defined by Section 131(d) of the Local Government Code as "trade or commercial activity regularly engaged in as a means of livelihood or with a view to profit." In relation to Section 131(d),²⁰ Section 143(h)²¹ of the Local Government Code provides that the

¹⁹ SEC. 133. *Common Limitations on the Taxing Powers of Local Government Units.* – Unless otherwise provided herein, the exercise of the taxing powers of provinces, cities, municipalities and barangays shall not extend to the levy of the following:

(a) Income tax, except when levied on banks and other financial institutions;

x x x x

²⁰ SEC. 131. *Definition of Terms.* – When used in this Title, the term:

x x x x

(d) "Business" means trade or commercial activity regularly engaged in as a means of livelihood or with a view to profit;

x x x x

²¹ SEC. 143. *Tax on Business.* – The municipality may impose taxes on the following businesses:

x x x x

city may impose taxes, fees, and charges on any business which is not specified in Section 143(a) to (g)²² and which the *sanggunian* concerned may deem proper to tax.

In contrast to the express statutory provisions on the City of Cagayan de Oro's power to tax, CEPALCO's claim of tax exemption of the income

(h) On any business, not otherwise specified in the preceding paragraphs, which the *sanggunian* concerned may deem proper to tax: *Provided*, That on any business subject to the excise, value-added or percentage tax under the National Internal Revenue Code, as amended, the rate of tax shall not exceed two percent (2%) of gross sales or receipts of the preceding calendar year.

x x x x

²² SEC. 143. *Tax on Business*. – The municipality may impose taxes on the following businesses:

(a) On manufacturers, assemblers, repackers, processors, brewers, distillers, rectifiers, and compounders of liquors, distilled spirits, and wines or manufacturers of any article of commerce of whatever kind or nature, in accordance with the following schedule:

With gross sales or receipts for the preceding calendar year in the amount of:	Amount of Tax Per Annum
Less than ₱10,000.00	165.00
₱ 10,000.00 or more but less than 15,000.00	220.00
15,000.00 or more but less than 20,000.00	302.00
20,000.00 or more but less than 30,000.00	440.00
30,000.00 or more but less than 40,000.00	660.00
40,000.00 or more but less than 50,000.00	825.00
50,000.00 or more but less than 75,000.00	1,320.00
75,000.00 or more but less than 100,000.00	1,650.00
100,000.00 or more but less than 150,000.00	2,200.00
150,000.00 or more but less than 200,000.00	2,750.00
200,000.00 or more but less than 300,000.00	3,850.00
300,000.00 or more but less than 500,000.00	5,500.00
500,000.00 or more but less than 750,000.00	8,000.00
750,000.00 or more but less than 1,000,000.00	10,000.00
1,000,000.00 or more but less than 2,000,000.00	13,750.00
2,000,000.00 or more but less than 3,000,000.00	16,500.00
3,000,000.00 or more but less than 4,000,000.00	19,800.00
4,000,000.00 or more but less than 5,000,000.00	23,100.00
5,000,000.00 or more but less than 6,500,000.00	24,375.00
6,500,000.00 or more	at a rate not exceeding thirty-seven and a half percent (37 1/2%) of one percent (1%)

(b) On wholesalers, distributors, or dealers in any article of commerce of whatever kind or nature in accordance with the following schedule:

With gross sales or receipts for the preceding calendar year in the amount of:	Amount of Tax Per Annum
Less than ₱1,000.00	18.00
₱ 1,000.00 or more but less than 2,000.00	33.00
2,000.00 or more but less than 3,000.00	50.00
3,000.00 or more but less than 4,000.00	72.00
4,000.00 or more but less than 5,000.00	100.00
5,000.00 or more but less than 6,000.00	121.00

from its poles relies on a strained interpretation.²³ Section 1 of R.A. No. 9284 added Section 9 to R.A. No. 3247, CEPALCO's franchise:

SEC. 9. *Tax Provisions.* – The grantee, its successors or assigns, shall be subject to the payment of all taxes, duties, fees or charges and other impositions applicable to private electric utilities under the National Internal Revenue Code (NIRC) of 1997, as amended, the Local Government Code and other applicable laws: *Provided*, That nothing herein shall be construed as repealing any specific tax exemptions, incentives, or privileges granted under any relevant law: *Provided*,

6,000.00 or more but less than	7,000.00	143.00
7,000.00 or more but less than	8,000.00	165.00
8,000.00 or more but less than	10,000.00	187.00
10,000.00 or more but less than	15,000.00	220.00
15,000.00 or more but less than	20,000.00	275.00
20,000.00 or more but less than	30,000.00	330.00
30,000.00 or more but less than	40,000.00	440.00
40,000.00 or more but less than	50,000.00	660.00
50,000.00 or more but less than	75,000.00	990.00
75,000.00 or more but less than	100,000.00	1,320.00
100,000.00 or more but less than	150,000.00	1,870.00
150,000.00 or more but less than	200,000.00	2,420.00
200,000.00 or more but less than	300,000.00	3,300.00
300,000.00 or more but less than	500,000.00	4,400.00
500,000.00 or more but less than	750,000.00	6,600.00
750,000.00 or more but less than	1,000,000.00	8,800.00
1,000,000.00 or more but less than	2,000,000.00	10,000.00
2,000,000.00 or more		at a rate not exceeding fifty percent (50%) of one percent (1%).

(c) On exporters, and on manufacturers, millers, producers, wholesalers, distributors, dealers or retailers of essential commodities enumerated hereunder at a rate not exceeding one-half (1/2) of the rates prescribed under subsections (a), (b) and (d) of this Section:

- (1) Rice and corn;
- (2) Wheat or cassava flour, meat, dairy products, locally manufactured, processed or preserved food, sugar, salt and other agricultural, marine, and fresh water products, whether in their original state or not;
- (3) Cooking oil and cooking gas;
- (4) Laundry soap, detergents, and medicine;
- (5) Agricultural implements, equipment and post-harvest facilities, fertilizers, pesticides, insecticides, herbicides and other farm inputs;
- (6) Poultry feeds and other animal feeds;
- (7) School supplies; and
- (8) Cement.

(d) On retailers,

With gross sales or receipts for the preceding calendar year of:	Rate of Tax Per Annum
₱400,000.00 or less	2%
more than ₱400,000.00	1%

Provided, however, That barangays shall have the exclusive power to levy taxes, as provided under Section 152 hereof, on gross sales or receipts of the preceding calendar year of Fifty thousand pesos (₱50,000.00) or less, in the case of cities, and Thirty thousand pesos (₱30,000.00) or less, in the case of municipalities.

further, That all rights, privileges, benefits and exemptions accorded to existing and future private electric utilities by their respective franchises shall likewise be extended to the grantee.

The grantee shall file the return with the city or province where its facility is located and pay the taxes due thereon to the Commissioner of Internal Revenue or his duly authorized representative in accordance with the NIRC and the return shall be subject to audit by the Bureau of Internal Revenue.

The Local Government Code withdrew tax exemption privileges previously given to natural or juridical persons, and granted local government units the power to impose franchise tax,²⁴ thus:

SEC. 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

(e) On contractors and other independent contractors, in accordance with the following schedule:

With gross receipts for the preceding calendar year in the amount of:	Amount of Tax Per Annum
Less than ₱5,000.00	27.50
₱ 5,000.00 or more but less than 10,000.00	61.60
10,000.00 or more but less than 15,000.00	104.50
15,000.00 or more but less than 20,000.00	165.00
20,000.00 or more but less than 30,000.00	275.00
30,000.00 or more but less than 40,000.00	385.00
40,000.00 or more but less than 50,000.00	550.00
50,000.00 or more but less than 75,000.00	880.00
75,000.00 or more but less than 100,000.00	1,320.00
100,000.00 or more but less than 150,000.00	1,980.00
150,000.00 or more but less than 200,000.00	2,640.00
200,000.00 or more but less than 250,000.00	3,630.00
250,000.00 or more but less than 300,000.00	4,620.00
300,000.00 or more but less than 400,000.00	6,160.00
400,000.00 or more but less than 500,000.00	8,250.00
500,000.00 or more but less than 750,000.00	9,250.00
750,000.00 or more but less than 1,000,000.00	10,250.00
1,000,000.00 or more but less than 2,000,000.00	11,500.00
2,000,000.00 or more	at a rate not exceeding fifty percent (50%) of one percent (1%)

(f) On banks and other financial institutions, at a rate not exceeding fifty percent (50%) of one percent (1%) on the gross receipts of the preceding calendar year derived from interest, commissions and discounts from lending activities, income from financial leasing, dividends, rentals on property and profit from exchange or sale of property, insurance premium.

(g) On peddlers engaged in the sale of any merchandise or article of commerce, at a rate not exceeding Fifty pesos (₱50.00) per peddler annually.

x x x x

²³ Supra notes 9 to 11.

²⁴ See *National Power Corp. v. City of Cabanatuan*, 449 Phil. 233 (2003); *MERALCO v. Province of Laguna*, 366 Phil. 428 (1999); *City Gov't. of San Pablo, Laguna v. Hon. Reyes*, 364 Phil. 842 (1999).

year based on the incoming receipt, or realized, within its territorial jurisdiction.

x x x x

SEC. 193. *Withdrawal of Tax Exemption Privileges.* – Unless otherwise provided in this Code, tax exemptions or incentives granted to, or presently enjoyed by all persons, whether natural or juridical, including government-owned or controlled corporations, except local water districts, cooperatives duly registered under R.A. No. 6938, non-stock and non-profit hospitals and educational institutions, are hereby withdrawn upon the effectivity of this Code.

SEC. 534. *Repealing Clause.* – x x x.

(f) All general and special laws, acts, city charters, decrees, executive orders, proclamations and administrative regulations, or part or parts thereof which are inconsistent with any of the provisions of this Code are hereby repealed or modified accordingly.

It is hornbook doctrine that tax exemptions are strictly construed against the claimant. For this reason, tax exemptions must be based on clear legal provisions. The separate opinion in *PLDT v. City of Davao*²⁵ is applicable to the present case, thus:

Tax exemptions must be clear and unequivocal. A taxpayer claiming a tax exemption must point to a specific provision of law conferring on the taxpayer, in clear and plain terms, exemption from a common burden. Any doubt whether a tax exemption exists is resolved against the taxpayer. Tax exemptions cannot arise by mere implication, much less by an implied re-enactment of a repealed tax exemption clause.

CEPALCO's claim of exemption under the "in lieu of all taxes" clause must fail in light of Section 193 of the Local Government Code as well as Section 9 of its own franchise.

**Ordinance No. 9503-2005's Compliance with
the Local Government Code**

In our Resolution dated 6 July 2011,²⁶ we asked both parties to discuss whether the amount of tax imposed by Section 2 of Ordinance No. 9503-

²⁵ 447 Phil. 571, 591-592 (2003).

²⁶ *Rollo*, pp. 190-191.

2005 complies with or violates, as the case may be, the limitation set by Section 151, in relation to Sections 137 and 143(h), of the Local Government Code.

CEPALCO argues that Ordinance No. 9503-2005 should be invalidated because the City of Cagayan de Oro exceeded its authority in enacting it. CEPALCO argued thus:

5. Thus, the taxes imposable under either Section 137 or Section 143(h) are not unbridled but are restricted as to the amount which may be imposed. This is the **first limitation**. Furthermore, if it is a city which imposes the same, it can impose only up to one-half of what the province or municipality may impose. This is the **second limitation**.

6. Let us now examine Ordinance No. 9503-2005 of the respondent City of Cagayan de Oro in the light of the twin limitations mentioned above.

7. Ordinance No. 9503-2005 of the respondent City of Cagayan de Oro imposes a tax on the lease or rental of electric and/or telecommunication posts, poles or towers by pole owners to other pole users “at the rate of ten (10) percent of the annual rental income derived therefrom.”

8. With respect to Section 137, considering that the tax allowed provinces “shall not exceed 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,” the tax imposed by Ordinance No. 9503-2005 “at the rate of ten (10) percent of the annual rental income derived therefrom” is too much. There is a whale of a difference between the allowable 50% of 1% and the 10% tax imposed by the respondent. To illustrate: assuming that the gross annual receipt is Php100, the maximum tax that a province may impose under Section 137 (50% of 1%) shall be Php0.5 or only fifty centavos. Therefore, the maximum tax that the City may impose shall only be one-half of this, which is Php0.25 or only twenty-five centavos. But the questioned Ordinance imposes a tax amounting to 10% of the gross annual receipt of Php100, which is Php10, or Ten Pesos. This a whopping [sic] **40 times more** than that allowed for the province! The violation made by respondent city of its delegated taxing authority is all too patent.

9. With respect to Section 143(h), the rate of tax which the municipality may impose “shall not exceed two percent (2%) of gross sales or receipts of the preceding calendar year.” On the other hand, the tax imposed by Ordinance No. 9503-2005 is “at the rate of ten (10) percent of the annual rental income derived therefrom.” Again, it is obvious that the respondent City’s questioned tax ordinance is way too much. Using the same tax base of Php100 to illustrate, let us compute:

Under Section 143(h), the maximum tax that a municipality may impose is 2% of Php100, which is Php2 or Two Pesos. Therefore, the maximum tax that the City may impose shall be one-half of this, which is Php1 or One Peso. But the tax under Ordinance No. 9503-2005 is Php10, or Ten Pesos. This is a whooping [sic] **10 times more** than that allowed for the municipality! As in the earlier instance discussed above, the violation made by the respondent city of its delegated taxing authority is all too patent.²⁷ (Boldfacing and underscoring in the original)

The interpretation of the City of Cagayan de Oro is diametrically opposed to that of CEPALCO. The City of Cagayan de Oro points out that under Section 151 of the Local Government Code, cities not only have the power to levy taxes, fees and charges which the provinces or municipalities may impose, but the maximum rate of taxes imposable by cities may exceed the maximum rate of taxes imposable by provinces or municipalities by as much as 50%. The City of Cagayan de Oro goes on to state:

6. Thus, Section 30 of [City of Cagayan de Oro's] Ordinance No. 8847-2003, otherwise known as the Revenue Code of Cagayan de Oro, imposes a franchise tax on the gross receipts realized from the preceding year by a business enjoying a franchise, at the rate of 75% of 1%. The increase of 25% over that which is prescribed under Section 137 of the LGC is in accordance with Section 151 thereof prescribing the allowable increase on the rate of tax on the businesses duly identified and enumerated under Section 143 of the LGC or those defined and categorized in the preceding sections thereof;

7. Section 143 of the LGC prescribes the rate of taxes on the identified categories of business enumerated therein which were determined to be existing at the time of its enactment. On the other hand, Section 151 of the LGC prescribes the allowable rate of increase over the rate of taxes imposed on businesses identified under Section 143 and the preceding sections thereof. It is [City of Cagayan de Oro's] humble opinion that the allowable rate of increase provided under Section 151 of the LGC applies only to those businesses identified and enumerated under Section 143 thereof. Thus, it is respectfully submitted by [City of Cagayan de Oro] that the 2% limitation prescribed under Section 143(h) applies only to the tax rates on the businesses identified thereunder and does not apply to those that may thereafter be deemed taxable under Section 186 of the LGC, such as the herein assailed Ordinance No. 9503-2005. On the same vein, it is the respectful submission of [City of Cagayan de Oro] that the limitation under Section 151 of the LGC likewise does not apply in our particular instance, otherwise it will run counter to the intent and purpose of Section 186 of the LGC;

²⁷ Id. at 202-203.

8. Be it strongly emphasized here that [CEPALCO] is differently situated *vis-à-vis* the rest of the businesses identified under Section 143 of the LGC. The imposition of a tax “xxx on the lease or rental of electric and/or telecommunications posts, poles or towers by pole owners to other pole users at the rate of ten (10%) of the annual rental income derived therefrom” as provided under Section 2 of the questioned Ordinance No. 9503-2005 is based on a reasonable classification, to wit: (a) It is based on substantial distinctions which make a real difference; (b) these are germane to the purpose of the law; (c) the classification applies not only to the present conditions but also to future conditions which are substantially identical to those of the present; and (d) the classification applies only to those belonging to the same class;

9. Furthermore, Section 186 of the LGC allow [sic] local government units to exercise their taxing power to levy taxes, fees or charges on any base or subject not otherwise specifically enumerated in the preceding sections, more particularly Section 143 thereof, or under the provisions of the National Internal Revenue Code, as long as they are not unjust, excessive, oppressive, confiscatory or contrary to declared national policy. Moreover, a public hearing is required before the Ordinance levying such taxes, fees or charges can be enacted;

10. It is respectfully submitted by [City of Cagayan de Oro] that the tax rate imposed under Section 2 of the herein assailed Ordinance is not unjust, excessive, oppressive, confiscatory or contrary to a declared national policy;

11. A reading of Section 143 of the LGC reveals that it has neither identified the operation of a business engaged in leasing nor prescribed its tax rate. Moreover, a Lessor, in any manner, is not included among those defined as Contractor under Section 131(h) of the LGC. However, a Lessor, in its intended general application in [City of Cagayan de Oro] (one who rents out real estate properties), was identified, categorized and included as one of the existing businesses operating in the city, and thus falling under the provisions of Ordinance No. 8847-2003 (the Revenue Code of Cagayan de Oro) and, therefore, imposed only a tax rate of 2% on their gross annual receipts;

12. While the herein assailed Ordinance similarly identifies that the base of the tax imposed therein are receipts and/or revenue derived from rentals of poles and posts, [CEPALCO] cannot be considered under the definition of Lessor under the spirit, essence and intent of Section 58(h) of the Revenue Code of Cagayan de Oro, because the same refers only to “Real Estate Lessors, Real Estate Dealers and Real Estate Developers.” Thus, [CEPALCO] should be, as it has been, categorized as a (Distinct) Lessor where it enjoys not only a tremendous and substantial edge but also an absolute advantage in the rental of poles, posts and/or towers to other telecommunication and cable TV companies and the like over and above all others in view of its apparent monopoly by allowing the use of their poles, posts and/or towers by, leasing them out to, telecommunication and cable TV companies operating within the city and suburbs. Furthermore, [CEPALCO] has neither competition in this field nor does it expect one since there are no other persons or entities who are engaged in this

particular business activity;

x x x x²⁸

CEPALCO is mistaken when it states that a city can impose a tax up to only one-half of what the province or city may impose. A more circumspect reading of the Local Government Code could have prevented this error. Section 151 of the Local Government Code states that, subject to certain exceptions, a city may exceed by “not more than 50%” the tax rates allowed to provinces and municipalities.²⁹ A province may impose a franchise tax at a rate “not exceeding 50% of 1% of the gross annual receipts.”³⁰ Following Section 151, a city may impose a franchise tax of up to 0.0075 (or 0.75%) of a business’ gross annual receipts for the preceding calendar year based on the incoming receipt, or realized, within its territorial jurisdiction. A municipality may impose a business tax at a rate not exceeding “two percent of gross sales or receipts.”³¹ Following Section 151, a city may impose a business tax of up to 0.03 (or 3%) of a business’ gross sales or receipts of the preceding calendar year.

²⁸ Id. at 216-219.

²⁹ SEC. 151. *Scope of Taxing Powers.* – Except as otherwise provided in this Code, the city may levy the taxes, fees and charges which the province or municipality may impose: *Provided, however,* That the taxes, fees and charges levied and collected by highly urbanized and independent component cities shall accrue to them and distributed in accordance with the provisions of this Code.

The rates of taxes that the city may levy may exceed the maximum rates allowed for the province or municipality by not more than fifty percent (50%) except the rates of professional and amusement taxes.

³⁰ SEC. 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.

x x x x

³¹ SEC. 143. *Tax on Business.* – The municipality may impose taxes on the following businesses:

x x x x

(h) On any business, not otherwise specified in the preceding paragraphs, which the sanggunian concerned may deem proper to tax: *Provided,* That on any business subject to the excise, value-added or percentage tax under the National Internal Revenue Code, as amended, the rate of tax shall not exceed two percent (2%) of gross sales or receipts of the preceding calendar year.

x x x x

CEPALCO also erred when it equates Section 137's "gross annual receipts" with Ordinance No. 9503-2005's "annual rental income." Section 2 of Ordinance No. 9503-2005 imposes "a tax on the lease or rental of electric and/or telecommunication posts, poles or towers by pole owners to other pole users at the rate of ten (10) percent of the annual rental income derived therefrom," and not on CEPALCO's gross annual receipts. Thus, although the tax rate of 10% is definitely higher than that imposable by cities as franchise or business tax, the tax base of annual rental income of "electric and/or telecommunication posts, poles or towers by pole owners to other pole users" is definitely smaller than that used by cities in the computation of franchise or business tax. In effect, Ordinance No. 9503-2005 wants a slice of a smaller pie.

However, we disagree with the City of Cagayan de Oro's submission that Ordinance No. 9503-2005 is not subject to the limits imposed by Sections 143 and 151 of the Local Government Code. On the contrary, Ordinance No. 9503-2005 is subject to the limitation set by Section 143(h). Section 143 recognizes separate lines of business and imposes different tax rates for different lines of business. Let us suppose that one is a brewer of liquor and, at the same time, a distributor of articles of commerce. The brewery business is subject to the rates established in Section 143(a) while the distribution business is subject to the rates established in Section 143(b). The City of Cagayan de Oro's imposition of a tax on the lease of poles falls under Section 143(h), as the lease of poles is CEPALCO's separate line of business which is not covered by paragraphs (a) to (g) of Section 143. The treatment of the lease of poles as a separate line of business is evident in Section 4(a) of Ordinance No. 9503-2005. The City of Cagayan de Oro required CEPALCO to apply for a separate business permit.

More importantly, because “any person, who in the course of trade or business x x x leases goods or properties x x x shall be subject to the value-added tax,”³² the imposable tax rate **should not exceed two percent** of gross receipts of the lease of poles of the preceding calendar year. Section 143(h) states that “**on any business subject to x x x value-added x x x tax under the National Internal Revenue Code, as amended, the rate of tax shall not exceed two percent (2%) of gross sales or receipts of the preceding calendar year**” from the lease of goods or properties. Hence, the 10% tax rate imposed by Ordinance No. 9503-2005 clearly violates Section 143(h) of the Local Government Code.

Finally, in view of the lack of a separability clause, we declare void the entirety of Ordinance No. 9503-2005. Any payment made by reason of the tax imposed by Ordinance No. 9503-2005 should, therefore, be refunded to CEPALCO. Our ruling, however, is made without prejudice to the enactment by the City of Cagayan de Oro of a tax ordinance that complies with the limits set by the Local Government Code.

WHEREFORE, we **GRANT** the petition. The Decision of the Court of Appeals in CA-G.R. CV No. 01105-Min promulgated on 28 May 2009

³² Section 105, Republic Act No. 8424 (1997) reads:

Persons Liable. - Any person who, in the course of trade or business, sells barter, exchanges, **leases goods or properties**, renders services, and any person who imports goods shall be subject to the value-added tax (VAT) imposed in Sections 106 to 108 of this Code.

The value-added tax is an indirect tax and the amount of tax may be shifted or passed on to the buyer, transferee or lessee of the goods, properties or services. This rule shall likewise apply to existing contracts of sale or lease of goods, properties or services at the time of the effectivity of Republic Act No. 7716.

The phrase “in the course of trade or business” means the regular conduct or pursuit of a commercial or an economic activity, including transactions incidental thereto, by any person regardless of whether or not the person engaged therein is a nonstock, nonprofit private organization (irrespective of the disposition of its net income and whether or not it sells exclusively to members or their guests), or government entity.

The rule of regularity, to the contrary notwithstanding, services as defined in this Code rendered in the Philippines by nonresident foreign persons shall be considered as being in the course of trade or business. (Emphasis supplied)

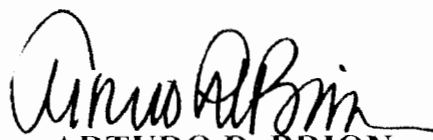
and the Resolution promulgated on 24 March 2010 are **REVERSED** and **SET ASIDE**. Ordinance No. 9503-2005 is declared void.

SO ORDERED.



ANTONIO T. CARPIO
Associate Justice

WE CONCUR:



ARTURO D. BRION
Associate Justice



MARIANO C. DEL CASTILLO
Associate Justice



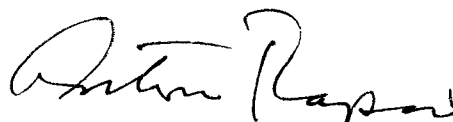
JOSE PORTUGAL PEREZ
Associate Justice



ESTELA M. PERLAS-BERNABE
Associate Justice

ATTESTATION

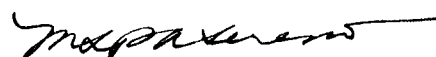
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ANTONIO T. CARPIO
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.



MARIA LOURDES P. A. SERENO
Chief Justice