

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

MALAYAN EDUCATION CTA EB NO. 2546
SYSTEM, INC. (FORMERLY (CTA AC No. 225)
KNOWN AS MALAYAN
COLLEGES, INC. AND
PRESENTLY OPERATING
UNDER THE NAME OF MAPUA
UNIVERSITY),
Petitioner,

- versus -

CITY OF MAKATI, CITY MAYOR
AND CITY TREASURER,
Respondents.

X ----- X

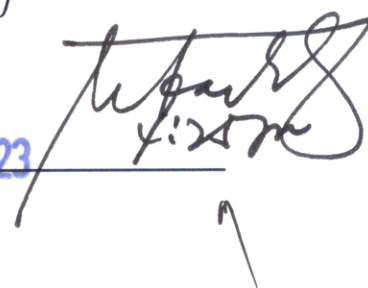
CITY OF MAKATI, CITY CTA EB NO. 2588
MAYOR OF CITY OF MAKATI (CTA AC No. 225)
AND CITY TREASURER,
Petitioners, Present:

- versus -

MALAYAN EDUCATION DEL ROSARIO, PJ,
SYSTEM, INC. (FORMERLY RINGPIS-LIBAN,
KNOWN AS MALAYAN MANAHAN,
COLLEGES, INC. AND BACORRO-VILLENA,
PRESENTLY OPERATING MODESTO-SAN PEDRO,
UNDER THE NAME OF MAPUA REYES-FAJARDO,
UNIVERSITY), CUI-DAVID,
Respondent. FERRER-FLORES, and
ANGELES, JJ

Promulgated:

NOV 20 2023



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DECISION

FERRER-FLORES, J.:

STATEMENT OF THE CASE

Before the Court of Tax Appeals (CTA) *En Banc* are the: 1.) Petition for Review¹ filed by Malayan Education System, Inc. (MESI) on December 2, 2021; and 2.) Petition for Review² filed on March 30, 2022 and Amended Petition for Review³ filed on May 11, 2022 by the City of Makati, City Mayor of City of Makati and City Treasurer (collectively referred to as Makati Local Government Unit or Makati LGU).

The aforesaid petitions assail the Decision dated October 30, 2020⁴ and the Resolution dated October 20, 2021⁵ rendered by the then CTA First Division (Court in Division), in CTA AC No. 225 entitled, *Malayan Education System, Inc. (Formerly Known as Malayan Colleges, Inc. and Presently Operating Under The Name of Mapua University) vs. City of Makati, City Mayor, and City Treasurer*, which reversed and set aside the Decision⁶ dated March 21, 2019 of the Regional Trial Court (RTC)-Branch 58, Makati City, and its Order⁷ dated June 7, 2019 in Civil Case No. 15-592. The RTC dismissed MESI's complaint for cancellation of Local Business Tax (LBT) assessments for taxable years (TYs) 2009 to 2013.⁸

The dispositive portions of the *assailed Decision* and *assailed Resolution* read, as follows:

Assailed Decision:

“WHEREFORE, premises considered, the Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, the assailed RTC-Branch 58, Makati City Decision dated March 21, 2019 and Order dated June 7, 2019 are hereby **REVERSED** and **SET ASIDE**. The Notice of Assessment dated March 6, 2015 is hereby **DECLARED NULL** and **VOID** and respondents [*Makati LGU*] are **ORDERED** to refund the amount of Php8,160,000.00 to petitioner [*MESI*]. Anent petitioner's prayer that it be

¹ *Rollo* (CTA EB No. 2546), pp. 1 to 22.

² *Rollo* (CTA EB No. 2588), pp. 1 to 14.

³ *Rollo* (CTA EB No. 2546), pp. 96 to 109.

⁴ *Id.*, pp. 27 to 49; *Rollo* (CTA EB No. 2588), pp. 22 to 44; Penned by Associate Justice Catherine T. Manahan and concurred in by Presiding Justice Roman G. Del Rosario.

⁵ *Rollo* (CTA EB No. 2546), pp. 51 to 56; *Rollo* (CTA EB No. 2588), pp. 46 to 51; Penned by Associate Justice Catherine T. Manahan and concurred in by Presiding Justice Roman G. Del Rosario.

⁶ Docket, pp. 80 to 89.

⁷ *Id.*, p. 90.

⁸ *Supra*, Note 6.

declared a tax exempt educational institution under the Philippine Constitution, the same is **DENIED** for lack of merit.

SO ORDERED.”

Assailed Resolution:

“**WHEREFORE**, premises considered, both petitioner’s [*MESI’s*] *Motion for Partial Reconsideration* and respondents’ [*Makati LGU’s*] *Motion for Partial Reconsideration (Decision dated October 30, 2020)* are hereby **DENIED** for lack of merit.

SO ORDERED.”

THE FACTS

The following are the parties and the facts (antecedents) of this case, as stated in the assailed Decision,⁹ to wit:

“THE PARTIES

Petitioner MESI is a technology-focused educational institution and has one of the biggest engineering schools in the Philippines, operating two (2) campuses or branches in the following location: a) Muralla Street, Intramuros, Manila (Manila Campus); b) Sen. Gil J. Puyat Avenue Makati City. It is also a domestic corporation duly organized and existing under and by the virtue of the laws of the Republic of the Philippines with principal address at MIT Compound, Muralla Street, Intramuros, Manila.

Respondent City of Makati is a municipal corporation duly created and existing under and by virtue of Republic Act (RA) No. 7854. On the other hand, respondent City Mayor of Makati is the local chief executive exercising supervision over the City Treasurer of Makati and is mandated by RA No. 7160, otherwise known as the ‘Local Government Code (LGC) of 1991,’ to ensure that all taxes and other revenues of the city are collected, while respondent City Treasurer of Makati is the local official who is responsible for the assessment, imposition and collection of the tax in question.

THE FACTS

On September 11, 2014 petitioner received a copy of Letter of Authority (LOA) No. 2014-0430 dated September 1, 2014 issued by respondent City Treasurer requesting for the former's various business records and/or documents for taxable years (TYs) 2009 up to December 31, 2013.

⁹ *Rollo* (CTA EB No. 2546), pp. 28 to 31; *Rollo* (CTA EB No. 2588), pp. 23 to 26; Citations omitted; Petitioner refers to MESI in the instant consolidated CTA *En Banc* cases while respondents pertains to City of Makati, City Mayor of City of Makati and City Treasurer (collectively referred as Makati LGU, in the instant consolidated CTA *En Banc* cases).

On September 18, 2014, petitioner submitted said records and documents as evidenced by a letter signed by its controller.

On March 13, 2015, petitioner received the NOA dated March 6, 2015, stating that it has outstanding obligation to respondent City of Makati in the amount of Php17,190,741.08 inclusive of interest and penalty charges representing deficiency local business taxes (LBT) covering TYs 2009 to 2013.

On May 11, 2015, petitioner filed an administrative protest against the said assessment with respondent City Treasurer within sixty (60) days from receipt of the NOA pursuant to Section 195 of LGC of 1991.

On May 25, 2015, petitioner received a letter dated May 18, 2015 from the respondents enjoining the former to settle its tax liabilities.

On June 24, 2015, petitioner filed a Complaint before the RTC-Branch 58, Makati City to appeal the denial of its administrative protest by the respondents and to seek cancellation of NOA dated March 6, 2015.

On July 21, 2015, the Board of Directors and Stockholders of petitioner held a special meeting which approved the change of its corporate name from Malayan Colleges, Inc. (Operating under the name of Mapua Institute of Technology) to Malayan Education System, Inc.

On January 30, 2018, petitioner attempted to renew its business permit for the year 2018 with the respondents but the latter refused to grant it without the prior settlement of the disputed deficiency LBTs, fees, or charges of the subject NOA. Petitioner was constrained to pay 30% of said assessment in the amount of Php5,160,000.00 since it was just one day before January 31, 2018, the deadline for the renewal of its business permits.

On June 29, 2018, petitioner filed a claim for refund of its partial payment of Php5,160,000.00 with respondent City Treasurer.

Thus, petitioner filed an Amended and Supplemental Complaint dated July 2, 2018 which added to its original prayer, a claim for refund of the partial payment of Php5,160,000.00. The subsequent payments totalling Php3,000,000.00 were further made to the City Treasurer on January 31, 2019, April 24, 2019 and July 24, 2019. However, they were no longer included in the complaint filed before the RTC but formed part of the instant petition before this Court.

On March 21, 2019, the trial court dismissed the case under the assailed Decision which was received by petitioner on May 8, 2019. Hence, petitioner moved for reconsideration of said decision but was denied anew by the trial court under the assailed Order which it received on July 10, 2019.

Thus, petitioner filed the instant petition for review on September 4, 2019 which was admitted after this Court granted its motion for extension of time to file said petition.

On September 25, 2019, this Court directed the respondents to submit their comment on the said petition. Such comment was submitted on

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October 15, 2019, hence, the case was declared deemed submitted for decision on November 5, 2019.”

On October 30, 2020, the Court in Division partially granted MESI’s petition. The Court in Division reversed and set aside the assailed Decision of RTC-Branch 58, Makati City dated March 21, 2019 and Order dated June 7, 2019, thus, nullifying Notice of Assessment (NOA) dated March 6, 2015. The Makati LGU was ordered to refund the amount of ₱8,160,000.00 to MESI. The Court also denied, for lack of merit, MESI’s prayer that it be declared a tax exempt educational institution under the Philippine Constitution.

On October 20, 2021, both MESI’s Motion for Partial Reconsideration and Makati LGU’s Motion for Partial Reconsideration (Decision dated October 30, 2020) were denied for lack of merit.

Both parties were dissatisfied; MESI, insofar as the portion of Decision upholding Makati LGU’s power to tax tuition fees and other related school fees,¹⁰ and Makati LGU, insofar as the portion of the Decision declaring as null and void the NOA dated March 6, 2015 and ordering the refund of the amount of ₱8,160,000.00 to MESI.

On December 2, 2021, MESI filed its Petition for Review (CTA EB No. 2546) before this Court.¹¹ On March 3, 2022, the CTA *En Banc* ordered MESI to submit a clearly legible duplicate original or certified true copy of its Secretary’s Certificate and directed Makati LGU to file its Comment.¹²

On March 30, 2022, Makati LGU filed a Petition for Review (CTA EB No. 2588) before this Court.¹³

On March 31, 2022, the CTA *En Banc* consolidated CTA EB No. 2588 with CTA EB No. 2546.¹⁴

In the Resolution dated April 26, 2022, this Court noted MESI’s Manifestation filed on March 16, 2022 in compliance with the Court’s March 3, 2022 Resolution, and admitted the attached Secretary’s Certificate as part of the records of this case. The Court also noted Makati LGU’s Comment to the Petition for Review (For the Petitioner), filed on March 18, 2022. In the same Resolution, the Court also ordered Makati LGU to explain discrepancies in the name of the respondent in its Petition for Review.

¹⁰ *Rollo* (CTA EB No. 2546), p. 2.

¹¹ *Supra*, Note 1.

¹² *Rollo* (CTA EB No. 2546), pp. 59 to 60.

¹³ *Supra*, Note 2.

¹⁴ *Rollo* (CTA EB No. 2546), pp. 75 to 75-a.

On May 11, 2022, the Makati LGU filed its Manifestation and Explanation¹⁵ and attached thereto was the Amended Petition for Review.¹⁶

On June 16, 2022, the Court noted the filing of the Makati LGU's Manifestation and Explanation and the Amended Petition for Review and directed MESI to file its Comment to Makati LGU's petition.¹⁷

On July 4, 2022, MESI filed its Comment (Re: City of Makati's Petition for Review dated March 28, 2022).¹⁸

The petitions in the above-captioned consolidated cases were submitted for decision on July 20, 2022.¹⁹

THE ISSUES

CTA EB No. 2546

MESI's Assignment of Errors/Arguments:

A.

THE CTA IN DIVISION ERRED WHEN IT FAILED TO RULE THAT THE LOCAL GOVERNMENT CODE (LGC) DID NOT ALLOW THE IMPOSITION OF LOCAL BUSINESS TAXES TO EDUCATIONAL INSTITUTIONS.

B.

THE CTA IN DIVISION ERRED WHEN IT FAILED TO RULE THAT RESPONDENTS UNDULY EXPANDED THE BREADTH OF ITS TAXING AUTHORITY IN ENACTING THE ORDINANCE.

C.

THE CTA IN DIVISION ERRED WHEN IT STATED THAT THE CONSTITUTIONALITY OR LEGALITY OF THE LOCAL TAX ORDINANCE SHOULD HAVE BEEN BROUGHT BEFORE THE SECRETARY OF JUSTICE.

¹⁵ *Rollo* (CTA EB No. 2546), pp. 80 to 83.

¹⁶ *Supra*, Note 3.

¹⁷ *Rollo* (CTA EB No. 2546), pp. 148 to 150.

¹⁸ *Id.*, pp. 151 to 168.

¹⁹ *Id.*, pp. 171 to 172.

CTA EB No. 2588

The Makati LGU's Assignment of Errors:

- a. The CTA 1st Division committed error in ruling that respondent MALAYAN EDUCATION SYSTEM, INC.'s right to due process was violated by petitioners by not indicating in the NOA the particular provision of law which the respondent supposedly violated.
- b. The CTA 1st Division committed error in ruling that the LBT assessments for TYs 2009 to 2013 are rendered null and void for violation of respondent's right to due process.
- c. The CTA 1st Division committed error in ruling that the assessments for TYs 2009 and 2010 are void for having been issued beyond the five-year prescriptive period.
- d. The CTA 1st Division committed error in ruling that the respondent is entitled to a refund.

MESI's Arguments

MESI argues that the Makati LGU has no authority under the LGC of 1991 to impose business taxes on educational institutions, such as MESI, and on the tuition fees and school fees it collects. It avers that the NOA dated March 6, 2015 is null and void due to being an *ultra vires* act in violation of the LGC of 1991.

In addition, MESI argues in its petition that the CTA in Division erred when it stated that the constitutionality or legality of the local tax ordinance should have been brought before the Secretary of Justice.

Makati LGU's Arguments

The Makati LGU reiterates its argument in its Motion for Partial Reconsideration filed before the Court in Division that it did not violate MESI's right to due process. It again avers that the NOA for LBT for TYs 2009 to 2013 is final and valid. It also claims that the assessments for TYs 2009 and 2010 are valid.

THIS COURT'S RULING

The petitions are denied.

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***Both petitions were timely filed by MESI
and by Makati LGU; thus, the CTA
En Banc has jurisdiction.***

Section 3(b), Rule 8 of the 2005 Revised Rules of the Court of Tax Appeals (RRCTA) states:

“RULE 8
Procedure in Civil Cases

xxx xxx xxx

SECTION 3. *Who May Appeal; Period to File Petition.* —

(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may **appeal** to the Court by filing before it a petition for review **within fifteen days from receipt of a copy of the questioned decision or resolution.** Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.” (*Emphasis supplied*)

Based on the foregoing provision, a party adversely affected by a resolution of Division of the Court on a motion for reconsideration has fifteen (15) days within which to appeal by filing a petition for review before the CTA *En Banc*.

In this case, a perusal of the records shows that MESI received the assailed Resolution on November 17, 2021.²⁰ On the other hand, the Makati LGU received the assailed Resolution, which was sent *via* registered mail with tracking no. RE512289827 ZZ, on March 17, 2022²¹ and was confirmed by the Makati LGU.²² Attached to Makati LGU’s petition is a copy of the Notice of Resolution with stamped receipt on March 17, 2022.²³

Counting fifteen (15) days from receipt of the assailed Resolution, MESI and Makati LGU had until December 2, 2021 and April 1, 2022, respectively, within which to file their petitions for review before this Court. MESI filed its Petition for Review on December 2, 2021 docketed as CTA EB No. 2546, while Makati LGU filed its Petition for Review on March 30, 2022 docketed as CTA EB No. 2588. Verily, both petitions were filed on time. Moreover, on May 11, 2022, the Makati LGU timely filed its Amended

²⁰ Notice of Resolution, Division Docket, p. 386.

²¹ Division Docket, p. 393.

²² *Rollo* (CTA EB No. 2588), pp. 1 to 2.

²³ *Id.*, p. 45.

Petition for Review which was within ten (10) days from receipt of the Resolution ordering the filing of Amended Petition For Review.²⁴

Perfection of an appeal in the manner and within the period laid down by law is not only mandatory but also jurisdictional.²⁵

Accordingly, the CTA *En Banc* has jurisdiction.

MESI, as a proprietary educational institution, is not exempted from paying LBT.

Section 5 of Article X of the 1987 Philippine Constitution provides:

“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.”

In relation thereto, Section 132 of the LGC of 1991 provides for the authority of LGUs to impose local taxes as follows:

“SECTION 132. Local Taxing Authority. — The power to impose a tax, fee, or charge or to generate revenue under this Code shall be exercised by the Sanggunian of the local government unit concerned through an appropriate ordinance.”

In this case, Section 3A.02 (g) of the Revised Makati Revenue Code (RMRC)²⁶ is alleged to be the basis of the NOA.²⁷

Section 3A.02 (g) of RMRC provides:

“SECTION 3A.02. Imposition of Tax. — There is hereby levied **an annual tax on the following businesses** at rates prescribed therefore:

xxx xxx xxx

(g) On Contractors and other independent contractors defined in SEC. 3A-01 (t) of chapter III of this Code; and on owners or operators of business establishments rendering or offering services such as; advertising agencies; rental of space of signs, signboards, billboard or advertisements;

²⁴ *Rollo* (CTA EB No. 2546), p. 76; On May 4, 2022, Makati LGU, through its Law Department, received the Court’s Resolution dated April 26, 2022 requiring it, among others, to file an Amended Petition for Review.

²⁵ *Commissioner of Internal Revenue v. Fort Bonifacio Development Corporation*, G.R. No. 167606, August, 11, 2010, 628 SCRA 105.

²⁶ City Ordinance No. 2004-A-025.

²⁷ *Rollo* (CTA EB No. 2546), pp. 13 to 14.

animal hospitals; assaying laboratories; belt and buckle shops; blacksmith shops; bookbinders; booking offices for film exchange; booking offices for transportation on commission basis; breeding of game cocks and other sporting animals belonging to others; business management services; collecting agencies; escort services; feasibility studies, consultancy services; garages; garbage disposal contractors; gold and silversmith shops; inspection services for incoming and outgoing cargoes; interior decorating services; janitorial services; job placements or recruitment agencies; landscaping contractors; lathe machine shops; management consultants not subject to professionals tax; medical and dental laboratories; mercantile agencies; messengerial services; operators of shoe shine stands; painting shops; perma press establishments; rent-a-plant services; polo players; school for and/or horse-back riding academy; real estate appraisers; real estate brokerages; photostatic; white/blue printing, photocopying, typing and mimeographing services; car rental, rental of heavy equipment, rental of bicycles and/or tricycles; furniture, shoes, watches, household appliances, boats, typewriters, etc.; roasting of pigs, fowls, etc.; shipping agencies; shipyard for repairing ships for others; shops for hearing animals; silkscreen or T-shirt printing shops; stables; travel agencies; vaciador shops; veterinary clinics; video rentals and/or coverage services; dancing school/speed reading/EDP; nursery, vocational **and other schools not regulated by the Department of Education (DepEd), day care centers; etc.**

With gross sales or receipts for the preceding calendar year in the amount of:

xxx xxx xxx “ (*Emphases supplied*)

Based on the foregoing provision, “other schools not regulated by the Department of Education (DepEd)” are subject to LBT.

We note that Article XIV, Section 4, Paragraph 3 of the 1987 Philippine Constitution explicitly exempts all revenues and assets of non-stock, non-profit educational institutions from taxes provided that they are actually, directly, and exclusively used for educational purposes, to wit:

“Section 4. (1) The State recognizes the complementary roles of public and private institutions in the educational system and shall exercise reasonable supervision and regulation of all educational institutions.

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(3) **All revenues and assets of non-stock, non-profit educational institutions used actually, directly, and exclusively for educational purposes shall be exempt from taxes and duties.** (*Emphasis supplied*)

A taxpayer shall be granted this tax exemption after proving that: (1) it falls under the classification of non-stock, non-profit educational institution;

and, (2) the income it seeks to be exempted from taxation is used actually, directly, and exclusively for educational purposes.²⁸

Based on the records of this case, the Court in Division found that MESI is a stock corporation or a proprietary entity. MESI's Amended Articles of Incorporation provided for two (2) kinds of capital stock, namely, common shares and preferred shares. The latter share has preference in assets at the time of dissolution and is fully participating in the distribution of dividends. It only means that MESI intended to distribute its income by way of dividends, which is contrary to the character of being a non-stock entity and, instead, is more characteristic of a stock corporation or a proprietary entity.²⁹

Considering MESI's failure to prove the first requisite for tax exemption, it is futile to discuss the second requisite. As a consequence, MESI is not exempted from paying LBT. The Court in Division, thus, did not err in ruling that MESI is not a non-stock, non-profit educational institution but a proprietary one.³⁰

Anent the issue on the inclusion of educational institutions in the definition of a Contractor in the RMRC, the Court *En Banc* agrees with the findings of the Court in Division,³¹ as follows:

“What the petitioner is assailing is the inclusion of the educational institutions in the definition of a Contractor in [Makati LGU]'s Revenue Code. Under Section 187 of the LGC, any question on the constitutionality or legality of tax ordinances or revenue measures should be brought before the Secretary of Justice [SOJ] within the period provided therein. **In the absence of any contravening evidence**, such tax ordinance or revenue measure is presumed regular.” (*Emphasis supplied*)

This Court, thus, finds that, an ordinance, as in every law, is presumed valid.³² Considering that no question on the constitutionality of the definition of a contractor in the RMRC was brought before the SOJ, the RMRC is presumed regular and the definition of Contractor stated therein remains.

NOA is void; thus, MESI is entitled to the refund.

We agree with the findings and discussion of the Court in Division in the assailed Decision,³³ as follows:

²⁸ *La Sallaian Educational Innovators Foundation (De La Salle University-College of St. Benilde), Inc. vs. Commissioner of Internal Revenue (CIR)*, G.R. No. 202792, February 27, 2019; *CIR vs. De La Salle University, Inc.*, G.R. Nos. 196596, 198841 & 198941, November 9, 2016.

²⁹ *Rollo* (CTA EB No. 2546), p. 37.

³⁰ *Id.*

³¹ *Rollo* (CTA EB No. 2546), p. 53.

³² *Ferrer, Jr. vs. Bautista*, G.R. No. 210551, June 30, 2015.

³³ *Rollo*, (CTA EB No. 2546), pp. 41 to 43.

“A strict scrutiny of the subject NOA shall reveal that nowhere in its face or in the attached detailed worksheet showing the computation of said assessment did [Makati LGU] inform [MESI] as to the particular law it violated which resulted in said assessment.

It is true that in the detailed worksheet, the [Makati LGU] indicated the income subject of said assessment. However, it failed to indicate the particular provision of law violated that served as its basis for such assessment.

[Makati LGU] must be aware that the essence of due process in administrative proceedings is not only for the [MESI] to have the opportunity to be heard but as well as the opportunity to properly and intelligently prepare for the answer to such charges. As held in *Alberta De Joya Iglesias v. The Office of the Ombudsman, et al.*, to wit:

Administrative due process demands that the party being charged is given an opportunity to be heard. Due process is complied with "if the party who is properly notified of allegations against him or her is given an opportunity to defend himself or herself against those allegations, and such defense was considered by the tribunal in arriving at its own independent conclusions."

xxx xxx xxx

The failure of the [Makati LGU] to indicate the particular provision of the Revised Makati Revenue Code allegedly violated by [MESI] in the face of the NOA violates glaringly the constitutional right to due process of [MESI]. Such violation impugns the validity of said assessment.”

Pertinent to the subject NOA is the case of *Luz R. Yamane, in her capacity as the City Treasurer of Makati City vs. BA Lepanto Condominium Corporation (Yamane case)*,³⁴ wherein the Supreme Court held that:

“Ostensibly, the notice of assessment, which stands as the first instance the taxpayer is officially made aware of the pending tax liability, should be sufficiently informative to apprise the taxpayer the legal basis of the tax. Section 195 of the Local Government Code does not go as far as to expressly require that the notice of assessment specifically cite the provision of the ordinance involved but it does require that it state the nature of the tax, fee or charge, the amount of deficiency, surcharges, interests and penalties. In this case, the notice of assessment sent to the Corporation did state that the assessment was for business taxes, as well as the amount of the assessment. There may have been *prima facie* compliance with the requirement under Section 195. However in this case, the Revenue Code provides multiple provisions on business taxes, and at varying rates. Hence, we could appreciate the Corporation's confusion, as expressed in its protest, as to the exact legal basis for the tax. Reference to the local tax ordinance is vital, for the power of local government units to impose local taxes is exercised through the appropriate ordinance enacted by the sanggunian, and not by the Local Government Code alone. What determines tax liability is

³⁴ G.R. 154993, October 25, 2005.

the tax ordinance, the Local Government Code being the enabling law for the local legislative body.” (*Emphases supplied*)

Applying the *Yamane case* to the instant case, the NOA³⁵ issued by Makati LGU is not sufficiently informative to apprise MESI of the legal basis of the tax. RMRC provides multiple provisions on business taxes, and at varying rates; thus, reference to the local tax ordinance is vital. The power of the local government units to impose local taxes is exercised through the appropriate ordinance enacted by the *sanggunian*, not by the LGC of 1991 alone.

Records reveal that the subject NOA informed MESI that it is “liable to pay the correct city business taxes, fees and charges,” without stating the specific provision of the RMRC (*i.e.* Section 3A.02) upon which the assessment was based. Clearly, MESI’s right to due process was violated and the Court in Division correctly declared the NOA dated March 6, 2015 for TYs 2009 to 2013 to be null and void.

Considering the nullity of the NOA, the Court finds the refund of the taxes paid in order.

In relation thereto, Sections 195 and 196 of the LGC of 1991 provide for the taxpayers’ remedies of protesting an assessment and refund of taxes, which read:

“Section 195. *Protest of Assessment.* — When the local treasurer or his duly authorized representative finds that correct taxes, fees, or charges have not been paid, he shall issue a notice of assessment stating the nature of the tax, fee, or charge, the amount of deficiency, the surcharges, interests and penalties. Within sixty (60) days from the receipt of the notice of assessment, the taxpayer may file a written protest with the local treasurer contesting the assessment; otherwise, the assessment shall become final and executory. The local treasurer shall decide the protest within sixty (60) days from the time of its filing. If the local treasurer finds the protest to be wholly or partly meritorious, he shall issue a notice cancelling wholly or partially the assessment. However, if the local treasurer finds the assessment to be wholly or partly correct, he shall deny the protest wholly or partly with notice to the taxpayer. The taxpayer shall have thirty (30) days from the receipt of the denial of the protest or from the lapse of the sixty (60)-day period prescribed herein within which to appeal with the court of competent jurisdiction otherwise the assessment becomes conclusive and unappealable.

Section 196. *Claim for Refund of Tax Credit.* — No case or proceeding shall be maintained in any court for the recovery of any tax, fee, or charge erroneously or illegally collected until a written claim for refund or credit has been filed with the local treasurer. No case or proceeding shall be entertained in any court after the expiration of two (2) years from the

³⁵ Docket, pp. 169 to 170.

date of the payment of such tax, fee, or charge, or from the date the taxpayer is entitled to a refund or credit.”

Based on the foregoing, Section 195 of the LGC of 1991 requires that the taxpayer file a protest within sixty (60) days from the receipt of the NOA. The local treasurer has sixty (60) days to decide said protest. In case of denial of the protest or inaction by the local treasurer, the taxpayer has thirty (30) days from receipt of the denial, or the lapse of the 60-day period to decide, within which to file its appeal with the court of competent jurisdiction; otherwise, the assessment becomes conclusive and unappealable.

On the other hand, in case the taxpayer decides to recover any tax, fee, or charge erroneously paid, Section 196 of the LGC of 1991 requires the taxpayer to first file a written claim for refund before bringing a suit in court which must be initiated within two (2) years from the date of payment.

In the case of *International Container Terminal Services, Inc. vs. The City of Manila, et al. (ICTSI case)*,³⁶ citing *City of Manila vs. Cosmos Bottling Corporation*,³⁷ the Supreme Court held that refund is available under both Sections 195 and 196 of the LGC of 1991: for Section 196, because it is the express remedy sought, and for Section 195, as a consequence of the declaration that the assessment was erroneous or invalid.

In this case, MESI availed of the remedy under Section 195 of the LGC of 1991. The Amended and Supplemental Complaint filed before the RTC explicitly states “FOR: Protest under Sections 195 of the Local Government Code (R.A. 7160); Cancellation of Deficiency Local Business Tax Assessment and Refund of Local Taxes.”³⁸

Following the requirements under Section 195 of the LGC of 1991, MESI protested the NOA before the City Treasurer on May 11, 2015, within sixty (60) days from its receipt of the NOA on March 13, 2015. Thereafter, on June 24, 2015, or within thirty (30) days from receipt of the letter from Makati LGU on May 25, 2015 enjoining them to settle its tax liabilities, it filed a Complaint before the RTC- Branch 58, Makati City. On January 30, 2018, MESI partially paid the assessment in the amount of ₱5,160,000.00.

On June 29, 2018, MESI filed a claim for refund of its partial payment with City Treasurer and filed its Amended and Supplemental Complaint dated July 2, 2018 with the RTC, adding to its original prayer, a claim for refund of the said partial payments. On the other hand, MESI’s subsequent payments on

³⁶ G.R. No. 185622, October 17, 2018.

³⁷ G.R. No. 196681, June 27, 2018.

³⁸ Docket, p. 131.

January 31, 2019, April 24, 2019, and July 24, 2019 amounting to ₱3,000,000.00, were no longer included in the complaint filed before the RTC but formed part of the petition before the Court in Division.³⁹

In view of the invalidity of the NOA and applying the *ICTSI* case, the Court finds that the refund of the total amount paid, *i.e.*, ₱8,160,000.00, by MESI is proper. Verily, the refund of the said amount under Section 195 of the LGC of 1991 follows as a matter of course as all taxes paid under the erroneous or invalid assessment are refunded to the taxpayer.⁴⁰

Based on the foregoing discussions, this Court finds no reversible error to disturb the assailed Decision and Resolution of the then CTA First Division.


WHEREFORE, premises considered, the Petition for Review filed by Malayan Education System, Inc. in CTA EB No. 2546, and the Amended Petition for Review filed by City of Makati, City Mayor of City of Makati, and City Treasurer in CTA EB No. 2588, are **DENIED** for lack of merit. Accordingly, the Decision dated October 30, 2020 and the Resolution dated October 20, 2021 of the then CTA First Division in CTA AC No. 225 are **AFFIRMED**.

SO ORDERED.


CORAZON G. FERRER-FLORES
Associate Justice

WE CONCUR:

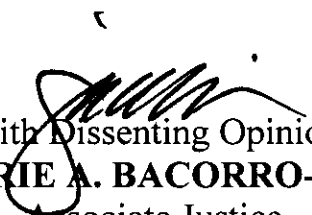

ROMAN G. DEL ROSARIO
Presiding Justice


MA. BELEN M. RINGPIS-LIBAN
Associate Justice

³⁹ See *Facts*, as found by the Court in Division.


⁴⁰ *Supra*, Note 36.

(On Official Business)
CATHERINE T. MANAHAN
Associate Justice


(With Dissenting Opinion)
JEAN MARIE A. BACORRO-VILLENA
Associate Justice


MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice


Marian Ivy F. Reyes - Fajardo
I join the Dissenting Opinion of Justice Cui-David
MARIAN IVY F. REYES-FAJARDO
Associate Justice


(With Dissenting Opinion)
LANEE S. CUI-DAVID
Associate Justice


HENRY S. ANGELES
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the cases were assigned to the writer of the opinion of the Court.



ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

MALAYAN EDUCATION SYSTEM,
INC. (FORMERLY KNOWN AS
MALAYAN COLLEGES, INC. AND
PRESENTLY OPERATING UNDER
THE NAME OF MAPUA
UNIVERSITY),

Petitioner,

CTA EB NO. 2546
(CTA AC No. 225)

- versus -

CITY OF MAKATI, CITY MAYOR
AND CITY TREASURER,

Respondents.

x ----- x

CITY OF MAKATI, CITY MAYOR OF
CITY OF MAKATI AND CITY
TREASURER,

Petitioners,

CTA EB NO. 2588
(CTA AC No. 225)

Present:

- versus -

DEL ROSARIO, P.J.,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, *and*
ANGELES JJ.

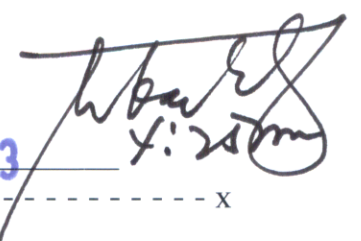
MALAYAN EDUCATION SYSTEM,
INC. (FORMERLY KNOWN AS
MALAYAN COLLEGES, INC. AND
PRESENTLY OPERATING UNDER
THE NAME OF MAPUA
UNIVERSITY),

Respondent.

Promulgated:

NOV 20 2023

x ----- x

A handwritten signature in black ink is written over a blue circular stamp. The stamp contains the date "NOV 20 2023" and the initials "F: 25/2023".

DISSENTING OPINION

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DISSENTING OPINION

BACORRO-VILLENA, J.:

With all due respect to the *ponencia* of our esteemed colleague, Associate Justice Corazon G. Ferrer-Flores, it is my humble opinion that the Notice of Assessment (NOA)¹ issued by City of Makati, City Mayor and City Treasurer (collectively referred to as **Makati Local Government Unit [Makati LGU]**) to Malayan Education System, Inc. (MESI) is valid, and thus, MESI is liable to pay the local business tax liability for taxable years (TY) 2011 to 2013.

Section 195 of the Local Government Code (LGC) of 1991 provides that in assessing the correct taxes, the local treasurer shall issue a NOA which contains the nature of tax, fee, or charge and the amount of deficiency including the surcharges, interests, and penalties, *viz*:

...

SEC. 195. *Protest of Assessment.* — When the local treasurer or his duly authorized representative finds that correct taxes, fees, or charges have not been paid, he shall issue a notice of assessment stating the nature of the tax, fee, or charge, the amount of deficiency, the surcharges, interests and penalties. Within sixty (60) days from the receipt of the notice of assessment, the taxpayer may file a written protest with the local treasurer contesting the assessment; otherwise, the assessment shall become final and executory. The local treasurer shall decide the protest within sixty (60) days from the time of its filing. If the local treasurer finds the protest to be wholly or partly meritorious, he shall issue a notice cancelling wholly or partially the assessment. However, if the local treasurer finds the assessment to be wholly or partly correct, he shall deny the protest wholly or partly with notice to the taxpayer. The taxpayer shall have thirty (30) days from the receipt of the denial of the protest or from the lapse of the sixty (60)-day period prescribed herein within which to appeal with the court of competent jurisdiction otherwise the assessment becomes conclusive and unappealable.

...

In the Decision dated 30 October 2020², the First Division found that the NOA failed to indicate the specific provision of the Revised Makati Revenue Code (RMRC) on which the assessment of tax deficiency against MESI was based. Citing the case of *Luz R. Yamane, in her capacity as the City Treasurer of Makati City v. BA Lepanto Condominium Corporation*³ (Yamane),

¹ Division Docket, p. 354.

² Division Docket, pp. 291-313; Penned by Associate Justice Catherine T. Manahan with Presiding Justice Roman G. Del Rosario concurring.

³ G.R. No. 154993, 25 October 2005.

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it then ruled that absent such basis, MESI's right to due process was violated; hence, the NOA was invalidated.

However, a second hard look of *Yamane*⁴ would show that the Supreme Court also ruled that the NOA need *not* specifically cite the provision of the ordinance involved so long as it properly apprises the taxpayer of the basis of the tax assessment, to wit:

...

Ostensibly, the notice of assessment, which stands as the first instance the taxpayer is officially made aware of the pending tax liability, should be sufficiently informative to apprise the taxpayer the legal basis of the tax. **Section 195 of the Local Government Code does not go as far as to expressly require that the notice of assessment specifically cite the provision of the ordinance involved but it does require that it state the nature of the tax, fee or charge, the amount of deficiency, surcharges, interests and penalties.** In this case, the notice of assessment sent to the Corporation did state that the assessment was for business taxes, as well as the amount of the assessment. There may have been *prima facie* compliance with the requirement under Section 195. However in this case, the Revenue Code provides multiple provisions on business taxes, and at varying rates. Hence, we could appreciate the Corporation's confusion, as expressed in its protest, as to the exact legal basis for the tax. Reference to the local tax ordinance is vital, for the power of local government units to impose local taxes is exercised through the appropriate ordinance enacted by the *sanggunian*, and not by the Local Government Code alone. What determines tax liability is the tax ordinance, the Local Government Code being the enabling law for the local legislative body.

...

From the foregoing, the subject NOA may nevertheless be deemed valid, even without mention of the specific provision of the ordinance, if the following are indicated:

1. nature of the tax, fee, or charge; and,
2. amount of deficiency, surcharges, interests, and penalties.

A careful scrutiny of the subject NOA and the attached worksheet⁵ reveals that it substantially complied with the requirements under the law and jurisprudence.



⁴ Supra at note 3; Citations omitted, italics in the original text, emphasis and underscoring supplied.
⁵ Division Docket, p. 355.

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First, the NOA states the **nature of the tax, i.e., the assessment of LBT**. It reads - *“The result of the examination under Letter of Authority LA-2014 Nos. 0430 conducted pursuant to Section 171 of the Local Government Code of 1991, reveals that you are liable to pay the correct city business taxes, fees and charges, reassessed or recomputed as follows[.]”*

Second, the NOA provides the total **amount of deficiency taxes and the applicable taxable period**:

...
Deficiency Taxes, Fees and Charges - **P17,190,741.08**
(Covering Taxable Period: 2009-2013)
...

Third, the worksheet attached in the NOA contains the detailed breakdown of MESI’s deficiency taxes including the **computation of surcharges, interests, and penalties per taxable period**.⁶

In *Yamane*, the Supreme Court confirmed that Article A, Chapter III of the RMRC, which governs business taxes in Makati, is **quite specific as to the particular businesses which are covered by business taxes. Giving a sample of the specified businesses (not enumerated under the LGC of 1991, as amended) where gross receipt tax is being levied, the Supreme Court quoted**

⁶ Lifted from the worksheet: Division Docket (CTA A.C. No. 225), p. 170.

Covering Period	Taxable Year	Particulars	Variance	25% Surcharge	2% Monthly Interest Rate	Amount	Total
2008	2009	SCHOOL	1,483,573.96				
		REAL ESTATE LESSOR	(501.41)				
			1,483,072.55	370,768.14	72%	1,067,812.24	2,921,652.92
2009	2010	SCHOOL	1,658,064.52				
		REAL ESTATE LESSOR	(579.92)				
			1,657,484.59	414,371.15	72%	1,193,388.91	3,265,244.65
2010	2011	SCHOOL	1,884,589.94				
		REAL ESTATE LESSOR	6,192.81				
			1,890,782.75	472,695.69	72%	1,361,363.58	3,724,842.01
2011	2012	SCHOOL	1,997,394.92				
		REAL ESTATE LESSOR	3,233.11				
			2,000,628.03	500,157.01	72%	1,440,452.18	3,941,237.22
2012	2013	SCHOOL	1,865,047.78				
		REAL ESTATE LESSOR	(375.00)				
			1,864,672.78	466,168.20	54%	1,006,923.30	3,337,764.28

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therein Section 3A.02(f)⁷ of the Makati Revenue Code⁸ (now Section 3A.02[g] of the RMRC). The Supreme Court then observed that the NOA therein was silent as to the statutory basis of the assessment and *merely stated that respondent was liable for business taxes. No other details were provided to inform respondent of the exact legal basis of the assessment, rendering it impossible for the latter to properly assail the assessment.*

On the contrary, although Section 3A.02(g) of the RMRC was not specifically stated in the NOA in herein case, the description and the computation in the worksheet nonetheless provided sufficient and specific identifiers that duly apprised MESI that it was being assessed under the above-mentioned provision, *viz:*

1. Under the column “Particulars”, MESI was assessed as a “**School**” for TYs 2009-2013. Section 3A.02(g) of the RMRC imposes business taxes on **schools** not regulated by the DepEd; and,
2. The amounts reflected under the column of “Tax Due” can be determined using the applicable tax rates under Section 3A.02(g), specifically, “P15,000.00 plus seventy five percent (75%) of one percent (1%) over 2 million”.

The purpose of providing the taxpayer with notice of the facts and laws used as bases for the assessment is to adequately inform the taxpayer of the basis of the assessment to enable him or her to prepare for an intelligent or "effective" protest or appeal of the assessment or decision. Thus, **substantial compliance with the law is allowed if the taxpayer is later fully apprised**

⁷ SEC. 3A.02. *Imposition of Tax.* — ...

...
(f) On contractors and other independent contractors defined in Sec. 3A.01(q) of Chapter III of this Code, and on owners or operators of business establishments rendering or offering services such as: advertising agencies; animal hospitals; assaying laboratories; belt and buckle shops; blacksmith shops; bookbinders; booking officers for film exchange; booking offices for transportation on commission basis; breeding of game cocks and other sporting animals belonging to others; business management services; collecting agencies; escort services; feasibility studies; consultancy services; garages; garbage disposal contractors; gold and silversmith shops; inspection services for incoming and outgoing cargoes; interior decorating services; janitorial services; job placement or recruitment agencies; landscaping contractors; lathe machine shops; management consultants not subject to professional tax; medical and dental laboratories; mercantile agencies; messengerial services; operators of shoe shine stands; painting shops; perma press establishments; rent-a-plant services; polo players; school for and/or horse-back riding academy; real estate appraisers; real estate brokerages; photostatic, white/blue printing, Xerox, typing, and mimeographing services; rental of bicycles and/or tricycles, furniture, shoes, watches, household appliances, boats, typewriters, etc.; roasting of pigs, fowls, etc.; shipping agencies; shipyard for repairing ships for others; shops for shearing animals; silkscreen or T-shirt printing shops; stables; travel agencies; vaciador shops; veterinary clinics; video rentals and/or coverage services; dancing schools/speed reading/FDP; nursery, vocational [and] other schools not regulated by the Department of Education, Culture and Sports, (DECS), day care centers; etc.

⁸ Dated 30 March 1993.

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of the basis of the deficiency taxes assessment, which enabled him or her to file an effective protest.⁹

Here, contrary to the findings of the First Division that MESI only learned of the legal basis of the assessment during the trial, the records show clearly that MESI, owing to the identifiers in the NOA, was able to point out the particular provision of the RMRC in its Protest Letter dated 07 May 2015¹⁰, which states:

...
While **Sec. 3A.02(g) of the Makati Revenue Code classifies “schools not regulated by the Department of Education (DepEd)” as contractors subject to tax**, we are of the view that the said provision cannot supersede the intent of Congress to not impose tax on educational institutions like MCI as expressed in the LGC.
...


Also, in its Amended and Supplemental Complaint¹¹, MESI took note of the said provision in the following manner:

...
76. [MESI] surmises that the City Government based its Assessment to **Section 3A.02(g) of the Revised Makati Revenue Code**, which reads...
...

77. While the **foregoing provision in the Revised Makati Revenue Code classifies “schools not regulated by the Department of Education (DepEd)” as contractors subject to tax**, the said provision cannot supersede the intent of Congress to not impose tax on educational institutions like [MESI] as expressed in the LGC. ...
...

86. **Sec. 3A.02(g) of the Revised Makati Revenue Code** is contrary to law, and public policy.
...

93. Hence, the Assessment, which was presumably issued pursuant to **Sec. 3A.02(g) of the Revised Makati Revenue Code**, is likewise *ultra vires* and void.
...

With the above, I am of the humble opinion that MESI was not deprived of due process (with the absence of the specific provision of the 

⁹ *National Power Corporation v. The Province of Pampanga, et al.*, G.R. No. 230648 (Resolution), 06 October 2021.

¹⁰ Division Docket, p. 122: Emphasis supplied.

¹¹ Attached as Annex D to the Petition for Review. *id.*, pp. 139-165: Emphasis supplied.

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RMRC in the NOA). In fact, it was able to respond intelligibly, prepare its defenses, and protest and provide counter arguments to the deficiency tax assessment against it. Had it been true that the NOA was deficient and defective, to the extent that it rendered MESI unable to respond, it would not have been able to protest and argue against the assessment.

To reiterate, in *Yamane*, the Supreme Court declared rather emphatically – “... the [LGC] does not go as far as to expressly require that the notice of assessment specifically cite the provision of the ordinance involved but it does require that it state the nature of the tax, fee or charge, the amount of deficiency, surcharges, interests and penalties”.¹² MESI then could not be sustained in its claim that it was not afforded due process by the mere absence of the specific provision of the tax ordinance in the NOA.

In the case of *Ray Peter O. Vivo v. Philippine Amusement and Gaming Corporation (PAGCOR)*¹³, the Supreme Court elaborated on what is truly meant by due process, in this wise:

...

The observance of fairness in the conduct of any investigation is at the very heart of procedural due process. **The essence of due process is to be heard, and, as applied to administrative proceedings, this means a fair and reasonable opportunity to explain one's side, or an opportunity to seek a reconsideration of the action or ruling complained of.** Administrative due process cannot be fully equated with due process in its strict judicial sense, for in the former a formal or trial-type hearing is not always necessary, and technical rules of procedure are not strictly applied. *Ledesma v. Court of Appeals* elaborates on the well-established meaning of due process in administrative proceedings in this wise:

x x x Due process, as a constitutional precept, does not always and in all situations require a trial-type proceeding. **Due process is satisfied when a person is notified of the charge against him and given an opportunity to explain or defend himself.** In administrative proceedings, the filing of charges and giving reasonable opportunity for the person so charged to answer the accusations against him constitute the minimum requirements of due process. **The essence of due process is simply to be heard, or as applied to administrative proceedings, an opportunity to explain one's side, or an opportunity to seek a reconsideration of the action or ruling complained of.**

...

¹² Supra at note 3.

¹³ G.R. No. 187854, 12 November 2013; Citations omitted and emphasis supplied.

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As can be gleaned from the above, MESI *repeatedly* reiterated that particular provision in its protest and appeal to insist that it was not subject to LBT. Thus, to reiterate, it was afforded fair and reasonable opportunity to explain its side and to seek a reconsideration of the assessment issued against it.

Lastly, the facts of this case are not on all fours with *Yamane*.¹⁴ There, the City Treasurer could not point out the specific provision of the local tax ordinance (that would impose LBT on condominium corporations) throughout the whole proceedings *e.g.* at the administrative level, in court trial, and even on appeal. The Supreme Court declared:

...

The initial inquiry is what provision of the Makati Revenue Code does the City Treasurer rely on to make the Corporation liable for business taxes. Even at this point, there already stands a problem with the City Treasurer's cause of action.

Our careful examination of the record reveals a highly disconcerting fact. **At no point has the City Treasurer been candid enough to inform the Corporation, the RTC, the Court of Appeals, or this Court for that matter, as to what exactly is the precise statutory basis under the Makati Revenue Code for the levying of the business tax on petitioner. We have examined all of the pleadings submitted by the City Treasurer in all the antecedent judicial proceedings, as well as in this present petition, and also the communications by the City Treasurer to the Corporation which form part of the record. Nowhere therein is there any citation made by the City Treasurer of any provision of the Revenue Code which would serve as the legal authority for the collection of business taxes from condominiums in Makati.**

...

Certainly, the City Treasurer has not been helpful in that regard, as she has been **silent all through out as to the exact basis for the tax imposition** which she wishes that this Court uphold. ...

...

The same is not true here.

On appeal before the RTC of Makati-Branch 28, Makati LGU already referred to the particular provision of the RMRC in the affidavit of its witness. The Judicial Affidavit of Macadaeg¹⁵ tells rather clearly:



¹⁴ Supra at note 3: Emphasis supplied.
¹⁵ Division Docket, pp. 346-352.

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...
Q14: **Ms. Witness, for the record, what do Section 3A.02 par. (g) of the Revised Makati Revenue Code (MRRC) say?**

A14: **Section 3A.02 par. (g) of the Revised Makati Revenue Code (MRRC) states:**

...

Q15: **Would you know if the provisions of Section 3A.02 (g) of the Revised Makati Revenue Code are still valid up to the present?**

A15: **Yes Sir, said provisions** are still valid since their constitutionality or legality have never been questioned in accordance with Paragraph (d), Section 7B.14 of the Revised Makati Revenue Code.¹⁶

...

Also, in the Decision of the RTC of Makati-Branch 28, the said lower court ruled that “[MESI] should be imposed with [LBT] under Revised [MRC] City Ordinance No. 2004-A-025 Sec. 3A.02”.¹⁷

In addition, the Supreme Court ruled mainly in *Yamane* that condominium corporations are generally exempt from LBT under the LGC of 1991, regardless of any local tax ordinance that declares otherwise. The failure of the City Treasurer therein to indicate the specific provision of the tax ordinance merely strengthened the Supreme Court’s pronouncement that LGUs cannot impose LBT on the said corporations because the latter are not actually engaged in business activities.

Moreover, contrary to *Yamane* wherein the alleged legal basis cannot be ascertained, here, MESI’s tax liability can immediately be traced and identified. A perusal of Chapter III, Article A of the RMRC reveals that the word “school/s” is only mentioned in Section 3A.02(g).¹⁸

¹⁶ Emphasis in the original text and supplied.

¹⁷ Division Docket, p. 88.

¹⁸ Chapter III, Article A is reproduced in full for emphasis and ease of reference:

...

CHAPTER III
City Taxes

ARTICLE A
Business Tax

SECTION 3A.01. *Definitions.* — When used in this Article: —

(a) *Advertising agency* includes all persons who are engaged in business of advertising for others by means of billboards, posters, placards, notices, signs, directories, pamphlets, leaflets, handbills, electric or neon lights, airplanes, balloons or media, whether in pictorial or reading form.

(b) *Agricultural product* includes the yield of the soil, such as corn, rice, wheat, rye, hay, coconuts, sugarcane, tobacco, root crops, vegetables, fruits, flowers, and their by-products; ordinary salt, all kinds of fish; poultry; and livestock and animal products, whether in their original form or not.

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The phrase whether in their original form or not refers to the transformation of said products by the farmer, fisherman, producer or owner through the application of processes to preserve or otherwise to prepare said products for the market such as freezing, drying, salting, smoking, or stripping for purposes of preserving or otherwise preparing said products for the market.

Agricultural products as defined include those that have undergone not only simple but even sophisticated processes employing advanced technological means in packaging like dressed chicken or ground coffee in plastic bags or "styropor" or other packaging materials intended to process and prepare the products for the market.

The term by-product shall mean those materials which in the cultivation or processing of an article remain over, and which are still of value and marketable like copra cake or molasses from sugar cane.

(c) *Amusement* is pleasurable diversion and entertainment. It is synonymous to recreation, relaxation, avocation, pastime or fun.

(d) *Amusement places* include theaters, cinemas, concert halls, circuses and other places of amusement where one seeks admission to entertain oneself by seeing or viewing the shows or performances. They also includes those places where one seeks admission to entertain himself by direct participation.

(e) *Banks and other financial institutions* include banks, offshore banking, non-bank financial intermediaries, lending investors, finance and investment companies, investment houses, pawnshops, money shops, insurance companies, stock markets, stock brokers and dealers in securities and foreign exchange including pre-need companies, as defined under applicable law, or rules and regulations.

(f) *Bar* includes any place where intoxicating and fermented liquors or malt are sold, even without food, where services hired hostesses and/or waitresses are employed; and where customers may dance to music not rendered by a regular dance orchestra or musicians hired for the purposes; otherwise, the place shall be classified as a dance hall or night or day club. A cocktail lounge or beer garden is considered a bar even if there are no hostesses or waitresses to entertain customers.

(g) *Boarding house* includes any house where boarders are accepted for compensation by the week or by the month or where meals are served to boarders only. A pension inn (or pension house) shall be considered a boarding house unless, by the nature of its services and facilities, it falls under another classification.

(h) *Brewer* includes all persons who manufacture fermented liquors of any description for sale or delivery to others, but does not include manufacturers of tuba, basi, tapuy, or similar domestic fermented liquors, whose daily production does not exceed two hundred (200) gauge liters.

(i) *Business Agent (Agente de negocio)* includes all persons who act as agents of others in the transaction of business with any public officer, as well as those who conduct collecting, advertising, employment, or private detective agencies.

(j) *Business Centre* a place for business transactions; a place for transacting business as well as collecting, advertising, purchasing a product or service.


(k) *Cabaret/Dance Hall* includes any place or establishment where dancing is permitted to the public in consideration of any admission, entrance, or any other fee paid on, before, or after the dancing, and where professional hostesses or dancers are employed.

(l) *Call Center* telecommunication business dealing with customers' phone calls; a place that handles high-volume incoming telephone calls on behalf of a large organization; A functional area within an organization or an outsourced, separate facility that exists solely to answer inbound or place outbound telephone calls. Usually refers to a sophisticated voice operations center that provides a full range of high-volume, inbound or outbound call-handling service, including customer support operator service, directory assistance, multilingual customer support, credit service, card service, inbound and outbound telemarketing interactive voice response and web-based services.

(m) *Calling* means one's regular business, trade, profession, vocation or employment which does not require the passing of an appropriate government board or bar examination, such as professional actors and actresses, hostess, masseurs, commercial stewards and stewardess, etc.

(n) *Capital investment* is the capital which a person puts in any undertaking, or which he contributes to the common stock of a partnership, corporation or any other juridical entity or association.

(o) *Carinderia* refers to any public eating place where food already cooked are served at a price.



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(p) *Cockpit* includes any place, compound, building or portion thereof, where cockfights are held, whether or not money bets are made on the results of such cockfights.

(q) *Collecting agency* includes any person, other than a practicing attorney-at-law, engaged in the business of collecting or suing debts or liabilities placed in his hands, for said collection or suit, by subscribers or customers applying and paying therefor.

(r) *Commercial broker* includes all persons other than importers, manufacturers, producers or bonafide employees, who for compensation or profit, sell or bring about sales or purchases or merchandise for other persons; bring proposed buyers and sellers together or negotiate freights or other business for owners of vessels or other means of transportation for shippers, consignees of freight carried by vessels or other means of transportation. The term includes commission merchants.

(s) *Construction Contractor* — shall refer to the principal contractor who has direct contract with the contractee for a specific domestic project.

(t) *Contractor* includes persons, natural or juridical, not subject to professional tax whose activity consists essentially of the sale of all kinds of services for a fee regardless of whether or not the performance of the service calls for the exercise or use of the physical or mental faculties of such contractor or his employees.

As used in this Article, the term contractor shall include general engineering, general building and speciality contractors as defined under applicable laws; filling, demolition and salvage works contractors; proprietors or operators of mine drilling apparatus; proprietors or operators of computer services/rental; proprietors or operators of dockyards; persons engaged in the installation of water system, and gas or electric light, heat, or power; proprietors or operators of smelting plants; engraving, plating, and plastic lamination establishments; proprietors or operators of establishments for repairing, repainting, upholstering, washing or greasing of vehicles, heavy equipment, vulcanizing, recapping and battery charging; proprietors or operators of furniture shops and establishments for planting or surfacing and recutting of lumber, sawmills under contract to saw or cut logs belonging to others; proprietors or operators of dry-cleaning or dyeing establishments, steam laundries, and laundries using washing machines; proprietors or owners of shops for the repair of any kind of mechanical and electrical devices, instruments, apparatus, or furniture and shoe repairing by machine or any mechanical contrivance; proprietors or operators of establishments or lots for parking purposes; proprietors or operator of tailor shops, dress shops, milliners and hatters, beauty parlors, barbershops, massage clinics, sauna Turkish and Swedish baths, slenderizing and building saloons and similar establishments; photographic studios; funeral parlors; proprietors or operators of arrastre and stevedoring, warehousing, or forwarding establishments; master plumbers, smiths, and house or sign painters; printers, bookbinders, lithographers, publishers except those engaged in the publication or printing of any newspaper, magazine, review or bulletin which appears at regular intervals with fixed prices for subscription and sale and which is not devoted principally to the publication of advertisements; business agents, private detective or watchman agencies, commercial and immigration brokers, and cinematographic film owners, lessors and distributors.

(u) *Dealer* means one whose business is to buy and sell merchandise, goods, and chattels as merchant. He stands immediately between the producer or manufacturer and consumer and depends for his profit not upon the labor he bestows upon his commodities but upon the skill and foresight with which he watches the market.

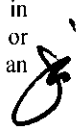
(v) *Dealer in securities* includes all persons who for their own account are engaged in the sale of stocks, bonds, exchange, bullion, coined money, bank notes, promissory notes, or other securities. It shall also include pre-need companies or those engaged in the sale of educational plans, health care plans, memorial plans, etc.

(w) *Distributor* — A person or a firm, especially a wholesaler, who distributes merchandise to retailers, usually within a *specified geographic area*, who is also involved in the delivery of goods from the producers to the consumers, including such items as sales methods.

(x) *Domestic Construction Project* — refers to a project bidded out and implemented within the territorial jurisdiction of the Philippines by any foreign or domestic contractor.

(y) *E-Commerce* it is generally used to cover the "distribution, marketing, sale or delivery of goods and services by electronic means."

(z) *Exhibit and Event Organizer* is any person, company, or entity who shall be responsible in organizing, arranging, sponsoring and in taking control and acting for any and all organizations, exhibits or institutions, including the officers, agents and/or employees thereof, on all aspects of the management of an exhibit.



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(aa) *Exporter* means any person who is engaged in the business of exporting articles or goods of any kind from the Philippines for sale or consumption abroad.

(bb) *General building contractor* is a person whose principal contracting business is in connection with any structure built, being built, or to be built, for the support, shelter and enclosure of persons, animals, chattels or movable property of any kind, requiring in its construction the use of more than two unrelated building trades or crafts, or to do or superintend the whole or any part thereof. Such structure includes sewers and sewerage disposal plants and systems, parks, playgrounds, and other recreational works, refineries, chemical plants and similar industrial plants requiring specialized engineering knowledge and skill, powerhouses, power plants and other utility plants and installation, mines and metallurgical plants, cement and concrete works in connection with the above[-]mentioned fixed works. A person who merely furnishes materials or supplies without fabricating them into or consuming them in the performance of the work of the general building contractor does not necessarily fall within this definition.

(cc) *General engineering contractor* is a person whose principal contracting business is in connection with fixed works requiring specialized engineering, knowledge and skill, including the following divisions or subjects: irrigation, drainage, water power, water supply, flood control, inland waterways, harbors, docks and wharves, shipyards and ports, dams hydroelectric projects, levees, river control and reclamation works, railroads, highways, streets and roads, tunnels, airports and airways, waste reduction plants, bridges, overpasses, underpasses and other similar works, pipelines and other systems for the transmission of petroleum and other liquid or gaseous substances, land-levelling and earth-moving projects, excavating, grading, trenching, paving and surfacing works.

(dd) *Holding Company* a controlling company that has one or more subsidiaries and confines its activities primarily to their management.

(ee) *Hotel* includes any house or buildings or portion thereof in which any person or persons may be regularly harbored or received as transients or guests. A hotel shall be considered as living quarters and shall have the privilege to accept any number of guests and to serve food to the guests therein.

(ff) *Importer* means any person who brings articles, good wares or merchandise of any kind of class into the Philippines from abroad for unloading therein, or which after entry are consumed herein or incorporated into the general mass of property in the Philippines. In case of tax free articles, brought or imported into the Philippines by persons, entities or agencies exempt from tax which are subsequently sold, transferred, or exchanged in the Philippines to non-exempt private persons or entities, the purchaser or recipient shall be considered the importer thereof.

(gg) *Independent wholesaler* means a person other than a manufacturer, producer or importer who buys commodities for resale to persons other than the end-users, regardless of the quantity of transaction.

(hh) *Information Technology* — may be defined as the collective term for various technologies involved in the processing and transmitting of information, which include computing, multimedia, telecommunications, microelectronics and their interdependencies.

The term Information Technology (IT) offering services both in the domestic and international market shall include IT project management, applications systems development, applications services providers, web development management, database design and development, computer net-working and data communications, software development and application (includes programming and adaptation of system software, middleware, application software, for business, media, e-commerce, education, entertainment and all other programs interdependent of this technology) and ICT facilities operations/management.

Information Technology - Enabled Services refer to business lines that can be transformed through information technology. These include activities such as business process outsourcing and shared services, engineering and design, animation and content creation, knowledge management, remote education, market research, travel services, finance and accounting services, human resources services and other administrative services (includes call centers; purchasing, data encoding, transcribing and processing; directories) and all future programs interdependent of this technology.

Information Communications Technology are support activities such as research and development of high-value-added ICT products and services, education and manpower development in ICT, incubation of IT services providers, provision for Internet services and community access. These support activities also include content development for multi-media or Internet purposes, knowledge-based and computer enabled support services like engineering and architectural design services and consultancies, business process outsourcing like e-commerce, and all other future programs and activities interdependent of this technology.

(ii) *Investment Company and Investment House* — Investment companies are entities primarily engaged in investing, reinventing or trading in securities. An investment house is an enterprise engaged in

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guaranteed underwriting of securities of another person or enterprise, including securities of government and its instrumentalities.

(jj) *Joint Venture* — is a legal organization that takes the form of a short term partnership in which the person jointly undertakes a transaction for mutual profit. Generally each person contributes assets and share risks. Like a partnership joint ventures can involved any type of business transaction and the "persons" involved can be individuals, group of individuals, companies, or corporations.

(kk) *Lodging house* includes any house or building, or portion thereof, in which any person or persons may be regularly harbored or received as transients for compensation.

(ll) *Manufacturer* includes every person who, for the purpose of sale or distribution to others and not for his own use or consumption, by physical or chemical process: (1) alters the exterior texture of form, or inner substance of any raw material or manufactured or partially manufactured product in such manner as to prepare it for a special use or uses to which it could not have been put in its original condition; (2) alters the quality of any such raw material or manufactured or partially manufactured product so as to reduce it to marketable shape or prepare it for any use of industry; or (3) combines any raw material or manufactured or partially manufactured product with other materials or products of the same or different kind in such manner that the finished product of such process or manufacture can be put to a special use or uses to which such material, or manufactured or partially manufactured product in its original condition could not have been put.

(mm) *Motor vehicle* means any vehicle propelled by any power other than muscular power using the public roads, but excluding road rollers, trolley cars, street-sweepers, sprinklers, lawnmowers, bulldozers, graders, forklifts, amphibian trucks, and cranes if not used on public roads vehicles which run only on rails or tracks, and tractors, trailers and traction engines of all kinds used exclusively for agricultural purposes.

(nn) *Night or day club* includes any place frequented at nighttime or daytime, as the case may be, where patrons are served food or drinks and are allowed to dance with their partners or with professional hostesses furnished by the management.

(oo) *Occupation* means one's regular business or employment or an activity which principally takes up one's time, thought and energies. It includes any calling, business, trade, profession or vocation.

(pp) *Overseas Construction Project* — shall mean a construction project undertaken by a construction contractor outside the territorial boundaries of the Philippines, paid for in acceptable freely convertible foreign-currency, as well as construction contracts dealing in foreign-currency denominated fabrication works with attendant installation works outside of the Philippines.

(qq) *Partnership* — is a business entity in which two or more individuals carry on a continuing business for profit as co-owners legally.

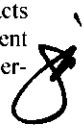
(rr) *Peddler* is a person who, either for himself or for commission, travels from place to place within the city and sells his goods or offers to sell or deliver the same.

(ss) *Privately-owned public market* means those market establishments including shopping centers funded and operated by private persons, natural or juridical, under government permit.

(tt) *Profession* means a calling which requires the passing of an appropriate government board or bar examinations, such as practice of law, medicine, public accountant, engineering, etc.

(uu) *Public market* refers to any place, building, or structure of any kind designated as such by the local board or council, except public streets, plazas, parks and the like.

(vv) *Real estate brokers* includes any person, other than a real estate salesman as hereinafter defined, who for another, and for a compensation or in the expectation or promise or receiving compensation, (1) sells, or offers for sale, buys or offers to buy, lists or solicits for prospective purchasers, or negotiates the purchase, sale or exchange of real estate or interests therein; (2) or negotiates loans on real estate; (3) or leases or offers to lease or negotiates the sale, purchase or exchange of a lease, or rents or places for rent or collects rent from real estate or improvements thereon; (4) or shall be employed by or on behalf of the owner or owners of lots or other parcels of real estate at a stated salary or commission, or otherwise to sell such real estate or any part thereof in lots or parcels. Real estate salesman means any natural person regularly employed by a real estate broker to perform in behalf of such broker any or all of the functions of a real estate broker. One act of a character embraced within the above definition shall constitute the person performing or attempting to perform the same real estate broker. The foregoing definitions do not include a person who shall directly perform the same real estate broker. The foregoing definitions do not include a person who shall directly perform any acts aforesaid reference to his own property, where such acts are performed in the regular course of or as an incident to the management of such property; nor shall they apply to persons acting pursuant to a duly executed power-



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of-attorney from the owner authorizing final consumption by performance of a contract conveying a real estate by sale, mortgage or lease; nor shall they apply to any receiver, trustee or assignee in bankruptcy or insolvency or in any person acting pursuant to the order of any court; nor to a trustee selling under a deed of trust.

(ww) *Real estate dealer* includes any person engaged in the business of buying, selling or exchanging real properties on his own account as a principal and holding himself out as a full or part time dealer in real estate.

(xx) *Real Estate Developer* — refers to any person engaged in the business of developing real properties into subdivisions, or building houses on subdivided lots, or constructing, improving and rehabilitating residential or commercial units, townhouses and other similar units for his own account and offering them for sales or lease.

(yy) *Real Estate Lessor* — is any person engaged in the business of leasing or renting out real properties on his own account as a principal and holding himself out as a lessor of real properties being rented out or offered for rent.

(zz) *Rectifier* comprises every person who rectifies, purifies, or refines distilled spirits or wines by any person other than by original and continuous distillation from mash, wort, wash, sap, or syrup through continuous closed vessels and pipes until the manufacture thereof is complete. Every wholesale or retail liquor dealer who has in his possession any still or mash tub, or who keeps any other apparatus for the purpose of distilling spirits, or in any manner refining distilled spirits, shall also be regarded as a rectifier and as being engaged in the business of rectifying.

(aaa) *Restaurant* refers to any place which provides food to the public and accepts orders from them at a price. This term includes caterers.

(bbb) *Retail* means a sale where the purchaser buys the commodity for his own consumption, irrespective of the quantity of the commodity sold.

(ccc) *Shopping center* means a building, establishment or a place or parts thereof, leased to at least ten (10) different persons to be used principally by them separately for selling any article, of commerce of whatever kind or nature.

(ddd) *Social/Sports club* is a club the social features of which are the individual purposes of each organization and which conducts various kinds of entertainment, sporting contests and have elaborate entertainment, amusement or sports facilities.

(eee) *Software Development* is the efficient application of software specification, design, and implementation technologies to produce a desired computer process.

(fff) *Specialty contractor/Subcontractor* — is a person whose operations pertain to the performance of construction work requiring special skill and whose principal contracting business involves the use of specialized building trades or crafts.

(ggg) *Theater or cinemahouse* includes any edifice, building or enclosure where motion pictures are exhibited and/or where operatic or dramatic performances, presentations or plays, or other shows are held.

(hhh) *Tiangge or "Privilege Store"* refers to a store or outlet which does not have a fixed location and normally are set up in places like shopping malls, hospitals, office buildings, hotels, villages or subdivisions, churches, parks, sidewalks, streets and other public places, for the purposes of selling a variety of goods/services for a short duration of time or on special events.

(iii) *Telecommunications* — The *breakthrough in science and technology* in the industry of long distance communications whereby electromagnetic impulses and signals are transmitted and received through air and sound waves, fiber optics, radio frequencies, i.e., radio, radar, sonar, televisions, telegraphy, telephony, etc.

(jjj) *Vessel* includes every type of boat, craft, or other artificial contrivances used, or capable of being used, as a means of transportation on water.

(kkk) *Wholesale* means a sale where the purchaser buys or imports the commodities for resale to persons other than the end-user regardless of the quantity of the transaction.

SECTION 3A.02. *Imposition of Tax.* — There is hereby levied an annual tax on the following businesses at rates prescribed therefore:



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On Manufacturers, producers, assemblers, re-packers, processors of any article of commerce of whatever kind of nature, and brewers, distillers, rectifiers and compounder of liquors, distilled spirits and wines or manufacturers of any article of commerce of whatever kind of nature, in accordance with the schedule shown here under. With domestic gross sales or receipts for the preceding calendar year in the amount of:

		<i>Amount of Tax per Annum</i>
less than	P50,000.00	Exempt
P50,000.00 or more but less than	75,000.00	1,850.00
75,000.00 or more but less than	100,000.00	2,310.00
100,000.00 or more but less than	150,000.00	3,080.00
150,000.00 or more but less than	200,000.00	3,850.00
200,000.00 or more but less than	300,000.00	5,390.00
300,000.00 or more but less than	500,000.00	7,700.00
500,000.00 or more but less than	750,000.00	11,200.00
750,000.00 or more but less than	1,000,000.00	14,000.00
1,000,000.00 or more but less than	2,000,000.00	19,250.00
2,000,000.00 or more but less than	3,000,000.00	23,100.00
3,000,000.00 or more but less than	4,000,000.00	27,720.00
4,000,000.00 or more but less than	5,000,000.00	32,340.00
5,000,000.00 or more but less than	6,500,000.00	34,125.00
6,500,000.00 or more	P34,125.00 plus 52.5% of 1% over P6.5 million.	

(b) On Wholesalers, distributors, importers, or dealers of any article of commerce of whatever kind or nature in accordance with the schedule shown here under. With domestic gross sales or receipts for the preceding calendar year in the amount of:

		<i>Amount of Tax per Annum</i>
less than	P50,000.00	Exempt
P50,000.00 or more but less than	75,000.00	1,190.00
75,000.00 or more but less than	100,000.00	1,540.00
100,000.00 or more but less than	150,000.00	2,240.00
150,000.00 or more but less than	200,000.00	2,900.00
200,000.00 or more but less than	300,000.00	3,960.00
300,000.00 or more but less than	500,000.00	5,280.00
500,000.00 or more but less than	750,000.00	7,920.00
750,000.00 or more but less than	1,000,000.00	10,560.00
1,000,000.00 or more but less than	2,000,000.00	12,000.00
2,000,000.00 or more	P 12,000.00 plus sixty percent (60%) of one percent (1%) over P 2.0 million.	

(c) On Exporter, shall be taxed either under subsection (a), (b) or (c), depending on how the business is conducted or operated as provided in this Code.

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The term exporter shall refer to those who are principally engaged in the business of exporting goods and merchandise, as well as manufacturers and producers whose goods or products are both sold domestically and abroad.

For this purpose, the amount of export sales shall be excluded and declared separately from the total sales and shall be subject to the rate of one-half (1/2) of the rates prescribed under sub-sections (a), (b) and (e) respectively. Provided, however, export sales on software development, computer programs, computer designs and all other computer works and related by-products, in accordance to the customer specifications and design that are conceptualized, realized/materialized, developed and utilized, shall be subject to the business tax at the full rate prescribed under subsection (g), as provided in this Code.

(d) On Manufacturers, millers, producers, wholesalers, distributors, dealers, or retailers of essential commodities enumerated hereunder at a rate of one-half (1/2) of the rates prescribed under subsections (a), (b) and (e), respectively, of this section:

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

(e) On retailers, shall be taxed at the rate of seventy five percent (75%) of one percent (1%) on gross sales or receipts for the preceding calendar year.

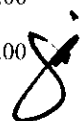
Provided, however, that the barangay shall have the exclusive power to impose tax on retailer for fixed business establishments with gross sales or receipts of the preceding calendar year of fifty thousand pesos (Php50,000.00) or less at the rate not exceeding one percent (1%) on such gross sales or receipts.

(f) On owner or operators of sari-sari store shall be taxed at the rate of fifty percent (50%) of one percent (1%) on the gross sales or receipts for the preceding calendar year.

(g) On Contractors and other independent contractors defined in SEC. 3A-01 (t) of chapter III of this Code; and on owners or operators of business establishments rendering or offering services such as: advertising agencies; rental of space of signs, signboards, billboard or advertisements; animal hospitals; assaying laboratories; belt and buckle shops; blacksmith shops; bookbinders; booking offices for film exchange; booking offices for transportation on commission basis; breeding of game cocks and other sporting animals belonging to others; business management services; collecting agencies; escort services; feasibility studies, consultancy services; garages; garbage disposal contractors; gold and silversmith shops; inspection services for incoming and outgoing cargoes; interior decorating services; janitorial services; job placements or recruitment agencies; landscaping contractors; lathe machine shops; management consultants not subject to professionals tax; medical and dental laboratories; mercantile agencies; messengerial services; operators of shoe shine stands; painting shops; perma press establishments; rent-a-plant services; polo players; **school** for and/or horse-back riding academy; real estate appraisers; real estate brokerages; photostatic; white/blue printing, photocopying, typing and mimeographing services; car rental, rental of heavy equipment, rental of bicycles and/or tricycles; furniture, shoes, watches, household appliances, boats, typewriters, etc; roasting of pigs, fowls, etc; shipping agencies; shipyard for repairing ships for others; shops for hearing animals; silkscreen or T-shirt printing shops; stables; travel agencies; vaciador shops; veterinary clinics; video rentals and/or coverage services; dancing **school**/speed reading/FDP; nursery, vocational and other **schools** not regulated by the Department of Education (DepEd), day care centers; etc.

With gross sales or receipts for the preceding calendar year in the amount of:

		<i>Amount of Tax per Annum</i>
less than	P50,000.00	Exempt
P50,000.00 or more but	75,000.00	1,144.00
less than		
75,000.00 or more but less	100,000.00	1,716.00
than		
100,000.00 or more but	150,000.00	2,574.00
less than		



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150,000.00 or more but less than	200,000.00	3,432.00
200,000.00 or more but less than	250,000.00	4,719.00
250,000.00 or more but less than	300,000.00	6,006.00
300,000.00 or more but less than	400,000.00	8,008.00
400,000.00 or more but less than	500,000.00	10,725.00
500,000.00 or more but less than	750,000.00	12,025.00
750,000.00 or more but less than	1,000,000.00	13,325.00
1,000,000.00 or more but less than	2,000,000.00	15,000.00
2,000,000.00 P15,000.00 plus seventy five percent (75%) of one percent (1%) over 2 million.		

For purposes of this Section, all general engineering, general building, and specialty contractors with principal offices located outside Makati but with multi-year projects located in the City of Makati, shall secure the required city business permit and shall be subject to pay the city taxes, fees and charges based the total contract price payable in annual or quarterly installments within the project term.

Upon completion of the project, the taxes shall be recomputed on the basis of the gross sales/receipts for the preceding calendar years and the deficiency tax, if there be any, shall be collected as provided in this Code, and shall retire the city business permits secured upon full completion of the projects undertaken in the City of Makati.

(h) On owners or operators of banks and other financial institutions which include offshore banking, non-bank, financial intermediaries, lending investors, finance and investment companies, investment house, pawnshops, money shops, insurance companies, stock markets, stock brokers, dealers in securities including pre-need companies, foreign exchange shall be taxed at the rate of twenty percent (20%) of one percent (1%) of the gross receipts of the preceding calendar year derived from interest, commissions, and discounts from lending activities, income from financial leasing, investments, dividends, insurance premium and profit from exchange or sale of property, provided, however, on gross sales/receipts derived from rental of property during the preceding calendar year shall be subject to the business tax at the rate prescribed under subsection (l) 1, as provided in this code.

(i) On owners or operators of hotels duly licensed and accredited by the City of Makati, the rate of the tax on the gross receipts during the preceding calendar year derived from room occupancy shall be sixty percent (60%) of one percent (1%).

(j) On owners or operators of cafes, cafeterias, ice cream and other refreshment parlour, restaurants, soda fountains, carinderias or food caterers in accordance with the schedule shown here under. With gross sales or receipts for the preceding calendar year in the amount of:

	<i>Amount of Tax per Annum</i>
less than P50,000.00	Exempt
P50,000.00 or more P795.00 plus 80% of 1% over P50,000.00	

Provided, however, That the gross receipts during the preceding year derived from the sales of cigarettes and other tobacco products, and liquor, wine, beer, distilled spirits and other alcoholic products or intoxicating drinks shall be taxed at the rate of (3%).

(k) On owners or operators of the following amusement and other recreational places in accordance with the following schedule:

Day and night clubs, day clubs or night clubs, cocktail or music lounges or bars, cabarets or dance hall, disco houses, beer garden or joints, gun clubs, off-track betting stations or off-frontons; race tracks, cockpits and other similar places at the rate of three percent (3%) of the gross sales/receipts including the sales food and non-alcoholic drinks during the preceding year.

Swimming pools, pelota/squash courts, tennis courts, badminton courts, exclusive clubs such as country and sports clubs, resorts and other similar places, skating rink; billiard or pool hall, bowling alleys, circus, carnivals or the like; merry-go-rounds.

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roller coasters, ferries wheel, swing shooting galleries and similar contrivances; boxing stadia, boxing contest, race tracks, theaters and cinema houses; judo-karate clubs and other similar places; at the rate of seventy five (75%) percent of one (1%) percent of the gross sales/receipts during the preceding calendar year;

The gross receipts of amusements and recreational places mentioned above derived from the sale of cigarettes and other tobacco products, and liquor, wine, beer, distilled spirits and other alcoholic products shall be taxed at the rate of three percent (3%) on the gross sales/receipts during the preceding calendar year; and

The Gross Receipts of owners or operators of amusement and recreational places derived from admission fees shall be excluded and declared separately from the total sales and shall be subject to the rate under Article F of this Chapter. Failure to make this separate declaration of amusement sales shall be subject to the business tax at the rate prescribed under subsection (k), as provided in this code.

(l) Real Estate Lessors and Real Estate Dealers shall pay the annual tax in accordance with the following schedule:

1. On lessors or sub-lessors of real estate including accessoria, appartelle, pension inns, lodging houses, apartments, condominiums, houses for lease, rooms and spaces for rent, and similar places shall pay the tax in accordance with the schedule shown here under. With gross sales or receipts for the preceding calendar year in the amount of:

		<i>Amount of Tax per Annum</i>
less than	P1,000.00	Exempt
P1,000.00 or more but less than	4,000.00	P30.00
4,000.00 or more but less than	10,000.00	120.00
10,000.00 or more but less than	20,000.00	300.00
20,000.00 or more but less than	30,000.00	600.00
30,000.00 or more but less than	50,000.00	900.00
50,000.00 or more	P900.00 plus 75% of 1% over P50,000.00	

2. On Real Estate Dealer shall pay the tax in accordance with the schedule shown hereunder. With gross sales or receipts for the preceding calendar year in the amount of:

		<i>Amount of Tax per Annum</i>
less than	P20,000.00	P240.00
P20,000.00 or more but less than	50,000.00	600.00
50,000.00 or more but less than	100,000.00	1,200.00
100,000.00 or more but less than	200,000.00	2,400.00
200,000.00 or more but less than	500,000.00	6,000.00
500,000.00 or more but less than	700,000.00	8,400.00
700,000.00 or more but less than	1,000,000.00	12,000.00
1,000,000.00 or more but less than	2,000,000.00	18,000.00
2,000,000.00 or more but less than	5,000,000.00	30,000.00
5,000,000.00 or more but less than	7,000,000.00	60,000.00
7,000,000.00 or more but less than	10,000,000.00	90,000.00
10,000,000.00 or more	P90,000.00 plus sixty percent (60%) of one percent (1%) over P10.0 million	

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(m) On owners or operators of real estate developer shall be tax at the rate prescribed under subsection (g) of the gross sales/receipts during the preceding calendar year.

(n) On owners or operators of privately-owned public markets, shopping centers, exhibit and event organizer, and business centers shall pay the tax rate of three percent (3%) on the gross sales or receipts of the preceding calendar year.

(o) On owner or operators of Information Technologies which include Software development, computer programming, internet, call centers, E-Commerce, design animation and other IT-related service activities shall be tax at the rate prescribed under subsection (g) of the gross sales and/or receipts during the preceding calendar year.

(p) On Holding Company shall be taxed at the rate prescribed either under subsection (g) or (h), of the gross sales and/or receipts during the preceding calendar year.

(q) On owners or operators of any business not specified above, shall pay the tax at the rate of three percent (3%) on the gross sales and/or receipts of the preceding calendar year.

SECTION 3A.03. *Computation of tax for newly-started business.* — In the case of a newly-started business under Sec. 3A.02 (a), (b), (bQ, <d), (c), (f), (g), (h), (i), (j), (k), (l), (m), (n), (o), (p) and (q) above, the initial tax for the year shall be Ten percent (10%) of One percent (1%) of the capital investment or paid up capital.

In the succeeding calendar year, regardless of when the business started to operate, the tax shall be based on the gross sales or receipts for the preceding calendar year, for any fraction thereof, as provided in the same pertinent schedules.

SECTION 3A.04. *Computation and Payment of Tax on Business.* —

(a) The tax imposed herein shall be payable for every separate or distinct establishment or place where business subject to the tax is conducted and one line of business does not become exempt by being conducted with some other businesses for which such tax has been paid. The tax on a business must be paid by the person conducting the same.

(b) In cases where a person conducts or operates two (2) or more of the related businesses mentioned in Sec. 3A.02 which are subjected to the same rate of tax, the tax shall be computed on the combined total gross sales or receipts of the said two (2) or more related businesses.

(c) In cases where a person conducts or operates two (2) or more businesses mentioned in the aforesaid section which are subject to different rates of tax, the gross sales or receipts of each business shall be separately reported, and the tax thereon shall be computed on the basis of the appropriate schedule.

SECTION 3A.05. *Situs of the tax.* —

(a) *Definition of Terms* —

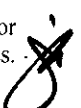
(1) *Principal Office* — the head or main office of the business appearing in the pertinent documents submitted to the Securities and Exchange Commission, or the Department of Trade and Industry, or other appropriate agencies as the case may be.

The municipality or city specifically mentioned in the articles of incorporation or official registration papers as being the official address of said principal office shall be considered as the situs thereof.

In case there is a transfer or relocation of the principal office to other municipality or city, it shall be the duty of the owner, operator or manager of the business to give due notice of such transfer or relocation to the City Mayor within fifteen (15) days after such transfer or relocation is effected.

(2) *Branch or Sales Office* — a fixed place in a locality which conducts operations of the business as an extension of the principal office. Offices used only as display areas of the products where no stocks or items are stored for sale, although orders for the products may be received thereat, are not branch or sales offices as herein contemplated. A warehouse which accepts orders and/or issues sales invoices independent of a branch with sales office shall be considered as a sales office.

(3) *Warehouse* — a building utilized for the storage of products for sale and from which goods or merchandise are withdrawn for delivery to customers or dealers, or by persons acting in behalf of the business.



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A warehouse that does not accept orders and/or issue sales invoice as aforementioned shall not be considered a branch or sales office.

(4) *Plantation* — a tract of agricultural land planted with trees or seedlings whether fruit bearing or not, uniformly spaced or seeded by broadcast methods or normally arranged to allow highest production. For purposes of this Article, inland fishing ground shall be considered as plantation.

(5) *Experimental Farms* — agricultural lands utilized by a business or corporation to conduct studies, tests, researches or experiment involving agricultural, agribusiness marine or aquatic, livestock, poultry dairy and other similar products for the purpose of improving the quality and quantity of goods or products.

On site sales of commercial quantity made in experimental farms shall be similarly imposed the corresponding tax under the Article A, Chapter III of this Code and allocated in paragraph (d) of Sec. 3A.02.

Sales Allocation

(1) All sales made by a branch or sales office or warehouse located in the city shall be taxable herein.

(2) In case the principal office and the factory are located in this city, all sales recorded in the principal office and those on the other localities where there is no branch or sales office or warehouses shall be recorded in the principal office and taxable by the city.

(3)(i) If the principal office is located in the city and the factory, project office plant or plantation is located in another locality, thirty percent (30%) of the sales recorded in the principal office shall be taxable by the City of Makati.

(ii) If the factory, project office, plant or plantation is located in this city and the principal office is located in another locality, seventy percent (70%) of the sales recorded in this city shall be taxable herein.

This sales allocation in (i) and (ii) above shall not apply to experimental farms.

(iii) If the plantation is located in the city and the factory is located in another locality, forty percent (40%) of the seventy percent (70%) sales determined in paragraph 3 (ii) of this section shall be taxable herein. On the other hand, if the factory is located in the city, and the plantation is located in another locality, sixty percent (60%) of the seventy percent (70%) sales determined in paragraph 3 (ii) above shall be taxable herein.

(iv) If the factory, project office, plant or plantation is located in the city and the other factories, project offices, plants or plantations are located in other localities this city shall tax the sales in proportion to the volume of production in the factory, project office, plant or plantation located herein during the tax period.

In the case of project offices or services and other independent contractors the term production shall refer to the cost of projects actually undertaken during the tax period.

(4) All sales made by the factory, project office, or plant located in this city shall be recorded in the branch or sales office which is similarly located herein, and shall be taxable by this city. In case there is no branch or sales office or warehouse in this city, but the principal office is located herein, the sales made in the said factory shall be taxable by the city along with the sales recorded in the principal office.

(5) In the case of manufacturers or producers which engage the services of an independent contractor to produce or manufacture some of their products, the foregoing rules on the situs of taxation shall apply. However, the factory or plant and warehouse of the contractor utilized for the production and storage of the manufacturers products shall be considered as the factory or plant and warehouse of the manufacturers.

(6) (i) All route sales made in this city where a manufacturer, producer, wholesaler, maintains a branch or sales office or warehouse shall be recorded and shall be taxable herein.

(ii) This city shall tax the sales of the products recorded and withdrawn by route trucks from the branch, sales office or warehouse located herein but sold in another locality where there is no branch, sales office, warehouse.

SECTION 3A.06. *Accrual of Payment.* — Unless specifically provided in this Article, the taxes imposed herein shall accrue in the first day of January each year.



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SECTION 3A.07. *Time of Payment.* — The tax period of all local taxes shall be the calendar year. Provided, however, such taxes shall be paid in annual, semi-annual and quarterly installments, and shall be paid to the City Treasurer in accordance with the following schedule:

- 1st quarter payment on or before the twentieth (20th) day of January
- 2nd quarter payment on or before the twentieth (20th) day of April
- 3rd quarter payment on or before the twentieth (20th) day of July, and
- 4th quarter payment on or before the twentieth (20th) day of October

SECTION 3A.08. *Surcharge for Late Payment.* — Failure to pay the tax prescribed in this Article within the time required shall subject the taxpayer to a surcharge of twenty five percent (25%) of the original amount of tax due, such surcharge to be paid at the same time and in the same manner as the tax due.

SECTION 3A.09. *Interest on Unpaid Tax.* — In addition to the surcharge imposed herein, there shall be imposed an interest of two percent (2%) per month of the unpaid taxes, fees or charges including surcharges, until such amount is fully paid but in no case shall the total interest on the unpaid amount or portion thereof exceed thirty-six (36) months.

Where an extension of time for the payment of the tax has been granted and the amount is not paid in full prior to the expiration of the extension, the interest abovementioned shall be collected on the unpaid amount from the date it becomes originally due until fully paid.

SECTION 3A.10. *Administrative Provisions.* —

(a) *Requirement* — Any person who shall establish, operate or conduct any business, trade or activity mentioned in this Article in the City of Makati, Metro Manila, shall first obtain a Mayor's permit and pay the fee therefor and the business tax imposed under this Article.

(b) *Issuance and posting of official receipt* — The City Treasurer shall issue an official receipt upon payment of the business tax. Issuance of the said official receipt shall not relieve the taxpayer from any requirement imposed by the different departments of this city.

Every person issued an official receipt for the conduct of a business or undertaking shall keep the same conspicuously posted in plain view at the place of business or undertaking. If the individual has no fixed place of business or office, he shall keep the official receipt in his person. The receipt shall be produced upon demand by the City Mayor, City Treasurer, or their duly authorized representatives.

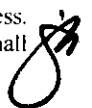
(c) *Issuance of invoices or receipts.* — All persons subject to the taxes on business shall, for each sale or transfer of merchandise or goods, or for services rendered, valued at Twenty Five Pesos (P25.00) or more at any one time, prepare and issue sale or commercial invoices and receipts serially numbered in duplicate, showing, among others, their names or styles if any, and business address. The original of each sales invoice or receipts shall be issued to the purchaser or customer and the duplicate to be kept and preserved by the person subject to the said tax, in his place of business for a period of five (5) years. The receipts or invoices issued pursuant to the requirements of the Bureau of Internal Revenue for determination of national internal revenue taxes shall be sufficient for purposes of this Code.

(d) *Sworn statement of gross receipts or sales* — Operators of business subject to the taxes on business shall submit a sworn statement of the capital investment before the start of their business operations and upon application for a Mayor's permit to operate the business. Upon payment of tax levied in this article, any person engaged in business subject to the business tax based on gross sales and/or receipts shall submit a sworn statement of his gross sales/receipts for the preceding calendar year in such manner and form as may be prescribed by the City Treasurer. Should the taxpayer fail to submit a sworn statement of gross sale or receipts, due among others for his failure to have a book of accounts, records and/or subsidiaries for his business, the City Treasurer or his/her authorized representatives may verify or assess the gross sales or receipts of the taxpayer under the best available evidence upon which the tax may be based.

(e) *Issuance of certification* — The City Treasurer may, upon presentation of satisfactory proof that the original official receipt has been lost, stolen or destroyed, issue a certification to the effect that the business tax has been paid, indicating therein, the number of the official receipt issued, upon payment of a fee of Fifty Pesos (P50.00).

(f) *Transfer of business to other location* — Any business for which a city business tax has been paid by the person conducting it may be transferred and continued in any other place within the territorial limits of this city without the payment of additional tax during the period for which the payment of the tax was made.

(g) *Retirement of Business* — Any person natural or juridical who discontinues, transfer to other locality/ies or close/retire his/her business operation(s) is subject to the taxes, fees and charges on business. Within the period of thirty (30) days of the discontinuance, transfer or closure/retirement of business, shall



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To my mind, to uphold the nullity of the NOA on the sole ground that it failed to state the specific provision of the RMRC, and despite the abovementioned circumstances wherein MESI is deemed to be sufficiently apprised of the legal basis, would result in a grave injustice to Makati LGU.

surrender to the City Treasurer the original business permit license of the current year, official receipt issued for the payment of the business tax, and submit a sworn statement of the gross sales or receipts for the current year or quarter and the corresponding taxes must be collected. Any tax due must first be paid before any business or undertaking is finally terminated.

The following documents should support the application for business retirement:

1. Audited Financial Statement for three (3) calendar years for verification of the gross sales or receipts of the business. In case there is a branch, sales office, factory, warehouse and/or project office outside Makati, breakdown of gross sales or receipts, assessment and proof of payments or Certified True Copies of Official Receipts evidencing payments from other LGU's are also to be submitted to this office.
2. Original Mayor's Permit/License for the current year.
3. Board Resolution/Secretary's Certificate
4. Affidavit of Non-Operation in case of no sales/operation
5. In case of inconsistencies with the above submitted documents, the opening of the Books of Accounts will be required for examination before the business is completely retired.

For purposes hereof, termination shall mean that business operations are stopped completely. Any change in ownership, management and/or name of the business shall not constitute termination as contemplated in this Article. Unless stated otherwise, assumption of the business by any new owner or manager or re-registration of the same business under a new name will only be considered by this city for record purposes in the course of the renewal of the permit or license to operate the business.

The City Treasurer shall see to it that the payment of the taxes of a business is not avoided by simulating the termination or retirement thereof. For this purpose, the following procedural guidelines shall be strictly observed:

(1) The City Treasurer shall assign every application for the termination or retirement of business to an inspector in his office who shall go to the address of the business on record to verify if it is really no longer operating. If the inspector finds that the business is simply placed under a new name, manager and/or new owner, the City Treasurer shall recommend to the Mayor the disapproval of the application for the termination or retirement of said business. Accordingly, the business continues to become liable for the payment of all the taxes, fees and charges imposed thereon under existing local tax ordinances; and

(2) In the case of new owner to whom the business was transferred by sale or other form of conveyance, said new owner shall be liable to pay the tax or fee for the transfer of the business to him if there is an existing ordinance prescribing such transfer tax.

(3) The permit issued to a business retiring or terminating its operations shall be surrendered to the City Treasurer who shall forthwith cancel the same and record such cancellation in his books.

(h) *Death of License* — When any individual paying a business tax dies, and the business is continued by a person interested in his estate, no additional payment shall be required for the residue of the term for which the tax was paid.

(i) *General Building Contractor to submit list of Sub-Contractor* — All general building contractors are required to submit to the City Treasurer/Business Permits Office the list of their sub-contractors for projects located in the City of Makati. The list must be comprehensive, signed under oath inclusive of the amount of contract price, duly notarized and must be accompanied by the respective sub-contract agreement.

SECTION 3A.11. *Penalty*. — Any violation of the provisions of this Article shall be punished by a fine of not less than One Thousands Pesos (P1,000.00) nor more than Five Thousands Pesos (P5,000.00), or imprisonment of not less than one (1) month nor more than five (5) months, or both, at the discretion of the Court.

...



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Thus, with the validity of the NOA, coupled with the First Division’s finding that the assessments for TYs 2009 and 2010 had already prescribed (because the NOA was issued beyond the five (5)-year assessment period pursuant to Section 194(a)¹⁹ of the LGC of 1991), the proper tax liability of MESI is computed as follows:

Taxable Year	Particulars	Per Audit of Gross Sales allocated to Makati ²⁰	Tax Due ²¹	Variance in taxes as Real Estate Lessor ²²	Basic Tax Due [A]	25% Surcharge (Sec. 3A.08) [B]	Total Amount Due [A + B = C]	72% Interest (Sec. 3A.09) [C x 72% = D]	Total [C + D]
2009	PRESCRIBED								
2010	PRESCRIBED								
2011	School	251,278,658.00	1,884,589.94	6,192.81	1,890,782.75	472,695.69	2,363,478.44	1,701,704.48	4,065,182.92
2012	School	266,319,323.00	1,997,394.92	3,233.11	2,000,628.03	500,157.01	2,500,785.04	1,800,565.23	4,301,350.27
2013	School	248,673,037.00	1,865,047.78	(375.00)	1,864,672.78	466,168.19	2,330,840.97	1,678,205.50 ²³	4,009,046.47
Total Deficiency Taxes									12,375,579.66
Less:							Taxes Paid	(8,160,000.00) ²⁴	
Total Tax Due									₱4,215,579.66

Accordingly, MESI is still liable to pay ₱4,215,579.66 deficiency LBT arising from TYs 2011 to 2013.

All told, I vote to **PARTIALLY GRANT** the Amended Petition for Review filed by the City of Makati, City Mayor of Makati, and City Treasurer on 11 May 2022; and **DENY** the Petition for Review filed by the Malayan Education System Inc. on 02 December 2021.


JEAN MARIE A. BACORRO-VILLENNA
 Associate Justice

¹⁹ SEC. 194. *Periods of Assessment and Collection.* — (a) Local taxes, fees, or charges shall be assessed within five (5) years from the date they became due. No action for the collection of such taxes, fees, or charges, whether administrative or judicial, shall be instituted after the expiration of such period: *Provided*, That taxes, fees or charges which have accrued before the effectivity of this Code may be assessed within a period of three (3) years from the date they became due.

²⁰ Lifted from the worksheet attached in the Notice of Assessment dated 06 March 2015. Division Docket, p. 170.
²¹ Computed using the rate under Section 3A.02(g) of the Revised Makati Revenue Code, particularly “P15,000.00 plus seventy five percent (75%) of one percent (1%) over 2 million”.

²² Lifted from the worksheet attached in the Notice of Assessment dated 06 March 2015. Division Docket, p. 170.
²³ Remained unpaid as of 20 April 2016, which is 36 months from the 4th quarter payment due date of petitioner’s LBT for the taxable year 2013, i.e., 20 October 2013.

²⁴ Evidenced by Official Receipt Nos. MKT 3537919, id., p. 198; MKT 3537947, id., p. 247; MKTCF 4011954, id., p. 248; MKTCF 4048539, id., p. 250.

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

MALAYAN EDUCATION SYSTEM,
INC. (FORMERLY KNOWN AS
MALAYAN COLLEGES, INC. AND
PRESENTLY OPERATING UNDER
THE NAME OF MAPUA
UNIVERSITY),

Petitioner,

CTA EB No. 2546
(CTA AC No. 225)

-versus-

CITY OF MAKATI, CITY MAYOR
AND CITY TREASURER,

Respondents.

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CITY OF MAKATI, CITY MAYOR
OF CITY OF MAKATI AND CITY
TREASURER,

Petitioners,

CTA EB No. 2588
(CTA AC No. 225)

Present:

-versus-

DEL ROSARIO, P.J.,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, and
ANGELES, JJ.

MALAYAN EDUCATION SYSTEM,
INC. (FORMERLY KNOWN AS
MALAYAN COLLEGES, INC. AND
PRESENTLY OPERATING UNDER
THE NAME OF MAPUA
UNIVERSITY),

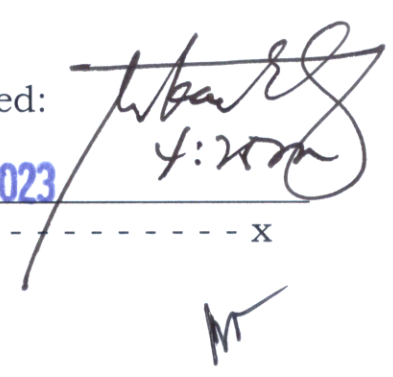
Respondent.

Promulgated:

NOV 20 2023

X- - - - -

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DISSENTING OPINION

CTA EB Nos. 2546 and 2588 (CTA AC No. 225)

Malayan Education System Inc. (Formerly Known As Malayan Colleges, Inc. and Presently Operating Under The Name of Mapua University vs. City of Makati, City Mayor and City Treasurer

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DISSENTING OPINION

CUI-DAVID, J.:

With all due respect to the learned ponente, Associate Justice Corazon Ferrer-Flores, and my other colleagues, I submit that the Court in Division lacks jurisdiction to entertain CTA AC No. 225.

Allow me to explain my position.

The Court of Tax Appeals (CTA), being a court of special jurisdiction, can take cognizance only of matters clearly within its jurisdiction.¹ Section 7(a)(3) of Republic Act (RA) No. 1125, as amended by RA No. 9282, provides for the jurisdiction of the CTA on local tax cases:

Sec. 7. Jurisdiction. — The CTA shall exercise:

- a. Exclusive appellate jurisdiction to review by appeal, as herein provided:

xxx xxx xxx

- 3. Decisions, orders or resolutions of the Regional Trial Courts in local tax cases originally decided or resolved by them in the exercise of their original or appellate jurisdiction;

Based on the above, for the CTA to acquire exclusive jurisdiction to review by appeal a decision, order, or resolution of a Regional Trial Court (RTC), the case must be a **local tax case** and must be **originally decided or resolved by them** in the exercise of their original or appellate jurisdiction. Thus, before the case can be raised on appeal to the CTA, the action before the RTC must be in the nature of a tax case or one that primarily involves a tax case. Further, the CTA's appellate jurisdiction over decisions, orders, or resolutions of the RTC becomes operative only when the latter has ruled on a **local tax case**.² Simply put, if the RTC ruling does **not** pertain to a local tax case, then the CTA is bereft of jurisdiction to entertain the same.



¹ Allied Banking Corporation vs. CIR, G.R. No. 175097, February 5, 2010.

² See *Mactel Corporation v. The City Government of Makati, et al.*, G.R. No. 244602, July 14, 2021.

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In the case of *City of Cagayan De Oro v. Cagayan Electric Power & Light Co., Inc. (CEPALCO)*,³ the Supreme Court defined the terms "tax" and "fee" and provided the standard for the proper determination thereof, to wit:

The term "taxes" has been defined by case law as "the enforced proportional contributions from persons and property levied by the state **for the support of government and for all public needs.**" While, under the Local Government Code, a "fee" is defined as "any charge fixed by law or ordinance **for the regulation or inspection of a business or activity.**"

From the foregoing jurisprudential and statutory definitions, it can be gleaned that the **purpose of an imposition will determine its nature as either a tax or a fee.** If the purpose is primarily revenue, or if revenue is at least one of the real and substantial purposes, then the exaction is properly classified as an exercise of the power to tax. On the other hand, if the purpose is primarily to regulate, then it is deemed an exercise of police power in the form of a fee, even though revenue is incidentally generated. **Stated otherwise, if generation of revenue is the primary purpose, the imposition is a tax but, if regulation is the primary purpose, the imposition is properly categorized as a regulatory fee.**

Clearly, if *revenue generation* is the primary purpose, the imposition is a *tax*, but if *regulation* is the primary purpose, the imposition is properly categorized as a regulatory *fee*.

It is also well to note that the nomenclature in a statute given to an exaction does not necessarily indicate whether it is a tax or some other kind of imposition. Instead, it is the *object* of the charge which is the true test in the determination thereof. This is confirmed in the case of *Bases Conversion and Development Authority and John Hay Management Corporation v. City Government of Baguio City, as represented by its Mayor, City Treasurer, and City Legal Officer (BCDA)*,⁴ citing *Calalang v. Lorenzo (Calalang)*,⁵ where the Supreme Court aptly explained, thus:



³ G.R. No. 224825, October 17, 2018. Boldfacing in the original.

⁴ G.R. No. 192694, February 22, 2023.

⁵ 97 Phil. 212 (1955).

DISSENTING OPINION

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Malayan Education System Inc. (Formerly Known As Malayan Colleges, Inc. and Presently Operating Under The Name of Mapua University vs. City of Makati, City Mayor and City Treasurer

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This Court has likewise explained that the nomenclature in a statute given to an exaction is not necessarily indicative of whether it is a tax or a fee. In *Calalang v. Lorenzo*:

The charges prescribed by the Revised Motor Vehicle Law for the registration of motor vehicles are in Section 8 of that law called "fees." But the appellation is no impediment to their being considered taxes if taxes they really are. **For not the name but the object of the charge determines whether it is a tax or a fee.** Generally speaking, taxes are for revenue, whereas fees are exactions for purposes of regulation and inspection and are for that reason limited in amount to what is necessary to cover the cost of the services rendered in that connection. Hence, "a charge fixed by statute for the service to be performed by an officer, where the charge has no relation to the value of the services performed and where the amount collected eventually finds its way into the treasury of the branch of the government whose officer or officers collected the charge, is not a fee but a tax." (*Emphasis supplied*)

In the case at bar, a perusal of the records reveals that the *Petition for Review* in CTA AC No. 225 seeks the reversal of the Decision dated March 21, 2019, and Order dated June 7, 2019, both rendered by the RTC of Makati - Branch 58 (RTC-Makati). It also prays to declare null and void the Notice of Assessment (NOA) dated March 6, 2015, which found Malayan Education System, Inc. (MESI) liable for local business taxes (LBT) for the period covering taxable years 2009 to 2013 to permanently enjoin the City of Makati (COM) from assessing and/or collecting business tax on its tuition fees and other educational receipts; and to refund the amount of Php8,160,000.00, representing deficiency LBTs for taxable years 2009 to 2013, which MESI paid under protest.⁶

Allegedly, on March 13, 2015, MESI received the NOA, stating that it has an outstanding obligation with the COM in the amount of Php17,190,741.08, inclusive of interest and penalty charges, representing deficiency LBTs for taxable years 2009 to 2013.

⁶ See page 1, Decision dated October 30, 2020 in CTA AC No. 225.

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MESI protested the assessment on May 11, 2015, under Section 195 of the Local Government Code (LGC) of 1991.

However, on May 25, 2015, MESI received a letter from the COM, enjoining the former to settle its tax liabilities.

On June 24, 2015, MESI elevated its case before the RTC, praying for the cancellation of the NOA.

Thereafter, on January 30, 2018, MESI attempted to renew its business permit for the year 2018 with the COM, but the latter **refused to grant it without prior settlement of the disputed deficiency LBTs, fees, or charges of the subject NOA.**

Here lies the basis of my dissent.

In *Mobil Philippines, Inc. v. The City Treasurer of Makati, et al.*, (*Mobil*),⁷ one which involves the refund of LBT collected by the COM on the taxpayer therein, the Supreme Court recognized that:

Business taxes imposed in the exercise of police power for regulatory purposes are paid for the privilege of carrying on a business in the year the tax was paid. It is paid at the beginning of the year as a fee to allow the business to operate for the rest of the year. It is deemed a prerequisite to the conduct of business. (*Emphasis supplied*)

The above pronouncement was re-affirmed in *BCDA*,⁸ stating that:

Business "taxes," thus, are a species of license fees that may be imposed by the local government unit. While incidentally revenue-earning, fees for a mayor-issued business permit are primarily regulatory, since the local government is not precluded from imposing conditions other than the payment of business taxes before the permit is issued. Issuances of business permits are in the exercise of police power. (*Emphasis supplied*)

The pronouncements in *Mobil* and *BCDA*, attesting to the *object and nature* of LBT as a license fee rather than a tax, are also ingrained in the Revised Makati Revenue Code (RMRC)⁹.

⁷ G.R. No. 154092, July 14, 2005.

⁸ *Supra*.

⁹ Ordinance 2004-A-025.

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More specifically, paragraph (a), Section 3A.10 thereof explicitly requires the payment of the LBT on persons who establish, operate, or conduct any business, trade, and activity within COM:

SEC. 3A. 10. Administrative Provisions —

(a) *Requirement*— Any person who shall establish, operate or conduct any business, trade or activity mentioned in this Article in the City of Makati, Metro Manila, **shall first** obtain a Mayor's permit and **pay** the fee therefor and **the business tax imposed** under this Article. (*Emphasis supplied*)

Should such persons fail to pay the LBT, despite demand, paragraph (a) of Section 4(A).15. of the RMRC declares that the issuance of the Mayor's Permit may be refused, or, if a Mayor's Permit was already issued, said permit may be revoked. In turn, the lack of a Mayor's Permit would lead to the eventual closure of a business establishment:

SEC. 4A. 15. Permit Refused; To Whom, Revocation and Closure.

a) Mayor's Permit may be **refused** to any person who has violated any ordinance or regulation relating to a license previously granted or **who has failed to pay the tax** or fee or a business being conducted but not licensed, or **fails to pay any** fine, penalty, **tax** or other debt or liability to the [COM] within thirty (30) days from the date of demand. The City Mayor shall close any business establishment operating without any Mayor's Permit or license. In the case of an existing license to any person, the same shall be **revoked and closed** by the City Mayor upon his [or her] **refusal to pay such** indebtedness or **liability** to the former. ... (*Emphasis supplied*)

With the condition that MESI has to settle its deficiency LBT before it can be issued a Mayor's Permit, the LBT imposed by the COM is primarily a license fee because it regulates the business establishments within its territorial jurisdiction. Thus, the LBT assessment slapped by the COM against MESI, covering years 2009-2013, addressed by the RTC-Makati in its Decision dated March 21, 2019, and Order dated June 7, 2019, is a local *fee* case, and *not* a local tax case.

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Accordingly, I **VOTE** to (1) **REVERSE** and **SET ASIDE** the Decision dated October 30, 2020, and Resolution dated October 20, 2021, in CTA AC No. 225, and (2) **DISMISS** CTA AC No. 225, for lack of jurisdiction.


LANEE S. CUI-DAVID
Associate Justice