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[G.R. NO. 155650, July 20, 2006]

MANILA INTERNATIONAL AIRPORT AUTHORITY, PETITIONER, VS. COURT OF APPEALS, CITY OF PARAÑAQUE, CITY MAYOR OF PARAÑAQUE, SANGGUNIANG PANGLUNGSOD NG PARAÑAQUE, CITY ASSESSOR OF PARAÑAQUE, AND CITY TREASURER OF PARAÑAQUE, RESPONDENTS.

D E C I S I O N

CARPIO, J.:

The Antecedents

Petitioner Manila International Airport Authority (MIAA) operates the Ninoy Aquino International Airport (NAIA) Complex in Parañaque City under Executive Order No. 903, otherwise known as the *Revised Charter of the Manila International Airport Authority* ("MIAA Charter"). Executive Order No. 903 was issued on 21 July 1983 by then President Ferdinand E. Marcos. Subsequently, Executive Order Nos. 909[1] and 298[2] amended the MIAA Charter.

As operator of the international airport, MIAA administers the land, improvements and equipment within the NAIA Complex. The MIAA Charter transferred to MIAA approximately 600 hectares of land,[3] including the runways and buildings ("Airport Lands and Buildings") then under the Bureau of Air Transportation.[4] The MIAA Charter further provides that no portion of the land transferred to MIAA shall be disposed of through sale or any other mode unless specifically approved by the President of the Philippines.[5]

On 21 March 1997, the Office of the Government Corporate Counsel (OGCC) issued Opinion No. 061. The OGCC opined that the Local Government Code of 1991 withdrew the exemption from real estate tax granted to MIAA under Section 21 of the MIAA Charter. Thus, MIAA negotiated with respondent City of Parañaque to pay the real estate tax imposed by the City. MIAA then paid some of the real estate tax already due.

On 28 June 2001, MIAA received Final Notices of Real Estate Tax Delinquency from the City of Parañaque for the taxable years 1992 to 2001. MIAA's real estate tax delinquency

is broken down as follows:

TAX DECLARATION	TAXABLE YEAR	TAX DUE	PENALTY	TOTAL
E-016-01370	1992-2001	19,558,160.00	11,201,083.20	30,789,243.20
E-016-01374	1992-2001	111,689,424.90	68,149,479.59	179,838,904.49
E-016-01375	1992-2001	20,276,058.00	12,371,832.00	32,647,890.00
E-016-01376	1992-2001	58,144,028.00	35,477,712.00	93,621,740.00
E-016-01377	1992-2001	18,134,614.65	11,065,188.59	29,199,803.24
E-016-01378	1992-2001	111,107,950.40	67,794,681.59	178,902,631.99
E-016-01379	1992-2001	4,322,340.00	2,637,360.00	6,959,700.00
E-016-01380	1992-2001	7,776,436.00	4,744,944.00	12,521,380.00
*E-016-013-85	1998-2001	6,444,810.00	2,900,164.50	9,344,974.50
*E-016-01387	1998-2001	34,876,800.00	5,694,560.00	50,571,360.00
*E-016-01396	1998-2001	75,240.00	33,858.00	109,098.00
GRAND TOTAL		P392,435,861.95	P232,070,863.47	P624,506,725.42

1992-1997 RPT was paid on Dec. 24, 1997 as per O.R.#9476102 for P4,207,028.75
#9476101 for P28,676,480.00
#9476103 for P49,115.00[6]

On 17 July 2001, the City of Parañaque, through its City Treasurer, issued notices of levy and warrants of levy on the Airport Lands and Buildings. The Mayor of the City of Parañaque threatened to sell at public auction the Airport Lands and Buildings should MIAA fail to pay the real estate tax delinquency. MIAA thus sought a clarification of OGCC Opinion No. 061.

On 9 August 2001, the OGCC issued Opinion No. 147 clarifying OGCC Opinion No. 061. The OGCC pointed out that Section 206 of the Local Government Code requires persons exempt from real estate tax to show proof of exemption. The OGCC opined that Section 21 of the MIAA Charter is the proof that MIAA is exempt from real estate tax.

On 1 October 2001, MIAA filed with the Court of Appeals an original petition for prohibition and injunction, with prayer for preliminary injunction or temporary restraining order. The petition sought to restrain the City of Parañaque from imposing real estate tax on, levying against, and auctioning for public sale the Airport Lands and Buildings. The petition was docketed as CA-G.R. SP No. 66878.

On 5 October 2001, the Court of Appeals dismissed the petition because MIAA filed it beyond the 60-day reglementary period. The Court of Appeals also denied on 27 September 2002 MIAA's motion for reconsideration and supplemental motion for

reconsideration. Hence, MIAA filed on 5 December 2002 the present petition for review.[7]

Meanwhile, in January 2003, the City of Parañaque posted notices of auction sale at the Barangay Halls of Barangays Vitalez, Sto. Niño, and Tambo, Parañaque City; in the public market of Barangay La Huerta; and in the main lobby of the Parañaque City Hall. The City of Parañaque published the notices in the 3 and 10 January 2003 issues of the *Philippine Daily Inquirer*, a newspaper of general circulation in the Philippines. The notices announced the public auction sale of the Airport Lands and Buildings to the highest bidder on 7 February 2003, 10:00 a.m., at the Legislative Session Hall Building of Parañaque City.

A day before the public auction, or on 6 February 2003, at 5:10 p.m., MIAA filed before this Court an Urgent Ex-Parte and Reiteratory Motion for the Issuance of a Temporary Restraining Order. The motion sought to restrain respondents - the City of Parañaque, City Mayor of Parañaque, *Sangguniang Panglungsod* ng Parañaque, City Treasurer of Parañaque, and the City Assessor of Parañaque ("respondents") - from auctioning the Airport Lands and Buildings.

On 7 February 2003, this Court issued a temporary restraining order (TRO) effective immediately. The Court ordered respondents to cease and desist from selling at public auction the Airport Lands and Buildings. Respondents received the TRO on the same day that the Court issued it. However, respondents received the TRO only at 1:25 p.m. or three hours after the conclusion of the public auction.

On 10 February 2003, this Court issued a Resolution confirming *nunc pro tunc* the TRO.

On 29 March 2005, the Court heard the parties in oral arguments. In compliance with the directive issued during the hearing, MIAA, respondent City of Parañaque, and the Solicitor General subsequently submitted their respective Memoranda.

MIAA admits that the MIAA Charter has placed the title to the Airport Lands and Buildings in the name of MIAA. However, MIAA points out that it cannot claim ownership over these properties since the real owner of the Airport Lands and Buildings is the Republic of the Philippines. The MIAA Charter mandates MIAA to devote the Airport Lands and Buildings for the benefit of the general public. Since the Airport Lands and Buildings are devoted to public use and public service, the ownership of these properties remains with the State. The Airport Lands and Buildings are thus inalienable and are not subject to real estate tax by local governments.

MIAA also points out that Section 21 of the MIAA Charter specifically exempts MIAA from the payment of real estate tax. MIAA insists that it is also exempt from real estate tax under Section 234 of the Local Government Code because the Airport Lands and Buildings are owned by the Republic. To justify the exemption, MIAA invokes the principle that the government cannot tax itself. MIAA points out that the reason for tax exemption of public property is that its taxation would not inure to any public advantage, since in such a case

the tax debtor is also the tax creditor.

Respondents invoke Section 193 of the Local Government Code, which **expressly withdrew** the tax exemption privileges of "**government-owned and-controlled corporations**" upon the effectivity of the Local Government Code. Respondents also argue that a basic rule of statutory construction is that the express mention of one person, thing, or act excludes all others. An international airport is not among the exceptions mentioned in Section 193 of the Local Government Code. Thus, respondents assert that MIAA cannot claim that the Airport Lands and Buildings are exempt from real estate tax.

Respondents also cite the ruling of this Court in ***Mactan International Airport v. Marcos***[8] where we held that the Local Government Code has withdrawn the exemption from real estate tax granted to international airports. Respondents further argue that since MIAA has already paid some of the real estate tax assessments, it is now estopped from claiming that the Airport Lands and Buildings are exempt from real estate tax.

The Issue

This petition raises the threshold issue of whether the Airport Lands and Buildings of MIAA are exempt from real estate tax under existing laws. If so exempt, then the real estate tax assessments issued by the City of Parañaque, and all proceedings taken pursuant to such assessments, are void. In such event, the other issues raised in this petition become moot.

The Court's Ruling

We rule that MIAA's Airport Lands and Buildings are exempt from real estate tax imposed by local governments.

First, MIAA is not a government-owned or controlled corporation but an **instrumentality** of the National Government and thus exempt from local taxation. Second, the real properties of MIAA are **owned by the Republic** of the Philippines and thus exempt from real estate tax.

1. **MIAA is Not a Government-Owned or Controlled Corporation**

Respondents argue that MIAA, being a government-owned or controlled corporation, is not exempt from real estate tax. Respondents claim that the deletion of the phrase "any government-owned or controlled so exempt by its charter" in Section 234(e) of the Local Government Code withdrew the real estate tax exemption of government-owned or controlled corporations. The deleted phrase appeared in Section 40(a) of the 1974 Real Property Tax Code enumerating the entities exempt from real estate tax.

There is no dispute that a government-owned or controlled corporation is not exempt from real estate tax. However, MIAA is not a government-owned or controlled corporation.

Section 2(13) of the Introductory Provisions of the Administrative Code of 1987 defines a government-owned or controlled corporation as follows:

> SEC. 2. *General Terms Defined*. - x x x x
>
> (13) *Government-owned or controlled corporation* refers to any agency **organized as a stock or non-stock corporation,** vested with functions relating to public needs whether governmental or proprietary in nature, and owned by the Government directly or through its instrumentalities either wholly, or, where applicable as in the case of stock corporations, to the extent of at least fifty-one (51) percent of its capital stock: x x x. (Emphasis supplied)

A government-owned or controlled corporation must be "**organized as a stock or non-stock corporation.**" MIAA is not organized as a stock or non-stock corporation. MIAA is not a stock corporation because it has **no capital stock divided into shares.** MIAA has no stockholders or voting shares. Section 10 of the MIAA Charter[9] provides:

> SECTION 10. *Capital*. - The capital of the Authority to be contributed by the National Government shall be increased from Two and One-half Billion (P2,500,000,000.00) Pesos to Ten Billion (P10,000,000,000.00) Pesos to consist of:
>
> (a) The value of fixed assets including airport facilities, runways and equipment and such other properties, movable and immovable[,] which may be contributed by the National Government or transferred by it from any of its agencies, the valuation of which shall be determined jointly with the Department of Budget and Management and the Commission on Audit on the date of such contribution or transfer after making due allowances for depreciation and other deductions taking into account the loans and other liabilities of the Authority at the time of the takeover of the assets and other properties;
>
> (b) That the amount of P605 million as of December 31, 1986 representing about seventy percentum (70%) of the unremitted share of the National Government from 1983 to 1986 to be remitted to the National Treasury as provided for in Section 11 of E. O. No. 903 as amended, shall be converted into the equity of the National Government in the Authority. Thereafter, the Government contribution to the capital of the Authority shall be provided in the General Appropriations Act.

Clearly, under its Charter, MIAA does not have capital stock that is divided into shares.

Section 3 of the Corporation Code[10] defines a stock corporation as one whose "**capital stock is divided into shares and x x x authorized to distribute to the holders of such shares dividends x x x.**" MIAA has capital but it is not divided into shares of stock. MIAA has no stockholders or voting shares. Hence, MIAA is not a stock corporation.

MIAA is also not a non-stock corporation because it has no members. Section 87 of the Corporation Code defines a non-stock corporation as "one where no part of its income is distributable as dividends to its members, trustees or officers." A non-stock corporation must have members. Even if we assume that the Government is considered as the sole member of MIAA, this will not make MIAA a non-stock corporation. Non-stock corporations cannot distribute any part of their income to their members. Section 11 of the MIAA Charter mandates MIAA to remit 20% of its annual gross operating income to the National Treasury.[11] This prevents MIAA from qualifying as a non-stock corporation.

Section 88 of the Corporation Code provides that non-stock corporations are "organized for charitable, religious, educational, professional, cultural, recreational, fraternal, literary, scientific, social, civil service, or similar purposes, like trade, industry, agriculture and like chambers." MIAA is not organized for any of these purposes. MIAA, a public utility, is organized to operate an international and domestic airport for public use.

Since MIAA is neither a stock nor a non-stock corporation, MIAA does not qualify as a government-owned or controlled corporation. What then is the legal status of MIAA within the National Government?

MIAA is a **government instrumentality** vested with corporate powers to perform efficiently its governmental functions. MIAA is like any other government instrumentality, the only difference is that MIAA is vested with corporate powers. Section 2(10) of the Introductory Provisions of the Administrative Code defines a government "**instrumentality**" as follows:

> SEC. 2. *General Terms Defined*. - x x x x
>
> (10) *Instrumentality* refers to any agency of the National Government, not integrated within the department framework, vested with special functions or jurisdiction by law, **endowed with some if not all corporate powers**, administering special funds, and **enjoying operational autonomy,** usually through a charter. x x x (Emphasis supplied)

When the law vests in a government instrumentality corporate powers, the instrumentality does not become a corporation. Unless the government instrumentality is organized as a stock or non-stock corporation, it remains a government instrumentality exercising not only governmental but also corporate powers. Thus, MIAA exercises the governmental powers of eminent domain,[12] police authority[13] and the levying of fees and charges.[14] At the same time, MIAA exercises "all the powers of a corporation under the Corporation Law, insofar as these powers are not inconsistent with the provisions of this Executive Order." [15]

Likewise, when the law makes a government instrumentality **operationally autonomous**, the instrumentality remains part of the National Government machinery although not

integrated with the department framework. The MIAA Charter expressly states that transforming MIAA into a "separate and autonomous body"[16] will make its operation more "financially viable."[17]

Many government instrumentalities are vested with corporate powers but they do not become stock or non-stock corporations, which is a necessary condition before an agency or instrumentality is deemed a government-owned or controlled corporation. Examples are the Mactan International Airport Authority, the Philippine Ports Authority, the University of the Philippines and *Bangko Sentral ng Pilipinas*. All these government instrumentalities exercise corporate powers but they are not organized as stock or non-stock corporations as required by Section 2(13) of the Introductory Provisions of the Administrative Code. These government instrumentalities are sometimes loosely called government corporate entities. However, they are not government-owned or controlled corporations in the strict sense as understood under the Administrative Code, which is the governing law defining the legal relationship and status of government entities.

A government instrumentality like MIAA falls under Section 133(o) of the Local Government Code, which states:

> 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:**
>
> x x x x
>
> (o) **Taxes, fees or charges of any kind on the National Government, its agencies and instrumentalities** and local government units. (Emphasis and underscoring supplied)

Section 133(o) recognizes the basic principle that local governments cannot tax the national government, which historically merely delegated to local governments the power to tax. While the 1987 Constitution now includes taxation as one of the powers of local governments, local governments may only exercise such power "subject to such guidelines and limitations as the Congress may provide."[18]

When local governments invoke the power to tax on national government instrumentalities, such power is construed strictly against local governments. The rule is that a tax is never presumed and there must be clear language in the law imposing the tax. Any doubt whether a person, article or activity is taxable is resolved against taxation. This rule applies with greater force when local governments seek to tax national government instrumentalities.

Another rule is that a tax exemption is strictly construed against the taxpayer claiming the exemption. However, when Congress grants an exemption to a national government instrumentality from local taxation, such exemption is construed liberally in favor of the

national government instrumentality. As this Court declared in ***Maceda v. Macaraig, Jr.:***

> The reason for the rule does not apply in the case of exemptions running to the benefit of the government itself or its agencies. In such case the practical effect of an exemption is merely to reduce the amount of money that has to be handled by government in the course of its operations. For these reasons, provisions granting exemptions to government agencies may be construed liberally, in favor of non tax-liability of such agencies.[19]

There is, moreover, no point in national and local governments taxing each other, unless a sound and compelling policy requires such transfer of public funds from one government pocket to another.

There is also no reason for local governments to tax national government instrumentalities for rendering essential public services to inhabitants of local governments. **The only exception is when the legislature clearly intended to tax government instrumentalities for the delivery of essential public services for sound and compelling policy considerations**. There must be express language in the law empowering local governments to tax national government instrumentalities. Any doubt whether such power exists is resolved against local governments.

Thus, Section 133 of the Local Government Code states that "**unless otherwise provided**" in the Code, local governments cannot tax national government instrumentalities. As this Court held in ***Basco v. Philippine Amusements and Gaming Corporation:***

> The states have no power by taxation or otherwise, to retard, impede, burden or in any manner control the operation of constitutional laws enacted by Congress to carry into execution the powers vested in the federal government. (MC Culloch v. Maryland, 4 Wheat 316, 4 L Ed. 579)
>
> This doctrine emanates from the "supremacy" of the National Government over local governments.
>
> "Justice Holmes, speaking for the Supreme Court, made reference to the entire absence of power on the part of the States to touch, in that way (taxation) at least, the instrumentalities of the United States (Johnson v. Maryland, 254 US 51) and it can be agreed that *no state or political subdivision can regulate a federal instrumentality in such a way as to prevent it from consummating its federal responsibilities, or even to seriously burden it in the accomplishment of them*." (Antieau, Modern Constitutional Law, Vol. 2, p. 140, emphasis supplied)
>
> Otherwise, mere creatures of theState can defeat National policies thru extermination of what local authorities may perceive to be undesirable activities or enterprise using the power to tax as "a tool for regulation" (U.S. v. Sanchez, 340 US 42).

> The power to tax which was called by Justice Marshall as the "power to destroy" (Mc Culloch v. Maryland, supra) cannot be allowed to defeat an instrumentality or creation of the very entity which has the inherent power to wield it. [20]

2. **Airport Lands and Buildings of MIAA are Owned by the Republic**

a. <u>Airport Lands and Buildings are of Public Dominion</u>

The Airport Lands and Buildings of MIAA are property of **public dominion and therefore owned by the State or the Republic of the Philippines**. The Civil Code provides:

> ARTICLE 419. Property is either of public dominion or of private ownership.
>
> ARTICLE 420. **The following things are property of public dominion:**
>
> (1) **Those intended for public use, such as** roads, canals, rivers, torrents, **ports** and bridges **constructed by the State**, banks, shores, roadsteads, and others of similar character;
>
> (2) Those which belong to the State, without being for public use, and are intended for some public service or for the development of the national wealth. (Emphasis supplied)
>
> ARTICLE 421. All other property of the State, which is not of the character stated in the preceding article, is patrimonial property.
>
> ARTICLE 422. Property of public dominion, when no longer intended for public use or for public service, shall form part of the patrimonial property of the State.

No one can dispute that properties of public dominion mentioned in Article 420 of the Civil Code, like "**roads, canals, rivers, torrents, <u>ports</u> and bridges constructed by the State,**" are owned by the State. **The term "ports" includes seaports and airports**. The MIAA Airport Lands and Buildings constitute a "**port**" constructed by the State. Under Article 420 of the Civil Code, the MIAA Airport Lands and Buildings are properties of public dominion and thus owned by the State or the Republic of the Philippines.

The Airport Lands and Buildings are devoted to public use because they are **used by the public for international and domestic travel and transportation**. The fact that the MIAA collects terminal fees and other charges from the public does not remove the character of the Airport Lands and Buildings as properties for public use. The operation by the government of a tollway does not change the character of the road as one for public use. Someone must pay for the maintenance of the road, either the public indirectly through the taxes they pay the government, or only those among the public who actually use the

road through the toll fees they pay upon using the road. The tollway system is even a more efficient and equitable manner of taxing the public for the maintenance of public roads.

The charging of fees to the public does not determine the character of the property whether it is of public dominion or not. Article 420 of the Civil Code defines property of public dominion as one "intended for public use." Even if the government collects toll fees, the road is still "intended for public use" if anyone can use the road under the same terms and conditions as the rest of the public. The charging of fees, the limitation on the kind of vehicles that can use the road, the speed restrictions and other conditions for the use of the road do not affect the public character of the road.

The terminal fees MIAA charges to passengers, as well as the landing fees MIAA charges to airlines, constitute the bulk of the income that maintains the operations of MIAA. The collection of such fees does not change the character of MIAA as an airport for public use. Such fees are often termed user's tax. This means taxing those among the public who actually use a public facility instead of taxing all the public including those who never use the particular public facility. A user's tax is more equitable " a principle of taxation mandated in the 1987 Constitution.[21]

The Airport Lands and Buildings of MIAA, which its Charter calls the "principal airport of the Philippines for both international and domestic air traffic,"[22] are properties of public dominion because they are intended for public use. **As properties of public dominion, they indisputably belong to the State or the Republic of the Philippines.**

b. **Airport Lands and Buildings are Outside the Commerce of Man**

The Airport Lands and Buildings of MIAA are devoted to public use and thus are properties of public dominion. **As properties of public dominion, the Airport Lands and Buildings are outside the commerce of man**. The Court has ruled repeatedly that properties of public dominion are outside the commerce of man. As early as 1915, this Court already ruled in **Municipality of Cavite v. Rojas** that properties devoted to public use are outside the commerce of man, thus:

> According to article 344 of the Civil Code: "Property for public use in provinces and in towns comprises the provincial and town roads, the squares, streets, fountains, and public waters, the promenades, and public works of general service supported by said towns or provinces."
>
> The said Plaza Soledad being a promenade for public use, the municipal council of Cavite could not in 1907 withdraw or exclude from public use a portion thereof in order to lease it for the sole benefit of the defendant Hilaria Rojas. In leasing a portion of said plaza or public place to the defendant for private use the plaintiff municipality exceeded its authority in the exercise of its powers by executing a contract over a thing of which it could not dispose, nor is it empowered so to do.

> The Civil Code, article 1271, prescribes that everything which is not outside the commerce of man may be the object of a contract, and plazas and streets are **outside of this commerce**, as was decided by the supreme court of Spain in its decision of February 12, 1895, which says: "**Communal things that cannot be sold because they are by their very nature outside of commerce are those for public use, such as the plazas, streets, common lands, rivers, fountains, etc."** (Emphasis supplied) [23]

Again in ***Espiritu v. Municipal Council***, the Court declared that properties of public dominion are outside the commerce of man:

> xxx Town plazas are **properties of public dominion**, to be devoted to public use and to be made available to the public in general. They are **outside the commerce of man** and cannot be disposed of or even leased by the municipality to private parties. While in case of war or during an emergency, town plazas may be occupied temporarily by private individuals, as was done and as was tolerated by the Municipality of Pozorrubio, when the emergency has ceased, said temporary occupation or use must also cease, and the town officials should see to it that the town plazas should ever be kept open to the public and free from encumbrances or illegal private constructions.[24] (Emphasis supplied)

The Court has also ruled that property of public dominion, being outside the commerce of man, cannot be the subject of an auction sale.[25]

Properties of public dominion, being for public use, are not subject to levy, encumbrance or disposition through public or private sale. Any encumbrance, levy on execution or auction sale of any property of public dominion is void for being contrary to public policy. Essential public services will stop if properties of public dominion are subject to encumbrances, foreclosures and auction sale. This will happen if the City of Parañaque can foreclose and compel the auction sale of the 600-hectare runway of the MIAA for non-payment of real estate tax.

Before MIAA can encumber[26] the Airport Lands and Buildings, the President must first **withdraw from public use** the Airport Lands and Buildings. Sections 83 and 88 of the Public Land Law or Commonwealth Act No. 141, which "remains to this day the existing general law governing the classification and disposition of lands of the public domain other than timber and mineral lands,"[27] provide:

> SECTION 83. Upon the recommendation of the Secretary of Agriculture and Natural Resources, the President may designate by proclamation any tract or tracts of land of the public domain as reservations for the use of the Republic of the Philippines or of any of its branches, or of the inhabitants thereof, in accordance with regulations prescribed for this purposes, or for quasi-public

uses or purposes when the public interest requires it, including reservations for highways, rights of way for railroads, hydraulic power sites, irrigation systems, communal pastures or *lequas communales,* public parks, public quarries, public fishponds, working men's village and other improvements for the public benefit.

SECTION 88. **The tract or tracts of land reserved under the provisions of Section eighty-three shall be <u>non-alienable</u> and shall not be subject to occupation, entry, sale, lease, or other disposition until again declared alienable under the provisions of this Act or by proclamation of the President.** (Emphasis and underscoring supplied)

Thus, unless the President issues a proclamation withdrawing the Airport Lands and Buildings from public use, these properties remain properties of public dominion and are **inalienable**. Since the Airport Lands and Buildings are inalienable in their present status as properties of public dominion, they are not subject to levy on execution or foreclosure sale. As long as the Airport Lands and Buildings are reserved for public use, their ownership remains with the State or the Republic of the Philippines.

The authority of the President to reserve lands of the public domain for public use, and to withdraw such public use, is reiterated in Section 14, Chapter 4, Title I, Book III of the Administrative Code of 1987, which states:

SEC. 14. *Power to Reserve Lands of the Public and Private Domain of the Government*. - (1) **The President shall have the power to reserve for settlement or public use, and for specific public purposes, any of the lands of the public domain, the use of which is not otherwise directed by law. The reserved land shall thereafter remain subject to the specific public purpose indicated until otherwise provided by law or proclamation;**

x x x x. (Emphasis supplied)

There is no question, therefore, that unless the Airport Lands and Buildings are withdrawn by law or presidential proclamation from public use, they are properties of public dominion, owned by the Republic and outside the commerce of man.

c. <u>MIAA is a Mere Trustee of the Republic</u>

MIAA is merely holding title to the Airport Lands and Buildings in trust for the Republic. Section 48, Chapter 12, Book I of **the Administrative Code allows instrumentalities like MIAA to hold title to real properties owned by the Republic,** thus:

SEC. 48. *Official Authorized to Convey Real Property*. - Whenever real property of the Government is authorized by law to be conveyed, the deed of conveyance shall be executed in behalf of the government by the following:

(1) For property belonging to and titled in the name of the Republic of the

Philippines, by the President, unless the authority therefor is expressly vested by law in another officer.

(2) **For property belonging to the Republic of the Philippines but titled in the name of any political subdivision or of any corporate agency or instrumentality,** by the executive head of the agency or instrumentality. (Emphasis supplied)

In MIAA's case, its status as a mere trustee of the Airport Lands and Buildings is clearer because even its executive head cannot sign the deed of conveyance on behalf of the Republic. Only the President of the Republic can sign such deed of conveyance.[28]

d. **Transfer to MIAA was Meant to Implement a Reorganization**

The MIAA Charter, which is a law, transferred to MIAA the title to the Airport Lands and Buildings from the Bureau of Air Transportation of the Department of Transportation and Communications. The MIAA Charter provides:

SECTION 3. *Creation of the Manila International Airport Authority*. - x x x x

The land where the Airport is presently located as well as the surrounding land area of approximately six hundred hectares, are hereby transferred, conveyed and assigned to the ownership and administration of the Authority, subject to existing rights, if any. The Bureau of Lands and other appropriate government agencies shall undertake an actual survey of the area transferred within one year from the promulgation of this Executive Order and the corresponding title to be issued in the name of the Authority. **Any portion thereof shall not be disposed through sale or through any other mode unless specifically approved by the President of the Philippines.** (Emphasis supplied)

SECTION 22. *Transfer of Existing Facilities and Intangible Assets*. - All existing **public airport facilities, runways, lands, buildings and other property**, movable or immovable, belonging to the Airport, and all assets, powers, rights, interests and privileges **belonging to the Bureau of Air Transportation** relating to airport works or air operations, including all equipment which are necessary for the operation of crash fire and rescue facilities, are hereby transferred to the Authority. (Emphasis supplied)

SECTION 25. Abolition of the Manila International Airport as a Division in the Bureau of Air Transportation and Transitory Provisions. - The Manila International Airport including the Manila Domestic Airport as a division under the Bureau of Air Transportation is hereby abolished.

x x x x.

The MIAA Charter transferred the Airport Lands and Buildings to MIAA without the Republic receiving cash, promissory notes or even stock since MIAA is not a stock corporation.

The whereas clauses of the MIAA Charter explain the rationale for the transfer of the Airport Lands and Buildings to MIAA, thus:

> WHEREAS, the Manila International Airport as the principal airport of the Philippines for both international and domestic air traffic, is required to provide standards of airport accommodation and service comparable with the best airports in the world;
>
> WHEREAS, domestic and other terminals, general aviation and other facilities, have to be upgraded to meet the current and future air traffic and other demands of aviation in Metro Manila;
>
> WHEREAS, a management and organization study has indicated that **the objectives of providing high standards of accommodation and service within the context of a financially viable operation, will best be achieved by a separate and autonomous body**; and
>
> WHEREAS, under Presidential Decree No. 1416, as amended by Presidential Decree No. 1772, the President of the Philippines is given continuing authority **to reorganize the National Government, which authority includes the creation of new entities, agencies and instrumentalities of the Government[.]** (Emphasis supplied)

The transfer of the Airport Lands and Buildings from the Bureau of Air Transportation to MIAA was not meant to transfer beneficial ownership of these assets from the Republic to MIAA. The purpose was merely to **reorganize a division in the Bureau of Air Transportation into a separate and autonomous body.** The Republic remains the beneficial owner of the Airport Lands and Buildings. MIAA itself is owned solely by the Republic. No party claims any ownership rights over MIAA's assets adverse to the Republic.

The MIAA Charter expressly provides that the Airport Lands and Buildings "**shall not be disposed through sale or through any other mode unless specifically approved by the President of the Philippines**." This only means that the Republic retained the beneficial ownership of the Airport Lands and Buildings because under Article 428 of the Civil Code, only the "owner has the right to x x x dispose of a thing." Since MIAA cannot dispose of the Airport Lands and Buildings, MIAA does not own the Airport Lands and Buildings.

At any time, the President can transfer back to the Republic title to the Airport Lands and Buildings without the Republic paying MIAA any consideration. Under Section 3 of the MIAA Charter, the President is the only one who can authorize the sale or disposition of the Airport Lands and Buildings. This only confirms that the Airport Lands and Buildings

belong to the Republic.

e. **Real Property Owned by the Republic is Not Taxable**

Section 234(a) of the Local Government Code exempts from real estate tax any "[r]eal property owned by the Republic of the Philippines." Section 234(a) provides:

> SEC. 234. *Exemptions from Real Property Tax*. - **The following are exempted from payment of the real property tax:**
>
> (a) **Real property owned by the Republic of the Philippines** or any of its political subdivisions **except when the beneficial use thereof has been granted, for consideration or otherwise, to a taxable person;**
>
> x x x. (Emphasis supplied)

This exemption should be read in relation with Section 133(o) of the same Code, which prohibits local governments from imposing "[t]axes, fees or charges of any kind on the National Government, its agencies and **instrumentalities** x x x." The real properties owned by the Republic are titled either in the name of the Republic itself or in the name of agencies or instrumentalities of the National Government. The Administrative Code allows real property owned by the Republic to be titled in the name of agencies or instrumentalities of the national government. Such real properties remain owned by the Republic and continue to be exempt from real estate tax.

The Republic may grant the beneficial use of its real property to an agency or instrumentality of the national government. This happens when title of the real property is transferred to an agency or instrumentality even as the Republic remains the owner of the real property. Such arrangement does not result in the loss of the tax exemption. Section 234(a) of the Local Government Code states that real property owned by the Republic loses its tax exemption only if the "beneficial use thereof has been granted, for consideration or otherwise, to a **taxable person**." MIAA, as a government instrumentality, is not a taxable person under Section 133(o) of the Local Government Code. Thus, even if we assume that the Republic has granted to MIAA the beneficial use of the Airport Lands and Buildings, such fact does not make these real properties subject to real estate tax.

However, portions of the Airport Lands and Buildings that MIAA leases to private entities are not exempt from real estate tax. For example, the land area occupied by hangars that MIAA leases to private corporations is subject to real estate tax. In such a case, MIAA has granted the beneficial use of such land area for a consideration to a **taxable person** and therefore such land area is subject to real estate tax. In ***Lung Center of the Philippines v. Quezon City,*** the Court ruled:

> Accordingly, we hold that the portions of the land leased to private entities as well as those parts of the hospital leased to private individuals are not exempt from such taxes. On the other hand, the portions of the land occupied by the

hospital and portions of the hospital used for its patients, whether paying or non-paying, are exempt from real property taxes.[29]

3. Refutation of Arguments of Minority

The minority asserts that the MIAA is not exempt from real estate tax because Section 193 of the Local Government Code of 1991 withdrew the tax exemption of "**all persons, whether natural or juridical**" upon the effectivity of the Code. Section 193 provides:

> 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 effectivity of this Code. (Emphasis supplied)

The minority states that MIAA is indisputably a **juridical person**. The minority argues that since the Local Government Code withdrew the tax exemption of all **juridical persons**, then MIAA is not exempt from real estate tax. Thus, the minority declares:

> **It is evident from the quoted provisions of the Local Government Code that the withdrawn exemptions from realty tax cover not just GOCCs, but all persons.** To repeat, the provisions lay down the explicit proposition that the withdrawal of realty tax exemption applies to all persons. The reference to or the inclusion of GOCCs is only clarificatory or illustrative of the explicit provision.
>
> **The term "All persons" encompasses the two classes of persons recognized under our laws, natural and juridical persons. Obviously, MIAA is not a natural person. Thus, the determinative test is not just whether MIAA is a GOCC, but whether MIAA is a juridical person at all.** (Emphasis and underscoring in the original)

The minority posits that the "**determinative test**" whether MIAA is exempt from local taxation is its status - **whether MIAA is a juridical person or not.** The minority also insists that "**Sections 193 and 234 may be examined in isolation from Section 133(o) to ascertain MIAA's claim of exemption.**"

The argument of the minority is fatally flawed. Section 193 of the Local Government Code expressly withdrew the tax exemption of all juridical persons "**[u]nless otherwise provided in this Code**." Now, Section 133(o) of the Local Government Code **expressly provides otherwise**, specifically **prohibiting** local governments from imposing any kind of tax on national government instrumentalities. Section 133(o) states:

> 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:**
>
> x x x x
>
> (o) **Taxes, fees or charges of any kinds on the National Government, its agencies and instrumentalities, and local government units.** (Emphasis and underscoring supplied)

By express mandate of the Local Government Code, local governments **cannot impose any kind of tax** on national government instrumentalities like the MIAA. **Local governments are devoid of power to tax the national government, its agencies and instrumentalities.** The taxing powers of local governments do not extend to the national government, its agencies and instrumentalities, "[u]nless otherwise provided in this Code" as stated in the saving clause of Section 133. The saving clause refers to Section 234(a) on the exception to the exemption from real estate tax of real property owned by the Republic.

The minority, however, theorizes that unless exempted in Section 193 itself, **all juridical persons** are subject to tax by local governments. **The minority insists that the juridical persons exempt from local taxation are limited to the three classes of entities specifically enumerated as exempt in Section 193**. Thus, the minority states:

> x x x **Under Section 193, the exemption is limited to (a) local water districts; (b) cooperatives duly registered under Republic Act No. 6938; and (c) non-stock and non-profit hospitals and educational institutions.** It would be belaboring the obvious why the MIAA does not fall within any of the exempt entities under Section 193. (Emphasis supplied)

The minority's theory directly contradicts and completely negates Section 133(o) of the Local Government Code. This theory will result in gross absurdities. It will make the **national government, which itself is a juridical person**, subject to tax by local governments since the national government is not included in the enumeration of exempt entities in Section 193. Under this theory, local governments can impose **any kind of local tax, and not only real estate tax**, on the national government.

Under the minority's theory, many national government instrumentalities with juridical personalities will also be subject to **any kind of local tax, and not only real estate tax**. Some of the national government instrumentalities vested by law with juridical personalities are: *Bangko Sentral ng Pilipinas,*[30] Philippine Rice Research Institute,[31] Laguna Lake

Development Authority,[32] Fisheries Development Authority,[33] Bases Conversion Development Authority,[34] Philippine Ports Authority,[35] Cagayan de Oro Port Authority,[36] San Fernando Port Authority,[37] Cebu Port Authority,[38] and Philippine National

Railways.[39]

The minority's theory violates Section 133(o) of the Local Government Code which expressly prohibits local governments from imposing any kind of tax on national government instrumentalities. **Section 133(o) does not distinguish between national government instrumentalities with or without juridical personalities**. Where the law does not distinguish, courts should not distinguish. Thus, Section 133(o) applies to all national government instrumentalities, with or without juridical personalities. The determinative test whether MIAA is exempt from local taxation is not whether MIAA is a juridical person, but **whether it is a national government instrumentality** under Section 133(o) of the Local Government Code. Section 133(o) is the specific provision of law prohibiting local governments from imposing any kind of tax on the national government, its agencies and instrumentalities.

Section 133 of the Local Government Code starts with the saving clause "**[u]nless otherwise provided in this Code.**" This means that unless the Local Government Code grants an express authorization, local governments have no power to tax the national government, its agencies and instrumentalities. Clearly, the **rule** is local governments have no power to tax the national government, its agencies and instrumentalities. As an exception to this rule, local governments may tax the national government, its agencies and instrumentalities **only if** the Local Government Code expressly so provides.

The saving clause in Section 133 refers to the exception to the exemption in Section 234(a) of the Code, which makes the national government subject to real estate tax **when it gives the beneficial use of its real properties to a taxable entity**. Section 234(a) of the Local Government Code provides:

> SEC. 234. *Exemptions from Real Property Tax* - **The following are exempted from payment of the real property tax:**
>
> (a) **Real property owned by the Republic of the Philippines** or any of its political subdivisions **except when the beneficial use thereof has been granted, for consideration or otherwise, to a taxable person.**
>
> x x x. (Emphasis supplied)

Under Section 234(a), real property owned by the Republic is exempt from real estate tax. The exception to this exemption is when the government gives the beneficial use of the real property to a taxable entity.

The exception to the exemption in Section 234(a) is the <u>only instance</u> when the national government, its agencies and instrumentalities are subject to any kind of tax by local governments. The exception to the exemption applies only to real estate tax and not to any other tax. The justification for the exception to the exemption is that the real property, although owned by the Republic, is not devoted to public use or public service

but devoted to the private gain of a taxable person.

The minority also argues that since Section 133 **precedes** Section 193 and 234 of the Local Government Code, the later provisions prevail over Section 133. Thus, the minority asserts:

> x x x Moreover, sequentially Section 133 antecedes Section 193 and 234. Following an accepted rule of construction, **in case of conflict the subsequent provisions should prevail.** Therefore, MIAA, as a juridical person, is subject to real property taxes, the general exemptions attaching to instrumentalities under Section 133(o) of the Local Government Code being qualified by Sections 193 and 234 of the same law. (Emphasis supplied)

The minority **assumes** that there is an irreconcilable conflict between Section 133 on one hand, and Sections 193 and 234 on the other. No one has urged that there is such a conflict, much less has any one presented a persuasive argument that there is such a conflict. The minority's assumption of an irreconcilable conflict in the statutory provisions is an egregious error for two reasons.

First, there is no conflict whatsoever between Sections 133 and 193 because **Section 193 expressly admits its subordination to other provisions of the Code** when Section 193 states "**[u]nless otherwise provided in this Code.**" By its own words, Section 193 admits the **superiority** of other provisions of the Local Government Code that limit the exercise of the taxing power in Section 193. When a provision of law grants a power but withholds such power on certain matters, there is no conflict between the grant of power and the withholding of power. The grantee of the power simply cannot exercise the power on matters withheld from its power.

Second, Section 133 is entitled "**Common Limitations on the Taxing Powers of Local Government Units**." Section 133 limits the grant to local governments of the power to tax, and not merely the exercise of a delegated power to tax. Section 133 states that the taxing powers of local governments "**shall not extend to the levy**" of any kind of tax on the national government, its agencies and instrumentalities. There is no clearer limitation on the taxing power than this.

Since Section 133 prescribes the "**common limitations**" on the taxing powers of local governments, Section 133 logically prevails over Section 193 which grants local governments such taxing powers. **By their very meaning and purpose, the "common limitations" on the taxing power prevail over the grant or exercise of the taxing power**. If the taxing power of local governments in Section 193 prevails over the limitations on such taxing power in Section 133, then local governments can impose any kind of tax on the national government, its agencies and instrumentalities - a gross absurdity.

Local governments have no power to tax the national government, its agencies and instrumentalities, except as otherwise provided in the Local Government Code pursuant to

the saving clause in Section 133 stating "[u]nless otherwise provided in this Code." This exception " which is an exception to the exemption of the Republic from real estate tax imposed by local governments - refers to Section 234(a) of the Code. The exception to the exemption in Section 234(a) subjects real property owned by the Republic, whether titled in the name of the national government, its agencies or instrumentalities, to real estate tax if the beneficial use of such property is given to a taxable entity.

The minority also claims that the definition in the Administrative Code of the phrase "government-owned or controlled corporation" is not controlling. The minority points out that Section 2 of the Introductory Provisions of the Administrative Code admits that its definitions are not controlling when it provides:

> SEC. 2. *General Terms Defined*. - Unless the specific words of the text, or the context as a whole, or a particular statute, shall require a different meaning:
>
> x x x x

The minority then concludes that reliance on the Administrative Code definition is "flawed."

The minority's argument is a *non sequitur*. True, Section 2 of the Administrative Code recognizes that a statute may require a different meaning than that defined in the Administrative Code. However, this does not automatically mean that the definition in the Administrative Code does not apply to the Local Government Code. Section 2 of the Administrative Code clearly states that "**unless the specific words x x x of a particular statute shall require a different meaning,**" the definition in Section 2 of the Administrative Code shall apply. Thus, unless there is specific language in the Local Government Code defining the phrase "government-owned or controlled corporation" differently from the definition in the Administrative Code, the definition in the Administrative Code prevails.

The minority does not point to any provision in the Local Government Code defining the phrase "government-owned or controlled corporation" differently from the definition in the Administrative Code. Indeed, there is none. **The Local Government Code is silent on the definition of the phrase "government-owned or controlled corporation.**" The Administrative Code, however, expressly defines the phrase "government-owned or controlled corporation." The inescapable conclusion is that the Administrative Code definition of the phrase "government-owned or controlled corporation" applies to the Local Government Code.

The third whereas clause of the Administrative Code states that the Code "**incorporates in a unified document the major structural, functional and procedural principles and rules of governance**." Thus, the Administrative Code is the governing law defining the status and relationship of government departments, bureaus, offices, agencies and instrumentalities. Unless a statute expressly provides for a different status and relationship for a specific government unit or entity, the provisions of the Administrative Code prevail.

The minority also contends that the phrase "government-owned or controlled corporation" should apply only to corporations organized under the Corporation Code, the general incorporation law, and not to corporations created by special charters. The minority sees no reason why government corporations with special charters should have a capital stock. Thus, the minority declares:

> I submit that the definition of "government-owned or controlled corporations" under the Administrative Code refer to those corporations owned by the government or its instrumentalities which are created not by legislative enactment, but formed and organized under the Corporation Code through registration with the Securities and Exchange Commission. In short, these are GOCCs without original charters.
>
> x x x x
>
> It might as well be worth pointing out that there is no point in requiring a capital structure for GOCCs whose full ownership is limited by its charter to the State or Republic. Such GOCCs are not empowered to declare dividends or alienate their capital shares.

The contention of the minority is seriously flawed. It is not in accord with the Constitution and existing legislations. It will also result in gross absurdities.

First, the Administrative Code definition of the phrase "government-owned or controlled corporation" does not distinguish between one incorporated under the Corporation Code or under a special charter. Where the law does not distinguish, courts should not distinguish.

Second, Congress has created through special charters several government-owned corporations organized as stock corporations. Prime examples are the Land Bank of the Philippines and the Development Bank of the Philippines. The special charter[40] of the Land Bank of the Philippines provides:

> SECTION 81. *Capital*. - The **authorized capital stock of the Bank shall be nine billion pesos, divided into seven hundred and eighty million common shares with a par value of ten pesos each**, which shall be fully subscribed by the Government, and one hundred and twenty million preferred shares with a par value of ten pesos each, which shall be issued in accordance with the provisions of Sections seventy-seven and eighty-three of this Code. (Emphasis supplied)

Likewise, the special charter[41] of the Development Bank of the Philippines provides:

> SECTION 7. *Authorized Capital Stock* " Par value. " **The capital stock of the Bank shall be Five Billion Pesos to be divided into Fifty Million common**

> **shares with par value of P100 per share**. These shares are available for subscription by the National Government. Upon the effectivity of this Charter, the National Government shall subscribe to Twenty-Five Million common shares of stock worth Two Billion Five Hundred Million which shall be deemed paid for by the Government with the net asset values of the Bank remaining after the transfer of assets and liabilities as provided in Section 30 hereof. (Emphasis supplied)

Other government-owned corporations organized as stock corporations under their special charters are the Philippine Crop Insurance Corporation,[42] Philippine International Trading Corporation,[43] and the Philippine National Bank[44] before it was reorganized as a stock corporation under the Corporation Code. All these government-owned corporations organized under special charters as stock corporations are subject to real estate tax on real properties owned by them. To rule that they are not government-owned or controlled corporations because they are not registered with the Securities and Exchange Commission would remove them from the reach of Section 234 of the Local Government Code, thus exempting them from real estate tax.

Third, the government-owned or controlled corporations created through special charters are those that meet the two conditions prescribed in Section 16, Article XII of the Constitution. The first condition is that the government-owned or controlled corporation must be established for the common good. **The second condition is that the government-owned or controlled corporation must meet the test of economic viability**. Section 16, Article XII of the 1987 Constitution provides:

> SEC. 16. The Congress shall not, except by general law, provide for the formation, organization, or regulation of private corporations. **Government-owned or controlled corporations may be created or established by special charters <u>in the interest of the common good and subject to the test of economic viability.</u>** (Emphasis and underscoring supplied)

The Constitution expressly authorizes the legislature to create "government-owned or controlled corporations" through special charters **only if** these entities are required to meet the twin conditions of common good and economic viability. **In other words, Congress has no power to create government-owned or controlled corporations with special charters unless they are made to comply with the two conditions of common good and economic viability.** The test of economic viability applies only to government-owned or controlled corporations that perform economic or commercial activities and need to compete in the market place. Being essentially economic vehicles of the State for the common good " meaning for economic development purposes " these government-owned or controlled corporations with special charters are usually organized as stock corporations just like ordinary private corporations.

In contrast, government instrumentalities vested with corporate powers and performing governmental or public functions need not meet the test of economic viability. These

instrumentalities perform essential public services for the common good, services that every modern State must provide its citizens. These instrumentalities need not be economically viable since the government may even subsidize their entire operations. These instrumentalities are not the "government-owned or controlled corporations" referred to in Section 16, Article XII of the 1987 Constitution.

Thus, the Constitution imposes no limitation when the legislature creates government instrumentalities vested with corporate powers but performing essential governmental or public functions. **Congress has plenary authority to create government instrumentalities vested with corporate powers provided these instrumentalities perform essential government functions or public services.** However, when the legislature creates through special charters corporations that perform economic or commercial activities, such entities " known as "government-owned or controlled corporations" " must meet the test of economic viability because they compete in the market place.

This is the situation of the Land Bank of the Philippines and the Development Bank of the Philippines and similar government-owned or controlled corporations, which derive their income to meet operating expenses solely from commercial transactions in competition with the private sector. The intent of the Constitution is to prevent the creation of government-owned or controlled corporations that cannot survive on their own in the market place and thus merely drain the public coffers.

Commissioner Blas F. Ople, proponent of the test of economic viability, explained to the Constitutional Commission the purpose of this test, as follows:

> MR. OPLE: Madam President, the reason for this concern is really that when the government creates a corporation, there is a sense in which this corporation becomes exempt from the test of economic performance. We know what happened in the past. If a government corporation loses, then it makes its claim upon the taxpayers" money through new equity infusions from the government and what is always invoked is the common good. That is the reason why this year, out of a budget of P115 billion for the entire government, about P28 billion of this will go into equity infusions to support a few government financial institutions. And this is all taxpayers" money which could have been relocated to agrarian reform, to social services like health and education, to augment the salaries of grossly underpaid public employees. And yet this is all going down the drain.
>
> Therefore, when we insert the phrase "ECONOMIC VIABILITY" together with the "common good," this becomes a restraint on future enthusiasts for state capitalism to excuse themselves from the responsibility of meeting the market test so that they become viable. And so, Madam President, I reiterate, for the committee's consideration and I am glad that I am joined in this proposal by Commissioner Foz, the insertion of the standard of "ECONOMIC VIABILITY

OR THE ECONOMIC TEST," together with the common good.[45]

Father Joaquin G. Bernas, a leading member of the Constitutional Commission, explains in his textbook *The 1987 Constitution of the Republic of the Philippines: A Commentary:*

> The second sentence was added by the 1986 Constitutional Commission. The significant addition, however, is the phrase "**in the interest of the common good and subject to the test of economic viability.**" The addition includes the ideas that **they must show capacity to function efficiently in business and that they should not go into activities which the private sector can do better**. Moreover, economic viability is more than financial viability but also includes capability to make profit and generate benefits not quantifiable in financial terms.[46] (Emphasis supplied)

Clearly, the test of economic viability does not apply to government entities vested with corporate powers and performing essential public services. The State is obligated to render essential public services regardless of the economic viability of providing such service. The non-economic viability of rendering such essential public service does not excuse the State from withholding such essential services from the public.

However, government-owned or controlled corporations with special charters, organized essentially for economic or commercial objectives, must meet the test of economic viability. These are the government-owned or controlled corporations that are usually organized under their special charters as stock corporations, like the Land Bank of the Philippines and the Development Bank of the Philippines. These are the government-owned or controlled corporations, along with government-owned or controlled corporations organized under the Corporation Code, that fall under the definition of "government-owned or controlled corporations" in Section 2(10) of the Administrative Code.

The MIAA need not meet the test of economic viability because the legislature did not create MIAA to compete in the market place. MIAA does not compete in the market place because there is no competing international airport operated by the private sector. MIAA performs an essential public service as the primary domestic and international airport of the Philippines. The operation of an international airport requires the presence of personnel from the following government agencies:

1. The Bureau of Immigration and Deportation, to document the arrival and departure of passengers, screening out those without visas or travel documents, or those with hold departure orders;

2. The Bureau of Customs, to collect import duties or enforce the ban on prohibited importations;

3. The quarantine office of the Department of Health, to enforce health measures against

the spread of infectious diseases into the country;

4. The Department of Agriculture, to enforce measures against the spread of plant and animal diseases into the country;

5. The Aviation Security Command of the Philippine National Police, to prevent the entry of terrorists and the escape of criminals, as well as to secure the airport premises from terrorist attack or seizure;

6. The Air Traffic Office of the Department of Transportation and Communications, to authorize aircraft to enter or leave Philippine airspace, as well as to land on, or take off from, the airport; and

7. The MIAA, to provide the proper premises - such as runway and buildings - for the government personnel, passengers, and airlines, and to manage the airport operations.

All these agencies of government perform government functions essential to the operation of an international airport.

MIAA performs an essential public service that every modern State must provide its citizens. MIAA derives its revenues principally from the mandatory fees and charges MIAA imposes on passengers and airlines. The terminal fees that MIAA charges every passenger are regulatory or administrative fees[47] and not income from commercial transactions.

MIAA falls under the definition of a government **instrumentality** under Section 2(10) of the Introductory Provisions of the Administrative Code, which provides:

> SEC. 2. *General Terms Defined*. - x x x x
>
> (10) *Instrumentality* refers to any agency of the National Government, not integrated within the department framework, vested with special functions or jurisdiction by law, **endowed with some if not all corporate powers**, administering special funds, and **enjoying operational autonomy,** usually through a charter. x x x (Emphasis supplied)

The fact alone that MIAA is endowed with corporate powers does not make MIAA a government-owned or controlled corporation. Without a change in its capital structure, MIAA remains a government instrumentality under Section 2(10) of the Introductory Provisions of the Administrative Code. More importantly, as long as MIAA renders essential public services, it need not comply with the test of economic viability. Thus, MIAA is outside the scope of the phrase "government-owned or controlled corporations" under Section 16, Article XII of the 1987 Constitution.

The minority belittles the use in the Local Government Code of the phrase "government-

owned or controlled corporation" as merely "**clarificatory or illustrative**." This is fatal. The 1987 Constitution prescribes explicit conditions for the creation of "government-owned or controlled corporations." The Administrative Code defines what constitutes a "government-owned or controlled corporation." To belittle this phrase as "clarificatory or illustrative" is grave error.

To summarize, MIAA is not a government-owned or controlled corporation under Section 2(13) of the Introductory Provisions of the Administrative Code because it is not organized as a stock or non-stock corporation. Neither is MIAA a government-owned or controlled corporation under Section 16, Article XII of the 1987 Constitution because MIAA is not required to meet the test of economic viability. MIAA is a government instrumentality vested with corporate powers and performing essential public services pursuant to Section 2(10) of the Introductory Provisions of the Administrative Code. As a government instrumentality, MIAA is not subject to any kind of tax by local governments under Section 133(o) of the Local Government Code. The exception to the exemption in Section 234(a) does not apply to MIAA because MIAA is not a taxable entity under the Local Government Code. Such exception applies only if the beneficial use of real property owned by the Republic is given to a taxable entity.

Finally, the Airport Lands and Buildings of MIAA are properties devoted to public use and thus are properties of public dominion. **Properties of public dominion are owned by the State or the Republic.** Article 420 of the Civil Code provides:

> Art. 420. The following things are property of public dominion:
>
> (1) Those **intended for public use**, such as roads, canals, rivers, torrents, **ports** and bridges **constructed by the State**, banks, shores, roadsteads, and **others of similar character;**
>
> (2) Those which belong to the State, without being for public use, and are **intended for some public service** or for the development of the national wealth. (Emphasis supplied)

The term "**ports x x x constructed by the State**" includes **airports** and seaports. The Airport Lands and Buildings of MIAA are intended for public use, and at the very least intended for public service. Whether intended for public use or public service, the Airport Lands and Buildings are **properties of public dominion.** As properties of public dominion, the Airport Lands and Buildings are owned by the Republic and thus exempt from real estate tax under Section 234(a) of the Local Government Code.

4. <u>Conclusion</u>

Under Section 2(10) and (13) of the Introductory Provisions of the Administrative Code, which governs the legal relation and status of government units, agencies and offices within the entire government machinery, MIAA is a government **instrumentality** and not a government-owned or controlled corporation. Under Section 133(o) of the Local

Government Code, MIAA as a government **instrumentality** is not a taxable person because it is not subject to "[t]axes, fees or charges of any kind" by local governments. The only exception is when MIAA leases its real property to a "taxable person" as provided in Section 234(a) of the Local Government Code, in which case the specific real property leased becomes subject to real estate tax. Thus, only portions of the Airport Lands and Buildings leased to taxable persons like **private parties** are subject to real estate tax by the City of Parañaque.

Under Article 420 of the Civil Code, the Airport Lands and Buildings of MIAA, being devoted to public use, are properties of **public dominion** and thus owned by the State or the Republic of the Philippines. Article 420 specifically mentions "**ports** x x x constructed by the State," which includes public airports and seaports, as properties of public dominion and owned by the Republic. As properties of public dominion owned by the Republic, there is no doubt whatsoever that the Airport Lands and Buildings are expressly exempt from real estate tax under Section 234(a) of the Local Government Code. This Court has also repeatedly ruled that properties of public dominion are not subject to execution or foreclosure sale.

WHEREFORE, we **GRANT** the petition. We **SET ASIDE** the assailed Resolutions of the Court of Appeals of 5 October 2001 and 27 September 2002 in CA-G.R. SP No. 66878. We **DECLARE** the Airport Lands and Buildings of the Manila International Airport Authority **EXEMPT** from the real estate tax imposed by the City of Parañaque. We declare **VOID** all the real estate tax assessments, including the final notices of real estate tax delinquencies, issued by the City of Parañaque on the Airport Lands and Buildings of the Manila International Airport Authority, except for the portions that the Manila International Airport Authority has leased to private parties. We also declare **VOID** the assailed auction sale, and all its effects, of the Airport Lands and Buildings of the Manila International Airport Authority.

No costs.

SO ORDERED.

Panganiban, C.J., Puno, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Corona, Carpio-Morales, Chico-Nazario, Garcia, and *Velasco, Jr. JJ.,* concur.
Austria-Martinez, Callejo, Sr., JJ., separate opinion.
Azcuna, J., on leave.
Tinga, J., dissenting opinion.

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[1] Dated 16 September 1983.

[2] Dated 26 July 1987.

[3] Section 3, MIAA Charter.

[4] Section 22, MIAA Charter.

[5] Section 3, MIAA Charter.

[6] *Rollo*, pp. 22-23.

[7] Under Rule 45 of the 1997 Rules of Civil Procedure.

[8] 330 Phil. 392 (1996).

[9] MIAA Charter as amended by Executive Order No. 298. See note 2.

[10] *Batas Pambansa Blg.* 68.

[11] Section 11 of the MIAA Charter provides:

Contribution to the General Fund for the Maintenance and Operation of other Airports. - Within thirty (30) days after the close of each quarter, twenty percentum (20%) of the gross operating income, excluding payments for utilities of tenants and concessionaires and terminal fee collections, shall be remitted to the General Fund in the National Treasury to be used for the maintenance and operation of other international and domestic airports in the country. Adjustments in the amount paid by the Authority to the National Treasury under this Section shall be made at the end of each year based on the audited financial statements of the Authority.

[12] Section 5(j), MIAA Charter.

[13] Section 6, MIAA Charter.

[14] Section 5(k), MIAA Charter.

[15] Section 5(o), MIAA Charter.

[16] Third Whereas Clause, MIAA Charter.

[17] Id.

[18] Constitution, Art. X, Sec. 5.

[19] 274 Phil. 1060, 1100 (1991) quoting C. Dallas Sands, 3 Statutes and Statutory Construction 207.

[20] 274 Phil. 323, 339-340 (1991).

[21] Constitution, Art. VI, Sec. 28(1).

[22] First Whereas Clause, MIAA Charter.

[23] 30 Phil. 602, 606-607 (1915).

[24] 102 Phil. 866, 869-870 (1958).

[25] *PNB v. Puruganan,* 130 Phil. 498 (1968). See also *Martinez v. CA,* 155 Phil. 591 (1974).

[26] MIAA Charter, Sec.16.

[27] *Chavez v. Public Estates Authority,* 433 Phil. 506 (2002).

[28] Section 3, MIAA Charter.

[29] G.R. No. 144104, 29 June 2004, 433 SCRA 119, 138.

[30] Republic Act No. 7653, 14 June 1993, Sec. 5.

[31] Executive Order No. 1061, 5 November 1985, Sec. 3(p).

[32] Republic Act No. 4850, 18 July 1966, Sec. 5.

[33] Presidential Decree No. 977, 11 August 1976, Section 4(j).

[34] Republic Act No. 7227, 13 March 1992, Sec. 3.

[35] Presidential Decree No. 857, 23 December 1975, Sec. 6(b)(xvi).

[36] Republic Act No. 4663, 18 June 1966, Sec. 7(m).

[37] Republic Act No. 4567, 19 June 1965, Sec. 7(m).

[38] Republic Act No. 7621, 26 June 1992, Sec. 7(m).

[39] Republic Act No. 4156, 20 June 1964. Section 4(b).

[40] Republic Act No. 3844, 8 August 1963, as amended by Republic Act No. 7907, 23 February 1995.

[41] Executive Order No. 81, 3 December 1986.

[42] Republic Act No. 8175, 29 December 1995.

[43] Presidential Decree No. 252, 21 July 1973, as amended by Presidential Decree No. 1071, 25 January 1977 and Executive Order No. 1067, 25 November 1985.

[44] Executive Order No. 80, 3 December 1986.

[45] III Records, Constitutional Commission 63 (22 August 1986).

[46] 2003 ed., 1181.

[47] *Manila International Airport Authority v. Airspan Corporation,* G.R. No. 157581, 1 December 2004, 445 SCRA 471.

DISSENTING OPINION

TINGA, *J. :*

The legally correct resolution of this petition would have had the added benefit of an utterly fair and equitable result - a recognition of the constitutional and statutory power of the City of Parañaque to impose real property taxes on the Manila International Airport Authority (MIAA), but at the same time, upholding a statutory limitation that prevents the City of Parañaque from seizing and conducting an execution sale over the real properties of MIAA. In the end, all that the City of Parañaque would hold over the MIAA is a limited lien, unenforceable as it is through the sale or disposition of MIAA properties. Not only is this the legal effect of all the relevant constitutional and statutory provisions applied to this case, it also leaves the room for negotiation for a mutually acceptable resolution between the City of Parañaque and MIAA.

Instead, with blind but measured rage, the majority today veers wildly off-course,

shattering statutes and judicial precedents left and right in order to protect the precious Ming vase that is the Manila International Airport Authority (MIAA). While the MIAA is left unscathed, it is surrounded by the wreckage that once was the constitutional policy, duly enacted into law, that was local autonomy. Make no mistake, the majority has virtually declared war on the seventy nine (79) provinces, one hundred seventeen (117) cities, and one thousand five hundred (1,500) municipalities of the Philippines.[1]

The icing on this inedible cake is the strained and purposely vague rationale used to justify the majority opinion. Decisions of the Supreme Court are expected to provide clarity to the parties and to students of jurisprudence, as to what the law of the case is, especially when the doctrines of long standing are modified or clarified. With all due respect, the decision in this case is plainly so, so wrong on many levels. More egregious, in the majority's resolve to spare the Manila International Airport Authority (MIAA) from liability for real estate taxes, no clear-cut rule emerges on the important question of the power of local government units (LGUs) to tax government corporations, instrumentalities or agencies.

The majority would overturn *sub silencio*, among others, at least one dozen precedents enumerated below:

> 1) *Mactan-Cebu International Airport Authority v. Hon. Marcos,*[2] the leading case penned in 1997 by recently retired Chief Justice Davide, which held that the express withdrawal by the Local Government Code of previously granted exemptions from realty taxes applied to instrumentalities and government-owned or controlled corporations (GOCCs) such as the Mactan-Cebu International Airport Authority (MCIAA). The majority invokes the ruling in *Basco v. Pagcor,*[3] a precedent discredited in *Mactan,* and a vanguard of a doctrine so noxious to the concept of local government rule that the Local Government Code was drafted precisely to counter such philosophy. The efficacy of several rulings that expressly rely on *Mactan*, such as *PHILRECA v. DILG Secretary,*[4] *City Government of San Pablo v. Hon. Reyes*[5] is now put in question.
>
> 2) The rulings in *National Power Corporation v. City of Cabanatuan,*[6] wherein the Court, through Justice Puno, declared that the National Power Corporation, a GOCC, is liable for franchise taxes under the Local Government Code, and succeeding cases that have relied on it such as *Batangas Power Corp. v. Batangas City*[7] The majority now states that deems instrumentalities as defined under the Administrative Code of 1987 as purportedly beyond the reach of any form of taxation by LGUs, stating "[l]ocal governments are devoid of power to tax the national government, its agencies and instrumentalities."[8] Unfortunately, using the definition employed by the majority, as provided by Section 2(d) of the Administrative Code, GOCCs are also considered as instrumentalities, thus leading to the astounding conclusion that GOCCs may

not be taxed by LGUs under the Local Government Code.

3) *Lung Center of the Philippines v. Quezon City,*[9] wherein a unanimous *en banc* Court held that the Lung Center of the Philippines may be liable for real property taxes. Using the majority's reasoning, the Lung Center would be properly classified as an instrumentality which the majority now holds as exempt from all forms of local taxation.[10]

4) *City of Davao v. RTC*,[11] where the Court held that the Government Service Insurance System (GSIS) was liable for real property taxes for the years 1992 to 1994, its previous exemption having been withdrawn by the enactment of the Local Government Code.[12] This decision, which expressly relied on *Mactan*, would be directly though silently overruled by the majority.

5) The common essence of the Court's rulings in the two *Philippine Ports Authority v. City of Iloilo*,[13] cases penned by Justices Callejo and Azcuna respectively, which relied in part on *Mactan* in holding the Philippine Ports Authority (PPA) liable for realty taxes, notwithstanding the fact that it is a GOCC. Based on the reasoning of the majority, the PPA cannot be considered a GOCC. The reliance of these cases on *Mactan*, and its rationale for holding governmental entities like the PPA liable for local government taxation is mooted by the majority.

6) The 1963 precedent of *Social Security System Employees Association v. Soriano,*[14] which declared the Social Security Commission (SSC) as a GOCC performing proprietary functions. Based on the rationale employed by the majority, the Social Security System is not a GOCC. Or perhaps more accurately, "no longer" a GOCC.

7) The decision penned by Justice (now Chief Justice) Panganiban, *Light Rail Transit Authority v. Central Board of Assessment.*[15] The characterization therein of the Light Rail Transit Authority (LRTA) as a "service-oriented commercial endeavor" whose patrimonial property is subject to local taxation is now rendered inconsequential, owing to the majority's thinking that an entity such as the LRTA is itself exempt from local government taxation[16], irrespective of the functions it performs. Moreover, based on the majority's criteria, LRTA is not a GOCC.

8) The cases of *Teodoro v. National Airports Corporation*[17] and *Civil Aeronautics Administration v. Court of Appeals*.[18] wherein the Court held that the predecessor agency of the MIAA, which was similarly engaged in the operation, administration and management of the Manila International Agency,

was engaged in the exercise of proprietary, as opposed to sovereign functions. The majority would hold otherwise that the property maintained by MIAA is actually patrimonial, thus implying that MIAA is actually engaged in sovereign functions.

9) My own majority in *Phividec Industrial Authority v. Capitol Steel,*[19] wherein the Court held that the Phividec Industrial Authority, a GOCC, was required to secure the services of the Office of the Government Corporate Counsel for legal representation.[20] Based on the reasoning of the majority, Phividec would not be a GOCC, and the mandate of the Office of the Government Corporate Counsel extends only to GOCCs.

10) Two decisions promulgated by the Court **just last month** (June 2006), *National Power Corporation v. Province of Isabela*[21] and *GSIS v. City Assessor of Iloilo City.*[22] In the former, the Court pronounced that "[a]lthough as a general rule, LGUs cannot impose taxes, fees, or charges of any kind on the National Government, its agencies and instrumentalities, this rule admits of an exception, i.e., when specific provisions of the LGC authorize the LGUs to impose taxes, fees or charges on the aforementioned entities." Yet the majority now rules that the exceptions in the LGC no longer hold, since "local governments are devoid of power to tax the national government, its agencies and instrumentalities."[23] The ruling in the latter case, which held the GSIS as liable for real property taxes, is now put in jeopardy by the majority's ruling.

There are certainly many other precedents affected, perhaps all previous jurisprudence regarding local government taxation *vis-a-vis* government entities, as well as any previous definitions of GOCCs, and previous distinctions between the exercise of governmental and proprietary functions (a distinction laid down by this Court as far back as 1916[24]). What is the reason offered by the majority for overturning or modifying all these precedents and doctrines? None is given, for the majority takes comfort instead in the pretense that these precedents never existed. Only children should be permitted to subscribe to the theory that something bad will go away if you pretend hard enough that it does not exist.

I.
Case Should Have Been Decided Following Mactan Precedent

The core issue in this case, whether the MIAA is liable to the City of Parañaque for real property taxes under the Local Government Code, has already been decided by this Court in the Mactan case, and should have been resolved by simply applying precedent.

Mactan Explained

A brief recall of the *Mactan* case is in order. The Mactan-Cebu International Airport

Authority (MCIAA) claimed that it was exempt from payment of real property taxes to the City of Cebu, invoking the specific exemption granted in Section 14 of its charter, Republic Act No. 6958, and its status as an instrumentality of the government performing governmental functions.[25] Particularly, MCIAA invoked Section 133 of the Local Government Code, precisely the same provision utilized by the majority as the basis for MIAA's exemption. Section 133 reads:

> *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:
>
> x x x
>
> (o) **Taxes, fees or charges of any kind on the National Government, its agencies and instrumentalities** and local government units. (emphasis and underscoring supplied).

However, the Court in *Mactan* noted that Section 133 qualified the exemption of the National Government, its agencies and instrumentalities from local taxation with the phrase "unless otherwise provided herein." It then considered the other relevant provisions of the Local Government Code, particularly the following:

> SEC. 193. *Withdrawal of Tax Exemption Privileges.* - Unless otherwise provided in this Code, **tax exemption or incentives granted to, or enjoyed by all persons, whether natural or juridical,** including government-owned and 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. [26]
>
> SECTION 232. *Power to Levy Real Property Tax.* - A province or city or a municipality within the Metropolitan Manila area may levy an annual *ad valorem* tax on real property such as land, building, machinery, and other improvements not hereafter specifically exempted.[27]
>
> SECTION 234. *Exemptions from Real Property Tax.* -- The following are exempted from payment of the real property tax:
>
> (a) Real property owned by the Republic of the Philippines or any of its political subdivisions except when the beneficial use thereof has been granted, for consideration or otherwise, to a taxable person:
> (b) Charitable institutions, churches, parsonages or convents appurtenant thereto, mosques, non-profit or religious cemeteries and all lands, buildings, and improvements actually, directly, and exclusively used for religious charitable or

educational purposes;
(c) All machineries and equipment that are actually, directly and exclusively used by local water districts and government-owned and controlled corporations engaged in the distribution of water and/or generation and transmission of electric power;
(d) All real property owned by duly registered cooperatives as provided for under R.A. No. 6938; and
(e) Machinery and equipment used for pollution control and environmental protection.

Except as provided herein, **any exemption from payment of real property tax previously granted to, or presently enjoyed by, all persons, whether natural or juridical**, including all government-owned or controlled corporations are hereby withdrawn upon the effectivity of this Code.[28]

Clearly, Section 133 was not intended to be so absolute a prohibition on the power of LGUs to tax the National Government, its agencies and instrumentalities, as evidenced by these cited provisions which "otherwise provided." But what was the extent of the limitation under Section 133? This is how the Court, correctly to my mind, defined the parameters in *Mactan:*

The foregoing sections of the LGC speak of: (a) the limitations on the taxing powers of local government units and the exceptions to such limitations; and (b) the rule on tax exemptions and the exceptions thereto. The use of exceptions or provisos in these sections, as shown by the following clauses:

(1) "unless otherwise provided herein" in the opening paragraph of Section 133;
(2) "Unless otherwise provided in this Code" in Section 193;
(3) "not hereafter specifically exempted" in Section 232; and
(4) "Except as provided herein" in the last paragraph of Section 234

initially hampers a ready understanding of the sections. Note, too, that the aforementioned clause in Section 133 seems to be inaccurately worded. Instead of the clause "unless otherwise provided herein," with the "herein" to mean, of course, the section, it should have used the clause "unless otherwise provided in this Code." The former results in absurdity since the section itself enumerates what are beyond the taxing powers of local government units and, where exceptions were intended, the exceptions are explicitly indicated in the next. For instance, in item (a) which excepts income taxes "when levied on banks and other financial institutions"; item (d) which excepts "wharfage on wharves constructed and maintained by the local government unit concerned"; and item (1) which excepts taxes, fees and charges for the registration and issuance of licenses or permits for the driving of "tricycles." It may also be observed that within the body itself of the section, there are exceptions which can be found only in other parts of the LGC, but the section interchangeably uses therein the

clause, "except as otherwise provided herein" as in items (c) and (i), or the clause "except as provided in this Code" in item (j). These clauses would be obviously unnecessary or mere surplusages if the opening clause of the section were "Unless otherwise provided in this Code" instead of "Unless otherwise provided herein." In any event, even if the latter is used, since under Section 232 local government units have the power to levy real property tax, except those exempted therefrom under Section 234, then Section 232 must be deemed to qualify Section 133.

Thus, reading together Sections 133, 232, and 234 of the LGC, we conclude that as a general rule, as laid down in Section 133, the taxing powers of local government units cannot extend to the levy of, inter alia, "taxes, fees and charges of any kind on the National Government, its agencies and instrumentalities, and local government units"; however, pursuant to Section 232, provinces, cities, and municipalities in the Metropolitan Manila Area may impose the real property tax except on, inter alia, "real property owned by the Republic of the Philippines or any of its political subdivisions except when the beneficial use thereof has been granted, for consideration or otherwise, to a taxable person," as provided in item (a) of the first paragraph of Section 234.

As to tax exemptions or incentives granted to or presently enjoyed by natural or judicial persons, including government-owned and controlled corporations, Section 193 of the LGC prescribes the general rule, viz., they are withdrawn upon the effectivity of the LGC, except those granted to local water districts, cooperatives duly registered under R.A. No. 6938, non-stock and non-profit hospitals and educational institutions, and unless otherwise provided in the LGC. The latter proviso could refer to Section 234 which enumerates the properties exempt from real property tax. But the last paragraph of Section 234 further qualifies the retention of the exemption insofar as real property taxes are concerned by limiting the retention only to those enumerated therein; all others not included in the enumeration lost the privilege upon the effectivity of the LGC. Moreover, even as to real property owned by the Republic of the Philippines or any of its political subdivisions covered by item (a) of the first paragraph of Section 234, the exemption is withdrawn if the beneficial use of such property has been granted to a taxable person for consideration or otherwise.

Since the last paragraph of Section 234 unequivocally withdrew, upon the effectivity of the LGC, exemptions from payment of real property taxes granted to natural or juridical persons, including government-owned or controlled corporations, except as provided in the said section, and the petitioner is, undoubtedly, a government-owned corporation, it necessarily follows that its exemption from such tax granted it in Section 14 of its

> **Charter, R.A. No. 6958, has been withdrawn. Any claim to the contrary can only be justified if the petitioner can seek refuge under any of the exceptions provided in Section 234, but not under Section 133, as it now asserts, since, as shown above, the said section is qualified by Sections 232 and 234.**[29]

The Court in *Mactan* acknowledged that under Section 133, instrumentalities were generally exempt from all forms of local government taxation, unless otherwise provided in the Code. On the other hand, Section 232 "otherwise provided" insofar as it allowed LGUs to levy an *ad valorem* real property tax, irrespective of who owned the property. At the same time, the imposition of real property taxes under Section 232 is in turn qualified by the phrase "not hereinafter specifically exempted." The exemptions from real property taxes are enumerated in Section 234, which specifically states that only real properties owned "by the Republic of the Philippines or any of its political subdivisions" are exempted from the payment of the tax. Clearly, instrumentalities or GOCCs do not fall within the exceptions under Section 234.[30]

Mactan Overturned the
Precedents Now Relied
Upon by the Majority

But the petitioners in *Mactan* also raised the Court's ruling in *Basco v. PAGCOR*,[31] decided before the enactment of the Local Government Code. The Court in *Basco* declared the PAGCOR as exempt from local taxes, justifying the exemption in this wise:

> Local governments have no power to tax instrumentalities of the National Government. PAGCOR is a government owned or controlled corporation with an original charter, PD 1869. All of its shares of stocks are owned by the National Government. In addition to its corporate powers (Sec. 3, Title II, PD 1869) it also exercises regulatory powers xxx
>
> PAGCOR has a dual role, to operate and to regulate gambling casinos. The latter role is governmental, which places it in the category of an agency or instrumentality of the Government. Being an instrumentality of the Government, PAGCOR should be and actually is exempt from local taxes. Otherwise, its operation might be burdened, impeded or subjected to control by a mere Local government.
>
> "The states have no power by taxation or otherwise, to retard impede, burden or in any manner control the operation of constitutional laws enacted by Congress to carry into execution the powers vested in the federal government." (McCulloch v. Marland, 4 Wheat 316, 4 L Ed. 579)
>
> This doctrine emanates from the "supremacy" of the National Government over local governments.

"Justice Holmes, speaking for the Supreme Court, made reference to the entire absence of power on the part of the States to touch, in that way (taxation) at least, the instrumentalities of the United States (Johnson v. Maryland, 254 US 51) and it can be agreed that no state or political subdivision can regulate a federal instrumentality in such a way as to prevent it from consummating its federal responsibilities, or even to seriously burden it in the accomplishment of them." (Antieau, Modern Constitutional Law, Vol. 2, p. 140, emphasis supplied)

Otherwise, mere creatures of the State can defeat National policies thru extermination of what local authorities may perceive to be undesirable activates or enterprise using the power to tax as "a tool for regulation" (U.S. v. Sanchez, 340 US 42).

The power to tax which was called by Justice Marshall as the "power to destroy" (McCulloch v. Maryland, supra) cannot be allowed to defeat an instrumentality or creation of the very entity which has the inherent power to wield it.[32]

Basco is as strident a reiteration of the old guard view that frowned on the principle of local autonomy, especially as it interfered with the prerogatives and privileges of the national government. Also consider the following citation from *Maceda v. Macaraig,*[33] decided the same year as *Basco*. Discussing the rule of construction of tax exemptions on government instrumentalities, the sentiments are of a similar vein.

Moreover, it is a recognized principle that the rule on strict interpretation does not apply in the case of exemptions in favor of a government political subdivision or instrumentality.

The basis for applying the rule of the strict construction to statutory provisions granting tax exemptions of deductions, even more obvious than with reference to the affirmative or levying provisions of tax statutes, is to minimize differential treatment and foster impartiality, fairness, and equality of treatment among tax payers.

The reason for the rule does not apply in the case of exemptions running to the benefit of the government itself or its agencies. In such case the practical effect of an exemption is merely to reduce the amount of money that has to be handled by government in the course of its operations. For these reasons, provisions granting exemptions to government agencies may be construed liberally, in favor of non tax-liability of such agencies.

In the case of property owned by the state or a city or other public corporations, the express exemption should not be construed with the same degree of

strictness that applies to exemptions contrary to the policy of the state, since as to such property "exemption is the rule and taxation the exception."[34]

Strikingly, the majority cites these two very cases and the stodgy rationale provided therein. This evinces the perspective from which the majority is coming from. It is admittedly a viewpoint once shared by this Court, and *en vogue* prior to the enactment of the Local Government Code of 1991.

However, the Local Government Code of 1991 ushered in a new ethos on how the art of governance should be practiced in the Philippines, conceding greater powers once held in the private reserve of the national government to LGUs. The majority might have private qualms about the wisdom of the policy of local autonomy, but the members of the Court are not expected to substitute their personal biases for the legislative will, especially when the 1987 Constitution itself promotes the principle of local autonomy.

Article II. Declaration of Principles and State Policies

xxx

Sec. 25. The State shall ensure the autonomy of local governments.

Article X. Local Government

xxx

Sec. 2. The territorial and political subdivisions shall enjoy local autonomy.

Section 3. The Congress shall enact a local government code which shall provide for a more responsive and accountable local government structure instituted through a system of decentralization with effective mechanisms of recall, initiative, and referendum, allocate among the different local government units their powers, responsibilities, and resources, and provide for the qualifications, election, appointment and removal, term, salaries, powers and functions and duties of local officials, and all other matters relating to the organization and operation of the local units.

xxx

Section 5. Each 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 governments.

xxx

The Court in *Mactan* recognized that a new day had dawned with the enactment of the 1987 Constitution and the Local Government Code of 1991. Thus, it expressly rejected the contention of the MCIAA that *Basco* was applicable to them. In doing so, the language of the Court was dramatic, if only to emphasize how monumental the shift in philosophy was with the enactment of the Local Government Code:

> Accordingly, the position taken by the [MCIAA] is untenable. **Reliance on *Basco v. Philippine Amusement and Gaming Corporation* is unavailing since it was decided before the effectivity of the [Local Government Code]. Besides, nothing can prevent Congress from decreeing that even instrumentalities or agencies of the Government performing governmental functions may be subject to tax. Where it is done precisely to fulfill a constitutional mandate and national policy, no one can doubt its wisdom.** [35] (emphasis supplied)

The Court Has Repeatedly Reaffirmed Mactan Over the Precedents Now Relied Upon By the Majority

Since then and until today, the Court has been emphatic in declaring the *Basco* doctrine as dead. The notion that instrumentalities may be subjected to local taxation by LGUs was again affirmed in *National Power Corporation v. City of Cabanatuan,*[36] which was penned by Justice Puno. NPC or *Napocor*, invoking its continued exemption from payment of franchise taxes to the City of Cabanatuan, alleged that it was an instrumentality of the National Government which could not be taxed by a city government. To that end, *Basco* was cited by NPC. The Court had this to say about *Basco.*

> xxx**[T]he doctrine in Basco vs. Philippine Amusement and Gaming Corporation relied upon by the petitioner to support its claim no longer applies. To emphasize, the Basco case was decided prior to the effectivity of the LGC, when no law empowering the local government units to tax instrumentalities of the National Government was in effect. However, as this Court ruled in the case of Mactan Cebu International Airport Authority (MCIAA) vs. Marcos, nothing prevents Congress from decreeing that even instrumentalities or agencies of the government performing governmental functions may be subject to tax. In enacting the LGC, Congress exercised its prerogative to tax instrumentalities and agencies of government as it sees fit.** Thus, after reviewing the specific provisions of the LGC, this Court held that MCIAA, although an instrumentality of the national government, was subject to real property tax.[37]

In the 2003 case of *Philippine Ports Authority v. City of Iloilo,*[38] the Court, in the able *ponencia* of Justice Azcuna, affirmed the levy of realty taxes on the PPA. Although the taxes were assessed under the old Real Property Tax Code and not the Local Government

Code, the Court again cited *Mactan* to refute PPA's invocation of *Basco* as the basis of its exemption.

> [*Basco*] did not absolutely prohibit local governments from taxing government instrumentalities. In fact we stated therein:
>
> The power of local government to "impose taxes and fees" is always subject to "limitations" which Congress may provide by law. Since P.D. 1869 remains an "operative" law until "amended, repealed or revoked". . . its "exemption clause" remains an exemption to the exercise of the power of local governments to impose taxes and fees.
>
> Furthermore, in the more recent case of Mactan Cebu International Airport Authority v. Marcos, where the Basco case was similarly invoked for tax exemption, we stated: "[N]othing can prevent Congress from decreeing that even instrumentalities or agencies of the Government performing governmental functions may be subject to tax. Where it is done precisely to fulfill a constitutional mandate and national policy, no one can doubt its wisdom." The fact that tax exemptions of government-owned or controlled corporations have been expressly withdrawn by the present Local Government Code clearly attests against petitioner's claim of absolute exemption of government instrumentalities from local taxation.[39]

Just last month, the Court in *National Power Corporation v. Province of Isabela*[40] again rejected Basco in emphatic terms. Held the Court, through Justice Callejo, Sr.:

> Thus, the doctrine laid down in the Basco case is no longer true. In the *Cabanatuan* case, the Court noted primarily that the *Basco* case was decided prior to the effectivity of the LGC, when no law empowering the local government units to tax instrumentalities of the National Government was in effect. It further explained that in enacting the LGC, Congress empowered the LGUs to impose certain taxes even on instrumentalities of the National Government.[41]

The taxability of the PPA recently came to fore in *Philippine Ports Authority v. City of Iloilo*[42] case, a decision also penned by Justice Callejo, Sr., wherein the Court affirmed the sale of PPA's properties at public auction for failure to pay realty taxes. The Court again reiterated that "it was the intention of Congress to withdraw the tax exemptions granted to or presently enjoyed by all persons, including government-owned or controlled corporations, upon the effectivity" of the Code.[43] The Court in the second *Public Ports Authority* case likewise cited *Mactan* as providing the "*raison d'etre* for the withdrawal of the exemption," namely, "the State policy to ensure autonomy to local governments and the objective of the [Local Government Code] that they enjoy genuine and meaningful local autonomy to enable them to attain their fullest development as self-reliant communities. . .

. "[44]

Last year, the Court, in *City of Davao v. RTC,*[45] affirmed that the legislated exemption from real property taxes of the Government Service Insurance System (GSIS) was removed under the Local Government Code. Again, *Mactan* was relied upon as the governing precedent. The removal of the tax exemption stood even though the then GSIS law[46] prohibited the removal of GSIS" tax exemptions unless the exemption was specifically repealed, "and a provision is enacted to substitute the declared policy of exemption from any and all taxes as an essential factor for the solvency of the fund."[47] The Court, citing established doctrines in statutory construction and *Duarte v. Dade*[48] ruled that such proscription on future legislation was itself prohibited, as "the legislature cannot bind a future legislature to a particular mode of repeal."[49]

And most recently, just less than one month ago, the Court, through Justice Corona in *Government Service Insurance System v. City Assessor of Iloilo*[50] again affirmed that the Local Government Code removed the previous exemption from real property taxes of the GSIS. Again *Mactan* was cited as having "expressly withdrawn the [tax] exemption of the [GOCC].[51]

Clearly then, *Mactan* is not a stray or unique precedent, but the basis of a jurisprudential rule employed by the Court since its adoption, the doctrine therein consistent with the Local Government Code. Corollarily, *Basco*, the polar opposite of *Mactan* has been emphatically rejected and declared inconsistent with the Local Government Code.

II.

Majority, in Effectively Overturning Mactan,
Refuses to Say Why Mactan Is Wrong

The majority cites *Basco* in support. It does not cite *Mactan,* other than an incidental reference that it is relied upon by the respondents.[52] However, the ineluctable conclusion is that the majority rejects the rationale and ruling in *Mactan*. The majority provides for a wildly different interpretation of Section 133, 193 and 234 of the Local Government Code than that employed by the Court in *Mactan*. Moreover, the parties in *Mactan* and in this case are similarly situated, as can be obviously deducted from the fact that both petitioners are airport authorities operating under similarly worded charters. And the fact that the majority cites doctrines contrapuntal to the Local Government Code as in *Basco* and *Maceda* evinces an intent to go against the Court's jurisprudential trend adopting the philosophy of expanded local government rule under the Local Government Code.

Before I dwell upon the numerous flaws of the majority, a brief comment is necessitated on the majority's studied murkiness vis-á-vis the *Mactan* precedent. The majority is obviously inconsistent with *Mactan* and there is no way these two rulings can stand together. Following basic principles in statutory construction, *Mactan* will be deemed as giving way

to this new ruling.

However, the majority does not bother to explain why *Mactan* is wrong. The interpretation in *Mactan* of the relevant provisions of the Local Government Code is elegant and rational, yet the majority refuses to explain why this reasoning of the Court in *Mactan* is erroneous. In fact, the majority does not even engage *Mactan* in any meaningful way. If the majority believes that *Mactan* may still stand despite this ruling, it remains silent as to the viable distinctions between these two cases.

The majority's silence on *Mactan* is baffling, considering how different this new ruling is with the ostensible precedent. Perhaps the majority does not simply know how to dispense with the ruling in *Mactan*. If *Mactan* truly deserves to be discarded as precedent, it deserves a more honorable end than death by amnesia or ignonominous disregard. The majority could have devoted its discussion in explaining why it thinks *Mactan* is wrong, instead of pretending that *Mactan* never existed at all. Such an approach might not have won the votes of the minority, but at least it would provide some degree of intellectual clarity for the parties, LGUs and the national government, students of jurisprudence and practitioners. A more meaningful debate on the matter would have been possible, enriching the study of law and the intellectual dynamic of this Court.

There is no way the majority can be justified unless *Mactan* is overturned. The MCIAA and the MIAA are similarly situated. They are both, as will be demonstrated, GOCCs, commonly engaged in the business of operating an airport. They are the owners of airport properties they respectively maintain and hold title over these properties in their name.[53] These entities are both owned by the State, and denied by their respective charters the absolute right to dispose of their properties without prior approval elsewhere.[54] Both of them are

not empowered to obtain loans or encumber their properties without prior approval the prior approval of the President.[55]

III.
Instrumentalities, Agencies And GOCCs Generally Liable for Real Property Tax

I shall now proceed to demonstrate the errors in reasoning of the majority. A bulwark of my position lies with *Mactan*, which will further demonstrate why the majority has found it inconvenient to even grapple with the precedent that is *Mactan* in the first place.

Mactan held that the prohibition on taxing the national government, its agencies and instrumentalities under Section 133 is qualified by Section 232 and Section 234, and accordingly, the only relevant exemption now applicable to these bodies is as provided under Section 234(o), or on "real property owned by the Republic of the Philippines or any

of its political subdivisions except when the beneficial use thereof has been granted, for consideration or otherwise, to a taxable person."

It should be noted that the express withdrawal of previously granted exemptions by the Local Government Code do not even make any distinction as to whether the exempt person is a governmental entity or not. As Sections 193 and 234 both state, the withdrawal applies to "all persons, including [GOCCs]", thus encompassing the two classes of persons recognized under our laws, natural persons[56] and juridical persons.[57]

The fact that the Local Government Code mandates the withdrawal of previously granted exemptions evinces certain key points. If an entity was previously granted an express exemption from real property taxes in the first place, the obvious conclusion would be that such entity would ordinarily be liable for such taxes without the exemption. If such entities were already deemed exempt due to some overarching principle of law, then it would be a redundancy or surplusage to grant an exemption to an already exempt entity. This fact militates against the claim that MIAA is preternaturally exempt from realty taxes, since it required the enactment of an express exemption from such taxes in its charter.

Amazingly, the majority all but ignores the disquisition in *Mactan* and asserts that government instrumentalities are not taxable persons unless they lease their properties to a taxable person. The general rule laid down in Section 232 is given short shrift. In arriving at this conclusion, several leaps in reasoning are committed.

Majority's Flawed Definition of GOCCs.

The majority takes pains to assert that the MIAA is not a GOCC, but rather an instrumentality. However, and quite grievously, the supposed foundation of this assertion is an adulteration.

The majority gives the impression that a government instrumentality is a distinct concept from a government corporation.[58] Most tellingly, the majority **selectively** cites a portion of Section 2(10) of the Administrative Code of 1987, as follows:

> *Instrumentality* refers to any agency of the National Government not integrated within the department framework, vested with special functions or jurisdiction by law, endowed with some if not all corporate powers, administering special funds, and enjoying operational autonomy, usually through a charter. xxx[59] (emphasis omitted)

However, Section 2(10) of the Administrative Code, when read in full, makes an important clarification which the majority does not show. The portions omitted by the majority are highlighted below:

> (10) *Instrumentality* refers to any agency of the National Government not

> integrated within the department framework, vested with special functions or jurisdiction by law, endowed with some if not all corporate powers, administering special funds, and enjoying operational autonomy, usually through a charter. **This term includes regulatory agencies, chartered institutions and government-owned or controlled corporations**.[60]

Since Section 2(10) makes reference to "agency of the National Government," Section 2(4) is also worth citing in full:

> (4) Agency of the Government refers to any of the various units of the Government, **including** a department, bureau, office, instrumentality, or **government-owned or controlled corporation**, or a local government or a distinct unit therein. (emphasis supplied)[61]

Clearly then, based **on the Administrative Code, a GOCC may be an instrumentality or an agency of the National Government.** Thus, there actually is no point in the majority's assertion that MIAA is not a GOCC, since based on the majority's premise of Section 133 as the key provision, the material question is whether MIAA is either an instrumentality, an agency, or the National Government itself. The very provisions of the Administrative Code provide that a GOCC can be either an instrumentality or an agency, so why even bother to extensively discuss whether or not MIAA is a GOCC?

Indeed as far back as the 1927 case of *Government of the Philippine Islands v. Springer,*[62] the Supreme Court already noted that a corporation of which the government is the majority stockholder "remains an agency or instrumentality of government."[63]

Ordinarily, the inconsequential verbiage stewing in judicial opinions deserve little rebuttal. However, the entire discussion of the majority on the definition of a GOCC, *obiter* as it may ultimately be, deserves emphatic refutation. **The views of the majority on this matter are very dangerous, and would lead to absurdities, perhaps unforeseen by the majority. For in fact, the majority effectively declassifies many entities created and recognized as GOCCs and would give primacy to the Administrative Code of 1987 rather than their respective charters as to the definition of these entities.**

Majority Ignores the Power
Of Congress to Legislate and
Define Chartered Corporations

First, the majority declares that, citing Section 2(13) of the Administrative Code, a GOCC must be "organized as a stock or non-stock corporation," as defined under the Corporation Code. To insist on this as an absolute rule fails on bare theory. Congress has the undeniable power to create a corporation by legislative charter, and has been doing so throughout legislative history. There is no constitutional prohibition on Congress as to what structure these chartered corporations should take on. Clearly, Congress has the prerogative to create a corporation in whatever form it chooses, and it is not bound by any traditional format.

Even if there is a definition of what a corporation is under the Corporation Code or the Administrative Code, these laws are by no means sacrosanct. It should be remembered that these two statutes fall within the same level of hierarchy as a congressional charter, since they all are legislative enactments. Certainly, Congress can choose to disregard either the Corporation Code or the Administrative Code in defining the corporate structure of a GOCC, utilizing the same extent of legislative powers similarly vesting it the putative ability to amend or abolish the Corporation Code or the Administrative Code.

These principles are actually recognized by both the Administrative Code and the Corporation Code. The definition of GOCCs, agencies and instrumentalities under the Administrative Code are laid down in the section entitled "General Terms Defined," which qualifies:

> Sec. 2. *General Terms Defined.* - **Unless the specific words of the text, or the context as a whole, or a particular statute, shall require a different meaning:** (emphasis supplied)
>
> xxx

Similar in vein is Section 6 of the Corporation Code which provides:

> SEC. 4. *Corporations created by special laws or charters.*- Corporations **created** by special laws or charters shall be governed primarily by the provisions of the special law or charter creating them or applicable to them, supplemented by the provisions of this Code, insofar as they are applicable. (emphasis supplied)

Thus, the clear doctrine emerges - **the law that governs the definition of a corporation or entity created by Congress is its legislative charter. If the legislative enactment defines an entity as a corporation, then it is a corporation, no matter if the Corporation Code or the Administrative Code seemingly provides otherwise. In case of conflict between the legislative charter of a government corporation, on one hand, and the Corporate Code and the Administrative Code, on the other, the former always prevails.**

Majority, in Ignoring the
Legislative Charters, Effectively
Classifies Duly Established GOCCs,
With Disastrous and Far Reaching
Legal Consequences

Second, the majority claims that MIAA does not qualify either as a stock or non-stock corporation, as defined under the Corporation Code. It explains that the MIAA is not a stock corporation because it does not have any capital stock divided into shares. Neither can it be considered as a non-stock corporation because it has no members, and under Section 87, a non-stock corporation is one where no part of its income is distributable as

dividends to its members, trustees or officers.

This formulation of course ignores Section 4 of the Corporation Code, which again provides that corporations created by special laws or charters shall be governed primarily by the provisions of the special law or charter, and not the Corporation Code.

That the MIAA cannot be considered a stock corporation if only because it does not have a stock structure is hardly a plausible proposition. Indeed, there is no point in requiring a capital stock structure for GOCCs whose full ownership is limited by its charter to the State or Republic. Such GOCCs are not empowered to declare dividends or alienate their capital shares.

Admittedly, there are GOCCs established in such a manner, such as the National Power Corporation (NPC), which is provided with authorized capital stock wholly subscribed and paid for by the Government of the Philippines, divided into shares but at the same time, is prohibited from transferring, negotiating, pledging, mortgaging or otherwise giving these shares as security for payment of any obligation.[64] However, based on the Corporation Code definition relied upon by the majority, even the NPC cannot be considered as a stock corporation. Under Section 3 of the Corporation Code, stock corporations are defined as being "authorized to distribute to the holders of its shares dividends or allotments of the surplus profits on the basis of the shares held."[65] On the other hand, Section 13 of the NPC's charter states that "the Corporation shall be non-profit and shall devote all its returns from its capital investment, as well as excess revenues from its operation, for expansion."[66] Can the holder of the shares of NPC, the National Government, receive its surplus profits on the basis of its shares held? It cannot, according to the NPC charter, and hence, following Section 3 of the Corporation Code, the NPC is not a stock corporation, if the majority is to be believed.

The majority likewise claims that corporations without members cannot be deemed non-stock corporations. This would seemingly exclude entities such as the NPC, which like MIAA, has no ostensible members. Moreover, non-stock corporations cannot distribute any part of its income as dividends to its members, trustees or officers. The majority faults MIAA for remitting 20% of its gross operating income to the national government. How about the Philippine Health Insurance Corporation, created with the "status of a tax-exempt government corporation attached to the Department of Health" under Rep. Act No. 7875.[67] It too cannot be considered as a stock corporation because it has no capital stock structure. But using the criteria of the majority, it is doubtful if it would pass muster as a non-stock corporation, since the PHIC or Philhealth, as it is commonly known, is expressly empowered "**to collect**, deposit, invest, administer **and disburse**" the National Health Insurance Fund.[68] Or how about the Social Security System, which under its revised charter, Republic Act No. 8282, is denominated as a "corporate body."[69] The SSS has no capital stock structure, but has capital comprised of contributions by its members, which are eventually remitted back to its members. Does this disqualify the SSS from classification as a GOCC, notwithstanding this Court's previous pronouncement in *Social*

Security System Employees Association v. Soriano?[70]

In fact, Republic Act No. 7656, enacted in 1993, requires that all GOCCs, whether stock or non-stock,[71] declare and remit at least fifty percent (50%) of their annual net earnings as cash, stock or property dividends to the National Government.[72] But according to the majority, non-stock corporations are prohibited from declaring any part of its income as dividends. But if Republic Act No. 7656 requires even non-stock corporations to declare dividends from income, should it not follow that the prohibition against declaration of dividends by non-stock corporations under the Corporation Code does not apply to government-owned or controlled corporations? For if not, and the majority's illogic is pursued, Republic Act No. 7656, passed in 1993, would be fatally flawed, as it would contravene the Administrative Code of 1987 and the Corporation Code.

In fact, the ruinous effects of the majority's hypothesis on the nature of GOCCs can be illustrated by Republic Act No. 7656. Following the majority's definition of a GOCC and in accordance with Republic Act No. 7656, here are but a few entities which are not obliged to remit fifty (50%) of its annual net earnings to the National Government as they are excluded from the scope of Republic Act No. 7656:

1) *Philippine Ports Authority*[73] " has no capital stock[74], no members, and obliged to apply the balance of its income or revenue at the end of each year in a general reserve.[75]

2) *Bases Conversion Development Authority*[76] - has no capital stock,[77] no members.

3) *Philippine Economic Zone Authority*[78] - no capital stock,[79] no members.

4) *Light Rail Transit Authority*[80] - no capital stock,[81] no members.

5) *Bangko Sentral ng Pilipinas*[82] - no capital stock,[83] no members, required to remit fifty percent (50%) of its net profits to the National Treasury.[84]

6) *National Power Corporation*[85] - has capital stock but is prohibited from "distributing to the holders of its shares dividends or allotments of the surplus profits on the basis of the shares held;"[86] no members.

7) *Manila International Airport Authority* - no capital stock[87], no members[88], mandated to remit twenty percent (20%) of its annual gross operating income to the National Treasury.[89]

Thus, for the majority, the MIAA, among many others, cannot be considered as within the coverage of Republic Act No. 7656. Apparently, President Fidel V. Ramos disagreed. How else then could Executive Order No. 483, signed in 1998 by President Ramos, be explained? The issuance provides:

> WHEREAS, Section 1 of Republic Act No. 7656 provides that:
>
> > "Section 1. *Declaration of Policy*. - It is hereby declared the policy of the State that in order for the National Government to realize additional revenues, government-owned and/or controlled corporations, without impairing their viability and the purposes for which they have been established, shall share a substantial amount of their net earnings to the National Government."
>
> **WHEREAS, to support the viability and mandate of government-owned and/or controlled corporations [GOCCs], the liquidity, retained earnings position and medium-term plans and programs of these GOCCs** were considered in the determination of the reasonable dividend rates of such corporations on their 1997 net earnings.
>
> **WHEREAS, pursuant to Section 5 of RA 7656, the Secretary of Finance recommended the adjustment on the percentage of annual net earnings that shall be declared by the Manila International Airport Authority [MIAA] and Phividec Industrial Authority [PIA] in the interest of national economy and general welfare.**
>
> NOW, THEREFORE, I, FIDEL V. RAMOS, President of the Philippines, by virtue of the powers vested in me by law, do hereby order:
>
> SECTION 1. **The percentage of net earnings to be declared and remitted by the MIAA and PIA as dividends to the National Government as provided for under Section 3 of Republic Act No. 7656 is adjusted from at least fifty percent [50%] to the rates specified hereunder:**
>
> 1. **Manila International Airport Authority - 35% [cash]**
> 2. 2. Phividec Industrial Authority - 25% [cash]
>
> SECTION 2. The adjusted dividend rates provided for under Section 1 are only applicable on 1997 net earnings of the concerned government-owned and/or controlled corporations.

Obviously, it was the opinion of President Ramos and the Secretary of Finance that MIAA is a GOCC, for how else could it have come under the coverage of Republic Act No. 7656, a law applicable only to GOCCs? But, the majority apparently disagrees, and resultantly holds that MIAA is not obliged to remit even the reduced rate of thirty five percent (35%) of its net earnings to the national government, since it cannot be covered by Republic Act

All this mischief because the majority would declare the Administrative Code of 1987 and the Corporation Code as the sole sources of law defining what a government corporation is. As I stated earlier, I find it illogical that chartered corporations are compelled to comply with the templates of the Corporation Code, especially when the Corporation Code itself states that these corporations are to be governed by their own charters. This is especially true considering that the very provision cited by the majority, Section 87 of the Corporation Code, expressly says that the definition provided therein is laid down "for the purposes of this [Corporation] Code." Read in conjunction with Section 4 of the Corporation Code which mandates that corporations created by charter be governed by the law creating them, it is clear that contrary to the majority, MIAA is not disqualified from classification as a non-stock corporation by reason of Section 87, the provision not being applicable to corporations created by special laws or charters. In fact, I see no real impediment why the MIAA and similarly situated corporations such as the PHIC, the SSS, the Philippine Deposit Insurance Commission, or maybe even the NPC could at the very least, be deemed as **no stock corporations** (as differentiated from non-stock corporations).

The point, stripped to bare simplicity, is that entity created by legislative enactment is a corporation if the legislature says so. After all, it is the legislature that dictates what a corporation is in the first place. This is better illustrated by another set of entities created before martial law. These include the Mindanao Development Authority,[90] the Northern Samar Development Authority,[91] the Ilocos Sur Development Authority,[92] the Southeastern Samar Development Authority[93] and the Mountain Province Development Authority.[94] An examination of the first section of the statutes creating these entities reveal that they were established "to foster accelerated and balanced growth" of their respective regions, and towards such end, the charters commonly provide that "**it is recognized that a government corporation should be created for the purpose," and accordingly, these charters "hereby created a body corporate."**[95] However, these corporations do not have capital stock nor members, and are obliged to return the unexpended balances of their appropriations and earnings to a revolving fund in the National Treasury. The majority effectively declassifies these entities as GOCCs, never mind the fact that their very charters declare them to be GOCCs.

I mention these entities not to bring an element of obscurantism into the fray. I cite them as examples to emphasize my fundamental point-that it is the legislative charters of these entities, and not the Administrative Code, which define the class of personality of these entities created by Congress. To adopt the view of the majority would be, in effect, to sanction an implied repeal of numerous congressional charters for the purpose of declassifying GOCCs. Certainly, this could not have been the intent of the crafters of the Administrative Code when they drafted the "Definition of Terms" incorporated therein.

MIAA Is Without

Doubt, A GOCC

Following the charters of government corporations, there are two kinds of GOCCs, namely: **GOCCs which are stock corporations and GOCCs which are no stock corporations (as distinguished from non-stock corporation). Stock GOCCs are simply those which have capital stock while no stock GOCCs are those which have no capital stock.** Obviously these definitions are different from the definitions of the terms in the Corporation Code. Verily, GOCCs which are not incorporated with the Securities and Exchange Commission are not governed by the Corporation Code but by their respective charters.

For the MIAA's part, its charter is replete with provisions that indubitably classify it as a GOCC. Observe the following provisions from MIAA's charter:

> SECTION 3. Creation of the Manila International Airport Authority.-**There is hereby established a body corporate to be known as the Manila International Airport Authority** which shall be attached to the Ministry of Transportation and Communications. The principal office of the Authority shall be located at the New Manila International Airport. The Authority may establish such offices, branches, agencies or subsidiaries as it may deem proper and necessary; Provided, That any subsidiary that may be organized shall have the prior approval of the President.
>
> **The land where the Airport is presently located as well as the surrounding land area of approximately six hundred hectares, are hereby transferred, conveyed and assigned to the ownership and administration of the Authority,** subject to existing rights, if any. The Bureau of Lands and other appropriate government agencies shall undertake an actual survey of the area transferred within one year from the promulgation of this Executive Order **and the corresponding title to be issued in the name of the Authority.** Any portion thereof shall not be disposed through sale or through any other mode unless specifically approved by the President of the Philippines.
>
> xxx
>
> SECTION 5. Functions, Powers, and Duties. - The Authority shall have the following functions, powers and duties:
>
> xxx
>
> **(d) To sue and be sued in its *corporate* name;**
> **(e) To adopt and use a *corporate* seal;**
> **(f) To succeed by its *corporate* name;**
> **(g) To adopt its by-laws, and to amend or repeal the same from time to time;**

(h) To execute or enter into contracts of any kind or nature;
(i) To acquire, purchase, own, administer, lease, mortgage, sell or otherwise dispose of any land, building, airport facility, or property of whatever kind and nature, whether movable or immovable, or any interest therein;
(j) To exercise the power of eminent domain in the pursuit of its purposes and objectives;

xxx

(o) **To exercise all the powers of a *corporation under the Corporation Law,* insofar as these powers are not inconsistent with the provisions of this Executive Order.**

xxx

SECTION 16. Borrowing Power. - **The Authority may, after consultation with the Minister of Finance and with the approval of the President of the Philippines, as recommended by the Minister of Transportation and Communications, raise funds, either from local or international sources, by way of loans, credits or securities, and other borrowing instruments, with the power to create pledges, mortgages and other voluntary liens or encumbrances on any of its assets or properties.**

All loans contracted by the Authority under this Section, together with all interests and other sums payable in respect thereof, shall constitute a charge upon all the revenues and assets of the Authority and shall rank equally with one another, but shall have priority over any other claim or charge on the revenue and assets of the Authority: Provided, That this provision shall not be construed as a prohibition or restriction on the power of the Authority to create pledges, mortgages, and other voluntary liens or encumbrances on any assets or property of the Authority.

Except as expressly authorized by the President of the Philippines the total outstanding indebtedness of the Authority in the principal amount, in local and foreign currency, shall not at any time exceed the net worth of the Authority at any given time.

xxx

The President or his duly authorized representative after consultation with the Minister of Finance may guarantee, in the name and on behalf of the Republic of the Philippines, the payment of the loans or other indebtedness of the Authority up to the amount herein authorized.

These cited provisions establish the fitness of MIAA to be the subject of legal relations.[96]

MIAA under its charter may acquire and possess property, incur obligations, and bring civil or criminal actions. It has the power to contract in its own name, and to acquire title to real or personal property. It likewise may exercise a panoply of corporate powers and possesses all the trappings of corporate personality, such as a corporate name, a corporate seal and by-laws. All these are contained in MIAA's charter which, as conceded by the Corporation Code and even the Administrative Code, is the primary law that governs the definition and organization of the MIAA.

In fact, MIAA itself believes that it is a GOCC represents itself as such. It said so itself in the very first paragraph of the present petition before this Court.[97] So does, apparently, the Department of Budget and Management, which classifies MIAA as a "government owned & controlled corporation" on its internet website.[98] There is also the matter of Executive Order No. 483, which evinces the belief of the then-president of the Philippines that MIAA is a GOCC. And the Court before had similarly characterized MIAA as a government-owned and controlled corporation in the earlier MIAA case, *Manila International Airport Authority v. Commission on Audit*.[99]

Why then the hesitance to declare MIAA a GOCC? As the majority repeatedly asserts, it is because MIAA is actually an instrumentality. But the very definition relied upon by the majority of an instrumentality under the Administrative Code clearly states that a GOCC is likewise an instrumentality or an agency. **The question of whether MIAA is a GOCC might not even be determinative of this Petition, but the effect of the majority's disquisition on that matter may even be more destructive than the ruling that MIAA is exempt from realty taxes. Is the majority ready to live up to the momentous consequences of its flawed reasoning?**

Novel Proviso in 1987 Constitution Prescribing Standards in the Creation of GOCCs Necessarily Applies only to GOCCs Created After 1987.

One last point on this matter on whether MIAA is a GOCC. The majority triumphantly points to Section 16, Article XII of the 1987 Constitution, which mandates that the creation of GOCCs through special charters be "in the interest of the common good and subject to the test of economic viability." For the majority, the test of economic viability does not apply to government entities vested with corporate powers and performing essential public services. But this test of "economic viability" is new to the constitutional framework. No such test was imposed in previous Constitutions, including the 1973 Constitution which was the fundamental law in force when the MIAA was created. How then could the MIAA, or any GOCC created before 1987 be expected to meet this new precondition to the creation of a GOCC? Does the dissent seriously suggest that GOCCs created before 1987 may be declassified on account of their failure to meet this "economic viability test"?

Instrumentalities and Agencies
Also Generally Liable For
Real Property Taxes

Next, the majority, having bludgeoned its way into asserting that MIAA is not a GOCC, then argues that MIAA is an instrumentality. It cites incompletely, as earlier stated, the provision of Section 2(10) of the Administrative Code. A more convincing view offered during deliberations, but which was not adopted by the *ponencia*, argued that MIAA is not an instrumentality but an agency, considering the fact that under the Administrative Code, the MIAA is attached within the department framework of the Department of Transportation and Communications.[100] Interestingly, Executive Order No. 341, enacted by President Arroyo in 2004, similarly calls MIAA an agency. Since instrumentalities are expressly defined as "an agency not integrated within the department framework," that view concluded that MIAA cannot be deemed an instrumentality.

Still, that distinction is ultimately irrelevant. Of course, as stated earlier, the Administrative Code considers GOCCs as agencies,[101] so the fact that MIAA is an agency does not exclude it from classification as a GOCC. On the other hand, the majority justifies MIAA's purported exemption on Section 133 of the Local Government Code, which similarly situates "agencies and instrumentalities" as generally exempt from the taxation powers of LGUs. And on this point, the majority again evades *Mactan* and somehow concludes that Section 133 is the general rule, notwithstanding Sections 232 and 234(a) of the Local Government Code. And the majority's ultimate conclusion? "**By express mandate of the Local Government Code, local governments cannot impose any kind of tax on national government instrumentalities like the MIAA. Local governments are devoid of power to tax the national government, its agencies and instrumentalities.**"[102]

The Court's interpretation of the Local Government Code in *Mactan* renders the law integrally harmonious and gives due accord to the respective prerogatives of the national government and LGUs. Sections 133 and 234(a) ensure that the Republic of the Philippines or its political subdivisions shall not be subjected to any form of local government taxation, except realty taxes if the beneficial use of the property owned has been granted for consideration to a taxable entity or person. On the other hand, Section 133 likewise assures that government instrumentalities such as GOCCs may not be arbitrarily taxed by LGUs, since they could be subjected to local taxation if there is a specific proviso thereon in the Code. One such proviso is Section 137, which as the Court found in *National Power Corporation,*[103] permits the imposition of a franchise tax on businesses enjoying a franchise, even if it be a GOCC such as NPC. And, as the Court acknowledged in *Mactan*, Section 232 provides another exception on the taxability of instrumentalities.

The majority abjectly refuses to engage Section 232 of the Local Government Code although it provides the indubitable general rule that LGUs "may levy an annual *ad valorem* tax on real property such as land, building, machinery, and other improvements not hereafter specifically exempted." The specific exemptions are provided by Section 234.

Section 232 comes sequentially after Section 133(o),[104] and even if the sequencing is irrelevant, Section 232 would fall under the qualifying phrase of Section 133, "Unless otherwise provided herein." It is sad, but not surprising that the majority is not willing to consider or even discuss the general rule, but only the exemptions under Section 133 and Section 234. After all, if the majority is dead set in ruling for MIAA no matter what the law says, why bother citing what the law does say.

Constitution, Laws and
Jurisprudence Have Long
Explained the Rationale
Behind the Local Taxation
Of GOCCs.

This blithe disregard of precedents, almost all of them unanimously decided, is nowhere more evident than in the succeeding discussion of the majority, which asserts that the power of local governments to tax national government instrumentalities be construed strictly against local governments. The *Maceda* case, decided before the Local Government Code, is cited, as is *Basco*. This section of the majority employs deliberate pretense that the Code never existed, or that the fundamentals of local autonomy are of limited effect in our country. Why is it that the Local Government Code is barely mentioned in this section of the majority? Because Section 5 of the Code, purposely omitted by the majority provides for a different rule of interpretation than that asserted:

> Section 5. *Rules of Interpretation.* - In the interpretation of the provisions of this Code, the following rules shall apply:
>
> (a) **Any provision on a power of a local government unit shall be liberally interpreted in its favor, and in case of doubt, any question thereon shall be resolved in favor of devolution of powers and of the lower local government unit. Any fair and reasonable doubt as to the existence of the power shall be interpreted in favor of the local government unit concerned;**
>
> (b) In case of doubt, any tax ordinance or revenue measure shall be construed strictly against the local government unit enacting it, and liberally in favor of the taxpayer. **Any tax exemption, incentive or relief granted by any local government unit pursuant to the provisions of this Code shall be construed strictly against the person claiming it;** xxx

Yet the majority insists that -**there is no point in national and local governments taxing each other, unless a sound and compelling policy requires such transfer of public funds from one government pocket to another.**"[105] I wonder whether the Constitution satisfies the majority's desire for "a sound and compelling policy." To repeat:

Article II. Declaration of Principles and State Policies

xxx

Sec. 25. The State shall ensure the autonomy of local governments.

Article X. Local Government

xxx

Sec. 2. The territorial and political subdivisions shall enjoy local autonomy.

xxx

Section 5. Each 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 governments.

Or how about the Local Government Code, presumably an expression of sound and compelling policy considering that it was enacted by the legislature, that veritable source of all statutes:

> SEC. 129. *Power to Create Sources of Revenue.* - Each local government unit shall exercise its power to create its own sources of revenue and to levy taxes, fees, and charges subject to the provisions herein, consistent with the basic policy of local autonomy. Such taxes, fees, and charges shall accrue exclusively to the local government units.

Justice Puno, in *National Power Corporation v. City of Cabanatuan,*[106] provides a more "sound and compelling policy considerations" that would warrant sustaining the taxability of government-owned entities by local government units under the Local Government Code.

> Doubtless, the power to tax is the most effective instrument to raise needed revenues to finance and support myriad activities of the local government units for the delivery of basic services essential to the promotion of the general welfare and the enhancement of peace, progress, and prosperity of the people. As this Court observed in the *Mactan* case, "the original reasons for the withdrawal of tax exemption privileges granted to government-owned or controlled corporations and all other units of government were that such privilege resulted in serious tax base erosion and distortions in the tax treatment of similarly situated enterprises." With the added burden of devolution, it is even more imperative for government entities to share in the requirements of development, fiscal or otherwise, by paying taxes or other charges due from them.[107]

I dare not improve on Justice Puno's exhaustive disquisition on the statutory and jurisprudential shift brought about the acceptance of the principles of local autonomy:

> In recent years, the increasing social challenges of the times expanded the scope of state activity, and taxation has become a tool to realize social justice and the equitable distribution of wealth, economic progress and the protection of local industries as well as public welfare and similar objectives. Taxation assumes even greater significance with the ratification of the 1987 Constitution. Thenceforth, the power to tax is no longer vested exclusively on Congress; local legislative bodies are now given direct authority to levy taxes, fees and other charges pursuant to Article X, section 5 of the 1987 Constitution, *viz*:
>
> > "Section 5. Each Local Government unit shall have the power to create its own sources of revenue, 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 Governments."
>
> This paradigm shift results from the realization that genuine development can be achieved only by strengthening local autonomy and promoting decentralization of governance. For a long time, the country's highly centralized government structure has bred a culture of dependence among local government leaders upon the national leadership. It has also "dampened the spirit of initiative, innovation and imaginative resilience in matters of local development on the part of local government leaders." 35 The only way to shatter this culture of dependence is to give the LGUs a wider role in the delivery of basic services, and confer them sufficient powers to generate their own sources for the purpose. To achieve this goal, section 3 of Article X of the 1987 Constitution mandates Congress to enact a local government code that will, consistent with the basic policy of local autonomy, set the guidelines and limitations to this grant of taxing powers, *viz:*
>
> > "Section 3. The Congress shall enact a local government code which shall provide for a more responsive and accountable local government structure instituted through a system of decentralization with effective mechanisms of recall, initiative, and referendum, allocate among the different local government units their powers, responsibilities, and resources, and provide for the qualifications, election, appointment and removal, term, salaries, powers and functions and duties of local officials, and all other matters relating to the organization and operation of the local units."
>
> To recall, prior to the enactment of the Rep. Act No. 7160, also known as the Local Government Code of 1991 (LGC), various measures have been enacted to promote local autonomy. These include the Barrio Charter of 1959, the Local

Autonomy Act of 1959, the Decentralization Act of 1967 and the Local Government Code of 1983. Despite these initiatives, however, the shackles of dependence on the national government remained. Local government units were faced with the same problems that hamper their capabilities to participate effectively in the national development efforts, among which are: (a) inadequate tax base, (b) lack of fiscal control over external sources of income, (c) limited authority to prioritize and approve development projects, (d) heavy dependence on external sources of income, and (e) limited supervisory control over personnel of national line agencies.

Considered as the most revolutionary piece of legislation on local autonomy, the LGC effectively deals with the fiscal constraints faced by LGUs. It widens the tax base of LGUs to include taxes which were prohibited by previous laws such as the imposition of taxes on forest products, forest concessionaires, mineral products, mining operations, and the like. The LGC likewise provides enough flexibility to impose tax rates in accordance with their needs and capabilities. It does not prescribe graduated fixed rates but merely specifies the minimum and maximum tax rates and leaves the determination of the actual rates to the respective sanggunian.[108]

And the Court's ruling through Justice Azcuna in *Philippine Ports Authority v. City of Iloilo*[109], provides especially clear and emphatic rationale:

In closing, we reiterate that in taxing government-owned or controlled corporations, the State ultimately suffers no loss. In National Power Corp. v. Presiding Judge, RTC, Br. XXV, 38 we elucidated:

> **Actually, the State has no reason to decry the taxation of NPC's properties, as and by way of real property taxes. Real property taxes, after all, form part and parcel of the financing apparatus of the Government in development and nation-building, particularly in the local government level.**
>
> xxx xxx xxx
>
> To all intents and purposes, real property taxes are funds taken by the State with one hand and given to the other. In no measure can the government be said to have lost anything.

Finally, we find it appropriate to restate that the primary reason for the withdrawal of tax exemption privileges granted to government-owned and controlled corporations and all other units of government was that such privilege resulted in serious tax base erosion and distortions in the tax treatment of similarly situated enterprises, hence resulting in the need for these entities to share in the requirements of development, fiscal or otherwise, by paying the

taxes and other charges due from them.[110]

How does the majority counter these seemingly valid rationales which establish the soundness of a policy consideration subjecting national instrumentalities to local taxation? Again, by simply ignoring that these doctrines exist. It is unfortunate if the majority deems these cases or the principles of devolution and local autonomy as simply too inconvenient, and relies instead on discredited precedents. Of course, if the majority faces the issues squarely, and expressly discusses why Basco was right and *Mactan* was wrong, then this entire endeavor of the Court would be more intellectually satisfying. But, this is not a game the majority wants to play.

Mischaracterization of this Writer's
Views on the Tax Exemption
Enjoyed by the National Government

Instead, the majority engages in an extended attack pertaining to Section 193, mischaracterizing my views on that provision as if I had been interpreting the provision as making "the national government, which itself is a juridical person, subject to tax by local governments since the national government is not included in the enumeration of exempt entities in Section 193."[111]

Nothing is farther from the truth. I have never advanced any theory of the sort imputed in the majority. My main thesis on the matter merely echoes the explicit provision of Section 193 that unless otherwise provided in the Local Government Code (LGC) all tax exemptions enjoyed by all persons, whether natural or juridical, including GOCCs, were withdrawn upon the effectivity of the Code. Since the provision speaks of withdrawal of tax exemptions of persons, it follows that the exemptions theretofore enjoyed by MIAA which is definitely a person are deemed withdrawn upon the advent of the Code.

On the other hand, the provision does not address the question of who are beyond the reach of the taxing power of LGUs. In fine, the grant of tax exemption or the withdrawal thereof assumes that the person or entity involved is subject to tax. Thus, Section 193 does not apply to entities which were never given any tax exemption. This would include the national government and its political subdivisions which, as a general rule, are not subjected to tax in the first place.[112] Corollarily, the national government and its political subdivisions do not need tax exemptions. And Section 193 which ordains the withdrawal of tax exemptions is obviously irrelevant to them.

Section 193 is in point for the disposition of this case as it forecloses dependence for the grant of tax exemption to MIAA on Section 21 of its charter. Even the majority should concede that the charter section is now ineffectual, as Section 193 withdraws the tax exemptions previously enjoyed by all juridical persons.

With Section 193 mandating the withdrawal of tax exemptions granted to all persons upon the effectivity of the LGC, for MIAA to continue enjoying exemption from realty tax, it

will have to rely on a basis other than Section 21 of its charter.

Lung Center of the Philippines v. Quezon City[113] provides another illustrative example of the jurisprudential havoc wrought about by the majority. Pursuant to its charter, the Lung Center was organized as a trust administered by an eponymous GOCC organized with the SEC.[114] There is no doubt it is a GOCC, even by the majority's reckoning. Applying the Administrative Code, it is also considered as an agency, the term encompassing even GOCCs. Yet since the Administrative Code definition of "instrumentalities" encompasses agencies, especially those not attached to a line department such as the Lung Center, it also follows that the Lung Center is an instrumentality, which for the majority is exempt from all local government taxes, especially real estate taxes. Yet just in 2004, the Court unanimously held that the Lung Center was not exempt from real property taxes. Can the majority and *Lung Center* be reconciled? I do not see how, and no attempt is made to demonstrate otherwise.

Another key point. The last paragraph of Section 234 specifically asserts that any previous exemptions from realty taxes granted to or enjoyed by all persons, including all GOCCs, are thereby withdrawn. The majority's interpretation of Sections 133 and 234(a) however necessarily implies that all instrumentalities, including GOCCs, can never be subjected to real property taxation under the Code. If that is so, what then is the sense of the last paragraph specifically withdrawing previous tax exemptions to all persons, including GOCCs when juridical persons such as MIAA are anyway, to his view, already exempt from such taxes under Section 133? The majority's interpretation would effectively render the express and emphatic withdrawal of previous exemptions to GOCCs inutile. *Ut magis valeat quam pereat.* Hence, where a statute is susceptible of more than one interpretation, the court should adopt such reasonable and beneficial construction which will render the provision thereof operative and effective, as well as harmonious with each other.[115]

But, the majority seems content rendering as absurd the Local Government Code, since it does not have much use anyway for the Code's general philosophy of fiscal autonomy, as evidently seen by the continued reliance on *Basco* or *Maceda*. Local government rule has never been a grant of emancipation from the national government. This is the favorite bugaboo of the opponents of local autonomy-the fallacy that autonomy equates to independence.

Thus, the conclusion of the majority is that under Section 133(o), MIAA as a government instrumentality is beyond the reach of local taxation because it is not subject to taxes, fees or charges of any kind. Moreover, the taxation of national instrumentalities and agencies by LGUs should be strictly construed against the LGUs, citing *Maceda* and *Basco*. No mention is made of the subsequent rejection of these cases in jurisprudence following the Local Government Code, including *Mactan*. The majority is similarly silent on the general rule under Section 232 on real property taxation or Section 5 on the rules of construction of the Local Government Code.

V.
MIAA, and not the National Government Is the Owner of the Subject Taxable Properties

Section 232 of the Local Government Code explicitly provides that there are exceptions to the general rule on rule property taxation, as "hereafter specifically exempted." Section 234, certainly "hereafter," provides indubitable basis for exempting entities from real property taxation. It provides the most viable legal support for any claim that an governmental entity such as the MIAA is exempt from real property taxes. To repeat:

> SECTION 234. *Exemptions from Real Property Tax*. -- The following are exempted from payment of the real property tax:
>
> xxx
>
> (f) Real property owned by the Republic of the Philippines or any of its political subdivisions except when the beneficial use thereof has been granted, for consideration or otherwise, to a taxable person:

The majority asserts that the properties owned by MIAA are owned by the Republic of the Philippines, thus placing them under the exemption under Section 234. To arrive at this conclusion, the majority employs four main arguments.

MIAA Property Is Patrimonial And Not Part of Public Dominion

The majority claims that the Airport Lands and Buildings are property of public dominion as defined by the Civil Code, and therefore owned by the State or the Republic of the Philippines. But as pointed out by Justice Azcuna in the first *PPA* case, if indeed a property is considered part of the public dominion, such property is "owned by the general public and cannot be declared to be owned by a public corporation, such as [the PPA]."

Relevant on this point are the following provisions of the MIAA charter:

> Section 3. Creation of the Manila International Airport Authority. - xxx
>
> **The land where the Airport is presently located as well as the surrounding land area of approximately six hundred hectares, are hereby transferred, conveyed and assigned to the ownership and administration of the Authority,** subject to existing rights, if any. xxx Any portion thereof shall not be disposed through sale or through any other mode unless specifically approved by the President of the Philippines.
>
> Section 22. Transfer of Existing Facilities and Intangible Assets. - **All existing public airport facilities, runways, lands, buildings and other property, movable or immovable, belonging to the Airport,** and all assets, powers

> rights, interests and privileges belonging to the Bureau of Air Transportation relating to airport works or air operations, including all equipment which are necessary for the operation of crash fire and rescue facilities, **are hereby transferred to the Authority.**

Clearly, it is the MIAA, and not either the State, the Republic of the Philippines or the national government that asserts legal title over the Airport Lands and Buildings. There was an express transfer of ownership between the MIAA and the national government. If the distinction is to be blurred, as the majority does, between the State/Republic/Government and a body corporate such as the MIAA, then the MIAA charter showcases the remarkable absurdity of an entity transferring property to itself.

Nothing in the Civil Code or the Constitution prohibits the State from transferring ownership over property of public dominion to an entity that it similarly owns. It is just like a family transferring ownership over the properties its members own into a family corporation. The family exercises effective control over the administration and disposition of these properties. Yet for several purposes under the law, such as taxation, it is the corporation that is deemed to own those properties. A similar situation obtains with MIAA, the State, and the Airport Lands and Buildings.

The second *Public Ports Authority* case, penned by Justice Callejo, likewise lays down useful doctrines in this regard. The Court refuted the claim that the properties of the PPA were owned by the Republic of the Philippines, noting that PPA's charter expressly transferred ownership over these properties to the PPA, a situation which similarly obtains with MIAA. The Court even went as far as saying that the fact that the PPA "had not been issued any torrens title over the port and port facilities and appurtenances is of no legal consequence. A torrens title does not, by itself, vest ownership; it is merely an evidence of title over properties. xxx It has never been recognized as a mode of acquiring ownership over real properties."[116]

The Court further added:

> xxx The bare fact that the port and its facilities and appurtenances are accessible to the general public does not exempt it from the payment of real property taxes. It must be stressed that the said port facilities and appurtenances are the petitioner's corporate patrimonial properties, not for public use, and that the operation of the port and its facilities and the administration of its buildings are in the nature of ordinary business. The petitioner is clothed, under P.D. No. 857, with corporate status and corporate powers in the furtherance of its proprietary interests xxx The petitioner is even empowered to invest its funds in such government securities approved by the Board of Directors, and derives its income from rates, charges or fees for the use by vessels of the port premises, appliances or equipment. xxx Clearly then, the petitioner is a profit-earning corporation; hence, its patrimonial properties are subject to tax.[117]

There is no doubt that the properties of the MIAA, as with the PPA, are in a sense, for public use. A similar argument was propounded by the Light Rail Transit Authority in *Light Rail Transit Authority v. Central Board of Assessment,*[118] which was cited in *Philippine Ports Authority* and deserves renewed emphasis. The Light Rail Transit Authority (LRTA), a body corporate, "provides valuable transportation facilities to the paying public."[119] It claimed that its carriage-ways and terminal stations are immovably attached to government-owned national roads, and to impose real property taxes thereupon would be to impose taxes on public roads. This view did not persuade the Court, whose decision was penned by Justice (now Chief Justice) Panganiban. It was noted:

> Though the creation of the LRTA was impelled by public service " to provide mass transportation to alleviate the traffic and transportation situation in Metro Manila " its operation undeniably partakes of ordinary business. Petitioner is clothed with corporate status and corporate powers in the furtherance of its proprietary objectives. Indeed, it operates much like any private corporation engaged in the mass transport industry. Given that it is engaged in a service-oriented commercial endeavor, its carriageways and terminal stations are patrimonial property subject to tax, notwithstanding its claim of being a government-owned or controlled corporation.
>
> xxx
>
> Petitioner argues that it merely operates and maintains the LRT system, and that the actual users of the carriageways and terminal stations are the commuting public. It adds that the public use character of the LRT is not negated by the fact that revenue is obtained from the latter's operations.
>
> We do not agree. Unlike public roads which are open for use by everyone, the LRT is accessible only to those who pay the required fare. It is thus apparent that petitioner does not exist solely for public service, and that the LRT carriageways and terminal stations are not exclusively for public use. Although petitioner is a public utility, it is nonetheless profit-earning. It actually uses those carriageways and terminal stations in its public utility business and earns money therefrom.[120]
>
> xxx
>
> Even granting that the national government indeed owns the carriageways and terminal stations, the exemption would not apply because their beneficial use has been granted to petitioner, a taxable entity.[121]

There is no substantial distinction between the properties held by the PPA, the LRTA, and the MIAA. These three entities are in the business of operating facilities that promote public transportation.

The majority further asserts that MIAA's properties, being part of the public dominion, are outside the commerce of man. But if this is so, then why does Section 3 of MIAA's charter authorize the President of the Philippines to approve the sale of any of these properties? In fact, why does MIAA's charter in the first place authorize the transfer of these airport properties, assuming that indeed these are beyond the commerce of man?

No Trust Has Been Created
Over MIAA Properties For
The Benefit of the Republic

The majority posits that while MIAA might be holding title over the Airport Lands and Buildings, it is holding it in trust for the Republic. A provision of the Administrative Code is cited, but said provision does not expressly provide that the property is held in trust. Trusts are either express or implied, and only those situations enumerated under the Civil Code would constitute an implied trust. MIAA does not fall within this enumeration, and neither is there a provision in MIAA's charter expressly stating that these properties are being held in trust. In fact, under its charter, MIAA is obligated to retain up to eighty percent (80%) of its gross operating income, not an inconsequential sum assuming that the beneficial owner of MIAA's properties is actually the Republic, and not the MIAA.

Also, the claim that beneficial ownership over the MIAA remains with the government and not MIAA is ultimately irrelevant. Section 234(a) of the Local Government Code provides among those exempted from paying real property taxes are "[r]eal property owned by the [Republic]" except when the beneficial use thereof has been granted, for consideration or otherwise, to a taxable person." In the context of Section 234(a), the identity of the **beneficial owner** over the properties is not determinative as to whether the exemption avails. It is the identity of the **beneficial user** of the property owned by the Republic or its political subdivisions that is crucial, for if said beneficial user is a taxable person, then the exemption does not lie.

I fear the majority confuses the notion of what might be construed as "beneficial ownership" of the Republic over the properties of MIAA as nothing more than what arises as a consequence of the fact that the capital of MIAA is contributed by the National Government.[122] If so, then there is no difference between the State's ownership rights over MIAA properties than those of a majority stockholder over the properties of a corporation. Even if such shareholder effectively owns the corporation and controls the disposition of its assets, the personality of the stockholder remains separately distinct from that of the corporation. A brief recall of the entrenched rule in corporate law is in order:

> The first consequence of the doctrine of legal entity regarding the separate identity of the corporation and its stockholders insofar as their obligations and liabilities are concerned, is spelled out in this general rule deeply entrenched in American jurisprudence:

> Unless the liability is expressly imposed by constitutional or statutory provisions, or by the charter, or by special agreement of the stockholders, stockholders are not personally liable for debts of the corporation either at law or equity. The reason is that the corporation is a legal entity or artificial person, distinct from the members who compose it, in their individual capacity; and when it contracts a debt, it is the debt of the legal entity or artificial person " the corporation " and not the debt of the individual members. (13A Fletcher Cyc. Corp. Sec. 6213)
>
> The entirely separate identity of the rights and remedies of a corporation itself and its individual stockholders have been given definite recognition for a long time. Applying said principle, the Supreme Court declared that a corporation may not be made to answer for acts or liabilities of its stockholders or those of legal entities to which it may be connected, or vice versa. (Palay Inc. v. Clave et. al. 124 SCRA 638) It was likewise declared in a similar case that a bonafide corporation should alone be liable for corporate acts duly authorized by its officers and directors. (Caram Jr. v. Court of Appeals et.al. 151 SCRA, p. 372) [123]

It bears repeating that MIAA under its charter, is expressly conferred the right to exercise all the powers of a corporation under the Corporation Law, including the right to corporate succession, and the right to sue and be sued in its corporate name.[124] The national government made a particular choice to divest ownership and operation of the Manila International Airport and transfer the same to such an empowered entity due to perceived advantages. Yet such transfer cannot be deemed consequence free merely because it was the State which contributed the operating capital of this body corporate.

The majority claims that the transfer the assets of MIAA was meant merely to effect a reorganization. The imputed rationale for such transfer does not serve to militate against the legal consequences of such assignment. Certainly, if it was intended that the transfer should be free of consequence, then why was it effected to a body corporate, with a distinct legal personality from that of the State or Republic? The stated aims of the MIAA could have very well been accomplished by creating an agency without independent juridical personality.

VI.

MIAA Performs Proprietary Functions

Nonetheless, Section 234(f) exempts properties owned by the Republic of the Philippines or its political subdivisions from realty taxation. The obvious question is what comprises "the Republic of the Philippines." I think the key to understanding the scope of "the Republic" is the phrase "political subdivisions." Under the Constitution, political subdivisions are defined as "the provinces, cities, municipalities and barangays."[125] In

correlation, the Administrative Code of 1987 defines "local government" as referring to "the political subdivisions established by or in accordance with the Constitution."

Clearly then, these political subdivisions are engaged in the exercise of sovereign functions and are accordingly exempt. The same could be said generally of the national government, which would be similarly exempt. After all, even with the principle of local autonomy, it is inherently noxious and self-defeatist for local taxation to interfere with the sovereign exercise of functions. However, the exercise of proprietary functions is a different matter altogether.

Sovereign and Proprietary Functions Distinguished

Sovereign or constituent functions are those which constitute the very bonds of society and are compulsory in nature, while ministrant or proprietary functions are those undertaken by way of advancing the general interests of society and are merely optional.[126] An exhaustive discussion on the matter was provided by the Court in *Bacani v. NACOCO:*[127]

> xxx This institution, when referring to the national government, has reference to what our Constitution has established composed of three great departments, the legislative, executive, and the judicial, through which the powers and functions of government are exercised. These functions are twofold: constituent and ministrant. The former are those which constitute the very bonds of society and are compulsory in nature; the latter are those that are undertaken only by way of advancing the general interests of society, and are merely optional. President Wilson enumerates the constituent functions as follows:
>
> > "'(1) The keeping of order and providing for the protection of persons and property from violence and robbery.
> > '(2) The fixing of the legal relations between man and wife and between parents and children.
> > '(3) The regulation of the holding, transmission, and interchange of property, and the determination of its liabilities for debt or for crime.
> > '(4) The determination of contract rights between individuals.
> > '(5) The definition and punishment of crime.
> > '(6) The administration of justice in civil cases.
> > '(7) The determination of the political duties, privileges, and relations of citizens.
> > '(8) Dealings of the state with foreign powers: the preservation of the state from external danger or encroachment and the advancement of its international interests.'" (Malcolm, The Government of the Philippine Islands, p. 19.)
>
> The most important of the ministrant functions are: public works, public education, public charity, health and safety regulations, and regulations of trade

and industry. The principles determining whether or not a government shall exercise certain of these optional functions are: (1) that a government should do for the public welfare those things which private capital would not naturally undertake and (2) that a government should do these things which by its very nature it is better equipped to administer for the public welfare than is any private individual or group of individuals. (Malcolm, The Government of the Philippine Islands, pp. 19-20.)

From the above we may infer that, strictly speaking, there are functions which our government is required to exercise to promote its objectives as expressed in our Constitution and which are exercised by it as an attribute of sovereignty, and those which it may exercise to promote merely the welfare, progress and prosperity of the people. To this latter class belongs the organization of those corporations owned or controlled by the government to promote certain aspects of the economic life of our people such as the National Coconut Corporation. These are what we call government-owned or controlled corporations which may take on the form of a private enterprise or one organized with powers and formal characteristics of a private corporations under the Corporation Law.[128]

The Court in *Bacani* rejected the proposition that the National Coconut Corporation exercised sovereign functions:

Does the fact that these corporations perform certain functions of government make them a part of the Government of the Philippines?

The answer is simple: they do not acquire that status for the simple reason that they do not come under the classification of municipal or public corporation. Take for instance the National Coconut Corporation. **While it was organized with the purpose of "adjusting the coconut industry to a position independent of trade preferences in the United States" and of providing "Facilities for the better curing of copra products and the proper utilization of coconut by-products," a function which our government has chosen to exercise to promote the coconut industry, however, it was given a corporate power separate and distinct from our government, for it was made subject to the provisions of our Corporation Law in so far as its corporate existence and the powers that it may exercise are concerned (sections 2 and 4, Commonwealth Act No. 518). It may sue and be sued in the same manner as any other private corporations, and in this sense it is an entity different from our government.** As this Court has aptly said, "The mere fact that the Government happens to be a majority stockholder does not make it a public corporation" (National Coal Co. vs. Collector of Internal Revenue, 46 Phil., 586-587). "**By becoming a stockholder in the National Coal Company, the Government divested itself of its sovereign character so far as respects the transactions of the corporation. . . . Unlike the**

> **Government, the corporation may be sued without its consent, and is subject to taxation. Yet the National Coal Company remains an agency or instrumentality of government**." (Government of the Philippine Islands vs. Springer, 50 Phil., 288.)

The following restatement of the entrenched rule by former SEC Chairperson Rosario Lopez bears noting:

> The fact that government corporations are instrumentalities of the State does not divest them with immunity from suit. (Malong v. PNR, 138 SCRA p. 63) **It is settled that when the government engages in a particular business through the instrumentality of a corporation, it divests itself pro hoc vice of its sovereign character so as to subject itself to the rules governing private corporations,** (PNB v. Pabolan 82 SCRA 595) and is to be treated like any other corporation. (PNR v. Union de Maquinistas Fogonero y Motormen, 84 SCRA 223)
>
> In the same vein, when the government becomes a stockholder in a corporation, it does not exercise sovereignty as such. It acts merely as a corporator and exercises no other power in the management of the affairs of the corporation than are expressly given by the incorporating act. Nor does the fact that the government may own all or a majority of the capital stock take from the corporation its character as such, or make the government the real party in interest. (Amtorg Trading Corp. v. US 71 F2d 524, 528)[129]

MIAA Performs Proprietary
Functions No Matter How
Vital to the Public Interest

The simple truth is that, based on these accepted doctrinal tests, MIAA performs proprietary functions. The operation of an airport facility by the State may be imbued with public interest, but it is by no means indispensable or obligatory on the national government. In fact, as demonstrated in other countries, it makes a lot of economic sense to leave the operation of airports to the private sector.

The majority tries to becloud this issue by pointing out that the MIAA does not compete in the marketplace as there is no competing international airport operated by the private sector; and that MIAA performs an essential public service as the primary domestic and international airport of the Philippines. This premise is false, for one. On a local scale, MIAA competes with other international airports situated in the Philippines, such as Davao International Airport and MCIAA. More pertinently, MIAA also competes with other international airports in Asia, at least. International airlines take into account the quality and conditions of various international airports in determining the number of flights it would assign to a particular airport, or even in choosing a hub through which destinations necessitating connecting flights would pass through.

Even if it could be conceded that MIAA does not compete in the market place, the example of the Philippine National Railways should be taken into account. The PNR does not compete in the marketplace, and performs an essential public service as the operator of the railway system in the Philippines. Is the PNR engaged in sovereign functions? The Court, in *Malong v. Philippine National Railways,*[130] held that it was not.[131]

Even more relevant to this particular case is *Teodoro v. National Airports Corporation,*[132] concerning the proper appreciation of the functions performed by the Civil Aeronautics Administration (CAA), which had succeeded the defunction National Airports Corporation. The CAA claimed that as an unincorporated agency of the Republic of the Philippines, it was incapable of suing and being sued. The Court noted:

> Among the general powers of the Civil Aeronautics Administration are, under Section 3, to execute contracts of any kind, to purchase property, and to grant concession rights, and under Section 4, to charge landing fees, royalties on sales to aircraft of aviation gasoline, accessories and supplies, and rentals for the use of any property under its management.
>
> These provisions confer upon the Civil Aeronautics Administration, in our opinion, the power to sue and be sued. The power to sue and be sued is implied from the power to transact private business. And if it has the power to sue and be sued on its behalf, the Civil Aeronautics Administration with greater reason should have the power to prosecute and defend suits for and against the National Airports Corporation, having acquired all the properties, funds and choses in action and assumed all the liabilities of the latter. To deny the National Airports Corporation's creditors access to the courts of justice against the Civil Aeronautics Administration is to say that the government could impair the obligation of its corporations by the simple expedient of converting them into unincorporated agencies. [133]

xxx

Eventually, the charter of the CAA was revised, and it among its expanded functions was "[t]o administer, operate, manage, control, maintain and develop the Manila International Airport."[134] Notwithstanding this expansion, in the 1988 case of *CAA v. Court of Appeals*[135] the Court reaffirmed the ruling that the CAA was engaged in "private or non-governmental functions."[136] Thus, the Court had already ruled that the predecessor agency of MIAA, the CAA was engaged in private or non-governmental functions. These are more precedents ignored by the majority. The following observation from the *Teodoro* case very well applies to MIAA.

> **The Civil Aeronautics Administration comes under the category of a private entity. Although not a body corporate it was created, like the**

> **National Airports Corporation, not to maintain a necessary function of government, but to run what is essentially a business, even if revenues be not its prime objective but rather the promotion of travel and the convenience of the traveling public. It is engaged in an enterprise which, far from being the exclusive prerogative of state, may, more than the construction of public roads, be undertaken by private concerns.**[137]

If the determinative point in distinguishing between sovereign functions and proprietary functions is the vitality of the public service being performed, then it should be noted that there is no more important public service performed than that engaged in by public utilities. But notably, the Constitution itself authorizes private persons to exercise these functions as it allows them to operate public utilities in this country[138] If indeed such functions are actually sovereign and belonging properly to the government, shouldn't it follow that the exercise of these tasks remain within the exclusive preserve of the State?

There really is no prohibition against the government taxing itself,[139] and nothing obscene with allowing government entities exercising proprietary functions to be taxed for the purpose of raising the coffers of LGUs. On the other hand, it would be an even more noxious proposition that the government or the instrumentalities that it owns are above the law and may refuse to pay a validly imposed tax. MIAA, or any similar entity engaged in the exercise of proprietary, and not sovereign functions, cannot avoid the adverse-effects of tax evasion simply on the claim that it is imbued with some of the attributes of government.

VII.
MIAA Property Not Subject to
Execution Sale Without Consent
Of the President.

Despite the fact that the City of Parañaque ineluctably has the power to impose real property taxes over the MIAA, there is an equally relevant statutory limitation on this power that must be fully upheld. Section 3 of the MIAA charter states that "[a]ny portion [of the [lands transferred, conveyed and assigned to the ownership and administration of the MIAA] **shall not be disposed through sale or through any other mode unless specifically approved by the President of the Philippines."**[140]

Nothing in the Local Government Code, even with its wide grant of powers to LGUs, can be deemed as repealing this prohibition under Section 3, even if it effectively forecloses one possible remedy of the LGU in the collection of delinquent real property taxes. While the Local Government Code withdrew all previous local tax exemptions of the MIAA and other natural and juridical persons, it did not similarly withdraw any previously enacted prohibitions on properties owned by GOCCs, agencies or instrumentalities. Moreover, the resulting legal effect, subjecting on one hand the MIAA to local taxes but on the other hand shielding its properties from any form of sale or disposition, is not contradictory or

paradoxical, onerous as its effect may be on the LGU. It simply means that the LGU has to find another way to collect the taxes due from MIAA, thus paving the way for a mutually acceptable negotiated solution.[141]

There are several other reasons this statutory limitation should be upheld and applied to this case. It is at this juncture that the importance of the Manila Airport to our national life and commerce may be accorded proper consideration. The closure of the airport, even by reason of MIAA's legal omission to pay its taxes, will have an injurious effect to our national economy, which is ever reliant on air travel and traffic. The same effect would obtain if ownership and administration of the airport were to be transferred to an LGU or some other entity which were not specifically chartered or tasked to perform such vital function. It is for this reason that the MIAA charter specifically forbids the sale or disposition of MIAA properties without the consent of the President. The prohibition prevents the peremptory closure of the MIAA or the hampering of its operations on account of the demands of its creditors. The airport is important enough to be sheltered by legislation from ordinary legal processes.

Section 3 of the MIAA charter may also be appreciated as within the proper exercise of executive control by the President over the MIAA, a GOCC which despite its separate legal personality, is still subsumed within the executive branch of government. The power of executive control by the President should be upheld so long as such exercise does not contravene the Constitution or the law, the President having the corollary duty to faithfully execute the Constitution and the laws of the land.[142] In this case, the exercise of executive control is precisely recognized and authorized by the legislature, and it should be upheld even if it comes at the expense of limiting the power of local government units to collect real property taxes.

Had this petition been denied instead with *Mactan* as basis, but with the caveat that the MIAA properties could not be subject of execution sale without the consent of the President, I suspect that the parties would feel little distress. Through such action, both the Local Government Code and the MIAA charter would have been upheld. The prerogatives of LGUs in real property taxation, as guaranteed by the Local Government Code, would have been preserved, yet the concerns about the ruinous effects of having to close the Manila International Airport would have been averted. The parties would then be compelled to try harder at working out a compromise, a task, if I might add, they are all too willing to engage in.[143] Unfortunately, the majority will cause precisely the opposite result of unremitting hostility, not only to the City of Parañaque, but to the thousands of LGUs in the country.

VIII.
Summary of Points

My points may be summarized as follows:

1) *Mactan* and a long line of succeeding cases have already settled the rule that

under the Local Government Code, enacted pursuant to the constitutional mandate of local autonomy, all natural and juridical persons, even those GOCCs, instrumentalities and agencies, are no longer exempt from local taxes even if previously granted an exemption. The only exemptions from local taxes are those specifically provided under the Local Government Code itself, or those enacted through subsequent legislation.

2) Under the Local Government Code, particularly Section 232, instrumentalities, agencies and GOCCs are generally liable for real property taxes. The only exemptions therefrom under the same Code are provided in Section 234, which include real property owned by the Republic of the Philippines or any of its political subdivisions.

3) The subject properties are owned by MIAA, a GOCC, holding title in its own name. MIAA, a separate legal entity from the Republic of the Philippines, is the legal owner of the properties, and is thus liable for real property taxes, as it does not fall within the exemptions under Section 234 of the Local Government Code.

4) The MIAA charter expressly bars the sale or disposition of MIAA properties. As a result, the City of Parañaque is prohibited from seizing or selling these properties by public auction in order to satisfy MIAA's tax liability. In the end, MIAA is encumbered only by a limited lien possessed by the City of Parañaque.

On the other hand, the majority's flaws are summarized as follows:

1) The majority deliberately ignores all precedents which run counter to its hypothesis, including *Mactan*. Instead, it relies and directly cites those doctrines and precedents which were overturned by *Mactan*. By imposing a different result than that warranted by the precedents without explaining why *Mactan* or the other precedents are wrong, the majority attempts to overturn all these ruling *sub silencio* and without legal justification, in a manner that is not sanctioned by the practices and traditions of this Court.

2) The majority deliberately ignores the policy and philosophy of local fiscal autonomy, as mandated by the Constitution, enacted under the Local Government Code, and affirmed by precedents. Instead, the majority asserts that there is no sound rationale for local governments to tax national government instrumentalities, despite the blunt existence of such rationales in the Constitution, the Local Government Code, and precedents.

3) The majority, in a needless effort to justify itself, adopts an extremely strained exaltation of the Administrative Code above and beyond the Corporation Code and the various legislative charters, in order to impose a wholly absurd definition of GOCCs that effectively declassifies innumerable existing GOCCs, to catastrophic legal consequences.

4) The majority asserts that by virtue of Section 133(o) of the Local Government Code, all national government agencies and instrumentalities are exempt from any form of local taxation, in contravention of several precedents to the contrary and the proviso under Section 133, "unless otherwise provided herein [the Local Government Code]."

5) The majority erroneously argues that MIAA holds its properties in trust for the Republic of the Philippines, and that such properties are patrimonial in character. No express or implied trust has been created to benefit the national government. The legal distinction between sovereign and proprietary functions, as affirmed by jurisprudence, likewise preclude the classification of MIAA properties as patrimonial.

IX.
Epilogue

If my previous discussion still fails to convince on how wrong the majority is, then the following points are well-worth considering. The majority cites the *Bangko Sentral ng Pilipinas* (Bangko Sentral) as a government instrumentality that exercises corporate powers but not organized as a stock or non-stock corporation. Correspondingly for the majority, the Bangko ng Sentral is exempt from all forms of local taxation by LGUs by virtue of the Local Government Code.

Section 125 of Rep. Act No. 7653, The New Central Bank Act, states:

> SECTION 125. *Tax Exemptions.* - The Bangko Sentral shall be **exempt for a period of five (5) years** from the approval of this Act from all national, **provincial, municipal and city taxes,** fees, charges and assessments.

The New Central Bank Act was promulgated after the Local Government Code if the BSP is already preternaturally exempt from local taxation owing to its personality as an "government instrumentality," why then the need to make a new grant of exemption, which if the majority is to be believed, is actually a redundancy. But even more tellingly, does not this provision evince a clear intent that after the lapse of five (5) years, that the Bangko Sentral will be liable for provincial, municipal and city taxes? This is the clear congressional intent, and it is Congress, not this Court which dictates which entities are subject to taxation and which are exempt.

Perhaps this notion will offend the majority, because the Bangko Sentral is not even a government owned corporation, but a government instrumentality, or perhaps "loosely", a "government corporate entity." How could such an entity like the Bangko Sentral , which is not even a government owned corporation, be subjected to local taxation like any mere mortal? But then, see Section 1 of the New Central Bank Act:

> **SECTION 1.** ***Declaration of Policy.*** - The State shall maintain a central

> monetary authority that shall function and operate as an **independent and accountable body corporate** in the discharge of its mandated responsibilities concerning money, banking and credit. In line with this policy, and considering its unique functions and responsibilities, **the central monetary authority established under this Act, while being a government-owned corporation,** shall enjoy fiscal and administrative autonomy.

Apparently, the clear legislative intent was to create a government corporation known as the Bangko Sentral ng Pilipinas. But this legislative intent, the sort that is evident from the text of the provision and not the one that needs to be unearthed from the bowels of the archival offices of the House and the Senate, is for naught to the majority, as it contravenes the Administrative Code of 1987, which after all, is "the governing law defining the status and relationship of government agencies and instrumentalities" and thus superior to the legislative charter in determining the personality of a chartered entity. Its like saying that the architect who designed a school building is better equipped to teach than the professor because at least the architect is familiar with the geometry of the classroom.

Consider further the example of the Philippine Institute of Traditional and Alternative Health Care (PITAHC), created by Republic Act No. 8243 in 1997. It has similar characteristics as MIAA in that it is established as a body corporate,[144] and empowered with the attributes of a corporation,[145] including the power to purchase or acquire real properties.[146] However the PITAHC has no capital stock and no members, thus following the majority, it is not a GOCC.

The state policy that guides PITAHC is the development of traditional and alternative health care,[147] and its objectives include the promotion and advocacy of alternative, preventive and curative health care modalities that have been proven safe, effective and cost effective.[148] "Alternative health care modalities" include "other forms of non-allophatic, occasionally non-indigenous or imported healing methods" which include, among others "reflexology, acupuncture, massage, acupressure" and chiropractics.[149]

Given these premises, there is no impediment for the PITAHC to purchase land and construct thereupon a massage parlor that would provide a cheaper alternative to the opulent spas that have proliferated around the metropolis. Such activity is in line with the purpose of the PITAHC and with state policy. Is such massage parlor exempt from realty taxes? For the majority, it is, for PITAHC is an instrumentality or agency exempt from local government taxation, which does not fall under the exceptions under Section 234 of the Local Government Code. Hence, this massage parlor would not just be a shelter for frazzled nerves, but for taxes as well.

Ridiculous? One might say, certainly a decision of the Supreme Court cannot be construed to promote an absurdity. But precisely the majority, and the faulty reasoning it utilizes, opens itself up to all sorts of mischief, and certainly, a tax-exempt massage parlor is one of the lesser evils that could arise from the majority ruling. This is indeed a very strange and

very wrong decision.

I dissent.

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[1] Per Department of Interior and Local Government. See also "Summary" from the National Statistical Coordination Board, http://www.nscb.gov.ph/activestats /psgc/NSCB_PSGC_SUMMARY_DEC04.pdf.

[2] 330 Phil. 392 (1996).

[3] G.R. No. 91649, 14 May 1991, 197 SCRA 52.

[4] 451 Phil. 683, 698 (2003).

[5] 364 Phil. 843, 855 (1999).

[6] 449 Phil. 233 (2003).

[7] G.R. No. 152675 & 152771, 28 April 2004.

[8] Decision, p. 24.

[9] G.R. No. 144104, 29 June 2004, 433 SCRA 119.

[10] Supra note 8.

[11]G.R. No. 127383, 18 August 2005, 467 SCRA 280. Per the author of this Dissenting Opinion.

[12] Nonetheless, the Court noted therein GSIS's exemption from real property taxes was reenacted in 1997, and the GSIS at present is exempt from such taxes under the GSIS Act of 1997. Id., at 299.

[13] G.R. No. 109791, 14 July 2003, 406 SCRA 88, and G.R. No. 143214, 11 November 2004, 442 SCRA 175, respectively.

[14] 118 Phil. 1354 (1963).

[15] 396 Phil. 860 (2000).

[16] Supra note 8.

[17]91 Phil 203 (1952).

[18] G.R. No. L-51806, 8 November 1988, 167 SCRA 28.

[19] G.R. No. 155692, 23 October 2003, 414 SCRA 327.

[20] *Id*. at 333, *citing* Section 10, Book IV, Title III, Chapter 3, Administrative Code of 1987.

[21] G.R. No. 165827, 16 June 2006.

[22] G.R. No. 147192, 27 June 2006.

[23] Supra note 8.

[24] *See Mendoza v. De Leon*, 33 Phil. 508 (1916).

[25] Mactan, *supra* note 2, at 397-398.

[26] Section 193, Rep. Act No. 7160.

[27] Section 232, Rep. Act No. 7160.

[28] Section 234, Rep. Act No. 7160. Emphasis supplied.

[29] Id. at 411-413.

[30] See *City of Davao v. RTC,* supra note 11, at 293.

[31]*Supra* note 3.

[32] *Id.* at 63-65.

[33] G.R. No. 88921, 31 May 1991, 197 SCRA 771.

[34] *Id.* at 799.

[35] Mactan, *supra* note 2, at 419-420.

[36] Supra note 6.

[37] *Id.* at 250-251.

[38] G.R. No. 109791, 14 July 2003, 406 SCRA 88.

[39] *Id*. at 99-100.

[40] Supra note 21.

[41] Id.

[42] G.R. No. 143214, 11 November 2004, 442 SCRA 175.

[43] *Id*., at 184.

[44] *Id.* at 185-186, *citing MCIAA v. Marcos,* supra note 2.

[45] Supra note 11.

[46] P.D. No. 1981. See *City of Davao v. RTC,* supra note 40, at 289.

[47] Id. at 287-288.

[48] 32 Phil. 36, 49; cited in *City of Davao v. RTC, supra* note 40 at 296-297.

[49] Id.

[50] Supra note 22.

[51] Id.

[52] Decision, p. 6.

[53] MIAA's Charter (E.O No. 903, as amended) provides:

Section 3. Creation of the Manila International Airport Authority. - xxx

The land where the Airport is presently located as well as the surrounding land area of approximately six hundred hectares, are hereby transferred, conveyed and assigned to the ownership and administration of the Authority, subject to existing rights, if any. xxx Any portion thereof shall not be disposed through sale or through any other mode unless specifically approved by the President of the Philippines.

Section 22. Transfer of Existing Facilities and Intangible Assets. - All existing public airport facilities, runways, lands, buildings and other property, movable or immovable, belonging to the Airport, and all assets, powers rights, interests and privileges belonging to the Bureau of Air Transportation relating to airport works or air operations, including all equipment which are necessary for the operation of crash fire and rescue facilities, are hereby transferred to the Authority.

On the other hand, MCIAA's charter (Rep. Act No. 6958) provides:

Section 15. Transfer of Existing Facilities and Intangible Assets. - All existing public airport facilities, runways, lands, buildings and other properties, movable or immovable, belonging to or presently administered by the airports, and all assets, powers, rights, interest and privileges relating to airport works or air operations, including all equipment which are necessary for the operation of air navigation, aerodrome control towers, crash, fire, and rescue facilities are hereby transferred to the Authority: Provided, however, That the operational control of all equipment necessary for the operation of radio aids to air navigation, airways communication, the approach control office and the area control center shall be retained by the Air Transportation Office. xxx

[54] See Section 3, E.O. 903 (as amended), *infra* note 140; and Section Section 4(c), Rep. Act No. 6958, which qualifies the power of the MCIAA to sell its properties, providing that "any asset located in the Mactan International Airport important to national security shall not be subject to alienation or mortgage by the Authority nor to transfer to any entity other than the National Government."

[55] *See* Section 16, E.O. 903 (as amended) and Section 13, Rep. Act No. 6958.

[56] *See* Articles 40 to 43, Civil Code.

[57] *See* Articles 44 to 47, Civil Code.

[58] This is apparent from such assertions as "When the law vests in a government instrumentality corporate powers, the instrumentality does not become a corporation. Unless the government instrumentality is organized as a stock or non-stock corporation, it remains a government instrumentality exercising not only governmental but also corporate powers." See Decision, p. 9-10.

[59] Decision, p. 9.

[60] *See* Section 2(10), E.O. 292.

[61] See Section 2(4), E.O No. 292.

[62] 50 Phil. 259 (1927).

[63] *Id.*, at 288.

[64] *See* Sec. 5, Rep. Act No. 6395.

[65] Section 3, Corporation Code.

[66] *See* Section 13, Rep. Act No. 6395.

[67] *See* Section 1, Rep. Act No. 7875.

[68] *See* Section 16(i), Rep. Act No. 7875.

[69]*See* Section 3, Rep. Act 8282.

[70] Supra note 14.

[71] *See* Section 2(b), Rep. Act No. 7656, which defines GOCCs as "corporations organized as a stock or non-stock corporation xxx"

[72] *See* Rep. Act No. 7656, the pertinent provisions of which read:

> c. 3. *Dividends.*-All government-owned or -controlled corporations shall declare and remit at least fifty percent (50%) of their annual net earnings as cash, stock or property dividends to the National Government. This section shall also apply to those government-owned or -controlled corporations whose profit distribution is provided by their respective charters or by special law, but shall exclude those enumerated in Section 4 hereof: Provided, That such dividends accruing to the National Government shall be received by the National Treasury and recorded as income of the General Fund.
>
> Sec. 4. *Exemptions.*-The provisions of the preceding section notwithstanding, government-owned or -controlled corporations created or organized by law to administer real or personal properties or funds held in trust for the use and the benefit of its members, shall not be covered by this Act such as, but not limited to: the Government Service Insurance System, the Home Development Mutual

Fund, the Employees Compensation Commission, the Overseas Workers Welfare Administration, and the Philippine Medical Care Commission.

[73] *See* Pres. Decree No. 857 (as amended).

[74] *See* Section 10, Pres. Decree No. 857.

[75] *See* Section 11, Pres. Decree No. 857.

[76] *See* Rep. Act No. 7227.

[77] *See* Section 6, Rep. Act No. 7227.

[78] *See* Rep. Act No. 7916.

[79] *See* Section 47, Rep. Act No. 7916 in relation to Section 5, Pres. Decree No. 66.

[80] *See* Executive Order No. 603, as amended.

[81] *See* Article 6, Section 15 of Executive Order No. 603, as amended.

[82] *See* Rep. Act No. 7653. If there is any doubt whether the BSP was intended to be covered by Rep. Act No. 7656, see Section 2(b), Rep. Act No. 7656, which states that "This term [GOCCs] shall also include financial institutions, owned or controlled by the National Government, but shall exclude acquired asset corporations, as defined in the next paragraphs, state universities, and colleges."

[83] *See* Section 2, Rep. Act No. 7653.

[84] *See* Sections 43 & 44, Rep. Act No. 7653.

[85] *See* Rep. Act No. 6395.

[86] *Supra* note 35.

[87] See Decision, p. 10.

[88] Id. at 10-11.

[89] Id.

[90] *See* Rep. Act No. 3034.

[91] *See* Rep. Act No. 4132.

[92] *See* Rep. Act No. 6070.

[93] *See* Rep. Act No. 5920.

[94] *See* Rep. Act No. 4071.

[95]*See e.g.,* Sections 1 & 2, Rep. Act No. 6070.

Section 1. *Declaration of Policy.* - It is hereby declared to be the policy of the Congress to foster the accelerated and balanced growth of the Province of Ilocos Sur, within the context of national plans and policies for social and economic development, through the leadership, guidance, and support of the government. To achieve this end, it is recognized that a government corporation should be created for the purpose of drawing up the necessary plans of provincial development; xxx

Sec. 2. *Ilocos Sur Development Authority created.* - There is hereby created a body corporate to be known as the Ilocos Sur Development Authority xxx. The Authority shall execute the powers and functions herein vested and conferred upon it in such manner as will in its judgment, aid to the fullest possible extent in carrying out the aims and purposes set forth below."

[96] *See* Art. 37, Civil Code, which provides in part, "Juridical capacity, which is the fitness to be the subject of legal relations""

[97] *See rollo,* p. 18. **-Petitioner [MIAA] is a government-owned and controlled corporation with original charter** as it was created by virtue of Executive Order No. 903 issued by then President Ferdinand E. Marcos on July 21, 1983, as amended by Executive Order No. 298 issued by President Corazon C. Aquino on July 26, 1987, and with office address at the MIAA Administration Bldg Complex, MIAA Road, Pasay City." (emphasis supplied).

[98] *See* "Department of Budget and Management - Web Linkages," http://www.dbm.gov.ph/web_linkages.htm (Last visited 25 February 2005).

[99] G.R. No. 104217, 5 December 1994, 238 SCRA 714; per Quiazon, J.. "Petitioner MIAA is a government-owned and controlled corporation for the purpose, among others, of encouraging and promoting international and domestic air traffic in the Philippines as a

means of making the Philippines a center of international trade and tourism and accelerating the development of the means of transportation and communications in the country". *Id.* at 716.

[100] *See* Section 23, Chapter 6, Title XV, Book IV, Administrative Code of 1987.

[101] Supra note 60.

[102] Supra note 8.

[103] Supra note 6.

[104] Assuming that there is conflict between Section 133(o), Section 193, Section 232 and Section 234 of the Local Government Code, the rule in statutory construction is, "If there be no such ground for choice between inharmonious provisions or sections, the latter provision or section, being the last expression of the legislative will, must, in construction, vacate the former to the extent of the repugnancy. It has been held that in case of irreconcilable conflict between two provisions of the same statute, the last in order of position is frequently held to prevail, unless it clearly appears that the intent of the legislature is otherwise." R. Agpalo, Statutory Construction (3rd ed., 1995), p. 201; citing *Lichauco & Co. v. Apostol,* 44 Phil. 138 (1922); *Cuyegkeng v. Cruz,* 108 Phil. 1147 (1960); *Montenegro v. Castañeda,* 91 Phil. 882 (1952).

[105] Decision, p. 12.

[106] Supra note 6.

[107] *Id*. at 261-262.

[108] *Id*., at 248-250.

[109] Supra note 38.

[110] *Id*, at 102; *citing National Power Corp. v. Presiding Judge, RTC, Br. XXV,* 190 SCRA 477 (1990).

[111] Decision, p. 25.

[112] "Unless otherwise expressed in the tax law, the government and its political subdivisions are exempt therefrom." J. VITUG AND E. ACOSTA, TAX LAW AND JURISPRUDENCE (2nd ed., 2000), at 36.

[113] Supra note 9.

[114] See P.D. No. 1423.

[115] R. Agpalo, Statutory Construction (3rd ed., 1995), at 199; *citing Javellana v. Tayo,* G.R. No. 18919, 29 December 1982, 6 SCRA 1042 (1962); *Radiola-Toshiba Phil., Inc. v. IAC,* 199 SCRA 373 (1991).

[116] *PPA v. City of Iloilo, supra* note 42.

[117] *Id.*, at 186-187.

[118] Supra note 15.

[119] *Id.* at 869.

[120] *Id*. at 871.

[121] *Id*. at 872.

[122] *See* Section 10, E.O. No. 903.

[123] R. Lopez, I The Corporation Code of the Philippines Annotated, pp. 15-16 (1994).

[124] *See* Section 5, E.O. No. 903.

[125] *See* Section 1, Article X of the Constitution, which reads: "The territorial and political subdivisions of the Republic of the Philippines are the provinces, cities, municipalities and barangays xxx"

[126] *Romualdez-Yap v. CSC,* G.R. No. 104226, 12 August 1993, 225 SCRA 285, 294.

[127] 100 Phil. 468. (1956)

[128] Id., at 471-473.

[129] Lopez, *supra* note 123 at 67.

[130] G.R. No. L-49930, 7 August 1985, 138 SCRA 63.

[131] "Did the State act in a sovereign capacity or in a corporate capacity when it organized the PNR for the purpose of engaging in transportation? Did it act differently when it organized the PNR as successor of the Manila Railroad Company? xxx We hold that in the instant case the State divested itself of its sovereign capacity when it organized the PNR which is no different from its predecessor, the Manila Railroad Company." Id, at 66.

[132] Supra note 17.

[133] *Id*., at 206.

[134] Section 32(24), Rep. Act No. 776. See *CAA v. Court of Appeals,* supra note 18, at 36.

[135] Supra note 18.

[136] *Id*., at 36.

[137] *Teodoro v. National Airports Commission,* supra note 17, at 207.

[138] *See* Article XII, Section 11, Const.

[139] Vitug & Acosta, *supra* note 112, at 35; *citing Bisaya Land Transportation Co., Inc. v. Collector of Internal Revenue,* L-11812, 29 May 1959, 105 Phil. 1338.

[140] See Section 3, E.O. 903, as amended.

[141] Indeed, last 4 February 2005, the MIAA filed a Manifestation before this Court stating that its new General Manager had been conferring with the newly elected local government of Parañaque with the end of settling the case at mutually acceptable terms. See *rollo*, pp. 315-316. While this Manifestation was withdrawn a few weeks later, see *rollo*, pp. 320-322, it still stands as proof that the parties are nevertheless willing to explore an extrajudicial settlement of this case.

[142] See Section 17, Article VII, Constitution. "The President shall have control of all the executive departments. He shall ensure that the laws be faithfully executed."

[143] See note 141.

[144] *See* Section 5, Rep. Act No. 8423.

[145] *See* Section 6(s), Rep. Act No. 8423.

[146] *See* Section 6(r), Rep. Act No. 8423.

[147] *See* Section 2, Rep. Act No. 8423.

[148] *See* Section 3(b), Rep. Act No. 8423.

[149] *See* Section 4(d), Rep. Act No. 8423.
