

594 Phil. 269

EN BANC**[G.R. No.156040, December 11, 2008]**

CITY GOVERNMENT OF BATANGAS REPRESENTED BY HON. ANGELITO DONDON A. DIMACUHA, BATANGAS CITY MAYOR, MR. BENJAMIN S. PARGAS, BATANGAS CITY TREASURER, AND ATTY. TEODULFO A. DEQUITO, BATANGAS CITY LEGAL OFFICER, RESPONDENTS.

DECISION**CARPIO, J.:****The Case**

This is a petition for review on certiorari^[1] assailing the Regional Trial Court's Order^[2] dated 2 May 2002 in Civil Case No. 5343 as well as the 19 November 2002 Order denying the Motion for Reconsideration. In the assailed orders, Branch 8 of the Regional Trial Court (RTC) of Batangas City (RTC-Branch 8) reversed the 28 March 2001 Order^[3] issued by Branch 3 of RTC-Batangas City (RTC-Branch 3). RTC-Branch 8 declared that under its legislative franchise, Digital Telecommunications Philippines, Inc. (petitioner) is not exempt from paying real property tax assessed by the Batangas City Government (respondent).

The Facts

On 17 February 1994, Republic Act No. 7678 (RA 7678)^[4] granted petitioner a 25-year franchise to install, operate and maintain telecommunications systems throughout the Philippines. Section 5 of RA 7678 reads:

Sec. 5. Tax Provisions. - The grantee shall be liable to pay the same taxes on its real estate, buildings, and personal property exclusive of this franchise as other persons or corporations are now or hereafter may be required by law to pay. In addition thereto, the grantee shall pay to the Bureau of Internal Revenue each year, within thirty (30) days after the audit and approval of the accounts, a franchise tax as may be prescribed by law of all gross receipts of the

telephone or other telecommunications businesses transacted under this franchise by the grantee; *Provided*, That the grantee shall continue to be liable for income taxes payable under Title II of the National Internal Revenue Code pursuant to Section 2 of Executive Order No. 72 unless the latter enactment is amended or repealed, in which case the amendment or repeal shall be applicable thereto.

The grantee shall file the return with and pay the tax due thereon to the Commissioner of Internal Revenue or his duly authorized representative in accordance with the National Internal Revenue Code and the return shall be subject to audit by the Bureau of Internal Revenue. (Boldfacing and underscoring supplied)

Sometime in 1997, respondent issued a building permit for the installation of petitioner's telecommunications facilities in Batangas City. After the installation of the facilities, petitioner applied with the Mayor's office of Batangas City for a permit to operate. Because of a discrepancy in the actual investment costs used in computing the prescribed fees for the clearances and permits, petitioner was not able to secure a Mayor's Permit for the year 1998. Petitioner was also advised to settle its unpaid realty taxes. However, petitioner claimed exemption from the payment of realty tax, citing the first sentence of Section 5 of RA 7678, the Letter-Opinion of the Bureau of Local Government Finance (BLGF) dated 8 April 1997,^[5] and the letter of the Office of the President dated 12 March 1996.^[6]

In 1999, respondent refused to issue a Mayor's Permit to petitioner without payment of its realty taxes.

On 22 June 1999, petitioner paid P68,890.39 under protest as fees for the permit to operate, but respondent refused to accept the payment unless petitioner also paid the realty taxes.^[7]

On 2 July 1999, respondent threatened to close down petitioner's operations. Hence, on 3 July 1999, petitioner instituted a complaint for prohibition and mandamus with prayer for a temporary restraining order or writ of preliminary injunction. This case was raffled to RTC-Branch 3. On the same date, respondent served a Cease and Desist Order on petitioner.^[8]

On 20 January 2000, during the pendency of the complaint, petitioner paid its realty taxes of P2,043,265 under protest.^[9] Petitioner resumed its business, rendering the other issues raised in petitioner's complaint moot. Consequently, the only issue left for resolution is whether petitioner is exempt from the realty tax under Section 5 of RA 7678.

The Ruling of RTC -Branch 3

On 28 March 2001, RTC-Branch 3 issued the following Order:

WHEREFORE, premises considered, the Court hereby declares that the real estate, buildings and personal property of plaintiff Digital Telecommunications Philippines, Inc. which are used in the operation of its franchise are exempt from payment of real property taxes, but those not so used should be held liable thereto.^[10]

RTC-Branch 3 reasoned that the phrase "exclusive of this franchise" in the first sentence of Section 5 of RA 7678 limits the real properties that are subject to realty tax only to those which are not used in petitioner's telecommunications business. In short, petitioner's real properties used in its telecommunications business are not subject to realty tax.^[11]

On 1 May 2001, respondent moved for reconsideration. Before acting on the motion, the Presiding Judge of RTC-Branch 3 voluntarily inhibited himself because the newly-elected mayor of Batangas City was his *kumpadre*.^[12] The case was re-raffled to RTC-Branch 8.

The Ruling of RTC -Branch 8

On 2 May 2002, RTC-Branch 8 issued an Order which reads:

WHEREFORE, the defendants' Motion for Reconsideration is hereby granted. The Order of this Court dated March 21, 2001 is hereby set aside and, in lieu thereof, judgment is hereby rendered in favor of the defendants and against the plaintiff:

- **DISMISSING** the Amended Complaint;
- **DECLARING** that the plaintiff Digital Telecommunications Philippines, Inc., under its legislative franchise RA No. 7678, is not exempted from the payment of real property tax being collected by the defendant City of Batangas and, accordingly,
- **ORDERING** said plaintiff to pay the City of Batangas real estate taxes in the amount of Ph4,620,683.33 which was due as of January, 2000, as well as those due thereafter, plus corresponding interest and penalties.^[13]

On 29 May 2002, petitioner moved for reconsideration. On 19 November 2002, RTC-Branch 8 denied petitioner's motion for reconsideration.

Hence, this petition.

The Issue

The sole issue for resolution is whether, under the first sentence of Section 5 of RA 7678, petitioner's real properties used in its telecommunications business are exempt from the realty tax.

Petitioner's Contentions

Petitioner contends that its exemption from realty tax is based on the first sentence of Section 5 of RA 7678. Petitioner claims that the evident purpose of the phrase "**exclusive of this franchise**" is to limit the real properties that are subject to realty tax only to properties that are not used in petitioner's telecommunications business.^[14] Petitioner asserts that the phrase "exclusive of this franchise" must not be construed as a useless surplusage. Petitioner points out that its exemption from realty tax was affirmed in two separate opinions, one rendered by the Office of the President on 12 March 1996 and the other by the BLGF on 8 April 1997 and reaffirmed on 4 January 1999.^[15] The BLGF declared that "the real properties of Digitel, which are used in the operation of its franchise are x x x found to be exempt from the payment of real property taxes beginning 1 January 1993. However, all other properties of that company not used in connection with the operation of its franchise shall remain taxable."^[16]

Petitioner further argues that under the Local Government Code, the realty tax is imposed on all lands, buildings, machineries and other improvements attached to real property. A franchise is an incorporeal being, a special privilege granted by the legislature. Hence, to read the first sentence of Section 5 of RA 7678 to mean that the franchisee shall pay taxes on its real properties used in its telecommunications business would render the phrase "exclusive of this franchise" meaningless.

Petitioner admits that the franchise granted under RA 7678 is a personal property, but the franchise is not the "personal property" referred to in the first sentence of Section 5. Petitioner asserts that the phrase "real estate, buildings, and personal property" in the first sentence of Section 5 refers solely to real properties and does not include personal properties. Petitioner explains thus:

For PTEs (public telecommunication entities), these personal properties include the switches which were installed in the exchange buildings as well as the outside and inside plant equipment. Initially, these telecommunications materials and equipment were personal property in character. But, having been installed and made operational by being attached to the exchange building, they are now converted into immovables or real property. **That being the case, the phrase "*real estate, buildings and personal property*" actually refer[s] to**

properties that are liable for real estate tax. And, Congress having made the qualification with the phrase "exclusive of this franchise," only such real properties that are not used in furtherance of the franchise are subject to real property tax.^[17] (Emphasis supplied)

Respondent's Contentions

Respondent contends that the phrase "exclusive of this franchise" does not mean that petitioner is exempt from the realty tax on its real properties used in its telecommunications business. The first sentence of Section 5 of RA 7678 makes petitioner "liable to pay the same taxes for its real estate, buildings, and personal property exclusive of this franchise as other persons or corporations are or hereafter may be required by law to pay." This shows the clear intent of Congress to tax petitioner's real and personal properties.^[18] Respondent asserts that the phrase "exclusive of this franchise" is a qualification of the broad declaration on the franchisee's liability for taxes which is the main thrust of the first sentence of Section 5. Respondent points out that petitioner is paying taxes and fees on all its motor vehicles, which are personal properties, without distinction.^[19] Respondent also points out that petitioner admits that the first sentence of Section 5 of RA 7678 is ambiguous with respect to the phrase "exclusive of this franchise,"^[20] thus petitioner resorted to the rules on statutory construction.^[21]

Respondent adds that the legislative franchises granted to other telecommunications companies contain the same phrase "exclusive of this franchise." This shows the intent of Congress to make franchisees liable for the realty tax rather than exempt them even if the real properties are used in their telecommunications business.^[22]

The Office of the Solicitor General (OSG), appearing for respondent, contends that the first sentence of Section 5 provides for petitioner's general liability to pay taxes and does not provide for petitioner's exemption from realty tax. The OSG invokes the doctrine of last antecedent which is an aid in statutory construction. The OSG argues that under this doctrine, the qualifying word or phrase only restricts the word or phrase to which the qualifying word or phrase is immediately associated and not the word or phrase which is distantly or remotely located. In the first sentence of Section 5, the phrase "exclusive of this franchise" restricts only the words "personal property" which immediately precede the phrase "exclusive of this franchise." This means that the franchise, an intangible personal property, should be excluded from the personal properties that are subject to taxes under the first sentence of Section 5. The OSG adds that the use of the comma to separate "real estate, buildings" from "personal property" exerts a dominant influence in the application of the doctrine of last antecedent. Further, the OSG reiterates that laws granting exemption from tax are to be construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing power.

The Ruling of the Court

The petition has no merit.

Section 5 of RA 7678 imposes taxes and does not exempt from realty tax

The issue in this case involves the interpretation of the phrase "**exclusive of this franchise**" in the first sentence of Section 5 of RA 7678.

Section 5 of RA 7678 states:

Sec. 5. Tax Provisions. - **The grantee shall be liable to pay the same taxes on its real estate, buildings, and personal property exclusive of this franchise as other persons or corporations are now or hereafter may be required by law to pay.** In addition thereto, the grantee shall pay to the Bureau of Internal Revenue each year, within thirty (30) days after the audit and approval of the accounts, a franchise tax as may be prescribed by law of all gross receipts of the telephone or other telecommunications businesses transacted under this franchise by the grantee; *Provided*, That the grantee shall continue to be liable for income taxes payable under Title II of the National Internal Revenue Code pursuant to Section 2 of Executive Order No. 72 unless the latter enactment is amended or repealed, in which case the amendment or repeal shall be applicable thereto.

The grantee shall file the return with and pay the tax due thereon to the Commissioner of Internal Revenue or his duly authorized representative in accordance with the National Internal Revenue Code and the return shall be subject to audit by the Bureau of Internal Revenue. (Boldfacing and underscoring supplied)

The first sentence of Section 5 of RA 7678 is the same provision found in almost all legislative franchises in the telecommunications industry dating back to 1905.^[23] It is also the same provision that appears in the legislative franchises of other telecommunications companies like Philippine Long Distance Telephone Company,^[24] Smart Information Technologies, Inc.,^[25] and Globe Telecom.^[26] Since 1905, no telecommunications company has claimed exemption from realty tax based on the phrase "exclusive of this franchise," until petitioner filed the present case on 3 July 1999.^[27]

The first sentence of Section 5 clearly states that the legislative franchisee shall be liable to

pay the following taxes: (1) "the same taxes on its real estate, buildings, **and personal property exclusive of this franchise** as other persons or corporations are now or hereafter may be required by law to pay"; (2) "franchise tax as may be prescribed by law of all gross receipts of the telephone or other telecommunications businesses transacted under this franchise";^[28] and (3) "income taxes payable under Title II of the National Internal Revenue Code."

The crux of the controversy lies in the interpretation of the phrase "exclusive of this franchise" in the first sentence of Section 5. Petitioner interprets the phrase to mean that its real properties that are used in its telecommunications business shall not be subject to realty tax. Respondent interprets the same phrase to mean that the term "personal property" shall not include petitioner's franchise, which is an intangible personal property.

We rule that the phrase "exclusive of this franchise" simply means that petitioner's franchise shall not be subject to the taxes imposed in the first sentence of Section 5. The first sentence lists the properties that are subject to taxes, and **the list excludes the franchise**. Thus, the first sentence provides:

The grantee shall be liable to pay the same taxes on its real estate, buildings, and personal property **exc lusive of this franchise** as other persons or corporations are now or hereafter may be required by law to pay. (Emphasis supplied)

A plain reading shows that the phrase "exclusive of this franchise" is meant to **exclude** the legislative franchise from the properties subject to taxes under the first sentence. In effect, petitioner's franchise, which is a personal property, is not subject to the taxes imposed on properties under the first sentence of Section 5.

However, petitioner's gross receipts from its franchise are subject to the "franchise tax" under the second sentence of Section 5. Thus, the second sentence provides:

In addition thereto, the grantee shall pay to the Bureau of Internal Revenue each year, within thirty (30) days after the audit and approval of the accounts, a **franchise tax** as may be prescribed by law of all gross receipts of the telephone or other telecommunications businesses transacted under this franchise by the grantee; x x x (Emphasis supplied)

In short, petitioner's franchise is excluded from the properties taxable under the first sentence of Section 5 but the gross receipts from its franchise are expressly taxable under the second sentence of the same Section.

The first sentence of Section 5 imposes on the franchisee the "**same taxes**" that non-franchisees are subject to with respect to real and personal properties. The clear intent is to

put the franchisees and non-franchisees **in parity** in the taxation of their real and personal properties. Since non-franchisees have obviously no franchises, the franchise must be excluded from the list of properties subject to tax to maintain the parity between the franchisees and non-franchisees. However, the franchisee is taxable separately from its franchise. Thus, the second sentence of Section 5 imposes the "franchise tax" on gross receipts, which under Republic Act No. 7716 has been replaced by the 10% Valued Added Tax effective 1 January 1996.^[29]

Section 5 can be divided into three parts. First is the first sentence which imposes taxes on real and personal properties, excluding one property, that is, the franchise. This puts in parity the franchisees and non-franchisees in the taxation of real and personal properties. Second is the second sentence which imposes the franchise tax, which is applicable solely to the franchisee. And third is the proviso in the second sentence that imposes the income tax on the franchisee, the same income tax payable by non-franchisees.

Petitioner claims that the first sentence refers only to real properties, and that the phrase "exclusive of this franchise" exempts petitioner from realty tax on its real properties used in its telecommunications business. This claim has no basis in the language of the law as written in the first sentence of Section 5. First, the first sentence expressly refers to taxes on "real estate" and on "personal property." Clearly, the first sentence does not refer only to taxes on real properties, but also to taxes on personal properties. The trial court correctly observed that petitioner pays taxes on its motor vehicles,^[30] which are personal properties, that are used in its telecommunications business.^[31] There is also the documentary stamp tax on transactions involving real and personal properties, which petitioner and other taxpayers are liable for.^[32]

A franchise granted by Congress to operate a private radio station for the franchisee's communications in deep-sea fishing shows that the first sentence of Section 5 of RA 7678 does not refer to real properties alone. Section 6 of Republic Act No. 3218 (RA 3218), entitled *An Act Granting Batas Riego De Dios A Franchise To Construct, Maintain And Operate Private Radio Stations For Radio Communications In Its Deep-Sea Fishing Industry*, provides:

SECTION 6. The grantee shall be liable (1) to pay the same taxes on its real estate, **building, fishing boats and personal property, exclusive of this franchise** as other persons or corporations are now, or hereafter may be required by law to pay, and shall further be liable (2) to pay all other taxes that may be imposed by the National Internal Revenue Code by reason of this franchise. (Emphasis supplied)

The inclusion of "**fishing boats**," personal properties that can never be attached to a land or

building so as to make them real properties, demonstrates that Section 6 of RA 3218, like the first sentence of Section 5 of RA 7678, not only applies to real properties but also to personal properties.

Second, there is no language in the first sentence of Section 5 expressly or even impliedly exempting petitioner from the **realty tax**. The phrases "exemption from real estate tax," "free from real estate tax" or "not subject to real estate tax" do not appear in the first sentence. No matter how one reads the first sentence, there is no grant of exemption, express or implied, from realty tax. In fact, the first sentence expressly imposes taxes on both real and personal properties, excluding only the intangible personal property that is the franchise.

A tax exemption cannot arise from vague inference. The first sentence of Section 5 does not grant any express or even implied exemption from realty tax. On the contrary, the first sentence categorically states that the franchisee is subject to the "**same taxes** currently imposed, and those taxes that may be subsequently imposed, on other persons or corporations," taxpayers that admittedly are all subject to realty tax. The first sentence does not limit the imposition of the "same taxes" to realty tax only but even to "those taxes" that may in the future be imposed on other taxpayers, which future taxes shall also be imposed on petitioner. Thus, the first sentence of Section 5 imposes on petitioner not only realty tax but also other taxes.

The phrase "personal property exclusive of this franchise" merely means that "personal property" does not include the franchise even if the franchise is an intangible personal property. Stated differently, the first sentence of Section 5 provides that petitioner shall pay tax on its real properties as well as on its personal properties but the franchise, which is an intangible personal property, shall not be deemed personal property.

The historical usage of the phrase "exclusive of this franchise" in franchise laws enacted by Congress indubitably shows that the phrase is not a grant of tax exemption, but an exclusion of one type of personal property subject to taxes, and the excluded personal property is the franchise. Thus, the franchises of telecommunications companies in Republic Act Nos. 4137,^[33] 5692,^[34] 5739,^[35] 5785,^[36] 5790,^[37] 5791,^[38] 5795,^[39] 5810,^[40] 5847,^[41] 5848,^[42] 5856,^[43] 5857,^[44] 5913,^[45] 5914,^[46] 5929,^[47] 5937,^[48] 5958,^[49] 5959,^[50] 5974,^[51] 5993,^[52] 5994,^[53] 6002,^[54] 6006,^[55] 6007,^[56] 6013,^[57] 6024,^[58] 6097,^[59] 6510,^[60] 6536,^[61] and 6530^[62] contain the following **common tax provision**:

The grantee shall be liable to pay the same taxes, **unless exempted therefrom**, on its business, real estate, buildings, and personal property, **exclusive of this franchise**, as other persons or corporations are now or hereafter may be

required by law to pay. (Emphasis supplied)

The phrase "**unless exempted therefrom**" in the common provision clearly clarifies that the phrase "exclusive of this franchise" does not grant any tax exemption. To claim tax exemption, there must be an express exemption from tax in another provision of law. On the other hand, the deletion of the phrase "unless exempted therefrom" from the common provision does not give rise to any tax exemption.

Bayantel and Digitel Cases

In *City Government of Quezon City v. Bayan Telecommunications, Inc.*,^[63] this Court's Second Division held that "all realties which are actually, directly and exclusively used in the operation of its franchise are 'exempted' from any property tax." The Second Division added that Bayantel's franchise being national in character, the "exemption" granted applies to all its real and personal properties found anywhere within the Philippines. The Second Division reasoned in this wise:

The legislative intent expressed in the phrase '**exclusive of this franchise**' cannot be construed other than distinguishing between two (2) sets of properties, be they real or personal, owned by the franchisee, namely, (a) those actually, directly and exclusively used in its radio or telecommunications business, and (b) those properties which are not so used. It is worthy to note that the properties subject of the present controversy are only those which are admittedly falling under the first category.

To the mind of the Court, Section 14 of Rep. Act No. 3259 effectively works to grant or delegate to local governments of Congress' inherent power to tax the franchisee's properties belonging to the second group of properties indicated above, that is, all properties which, "exclusive of this franchise," are not actually and directly used in the pursuit of its franchise. As may be recalled, the taxing power of local governments under both the 1935 and the 1973 Constitutions solely depended upon an enabling law. Absent such enabling law, local government units were without authority to impose and collect taxes on real properties within their respective territorial jurisdictions. While Section 14 of Rep. Act No. 3259 may be validly viewed as an implied delegation of power to tax, the delegation under that provision, as couched, is limited to impositions over properties of the franchisee which are not actually, directly and exclusively used in the pursuit of its franchise. Necessarily, other properties of Bayantel directly used in the pursuit of its business are beyond the pale of the delegated taxing power of local governments. In a very real sense, therefore, real properties of Bayantel, save those exclusive of its franchise, are subject to realty taxes. **Ultimately, therefore, the inevitable result was that all realties which**

are actually, directly and exclusively used in the operation of its franchise are "exempted" from any property tax. (Emphasis supplied)

In *Digital Telecommunications Philippines, Inc. (Digitel) v. Province of Pangasinan*, ^[64] this Court's Third Division ruled that Digitel's real properties located within the territorial jurisdiction of Pangasinan that are actually, directly and exclusively used in its franchise are exempt from realty tax under the first sentence of Section 5 of RA 7678. The Third Division explained thus:

The more pertinent issue to consider is whether or not, by passing Republic Act No. 7678, Congress intended to exempt petitioner DIGITEL's real properties actually, directly and exclusively used by the grantee in its franchise.

The fact that Republic Act No. 7678 was a later piece of legislation can be taken to mean that Congress, knowing fully well that the Local Government Code had already withdrawn exemptions from real property taxes, chose to restore such immunity even to a limited degree. Accordingly:

The Court views this subsequent piece of legislation as an express and real intention on the part of Congress to once again remove from the LGC's delegated taxing power, all of the franchisee's x x x properties that are actually, directly and exclusively used in the pursuit of its franchise.

In view of the unequivocal intent of Congress to exempt from real property tax those real properties actually, directly and exclusively used by petitioner DIGITEL in the pursuit of its franchise, respondent Province of Pangasinan can only levy real property tax on the remaining real properties of the grantee located within its territorial jurisdiction not part of the above-stated classification. Said exemption, however, merely applies from the time of the effectivity of petitioner DIGITEL's legislative franchise and not a moment sooner.

Nowhere in the language of the first sentence of Section 5 of RA 7678 does it expressly or even impliedly provide that petitioner's real properties that are actually, directly and exclusively used in its telecommunications business are exempt from payment of realty tax. On the contrary, the first sentence of Section 5 specifically states that the petitioner, as the franchisee, shall pay the "same taxes on its real estate, buildings, and personal property exclusive of this franchise as other persons or corporations are now or hereafter may be required by law to pay."

The heading of Section 5 is "Tax Provisions," not Tax Exemptions. To reiterate, the phrase "exemption from real estate tax" or other words conveying exemption from realty tax do

not appear in the first sentence of Section 5. The phrase "exclusive of this franchise" in the first sentence of Section 5 merely qualifies the phrase "personal property" to exclude petitioner's legislative franchise, which is an intangible personal property. Petitioner's franchise is subject to tax in the second sentence of Section 5 which imposes the "franchise tax." Thus, there is no grant of tax exemption in the first sentence of Section 5.

The interpretation of the phrase "exclusive of this franchise" in the *Bayantel* and *Digitel* cases goes against the basic principle in construing tax exemptions. In *PLDT v. City of Davao*,^[65] the Court held that "tax exemptions should be granted only by clear and unequivocal provision of law on the basis of language too plain to be mistaken. They cannot be extended by mere implication or inference."

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.^[66]

RCPI case

In *Radio Communications of the Philippines, Inc. (RCPI) v. Provincial Assessor of South Cotabato*,^[67] the Court's First Division held that RCPI's radio relay station tower, radio station building, and machinery shed are real properties and are subject to real property tax. The Court added that:

RCPI cannot also invoke the equality of treatment clause under Section 23 of Republic Act No. 7925. **The franchises of Smart, Islacom, TeleTech, Bell, Major Telecoms, Island Country, and IslaTel,**^[68] **all expressly declare that the franchisee shall pay the real estate tax, using words similar to Section 14 of RA 2036, as amended.** The provisions of these subsequent telecommunication franchises imposing the real estate tax on franchisees only confirm that RCPI is subject to the real estate tax. Otherwise, RCPI will stick out like a sore thumb, being the only telecommunications company exempt from the real estate tax, in mockery of the spirit of equality of treatment that RCPI is invoking, not to mention the violation of the constitutional rule on uniformity of taxation.

It is an elementary rule in taxation that exemptions are strictly construed against the taxpayer and liberally in favor of the taxing authority. It is the taxpayer's duty to justify the exemption by words too plain to be mistaken and too categorical to be misinterpreted. (Emphasis supplied)

In *RCPI*, the Court emphasized that telecommunications companies which were granted legislative franchise are liable to realty tax. The intent to grant realty tax exemption cannot be discerned from Republic Act No. 4054^[69] and neither from the legislative franchises of other telecommunications companies. Tax exemptions granted to one or more, but not to all, telecommunications companies similarly situated will violate the constitutional rule on uniformity of taxation.^[70]

**The intent of Congress is to make
legislative franchisees liable to tax**

In *PLDT v. City of Davao*,^[71] it was observed that after the imposition of VAT on telecommunications companies, Congress refused to grant any tax exemption to telecommunications companies that sought new franchises from Congress, except the exemption from specific tax.^[72] More importantly, the uniform tax provision in these new franchises expressly states that the franchisee shall pay not only all taxes, except specific tax, under the National Internal Revenue Code, but also all taxes under "**other applicable laws**,"^[73] one of which is the Local Government Code which imposes the realty tax.^[74]

In fact, Section 12 of Republic Act No. 9180 (RA 9180),^[75] the legislative franchise of Digitel Mobile, a 100%-owned subsidiary of petitioner, states that the franchisee, its successors or assigns shall be subject to the payment of "**all taxes**, duties, fees or charges and other impositions under the National Internal Revenue Code of 1997, as amended, **and other applicable laws**."^[76] Section 12 of RA 9180 provides:

SECTION 12. Tax Provisions. -- **The grantee, its successors or assigns, shall be subject to the payment of all taxes, duties, fees or charges and other impositions under the National Internal Revenue Code of 1997, as amended, 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, further, That all rights, privileges, benefits and exemptions accorded to existing and future telecommunications 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 income tax due thereon to the Commissioner of Internal Revenue or his duly authorized representatives in accordance with the National Internal Revenue Code and the return shall be subject to audit by the Bureau of Internal Revenue. (Emphasis supplied)

Thus, Digitel Mobile is subject to tax on its real estate and personal properties, whether or

not used in its telecommunications business.

In *Compagnie Financiere Sucres et Denrees v. Commissioner of Internal Revenue*,^[77] the Court ruled that "the governing principle is that tax exemptions are to be construed in *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority - he who claims an exemption must be able to justify his claim by the clearest grant of statute." A person claiming an exemption has the burden of justifying the exemption by words too plain to be mistaken and too categorical to be misinterpreted. Tax exemptions are never presumed and the burden lies with the taxpayer to clearly establish his right to exemption.^[78]

BLGF Opinions

On 25 October 2004, the BLGF issued Memorandum Circular No. 15-2004.^[79] This circular reversed the BLGF's Letter-Opinion dated 8 April 1997 recognizing realty tax exemption under the phrase "exclusive of this franchise." This later circular states that the real properties owned by Globe and Smart Telecommunications and all other telecommunications companies similarly situated are subject to the realty tax. The BLGF has reversed its opinion on the realty tax exemption of telecommunications companies. Hence, petitioner's claim of tax exemption based on BLGF's opinion does not hold water. Besides, the BLGF has no authority to rule on claims for exemption from the realty tax.^[80]

Wherefore, we **DENY** the petition. We **AFFIRM** the 2 May 2002 and 19 November 2002 Orders of the Regional Trial Court, Branch 8, Batangas City, in Civil Case No. 5343.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Austria-Martinez, Carpio Morales, Tinga, Chico-Nazario, Velasco, Jr., Nachura, Reyes, Leonardo-De Castro, and Brion, JJ., concur. Corona, and Azcuna, JJ., on official leave.

^[1] Under Rule 45 of the Rules of Court.

^[2] Penned by Judge Liberato C. Cortes.

^[3] Penned by Presiding Judge Romeo F. Barza.

^[4] An Act Granting the Digital Telecommunications Philippines, Incorporated, a Franchise

to Install, Operate and Maintain Telecommunications Systems Throughout the Philippines and for Other Purposes.

[5] *Rollo*, pp. 41-44.

April 8, 1997

Mr. William S. Pamintuan
Senior Vice President
Digital Telecommunications Phils., Inc. (DIGITEL)
110 E. Rodriguez Jr. Avenue
Bagumbayan, Quezon City

Sir:

This refers to your letter dated January 28, 1997, requesting opinion concerning the exemption from real property taxes of DIGITEL pursuant to the provisions of its franchise (R.A. No. 7678), which was approved on February 17, 1994.

That company advanced the contention that Digitel "is not liable to pay the aforementioned tax" on its "real estate, buildings and personal property... inclusive of its franchise," in view of the provisions of Section 5 of Republic Act No. 7678 (Digitel's legislative franchise) which, among others, provides that "[T]he grantee (Digitel) shall be liable to pay the same taxes on its real estate, buildings, and personal property exclusive of this franchise, x x x."

Moreover, Digitel's position is based on the *ipso facto* provision of Section 12 of their abovementioned franchise, which reads:

SEC. 12. *Non-exclusivity of Franchise; Interpretation of Franchise.* - The franchise granted under this Act is not exclusive and shall not prevent the grant of similar franchise to other qualified persons or entities: x x x x Provided, finally, that if any subsequent franchise for telecommunications services is awarded or granted by the Congress of the Philippines with terms, privileges and conditions more favorable and beneficial than those contained in this Act, then the same privileges or advantages shall, ipso facto, accrue to the herein grantee and shall be deemed part of this Act.

It appears that the abovementioned request was prompted by the following:

1. The letter dated March 12, 1996 of the Executive Secretary, Office of the

President, Malacañang, Manila, which ruled as follows:

As clearly spelled out in the above *ipso facto* provision, it is the intent of the legislature to provide 'equality of treatment in the telecommunications industry.' Equally clear is the fact that the tax exemption being enjoyed by telecommunications companies similarly situated with Digitel or those whose franchises provide similar benefits constitutes an 'advantage, favor, privilege, exemption, or immunity' granted under an existing franchise.

Hence, Section 6, R.A. No. 7293 granting a similar franchise to Pilipino Telephone Corporation (PILTEL) *ipso facto* became part of Digitel's franchise pursuant to Section 23 of R.A. No. 7925. Digitel, therefore, became entitled to the tax exemptions provided for under Section 6, R.A. No. 7293 immediately upon effectivity of R.A. No. 7925.

2. The 1st Indorsement dated February 14, 1995 of the Department of Finance (DOF), concerning the request of the Philippine Telegraph and Telephone Corporation (PT&T) for reconsideration of the DOF's ruling embodied under a 1st Indorsement dated May 27, 1994 which held, in view of the withdrawal of exemption provision of Section 234 of R.A. No. 7160, that: "the real properties of PT&T, although directly used in the operation of its franchise, shall be liable to the payment of real property taxes beginning January 1, 1992, the effectivity of R.A. No. 7160."

The said February 14, 1995 ruling, which is relatively similar to that of the abovesited ruling of the Office of the President, held, thus:

In view thereof, such pertinent portion of the Tax Provisions of the franchises of SMART, Bell Telecommunication Philippines, Inc., and Digital Telecommunications Philippines, Inc., stating that "(T)he grantee shall be liable to pay the same taxes on real estate, buildings and personal property, exclusive of this franchise," is again deemed a part of PT&T's franchise when R.A. No. 7294 (SMART's franchise) took effect on April 15, 1992.

The stand of this Department under its 1st Indorsement dated May 27, 1994, 'that real properties of PT&T, although directly used in the operations of its franchise, shall be liable to the payment of real property taxes beginning January 1, 1992,' is, therefore, hereby maintained. However, such real properties of

the said company (PT&T) which are directly used in the operation of its franchise, should again, in view of the foregoing considerations, be assessed as exempt from payment of real property taxes commencing January 1, 1993, the year after the franchise of SMART took effect, in line with Article III (B) (2) of the Manual on Real Property Tax Administration in the Philippines and Section 221 of R.A. No. 7160, x x x.

Moreover, it is emphasized that all other real properties of PT&T not used in connection with the operations of its franchise shall remain subject to the payment of real property taxes.

It is worthwhile to note that under the aforecited 1st Indorsement of the Department of Finance, Digitel's real property tax exemption was already recognized in granting PT&T's request for real property tax exemption.

Moreover, attention is likewise invited to the letter dated July 24, 1996, of this Bureau, also treating on a similar subject matter, to wit:

Like the abovementioned telecommunications (PT&T, SMART, BELL and DIGITAL), ISLACOM was granted, under Section 1 of R.A. No. 7372, the `right, privilege and authority to construct, operate and maintain all types of mobile communications, including cellular, personal communication network, paging and trunk radio services (such as but not limited to the transmission and reception of voice, data facsimile, audio and video and all other improvements and innovations pertaining to or as may be applicable to mobile telecommunication technology) as well as multi-channel microwave fiber optic and satellite distribution x x x.

The exemption provisions under the legislative franchise of PT&T, SMART, BELL and DIGITAL is similarly found under Section 14 of ISLACOM's franchise (R.A. 7372), which provides as follows:

`x x x.'

Obviously, the same privilege (exemption from payment of real property taxes on properties used in the operation of franchise)

should be enjoyed by ISLACOM, in the same way that exemption of the abovementioned telecommunications companies (PT&T, SMART, BELL and DIGITAL) were, in effect, considered by the Department of Finance (DOF).

In view of all the foregoing, this Bureau finds merit in the abovementioned contention and claim of that company for real property tax exemption. Hence, the real properties of DIGITEL, which are used in the operation of its franchise, are hereby similarly found to be exempt from the payment of real property taxes, beginning January 1, 1993.

However, all other real properties of that company not used in connection with the operations of its franchise shall remain taxable.

Very truly yours,
LORINDA M. CARLOS
Executive Director

[6] Id. at 59-62.

12 March 1996

Mr. John Gokongwei, Jr.
Chairman
Digital Telecommunications Philippines, Inc.
c/o JG Summit Holdings, Inc.
29th Floor, Galleria Corporate Center
EDSA corner Ortigas Avenue
Quezon City

Sir:

This refers to your request for "a ruling addressed to the Bureau of Internal Revenue and the Department of Finance for the tax and duty-free importations of Digitel," the same privilege which you understood as being accorded to other telecommunications companies with the same franchise.

x x x

Hence, Section 6, R.A. No. 7293 granting a similar franchise to Pilipino Telephone Corporation (PILTEL) *ipso facto* became part of Digitel's franchise pursuant to Section 23 of R.A. No. 7925. Digitel, therefore, became entitled to

the tax exemptions provided for under Section 6, R.A. No. 7293 immediately upon effectivity of R.A. No. 7925.

Corollarily, as ruled by the BIR in its letter-opinion dated 25 January 1995 regarding PILTEL's tax exemption, Digitel, too, shall be subject only to the following taxes, to wit:

1. Taxes on its real estate, buildings and personal property not used in connection with the conduct of its business under its franchise, as other persons or corporations are now or hereafter may be required to pay;
2. 35% corporate income tax as provided for under Section 24(a) of the Tax Code, as amended;
3. 20% final withholding tax (FWT) on interest income derived from Philippine currency bank deposits and yield or any other monetary benefit from deposit substitutes, trust funds and similar arrangements, and royalties derived from sources within the Philippines (Section 2 [e] ^[1], NIRC);
4. Creditable expanded withholding tax (EWT) on sales, exchanges or transfers of real properties (whether classified as ordinary or capital asset) by Digitel consummated on or after January 1, 1990 (RMC 7-90);
5. Capital gains tax (CGT) on capital gains realized from sale, exchange or disposition of shares of stock in any domestic corporation under Section 24 (e) (2) of the Tax Code, as amended;
6. All other income taxes as provided for and imposed under Title II of the Tax Code, as amended; and
7. The 3% franchise tax on gross which shall be in lieu of all taxes, franchise or earnings thereof.

In view of the foregoing, this Office hereby holds that Digitel is exempt from any and all duties, taxes and assessments on the importation of radio and message handling equipment, machineries, pagers, accessories, spare parts and all other goods and articles used in connection with its business conducted under its franchise, including Value Added Tax (VAT).

Very truly yours,

RUBEN D. TORRES
Executive Secretary

[7] Id. at 10.

[8] Id.

[9] Records, p. 236.

[10] *Rollo*, p. 40.

[11] Records, p. 250.

[12] Id. at 311.

[13] *Rollo*, pp. 25-26.

[14] Id. at 11-12.

[15] Id. at 63-66.

January 4, 1999

ATTY. WILLIAM S. PAMINTUAN
Senior Vice President-Legal Services
Digital Telecommunications Philippines, Inc. (DIGITEL)
110 E. Rodriguez Jr. Avenue
Bagumbayan, Quezon City

Sir:

This refers to your letter dated October 19, 1998, seeking the assistance of this Bureau to render an opinion affirming its previous position that real properties of DIGITEL which are used in the operation of its franchise are exempt from payment of real property taxes.

In this connection, enclosed is a copy of our 2nd Indorsement of the same date addressed thru the Regional Director for Local Government Finance, Department of Finance, Region IV, to the Provincial Assessor of Batangas, the dispositive portion of which states as follows:

". . . in adherence to the aforementioned March 12, 1996 pronouncement of the Office of the President, this Bureau, in its November 9, 1998 letter..., likewise maintained the same stand, which in effect expressed that `the claim for exemption of that company from the payment of real property taxes on the real properties which are used in the operation of . . . (the company's) franchise is hereby deemed meritorious.'

"In view thereof, the said Regional Director for Local Government Finance and the Provincial Assessor are hereby enjoined to implement the subject Opinions rendered by the Offices of the President and the Department of Finance, thru the Bureau of Local Government Finance, on matters pertaining to the real property tax exemption covering the real properties of DIGITEL which are used in the operation of its franchise."

We trust that this will clarify matters.

Very truly yours,

Angelina M. Magsino
Deputy Executive Director
Officer-in-Charge
2nd Indorsment

January 4, 1999

Respectfully returned, thru the Regional Director for Local Government Finance, Department of Finance, Region IV, People Mansion Compound, Batangas City, to the Provincial Assessor of Batangas, same city.

This pertains to the "contrary opinion" expressed by the said Provincial Assessor concerning the letter dated April 18, 1997 of this Bureau, which held that "the real properties of DIGITEL, which are used in the operation of its franchise, are hereby found to be exempt from the payment of real property taxes."

It is worthwhile to note that the stand/opinion expressed in the abovementioned

letter dated April 8, 1997 of this Bureau, including those that similarly resolved real property tax exemption controversies of other telecommunication companies, were primarily based on the Opinion dated September 21, 1981 of the Office of the President stating that the phrase "exclusive of this franchise" found in Section 7 of R.A. No. 3662 (RETELCO's franchise) "has been construed to mean as excluding real estate, buildings and personal property of defendant RETELCO, Inc., directly used in the operation of its franchise, for which the latter is not subject to real estate tax as other persons or corporations are now or hereafter may be required by law to pay."

Apparently, the abovementioned "contrary opinion" of the Provincial Assessor of Batangas was prompted by the claim of DIGITEL for real property tax exemption on its real properties situated in Batangas Province, which are used in the operation of its franchise; and the Court of Appeals Decision, CA-GR CV No. 21897, promulgated on January 21, 1992, entitled, "The City Government of Batangas vs. Republic Telephone Company, Inc. (RETELCO), that "RETELCO is liable to pay the real property taxes on its real estate, building and personal property excluding its franchise." (Underscoring supplied) Hence, "RETELCO is ordered to pay the City of Batangas...the real property tax on said defendants' real estate, buildings and personal property located at Batangas City, covering the period from 1972 to June, 1980 and the real property tax due thereafter, plus the interest and penalty as provided by law."

In a letter dated October 19, 1998 (copy attached), the Senior Vice President Legal Service, Digital Telecommunications, Inc. (DIGITEL), advanced that, while most local government units "recognize and honor the said letter-opinion" of this Bureau, "the province of Batangas... rejected our (DIGITEL's) claim and refuses to honor the learned opinion of this (BLGF's) Office," thus, it argued that:

1. "(T)he Court of Appeals Decision cannot be used as basis for the refusal to honor the opinion of this (BLGF's) Honorable Office and the denial of DIGITEL's claim for real property tax exemption" considering that DIGITEL "is not a party to the said case."
2. "(I)t cannot be said that the Court of Appeals decision has established a precedent upon which other telecommunications companies can be compelled to comply with. x x x In the case of Miranda Imperial (77 Phil. 1066), the Supreme Tribunal categorically stated that `only decision of this Honorable Court establish jurisprudence or doctrines in this jurisdiction.'

Consequently, decisions of subordinate court are only persuasive in nature, and can have no mandatory effect (Paras, Civil Code of the Philippines annotated)."

3. "(R)real property tax is not imposed on a franchise (as the said Court of Appeals Decision resolved it to be), because it (the real property tax) is imposed specifically on real properties such as land, buildings and machineries. A franchise is never subject to real property tax. It is subject to a franchise tax."

This Bureau finds the foregoing arguments of DIGITEL tenable considering the fact that, actually, even the Office of the President (OP) appears to share the same stand when OP, notwithstanding the subject January 21, 1992 Court of Appeals Decision, reaffirmed its position on the matter under a letter dated March 12, 1996, which categorically declared that "DIGITEL, too, shall be subject only to the following taxes, to wit:

"1. Taxes on its real estate, buildings and personal property as other persons or corporations are now or hereafter may be required to pay; (Underscoring supplied)

x x x

It is likewise important to note hereon that, in adherence to the aforementioned March 12, 1996 pronouncement of the Office of the President, this Bureau, in its November 9, 1998 letter..., likewise maintained the same stand, which in effect expressed that "the claim for exemption of that company from the payment of real property taxes on the real properties which are used in the operation of ... (the company's) franchise is hereby deemed meritorious."

In view thereof, the said Regional Director for Local Government Finance and the Provincial Assessor are hereby enjoined to implement the subject Opinions rendered by the Offices of the President and the Department of Finance, thru the Bureau of Local Government Finance, on matters pertaining to the real property tax exemption covering the real properties of DIGITEL which are used in the operation of its franchise.

Be guided accordingly.

ANGELINA M. MAGSINO
Deputy Executive Director
Officer-in-Charge

[16] Id. at 13.

[17] Id. at 14.

[18] Id. at 181-182.

[19] Id. at 187-188.

[20] Id. at 189.

[21] Id. at 161.

[22] Id. at 185-186.

[23] Act No. 1368 entitled "An Act to provide for the granting of a franchise to construct, maintain, and operate telephone and telegraph systems, and to carry on other electrical transmission business in and between the provinces, cities, and municipalities of the Island of Luzon." Enacted on 6 July 1905.

Sec. 5 reads: "Sec. 5. **The grantees, their successors or assigns, shall be liable to pay the same taxes on their real estate, buildings, and personal property exclusive of this franchise as other persons or corporations are now or hereafter may be required by law to pay.** The grantees, their successors or assigns, shall further pay to the Insular Treasurer each year, within ten days after the audit and approval of the accounts as prescribed in section four of this Act, two per centum of all gross receipts of the telephone, telegraph, or other electrical transmission business transacted under this franchise by the grantees, their successors or assigns, and the said percentage shall be in lieu of all taxes on the franchise or earnings thereof." (Boldfacing and underscoring supplied)

[24] Republic Act No. 7082 entitled "An Act Further Amending Act No. 3436, as Amended, Entitled 'An Act Granting to the Philippine Long Distance Telephone Company A Franchise to Install, Operate and Maintain A Telephone System Throughout the Philippine Islands,' Consolidating The Terms and Conditions of the Franchise Granted to the Philippine Long Distance Telephone Company, and Extending the Said Franchise by Twenty-Five (25) Years From the Expiration of the Terms Thereof as Provided in Republic Act No. 6146."

[25] Republic Act No. 7294 entitled "An Act Granting Smart Information Technologies, Inc. (SMART) A Franchise To Establish, Install, Maintain, Lease And Operate Integrated

Telecommunications/ Computer/Electronic Services And Stations Throughout The Philippines For Public Domestic And International Telecommunications, And For Other Purposes."

[26] Republic Act No. 4630 entitled "An Act Amending Act Numbered Thirty-Four Hundred Ninety-Five, As Amended, Granting Globe Wireless, Limited, Of The Philippines, A Franchise To Construct, Maintain And Operate In The Philippines Stations For The Reception And Transmission Of Wireless Messages."

[27] In *Digital Telecommunications, Inc. (Digitel) v. Province of Pangasinan* (516 SCRA 541), the Province sued *Digitel* on 1 March 2000 for collection of unpaid real estate taxes. *Bayantel Telecommunications, Inc.* (484 SCRA 169) sued the City of Quezon in 2002 to prevent the collection of real estate taxes.

[28] Republic Act No. 7716 abolished the franchise tax on telecommunications companies effective 1 January 1996 and replaced it with a 10% value-added tax on telecommunications companies under Section 102 (now Section 108 of the Tax Reform Act of 1997, RA 8424) of the National Internal Revenue Code. RA 9337 increased the rate of VAT to 12% on 1 January 2006.

[29] See note 28.

[30] *Rollo*, p. 21.

[31] *See also* Republic Act No. 8794 entitled "An Act Imposing A Motor Vehicle User's Charge On Owners of All Types of Motor Vehicles And For Other Purposes."

[32] Sections 173, 174, 195 and 196 of the National Internal Revenue Code.

[33] An Act Granting The Luzon Broadcasting Company, Inc., A Franchise to Construct, Maintain And Operate Radio Broadcasting Stations Within The Philippines For Commercial Purposes.

[34] An Act Granting Alfredo Angeles A Franchise To Install, Maintain And Operate An Electric Light, Heat, Power System And An Ice Plant In The Municipality Of Molave, Province Of Zamboanga Del Sur.

[35] An Act Granting Leonides C. Pengson A Franchise To Construct, Operate And Maintain An Ice Plant And Cold Storage In The Municipality Of Makati, Province Of

Rizal, And To Sell And Distribute Ice In The Cities Of Pasay, Quezon, And The Municipality Of Makati, Province Of Rizal.

[36] An Act Approving Any Assignment, Sale And Transfer Of The Franchise Granted To Juan R. Alcasid By Republic Act Numbered Forty-Five Hundred Six, And Of The Franchise Granted To Feliciano S. Bermudez Under The Republic Act Numbered Eighteen Hundred Forty Which Was Later Assigned, Sold And Transferred To Juan R. Alcasid Duly Approved By Congress Under Republic Act Numbered Forty-Five Hundred Fifty-Three, In Favor Of Rural Electric, Inc.

[37] An Act Granting Romulo Rodriguez, Jr., A Franchise To Construct, Maintain And Operate Radio Broadcasting And Television Stations In Gingoog City.

[38] An Act Granting Burauen Electric And Ice Plant Corporation A Franchise To Construct, Operate And Maintain An Electric Light And Power System, An Ice Plant And Cold Storage In The Municipality Of Burauen, Province Of Leyte, And To Sell Electric Current, Ice And To Supply Cold Storage Therein.

[39] An Act Granting Elpidiforo Cuna, Jr. A Franchise To Construct, Operate And Maintain Ice Plants And Cold Storage, To Distribute And Sell Ice So Manufactured And Furnish Cold Storage In The Cities Of Pasay, Caloocan, Quezon And Manila And In Paranaque In The Province Of Rizal.

[40] An Act Granting Philippine Greenhills Development Corporation A Franchise To Establish, Maintain And Operate Private, Fixed, Point-To-Point, Private Coastal, Land-based, Aeronautical And Land-Mobile Radio Stations For The Transmission And Reception Of Wireless Messages.

[41] An An Act Granting Pedro R. Luspo, Sr. A Franchise To Construct, Operate And Maintain Radio Broadcasting And Television Stations In Northern Mindanao.

[42] An Act Granting Felipe C. Adamos A Franchise To Construct, Operate And Maintain An Ice Plant And Cold Storage In The Municipality Of San Felipe, Province Of Zambales And To Sell Ice And Supply Cold Storage In The Said Province.

[43] An Act Granting Katigbak Enterprises, Incorporated, A Franchise To Construct, Operate And Maintain A Radio Broadcasting Station In The City Of San Pablo.

[44] An Act Amending Section Five Of Republic Act Numbered Fifty-One Hundred And Six, Entitled An Act Granting Rafael C. Aquino A Franchise To Install, Maintain And

Operate An Electric Light, Heat, Power System, An Ice Plant And Cold Storage In The Municipalities Of Bayugan And Prosperidad, Province Of Agusan.

[45] An Act Granting Far Corporation A Franchise To Construct, Operate And Maintain Radio Broadcasting Stations In Luzon.

[46] An Act Granting Basilan Broadcasting Corporation A Franchise To Establish, Operate And Maintain Radio Broadcasting Stations In Mindanao.

[47] An Act Granting Felipe Dela Cruz A Franchise To Construct, Operate And Maintain An Ice Plant And Cold Storage And To Sell And To Supply Cold Storage Facilities In Quezon City.

[48] An Act Granting The Asiatic Integrated Corporation, A Franchise To Construct, Maintain And Operate An Ice Plant And Cold Storage In The Municipality Of Mariveles, Province Of Bataan.

[49] An Act Granting Bidcor Telephone Company, Inc. A Franchise To Install, Operate And Maintain A Telephone System In The Province Of South Cotabato.

[50] An Act Granting Lourdes P. San Diego A Franchise To Construct, Operate And Maintain Ice Plants And Cold Storage In The City Of Iriga And In The Municipality Of Balatan, Province Of Camarines Sur, And To Sell Ice And Supply Cold Storage Therein.

[51] An Act Granting Iriga Telephone Company, Incorporated, A Franchise To Install, Operate And Maintain A Telephone System In The City Of Iriga.

[52] An Act Granting Eusebio G. Bernales, Sr. A Franchise To Install, Operate And Maintain An Electric Light, Heat and Power System, And An Ice Plant In The Municipality Of Bacolod, Province Of Lanao Del Norte.

[53] An Act Granting Garcia, Diapo and Co., A Franchise For An Electric Light, Heat And Power System In The Municipalities Of Banga And New Washington, Both In The Province Of Aklan.

[54] An Act Granting Jesus Arevalo A Franchise To Construct, Operate And Maintain An Ice Plant And Cold Storage In The Municipality Of San Fernando, Province Of Masbate, And To Sell Ice And Cold Storage In The Municipality Of Batuan, San Jacinto And Monreal, All In The Province Of Masbate.

- [55] An Act Granting Restituto Palma Gil A Franchise For An Electric Light, Heat And Power System In The Municipality Of Caraga, Province Of Davao Oriental.
- [56] An Act Granting Combined Broadcasting, Inc., A Franchise To Construct, Operate And Maintain A Radio Broadcasting Station In The City Of Lipa And The Province Of Batangas.
- [57] An Act Granting A Franchise For An Electric Light, Heat And Power System To Leopoldo T. Calderon, Jr., In The Municipality Of Pulilan, Province Of Bulacan.
- [58] An Act Amending Republic Act Numbered Forty-Five Hundred Fifty (Re: CE Plant In Hagonoy, Davao Del Sur).
- [59] An Act Granting Enrique M. Reyes A Franchise To Install, Maintain And Operate A Telephone System In The Province Of Davao Del Sur.
- [60] An Act Granting The Arcadia Agricultural And Development Co., Inc., A Franchise To Construct, Operate And Maintain An Ice Plant And Cold Storage In Barrio Bagbaguin, Caloocan City And To Sell And Distribute Ice And To Supply Cold Storage In The City Of Caloocan And Suburbs.
- [61] An Act Granting Bayani Pingol A Franchise To Construct, Operate And Maintain An Ice Plant And Cold Storage In The City Of Nage And To Sell Ice And Supply Cold Storage In Certain Municipalities In The Province Of Camarines Sur And The Said City.
- [62] An Act Granting Makati Broadcasting Corporation A Franchise To Construct, Operate And Maintain Radio Broadcasting Stations Within The Greater Manila Area And Rizal Province.
- [63] G.R. No. 162015, 6 March 2006, 484 SCRA 169, 181.
- [64] G.R. No. 152534, 23 February 2007, 516 SCRA 541, 559-560.
- [65] G.R. No. 143867, 25 March 2003, 399 SCRA 442, 453.
- [66] RA No. 7229 *expressly* provides that original provisions of the franchise of Clavecilla under Republic Act No. 402, as amended, *which have not been repealed*, shall continue in full force and effect. The clear intent of the law is that provisions as of the enactment of RA

No. 7229 shall remain repealed and shall not be reenacted with the passage of RA No. 7229. Thus, Section 11 of RA No. 7229 states -

All other provisions of Republic Act No. 402, as amended by Republic Act Nos. 1618 and 4540, and other provisions of Batas Pambansa Blg. 95 which are not inconsistent with the provisions of this Act and are *still unrepealed* shall continue to be in full force and effect. (Emphasis supplied in the original)

Concurring Opinion of Justice Antonio T. Carpio in *PLDT v. City of Davao*, 447 Phil. 571, 591-592 (2003).

[67] G.R. No. 144486, 13 April 2005, 456 SCRA 1, 12-14.

[68] The tax provision of all these franchises partly reads:

"The grantee, its successors or assigns shall be liable to pay the same taxes on their real estate, buildings and personal property exclusive of this franchise, as other persons or telecommunication entities are now or hereafter may be required by law to pay. x x x"

[69] Republic Act No. 4054 entitled "An Act Granting the Radio Communications of the Philippines a Franchise to Establish Radio Stations for Domestic Telecommunications."

[70] Concurring Opinion of Justice Antonio T. Carpio in *PLDT v. City of Davao*, 447 Phil. 571, 596- 597 (2003).

[71] 447 Phil. 571 (2003).

[72] From September 2000 to July 2001, all the fourteen telecommunications franchises approved by Congress uniformly and expressly state that the franchisee shall be subject to all taxes under the National Internal Revenue Code, and other applicable laws.

[73] Supra note 66 at 596.

[74] Section 197, Title Two, Book II of Republic Act No. 7160 (RA 7160) or the Local Government Code provides:

Sec. 197. Scope. - This title shall govern the administration, appraisal, assessment, levy and collection of real property tax.

[75] An Act Granting the Digitel Mobile Phils., Inc. A Franchise to Construct, Install,

Establish, Operate and Maintain Telecommunications Systems Throughout the Philippines.

[76] RA 9180, Section 12. Tax Provisions. - The grantee, its successors or assigns, shall be subject to the payment of all taxes, duties, fees or charges and other impositions under the National Internal Revenue Code of 1997, as amended, and other applicable laws; Provided that nothing herein shall be construed as repealing any specific tax exceptions, incentives, or privileges granted under any relevant law; Provided, further, That all rights, privileges, benefits and exemptions accorded to existing and future telecommunications franchise shall likewise be extended to the grantee.

[77] G.R. No. 133834, 28 August 2006, 499 SCRA 664.

[78] Section 206 of Title Two, Book II of RA 7160 states:

Sec. 206. Proof of Exemption of Real Property from Taxation. - Every person by or for whom real property is declared, who shall claim tax exemption for such property under this Title shall file with the provincial, city or municipal assessor within thirty (30) days from the date of the declaration of real property sufficient documentary evidence in support of such claims including corporate charters, title of ownership, articles of incorporation, by laws, contracts, affidavits, certifications and mortgage deeds, and similar documents.

If the required evidence is not submitted within the period herein prescribed, the property shall be listed as taxable in the assessment roll. However, if the property shall be proven to be tax exempt, the same shall be dropped from the assessment roll.

[79] Reversal of the Real Property Tax Exemption Previously Granted to GLOBE Telecommunications (GLOBE for brevity) in line with the Supreme Court (SC) Decision (G.R. No. 143867) dated August 22, 2001, and the Central Board of Assessment Appeals (CBAA) Decision (Case No. V-17) dated January 31, 2002.

[80] Section 33, Chapter 4, Title II, Book IV of Executive Order No. 292 or "The Administrative Code of 1987" provides:

Sec. 33. *Bureau of Local Government Finance*. - The Bureau of Local Government Finance, which shall be headed by and subject to the supervision and control of an Executive Director who shall be appointed by the President upon the recommendation of the Secretary, shall have the following functions:

- (1) Assist in the formulation and implementation of policies on local government revenue administration and fund management;

- (2) Exercise administrative and technical supervision and coordination over the treasury and assessment operations of local governments;
- (3) Develop and promote plans and programs for the improvement of resource management systems, collection enforcement mechanisms, and credit utilization schemes at the local levels;
- (4) Provide consultative services and technical assistance to the local governments and the general public on local taxation, real property assessment and other related matters;**
- (5) Exercise line supervision over its Regional Offices/ field units within the Department Regional Administrative Coordination Office and the Local Treasury and Assessment Services; and
- (6) Perform such other appropriate functions as may be assigned by the Secretary or Undersecretary for Domestic Operations. (Emphasis supplied)

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