REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PREMIUMLEISURE AND AMUSEMENT, INC. (PLAI), Petitioner,	**CTA EB NO. 2712** (CTA Case No. 10060)
- versus -	Members: **DEL ROSARIO**, *P.J.* **RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID, FERRER-FLORES**, *and* **ANGELES**, *JJ.*
COMMISSIONER OF INTERNAL REVENEU, Respondent.	Promulgated: APR 2 2 2024

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DECISION

***FERRER-FLORES, J.*:**

This is a **Petition for Review** filed by petitioner **PremiumLeisure and Amusement, Inc. (PLAI)** appealing the Court of Tax Appeals (CTA) First Division's *Decision*, dated May 26, 2022,[1] (assailed Decision) and Resolution, dated October 18, 2022,[2] (assailed Resolution) pursuant to Section 18, Republic Act (R.A.) No. 1125,[3] as amended by R.A. No. 9282.[4]

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[1] *Rollo*, pp. 35-63. Penned by Associate Justice Marian Ivy F. Reyes-Fajardo with concurrence by Associate Justice Catherine T. Manahan but with Dissenting Opinion of Presiding Justice Roman G. Del Rosario.

[2] *Rollo*, pp. 65-84. Penned by Associate Justice Marian Ivy F. Reyes-Fajardo with Dissenting Opinion of Presiding Justice Roman G. Del Rosario and Separate Opinion of Associate Justice Catherine T. Manahan.

[3] AN ACT CREATING THE COURT OF TAX APPEALS.

[4] AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA) ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBETSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OF REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS.

THE PARTIES

Petitioner is a domestic corporation duly organized and existing under the laws of the Philippines with principal office at 10/F One -E-Com Center, Harbor Drive, Mall of Asia Complex, CBP 1A, Pasay City.[5]

Respondent is the duly appointed **Commissioner of Internal Revenue (CIR)** vested under the appropriate laws with the authority to carry out the functions, duties, and responsibilities of said Office, including *inter alia*, the duty to act upon and approve claims for refund or tax credit pursuant to the provisions of the National Internal Revenue Code (NIRC) of 1997, as amended, and other tax laws, rules, and regulations.[6]

FACTUAL ANTECEDENTS

Petitioner is one of the members of *The Consortium* composed of SM Investments Corporation, SM Land, Inc., SM Hotels Corporation, SM Commercial Properties, Inc., SM Development Corporation, and petitioner PLAI.

On December 12, 2008, the Philippine Amusement and Gaming Corporation (PAGCOR) granted a Provisional License[7] to The Consortium to establish and operate casinos in the project[8] located within the Bagong Nayong Pilipino Entertainment City Manila.

On October 25, 2012, a Cooperation Agreement[9] was entered into among SM Investments Corporation (for itself and on behalf of the other companies of the SM Group), Belle Corporation, petitioner PLAI,[10] and MCE Leisure (Philippines) Corporation [for itself and on behalf of MCE Holdings (Philippines) Corporation and MCE Holdings No. 2 (Philippines) Corporation][11] to regulate the relationship among the parties as Licensees and to provide for the contribution of certain amounts to the project, in each case on and from closing. MCE Leisure (Philippines) Corporation *(MCE Leisure)* was irrevocably designated as the special purpose vehicle and the

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5 Paragraph 2, The Parties, Petition for Review, *Rollo*, p. 6.
6 Paragraph 3, *Ibid.*
7 Exhibit "P-4", Docket – Vol. III, pp. 1595-1605.
8 "Project" means the development within the Bagong Nayong Pilipino Entertainment City Manila specifically located at the "SM Mall of Asia Complex". *Id.*, p. 1595.
9 Exhibit "P-7", Docket – Vol. III, pp. 1605-1669.
10 Referred to as the Philippine Parties, *Id.*, p. 1605.
11 Referred to as the MCE Parties, *Ibid.*

sole and exclusive representative of the Licensees in connection with the casino license and the operation and management of the project.[12]

On January 28, 2013, an Amended Certificate of Affiliation and Provisional License[13] was issued by PAGCOR certifying that *The Consortium,* composed (this time) of SM Investments Corporation, petitioner PLAI, Belle Corporation, *MCE Leisure*, MCE Holdings (Philippines) Corporation, and MCE Holdings No. 2 (Philippines) Corporation, will be the co-licensees and holders of the Provisional License, dated December 12, 2008, previously issued by PAGCOR in accordance with Presidential Decree (P.D.) No. 1869,[14] as amended by R.A. 9487,[15] and that the Licensee is entitled to the customs duties and tax exemptions specified under Title IV, Section 13 of the PAGCOR Charter, as amended. The Affiliation and Provisional License applies to casinos located in the Bagong Nayong Pilipino Manila Bay Entertainment City, Parañaque City, and in the Newport City Integrated Resort, Pasay City.[16]

On March 13, 2013, *The Consortium* executed an Operating Agreement[17] appointing *MCE Leisure* as special purpose entity, pursuant to the Cooperation Agreement,[18] to operate and manage the project for the purpose of generating revenue.[19] *MCE Leisure* undertakes to determine and distribute to petitioner a variable amount as the latter's share in the gaming revenues based on a payment formula.[20]

On April 17, 2013, the Bureau of Internal Revenue (BIR) issued Revenue Memorandum Circular (RMC) No. 33-2013[21] to clarify the income tax and franchise tax due from PAGCOR and its contractees and licensees in line with the enactment of R.A. No. 9337[22] which removed PAGCOR from the list of exempt entities under Section 27(C) of the NIRC of 1997, as amended. The said RMC No. 33-2013 provides that PAGCOR and its contractees and licensees authorized to perform gambling casinos, gaming clubs and other similar recreation or amusement places, and gaming pools are subject to income tax under the NIRC of 1997, as amended.

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[12] Section 3.02(a)(i), and (iii), *Id.*, p. 1609.
[13] Exhibit "P-5", Docket – Vol. III, p. 1605.
[14] CONSOLIDATING AND AMENDING PRESIDENTIAL DECREE NOS. 1067-A, A067-B, 1067-C, 1399 AND 1632, RELATIVE TO THE FRANCHISE AND POWERS OF THE PHILIPPINE AMUSEMENT AND GAMING CORPORATION (PAGCOR).
[15] AN ACT FURTHER AMENDING PRESIDENTIAL DECREE NO. 1869, OTHERWISE KNOWN AS PAGCOR CHARTER
[16] Exhibit "P-5", *supra.*
[17] Exhibit "P-9", Docket – Vol. III, pp. 1671-1696.
[18] *Id.*, p. 1672.
[19] *Ibid.*
[20] Exhibit "P-9-a", Docket – Vol. III, pp. 1697-1705.
[21] Income Tax and Franchise Tax Due From the Philippine Amusement and Gaming Corporation (PAGCOR), Its Contractees and Licensees.
[22] An Act Amending Sections 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 and 288 of the National Internal Revenue Code of 1997, as Amended, and for Other Purposes.

On December 20, 2014, the Supreme Court, in the case of *Philippine Amusement and Gaming Corporation vs. Bureau of Internal Revenue* (PAGCOR case),[23] pronounced that the PAGCOR Charter remains in effect and the income derived by it from gaming operations remains subject to the five percent (5%) franchise tax, in lieu of all other taxes.

On April 29, 2015, PAGCOR issued a Gaming License[24] to *The Consortium* applicable to the casinos located in the Entertainment City, Parañaque City, and in the Newport City Integrated Resort, Pasay City, specifically to the Licensees' casino located along Asean Avenue and Roxas Boulevard, Tambo, Parañaque City, with the brand name City of Dreams Manila. The Gaming License is valid until July 11, 2033.[25]

On August 10, 2016, the Supreme Court promulgated *Bloomberry Resorts and Hotels, Inc. vs. Bureau of Internal* Revenue[26] (*Bloomberry case)*, confirming that the tax exemption privilege of PAGCOR from all other taxes, including corporate income tax realized from the operation of casinos, inures to the benefit of its contractees and licensees upon payment of the five percent (5%) franchise tax.

For calendar year (CY) 2016, petitioner filed its first, second, and third quarterly income tax returns on May 26, 2016, August 25, 2016, and November 28, 2016, respectively, while the 2016 annual income tax return (AITR) was filed on April 7, 2017, all through the BIR Electronic Filing and Payment System (eFPS).[27] Petitioner subjected its gaming revenue share to corporate income tax in compliance with RMC No. 33-2013.

Based on the aforementioned pronouncements of the Supreme Court, petitioner, on February 14, 2019, filed a letter dated January 31, 2019 to claim the refund of its alleged erroneously paid income tax for CY 2016 in the amount of **₱98,851,263.00**.[28] The claim for refund was amended on April 4, 2019 to increase its claim for refund to **₱115,384,991.00**.[29]

On April 6, 2019, petitioner filed the *Petition for Review* with the Court in Division.[30] On the other hand, respondent filed his *Answer* on July 23, 2019[31] and an Amended *Answer* on July 30, 2019.[32]

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[23] G.R. No. 215427, December 10, 2014.
[24] Exhibit "P-6", Docket – Vol. III, p. 1605.
[25] *Ibid.*
[26] G.R. No. 212530, August 16, 2016.
[27] Exhibits "P-14" to "P-17", Docket – Vol. III, pp. 1824-1857.
[28] Exhibit "P-20", Docket – Vol. III, pp. 1942-1948.
[29] Exhibit "P-21", Docket – Vol. III, pp. 1949-1951.
[30] Docket – Vol. I, pp. 9-21.
[31] Docket – Vol. I, pp. 457-465.
[32] Docket – Vol. I, pp. 476-490.

After the case had undergone trial, the CTA First Division rendered its decision on May 26, 2022 dismissing the petition for lack of merit, the dipositive portion of which reads:

> **WHEREFORE**, in light of the foregoing considerations, the instant Petition for Review is **DISMISSED** for lack of merit.
>
> **SO ORDERED.**

Unsatisfied, petitioner filed its *Omnibus Motion (1) Motion for Reconsideration (Re: Decision dated May 26, 2022) (2) Urgent Motion to Reopen Case* on June 23, 2022;[33] however, the Court *a quo*, denied the same in the now assailed Resolution, the *fallo* of which reads:

> **WHEREFORE**, in light of the foregoing considerations, the Court finds no compelling reason to reconsider or modify the assailed Decision. Petitioner's Omnibus Motion (1) Motion for Reconsideration (Re: Decision dated May 26, 2022 (2) Urgent Motion to Reppen Case is **DENIED** for lack of merit.
>
> **SO ORDERED.**

Having failed to obtain an affirmative relief from the Court in Division, petitioner filed the instant *Petition for Review* on November 25, 2022[34] praying that this Court reverse and set aside the assailed Decision and Resolution. On the other hand, respondent, in his *Comment [Re: Petition for Review dated 9 November 2022]*, prays that this Court render judgment denying the petition and affirming the assailed Decision and Resolution.[35]

This case was submitted for decision on March 22, 2023.[36]

ISSUES

1. Whether petitioner, as licensee of PAGCOR, is exempt from payment of income tax; and,

2. Whether petitioner is entitled to its claim for refund or issuance of tax credit certificate in the amount of ₱115,384,991.00 allegedly representing erroneously paid income tax for CY 2016.

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[33] Docket – Vol IV, pp. 2049-2066.
[34] *Rollo*, p. 27.
[35] *Rollo*, pp. 98-99.
[36] Resolution dated March 22, 2023, *Rollo*, pp. 103-105.

Petitioner's arguments:

Petitioner, as licensee of PAGCOR, is entitled to the tax exemption under Section 13(2) of P.D. No. 1869; thus, it is entitled to the refund of erroneously paid income tax for CY 2016. Petitioner was able to establish that it remitted the license fees to PAGCOR, which fees were inclusive of the franchise tax. Assuming *arguendo* that it failed to prove PAGCOR's remittance to the National Government of the five percent (5%) franchise tax, jurisprudential rulings only require proof of payment of five percent (5%) franchise tax by the licensees or contractees.

Respondent's counter-arguments:

Respondent maintains that the Court in Division correctly denied the original petition. Even assuming that petitioner is exempt as a co-licensee or grantee of PAGCOR, petitioner is not entitled to the refund or issuance of a tax credit certificate because it has not proven its entitlement thereto.

RULING OF THE COURT *EN BANC*

We find merit in the instant Petition for Review.

Timeliness of the Petition for Review

Before proceeding to the merits of the arguments of the parties, the Court En Banc deems it necessary to delve on the timeliness of the instant Petition for Review.

Records show that, on June 8, 2022, petitioner received a copy of the assailed Decision of the Court in Division to which petitioner timely filed its *Omnibus Motion: (1) Motion for Reconsideration (Re: Decision dated May 26, 2022*; and, *(2) Urgent Motion to Reopen Case* on June 23, 2022.

On October 18, 2022, the Court in Division issued the assailed Resolution denying petitioner's *Omnibus Motion* which was received by the latter on October 27, 2022. Consequently, petitioner had fifteen (15) days from its receipt, or until November 11, 2022, within which to file a petition for review before the CTA En Banc.

On November 11, 2022, petitioner filed a *Motion for Extension of Time to File Petition for Review* seeking an additional period of thirty (30) days, or

until November 26, 2022, within which to file the petition.[37] The Court *En Banc*, however, granted a final and non-extendible period of fifteen (15) days only from November 11, 2022, or until November 26, 2022 to file its Petition for Review pursuant to Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA).[38]

On November 25, 2022, petitioner timely filed the instant Petition for Review.[39]

We shall now proceed to the merits of the case.

The exemption of PAGCOR from income tax, as a holder of a franchise under P.D. No. 1869, inures to the benefit of its licensees and contractees, such as petitioner.

In the assailed Resolution, the Court in Division ruled that petitioner is not entitled to its claim for refund and that, as licensee of PAGCOR, which operates its own casino, petitioner is not entitled to the tax incentives granted to PAGCOR. The Court *a quo* cited the Supreme Court case of *Thunderbird Pilipinas Hotels and Resorts, Inc. vs. Commissioner of Internal Revenue*,[40] which pronounced that PAGCOR's exemption extends only to entities or individuals with whom PAGCOR has a contractual relationship in connection with its casino operations but not to its licensees.

Petitioner argues otherwise.

Petitioner alleges that, under Section 13(2) of P.D. No. 1869, the exemption privilege of PAGCOR from all kinds of taxes upon payment of the five percent (5%) franchise tax inures to the benefit of PAGCOR's contractees and licensees. Corollarily, as a licensee of PAGCOR, the tax exemption privilege granted to PAGCOR should also be accorded it. Petitioner cites the *PAGCOR case* and the *Bloomberry case* to bolster its claim.

We agree with petitioner.

The provisions of Section 13(a) and (b) of P.D. No. 1869 are clear. The exemption of PAGCOR and those which PAGCOR has a contractual

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[37] *Rollo*, pp. 1-3.
[38] Minute Resolution, dated November 11, 2022, *Rollo*, p. 4.
[39] *Rollo*, pp. 5-28.
[40] G.R. No. 211327, November 11, 2020.

relationship with from the payment of tax of any kind or form, income or otherwise, as well as fees, charges or levies of whatever nature, whether national or local, except the five percent (5%) franchise tax, is provided for by law, to wit:

> SEC. 13. Exemptions.
>
> (1) Customs duties, taxes and other imposts on importations. — xxx
>
> (2) Income and other taxes. — (a) Franchise Holder: ***No tax of any kind or form, income or otherwise, as well as fees, charges or levies of whatever nature, whether National or Local, shall be assessed and collected under this Franchise*** *from the Corporation; nor shall any form of tax or charge attach in any way to the earnings of the Corporation,* ***except a Franchise Tax of five (5%) percent of the gross revenue or earnings derived by the Corporation from its operation under this Franchise***. Such tax shall be due and payable quarterly to the National Government and shall be in lieu of all kinds of taxes, levies, fees or assessments of any kind, nature or description, levied, established or collected by any municipal, provincial, or national government authority.
>
> (b) Others: The ***exemptions herein granted for earnings derived from the operations conducted under the franchise*** *specifically from the payment of any tax, income or otherwise, as well as any form of charges, fees or levies,* ***shall inure to the benefit of and extend to corporation(s), association(s), agency(ies), or individual(s) with whom the Corporation or operator has any contractual relationship in connection with the operations of the casino(s) authorized to be conducted*** under this Franchise and to those receiving compensation or other remuneration from the Corporation or operator as a result of essential facilities furnished and/or technical services rendered to the Corporation or operator. xxx (Italic and boldfacing supplied)

The exemption of PAGCOR and its licensees and contractees from payment of all kinds of taxes, except the five percent (5%) franchise tax, has been upheld by the Supreme Court in the *Bloomberry case*, where it disposed of the issue in this manner:

> The Court through Justice Diosdado M. Peralta, categorically followed what was simply provided under the PAGCOR Charter (PD No. 1869, as amended by RA No. 9487), by proclaiming that despite amendments to the NIRC of 1997, the said Charter remains in effect. Thus, income derived by PAGCOR from its *gaming operations* such as the operation and licensing of gambling casinos, gaming clubs and other similar recreation or amusement places, gaming pools and related operations is subject only to 5% franchise tax, *in lieu* of all other taxes, including corporate income tax. The Court concluded that the **CIR committed grave abuse of discretion amounting to lack or excess of jurisdiction when it issued RMC No. 33-2013 subjecting both income from gaming operations and other related services to corporate income tax and 5% franchise tax considering that it unduly expands the Court's Decision**

dated 15 March 2011 without due process, which creates additional burden upon PAGCOR.

Noticeably, however, the High Court in the abovementioned case intentionally did not rule on the issue of whether or not PAGCOR's tax privilege of paying only the 5% franchise tax *in lieu* of all other taxes inures to the benefit of third parties with contractual relationship with it in connection with the operation of casinos, such as petitioner herein. The Court sitting *En Banc* simply stated that:

> The resolution of the instant petition is limited to clarifying the tax treatment of [PAGCOR's] income *vis-a-vis* our Decision dated March 15, 2011. This Decision (dated 10 December 2014) is not meant to expand our original Decision (dated 15 March 2011) by delving into new issues involving [PAGCOR's] contractees and licensees. For one, the latter are not parties to the instant case, and may not therefore stand to benefit or bear the consequences of this resolution. For another, to answer the fourth issue raised by [PAGCOR] relative to its contractees and licensees would be downright premature and iniquitous as the same would effectively countenance sidesteps to judicial process.[22]

Bearing in mind the parties involved and the similarities of the issues submitted in the present case, we are now presented with the prospect of finally resolving the confusion caused by the amendments introduced by RA No. 9337 to the NIRC of 1997, and the subsequent issuance of RMC No. 33-2013, affecting the tax regime not only of PAGCOR but also its contractees and licensees under the existing laws and prevailing jurisprudence.

Section 13 of PD No. 1869 evidently states that payment of the 5% franchise tax by PAGCOR and its *contractees and licensees* exempts them from payment of any other taxes, including corporate income tax, quoted hereunder for ready reference:

> Sec. 13. Exemptions. –
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> x x x x
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> (2) **Income and other taxes. — (a) Franchise Holder: No tax of any kind or form, income or otherwise, as well as fees, charges or levies of whatever nature, whether National or Local, shall be assessed and collected under this Franchise from the Corporation; nor shall any form of tax or charge attach in any way to the earnings of the Corporation, except a Franchise Tax of five (5%) percent of the gross revenue or earnings derived by the Corporation from its operation under this Franchise.** Such tax shall be due and payable quarterly to the National Government and shall be in lieu of all kinds of taxes, levies, fees or assessments of any kind, nature or description, levied, established or collected by any municipal, provincial, or national government authority.

> **(b) Others: The exemptions herein granted for earnings derived from the operations conducted under the franchise specifically from the payment of any tax, income or otherwise, as well as any form of charges, fees or levies, shall inure to the benefit of and extend to corporation(s), association(s), agency(ies), or individual(s) with whom the Corporation or operator has any contractual relationship in connection with the operations of the casino(s) authorized to be conducted under this Franchise and to those receiving compensation or other remuneration from the Corporation or operator as a result of essential facilities furnished and/or technical services rendered to the Corporation or operator.** (Emphasis and underlining supplied)

As previously recognized, the above-quoted provision providing for the said exemption was neither amended nor repealed by any subsequent laws (*i.e.* Section 1 of R.A. No. 9337 which amended Section 27(C) of the NIRC of 1997); thus, it is still in effect. Guided by the doctrinal teachings in resolving the case at bench, it is without a doubt that, like PAGCOR, its *contractees and licensees* remain exempted from the payment of corporate income tax and other taxes since the law is clear that said exemption inures to their benefit.

We adhere to the cardinal rule in statutory construction that when the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation. As has been our consistent ruling, where the law speaks in clear and categorical language, there is no occasion for interpretation; there is only room for application.

As the PAGCOR Charter states in unequivocal terms that exemptions granted for earnings derived from the operations conducted under the franchise specifically from the payment of any tax, income or otherwise, as well as any form of charges, fees or levies, ***shall inure to the benefit of and extend to*** corporation(s), association(s), agency(ies), or individual(s) with whom the PAGCOR or operator has any contractual relationship in connection with the operations of the casino(s) authorized to be conducted under this Franchise, so it must be that all *contractees and licensees* of PAGCOR, upon payment of the 5% franchise tax, shall likewise be exempted from all other taxes, including corporate income tax realized from the operation of casinos.

For the same reasons that made us conclude in the 10 December 2014 Decision of the Court sitting En Banc in G.R. No. 215427 that PAGCOR is subject to corporate income tax for "other related services", we find it logical that its *contractees and licensees* shall likewise pay corporate income tax for income derived from such "related services."

Simply then, in this case, we adhere to the principle that since the statute is clear and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. This is the plain meaning rule or *verba legis,* as expressed in the maxim *index animi sermo* or speech is the index of intention.[24]

> Plainly, too, upon payment of the 5% franchise tax, petitioner's income from its gaming operations of gambling casinos, gaming clubs and other similar recreation or amusement places, and gaming pools, defined within the purview of the aforesaid section, is not subject to corporate income tax.

In fact, the respondent confirms the exemption of PAGCOR and its licensees and contractees from the payment of taxes realized from the operation of casinos upon payment of the five percent (5%) franchise tax through the issuance of RMC No. 32-2022 on March 29, 2022 banking on the wordings of Section 13 of P.D. No. 1869 and the ruling in the *Bloomberry case*, to quote:

REVENUE MEMORANDUM CIRCULAR NO. 032-2022

SUBJECT : Clarifying the Tax Treatment of the Philippine Amusement and Gaming Corporation (PAGCOR), Its Licensees and Contractees

TO : The Philippine Amusement and Gaming Corporation (PAGCOR), Its Licensees and Contractees, Internal Revenue Officials, Employees and Others Concerned

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I. BACKGROUND

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II. TAX TREATMENT OF PAGCOR

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III. TAX TREATMENT OF PAGCOR's LICENSEES

P.D. No. 1869, as amended, expressly provides that the payment of the five percent (5%) franchise tax of PAGCOR inures to the benefit of its Contractees and Licensees (*Bloomberry Resorts and Hotels, Inc. v. BIR*) *viz*:

> *"SEC. 13. Exemptions. —*
>
> *(2) Income and other taxes —*
>
> *(b) Others: The exemptions herein granted for earnings derived from the operations conducted under the franchise specifically from the payment of any tax, income or otherwise, as well as any form of charges, fees or levies, shall inure to the benefit of and extend to corporation(s), association(s), agency(ies), or individual(s) with whom the Corporation or operator has any contractual relationship in connection with the operations of the casino(s) authorized to be conducted under this Franchise and to those receiving compensation or*

> *other remuneration from the Corporation or operator as a result of essential facilities furnished and/or technical services rendered to the Corporation or operator.*
>
> *The fee or remuneration of foreign entertainers contracted by the Corporation or operator in pursuance of this provision shall be free of any tax."*
>
> Hence, following the ruling in *Bloomberry*, like PAGCOR, its Contractees and Licensees shall be exempt from the payment of corporate income tax realized from the operation of casinos upon payment of the five (5%) franchise tax since the law is clear that said exemption inures and extends to their benefit. xxx (Underlining supplied)

A perusal of the records shows that petitioner is a holder of a Casino License[41] granted by PAGCOR, pursuant to the Provisional License issued to The (original) *Consortium* on December 12, 2008.[42] The *Consortium* is authorized to establish and operate casinos for both local and foreign patrons. Petitioner additionally presented the Amended Certificate of Affiliation & Provisional License issued by PAGCOR on January 13, 2013, this time, to *The* (second) *Consortium*, bearing a note that *The Consortium* will be the co-licensees and holders of the Provisional License issued on December 12, 2008. Petitioner likewise offered in evidence the Gaming License which was issued to *The Consortium*[43] which authorized the operation of casinos located in the Entertainment City, Parañaque City, and in the Newport City Integrated Resort, Pasay City, specifically to the casinos located along Asean Avenue and Roxas Boulevard, Tambo, Parañaque City, with the brand name City of Dreams Manila.

Having the Provisional License, the Amended Certificate of Affiliation & Provisional License, and the Gaming License, petitioner was able to prove that it is a licensee of PAGCOR authorized to establish and operate casino(s) in different locations for both local and foreign patrons.

As regards the application of the *Thunderbird case* to case at bar, which according to the Court *a quo* modifies the ruling in the *Bloomberry case*, in that PAGCOR's exemption extends only to entities or individuals with whom PAGCOR has contractual relationship with in connection with its casino operations but not to its licensees, this Court adopts the explanation of Presiding Justice Roman G. Del Rosario in expounding the dissimilarity between the two case laws, as follows:

> While I am not unaware of the pronouncement of the Third Division of the Supreme Court in *Thunderbird*, with utmost respect, I am of the

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[41] Section 1, Article IV, Exhibit "P-4", Docket – Vol. III, p. 1595.
[42] Exhibit "P-4", Docket – Vol. III, pp. 1595-1605.
[43] Exhibit "P-6", Docket – Vol. III, p. 1605.

humble view that *Thunderbird* could not have reversed the doctrine laid down in *Bloomberry* which was also decided by the Third Division of the Supreme Court, albeit with different composition.

Parenthetically, the doctrine in determining the taxation of income from gaming operations derived by contractees and licensees of PAGCOR, as laid down in *Bloomberry*, remains entitled to respect until and unless modified by the Supreme Court *En Banc*. Section 4(3), Article VIII of the 1987 Constitution is categorical.

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Moreover, *Thunderbird* itself acknowledges that *Bloomberry* is not similar to *Thunderbird* as the facts in *Bloomberry* occurred after PD No. 1869 was amended by RA No. 9487. **RA No. 9487, which took effect in 2007, granted PAGCOR the authority to license casinos and other gaming operations**. Notably, the taxable year involved in *Thunderbird* is **2006** (or prior to the effectivity of RA No. 9487 in 2007) during which PAGCOR had no authority to license casinos and other gaming operations.

Section 10 of PD No. 1869 prior to and after its amendment by RA No. 9487 is quoted hereunder:

Section 10 of PD No. 1869	Section 10 of PD No. 1869, as amended by RA No. 9487
"SEC. 10. Nature and Term of Franchise. — Subject to the terms and conditions established in this Decree, the Corporation is hereby granted for a period of twenty-five (25) years, renewable for another twenty-five (25) years, **the rights, privilege and authority to operate and maintain** gambling casinos, clubs and other recreation or amusement places, sports, gaming pools, i.e. basketball, football, lotteries, etc. whether on land or sea, within the territorial jurisdiction of the Republic of the Philippines.	SEC. 10. Nature and Term of Franchise. — Subject to the terms and conditions established in this Decree, the Corporation is hereby granted from the expiration of its original term on July 11, 2008, another period of twenty-five (25) years, renewable for another twenty-five years, **the rights, privileges and authority to operate and license** gambling casinos, gaming clubs and other similar recreation or amusement places, gaming pools, i.e. basketball, football, bingo, etc. except jai-alai, whether on land or sea, within the territorial jurisdiction of the Republic of the Philippines.

Simply put, PAGCOR had no authority to license gambling casinos prior to 2007. Thunderbird Pilipinas Hotels and Resorts, Inc. (TPHRI) was then authorized by PAGCOR to construct and operate a casino complex pursuant merely to a **Memorandum of Agreement** dated April 11, 2006. Considering that TPHRI was not a licensee under Section 13(2)(b) of PD No. 1869, **as amended by RA No. 9487**, the tax exemption granted to licensees (as confirmed in *Bloomberry)* did not apply to TPHRI.

> Indeed, a careful perusal of the following disquisition in *Thunderbird* readily reveals that the pronouncement therein pertains to TPHRI alone, as there is nothing in *Thunderbird* which suggests, even remotely, that the doctrine laid in *Bloomberry* is reversed or modified. It is downright obvious that the conclusions in *Thunderbird* applies to said case only under the specific circumstances therein obtaining. Pertinent portions of *Thunderbird* are quoted hereunder:
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> xxx xxx xxx
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> Indeed, in 2006, the operation of casinos was centralized into PAGCOR. In constructing and operating a casino complex pursuant to its April 11, 2006 Memorandum of Agreement with PAGCOR. TPHRI was not a licensee as contemplated under PD No. 1869, as amended by RA No. 9487. Thus, *Thunderbird* concluded that TPHRI does not fall within the purview of Section 13(2)(b) of PD No. 1869; consequently, **TPHRI's** revenues from its casino operations were not exempt from income tax.
>
> More importantly, it is worthy to note that the doctrine laid down in *Bloomberry* was reiterated in *Commissioner of Internal Revenue vs. Travellers International Hotel Group, Inc.* on **May 3, 2021 or six (6) months after *Thunderbird*.** In *Travellers,* which involves taxable year 2010 or after PD No. 1869 was amended by RA No. 9487, the Second Division of the Supreme Court was categorical:
>
> > "Even assuming that the delegation of authority was valid, the CTA *En Banc* also correctly found that **respondent's gaming revenues as a PAGCOR licensee were exempt from regular corporate income tax after payment of the five percent (5%) franchise tax per the Court's pronouncement in *Bloomberry Resorts and Hotels, Inc. v. Bureau of Internal Revenue.* Hence, the CTA En Banc correctly set aside the deficiency tax assessment against respondent.**" *(Boldfacing and underscoring supplied).*

Prescinding from above, it is clear that the ruling in *Thunderbird case* does not apply to petitioner.

The *Bloomberry case* is categorical in stating that the tax exemption privilege of PAGCOR inures to the benefit of its contractees and **licensees.** The records are clear that petitioner was granted a Provisional License on December 12, 2008 pursuant to PAGCOR's authority under P.D. No. 1869, as amended. Its tax exemption privilege was based on Section 13(2) of P.D. No. 1869, in relation to Section 10 of the same decree, as amended by R.A. No. 9487, being a PAGCOR licensee.

In effect, the amendment introduced by R.A. No. 9487 in Section 10 of P.D. No. 1869 grants the licensee the privileges and benefits accorded to PAGCOR with respect to tax exemption incentives under the latter's

legislative franchise. It follows, therefore, as PAGCOR's licensee, petitioner enjoys the tax exemption benefits of PAGCOR.

Nevertheless, petitioner's claim cannot instantaneously be granted. Petitioner must comply with the requirements in claiming refund of erroneously paid income tax under the law and jurisprudence.

Requisites for the recovery of tax erroneously collected

Sections 204(C)[44] and 229[45] of the NIRC of 1997, as amended, govern the claim for refund of erroneously or illegally collected taxes.

A reading of the said provisions shows the following are the pre-requisites that must be satisfied for such claim to prosper:

1) that an administrative claim for refund or credit must be filed with the BIR before filing a judicial claim with this Court, both within two (2) years from the date of payment of tax; and,

2) that the subject tax paid is an erroneous or illegal tax, that is, *"one levied without statutory authority, or upon property not subject to taxation, or by some officer having no authority to levy the tax, or one which in some other similar aspect is illegal".*[46]

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[44] **SEC. 204. Authority of the Commissioner to Compromise/Abate and Refund or Credit Taxes.** - The Commissioner may –

xxx xxx xxx

(C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty: Provided, however, that a return filed showing an overpayment shall be considered as a written claim for credit or refund. xxx

[45] **SEC. 229. Recovery of Tax Erroneously or Illegally Collected.** - No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: *Provided, however*, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.

[46] Black's Law Dictionary, 5th Ed., p. 486 cited in *Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corporation*, G.R. No. 188497, April 25, 2012.

The administrative and judicial claims were timely filed.

In *ACCRA Investments Corporation vs. The Honorable Court of Appeals, et al.*,[47] *CIR vs. TMX Sales, Inc., et al.*,[48] and *CIR vs. Philippine American Life Insurance Co., et al.*,[49] all cited in *CIR vs. Court of Appeals, et al.*,[50] the two (2)-year prescriptive period for filing of claim for refund, both in the administrative and judicial levels, should be reckoned from the time the final adjustment return or AITR was filed, since it is only at that time when the corporate taxpayer will determine whether it paid an amount exceeding its annual income tax liability, to wit:

> xxx. In *Commissioner of Internal Revenue v. TMX Sales, Inc.*, this Court, in rejecting the contention that the period of prescription should be counted from the date of payment of the quarterly tax, held:
>
> > . . . [T]he filing of a quarterly income tax return required in Section 85 [now Section 68] and implemented per BIR Form 1702-Q and payment of quarterly income tax should only be considered mere installments of the annual tax due. These quarterly tax payments which are computed based on the cumulative figures of gross receipts and deductions in order to arrive at a net taxable income, should be treated as advances or portions of the annual income tax due, to be adjusted at the end of the calendar or fiscal year. This is reinforced by Section 87 [now Section 69] which provides for the filing of adjustment returns and final payment of income tax. *Consequently, the two-year prescriptive period provided in Section 292 [now Section 230 of the Tax Code] should be computed from the time of filing the Adjustment Return or Annual Income Tax Return and final payment of income tax*.
>
> On the other hand, in *ACCRA Investments Corporation vs. Court of Appeals*, where the question was whether the two-year period of prescription should be reckoned from the end of the taxable year (in that case December 31, 1981), we explained why the period should be counted from the filing of the final adjustment return, thus:
>
> > Clearly, there is the need to file a return first before a claim for refund can prosper inasmuch as the respondent Commissioner by his own rules and regulations mandates that the corporate taxpayer opting to ask for a refund must show in its final adjustment return the income it received from all sources and the amount of withholding taxes remitted by its withholding agents to the Bureau of Internal Revenue. The petitioner corporation filed its final adjustment return for its 1981 taxable year on April 15, 1982. In our Resolution dated April 10, 1989 in the case of *Commissioner of Internal Revenue v. Asia Australia Express, Ltd.* (G.R. No. 85956), *we ruled that the two-year prescriptive period within which to claim a refund*

[47] G.R. No. 96322, December 20, 1991.
[48] G.R. No. 83736, January 15, 1992.
[49] G.R. No. 105208, May 29, 1995.
[50] G.R. No. 117254, January 21, 1999.

> *commences to run, at the earliest, on the date of the filing of the adjusted final tax return*. Hence, the petitioner corporation had until April 15, 1984 within which to file its claim for refund.
>
> xxx xxx xxx
>
> It bears emphasis at this point that the rationale in computing the two-year prescriptive period with respect to the petitioner corporation's claim for refund from the time it filed its final adjustment return is the fact that it was only then that ACCRAIN could ascertain whether it made profits or incurred losses in its business operations. *The "date of payment", therefore, in ACCRAIN's case was when its tax liability, if any, fell due upon its filing of its final adjustment return on April 15, 1982*.

Finally, in *Commissioner of Internal Revenue v. Philippine American Life Insurance Co.*, we held:

> *Clearly, the prescriptive period of two years should commence to run only from the time that the refund is ascertained, which can only be determined after a final adjustment return is accomplished*. In the present case, this date is April 16, 1984, and two years from this date would be April 16, 1986. The record shows that the claim for refund was filed on December 10, 1985 and the petition for review was brought before the CTA on January 2, 1986. Both dates are within the two-year reglementary period. Private respondent being a corporation, Section 292 [now Section 230] cannot serve as the sole basis for determining the two-year prescriptive period for refunds. As we have earlier stated in the TMX Sales case. Sections 68, 69, and 70 on Quarterly Corporate Income Tax Payment and Section 321 should be construed in conjunction with it.
>
> xxx xxx xxx
>
> Thus, it can be deduced from the foregoing that, in the context of §230, which provides for a two-year period of prescription counted "from the date of payment of the tax" for actions for refund of corporate income tax, the two-year period should be computed from the time of actual filing of the Adjustment Return or Annual Income Tax Return. This is so because at that point, it can already be determined whether there has been an overpayment by the taxpayer. Moreover, under §49(a) of the NIRC, payment is made at the time the return is filed. (Underscoring supplied)

The Supreme Court explained, in the case of *Metropolitan Bank & Trust Company vs. The CIR*,[51] the *ratio decidendi* in the above-cited cases wherein it ruled, *viz*:

[51] G.R. No. 182582, April 17, 2017.

> [T]he cases cited by Metrobank involved corporate income taxes, in which the corporate taxpayer is required to file and pay income tax on a quarterly basis, with such payments being subject to an adjustment at the end of the taxable year. As aptly put in *CIR v. TMX Sales, Inc.*, "payment of quarterly income tax should only be considered [as] mere installments of the annual tax due. These quarterly tax payments which are computed based on the cumulative figures of gross receipts and deductions in order to arrive at a net taxable income, should be treated as advances or portions of the annual income tax due, to be adjusted at the end of the calendar or fiscal year. x x x Consequently, the two-year prescriptive period x x x should be computed from the time of filing of the Adjustment Return or Annual Income Tax Return and final payment of income tax." Verily, since quarterly income tax payments are treated as mere "advance payments" of the annual corporate income tax, there may arise certain situations where such "advance payments" would cover more than said corporate taxpayer's entire income tax liability for a specific taxable year. Thus, it is only logical to reckon the two (2)-year prescriptive period from the time the Final Adjustment Return or the Annual Income Tax Return was ruled, since it is only at that time that it would be possible to determine whether the corporate taxpayer had paid an amount exceeding its annual income tax liability.

Applying the above jurisprudence to the case at bar, petitioner filed its AITR for CY 2016 on April 7, 2017. Counting two (2) years from April 7, 2017, petitioner had until April 7, 2019, within which to file its claim for refund. Since petitioner filed its administrative claims for refund on February 14, 2019 and April 4, 2019 while the judicial claim was filed with the Court in Division on April 5, 2019, both claims were filed within the two (2)-year prescriptive period.

Having established that the administrative and judicial claims for refund were timely filed, petitioner must next prove its payment of the five percent (5%) franchise tax on gross gaming revenue earned from casino operations as a condition *sine qua non* for its entitlement to the exemption from payment of income tax.

Petitioner paid the five percent (5%) franchise tax.

In the assailed Decision, the Court in Division ruled that petitioner failed to prove its entitlement to the claim for refund because it failed to establish that PAGCOR remitted the franchise tax to the National Government. The Court *a quo* held that it is the payment of the franchise tax by PAGCOR that will create the tax exemption incentives under its franchise which may inure to the benefit of its contractees and licensees.

Petitioner opines otherwise. Petitioner, as part of *The Consortium*, earns gaming revenues in the operation of casino located in the City of Dreams

Manila. Pursuant to the Operating Agreement, *MCE Leisure* distributes to petitioner variable amounts constituting its (petitioner) share in the gaming revenues of the City of Dreams Manila. The amounts received by petitioner from *MCE Leisure* were already net of the applicable PAGCOR license fees which were remitted by the *MCE Leisure* to PAGCOR.

Petitioner avers that the remitted license fees to PAGCOR were inclusive of the five percent (5%) franchise tax and that PAGCOR is the one responsible of remitting the franchise tax to the National Government pursuant to Section 21, Article IV of the Provisional License.

We agree with petitioner.

Based on Section 13 of P.D. No. 1869, the *Bloomberry case*, and the Provisional License, the requirements that must be established by petitioner are: (1) that it is a licensee of PAGCOR; (2) that it derives income from the casino operations as a licensee; (3) that it pays license fee, which must be inclusive of the five percent (5%) franchise tax; and, (4) that it paid income tax for CY 2016.

Under Section 20, in relation to Section 21, of the Provisional License, petitioner is required to pay license fee inclusive of the five percent (5%) franchise tax to PAGCOR and it is PAGCOR which is responsible in remitting the five percent (5%) franchise tax to the National Government, to quote:

> **SECTION 20. LICENSE FEE.** As an essential condition for the License to be issued by PAGCOR to LICENSEE to establish and operate the Casino within the Project, LICENSEE must remit to PAGCOR on monthly basis, starting from the date the Casino commences operation, the following License Fees, in lieu of all taxes with reference to the Income Component of the Gross Gaming Revenues:
>
> (a) 15% of Gross Gaming Revenues generated from High Roller tables;
> (b) 25% of Gross Gaming Revenues generated from non-High Roller Tables;
> (c) 25% of Gross Gaming Revenues generated from slot machines and electronic gaming machines;
> (d) 15% of Gross Gaming Revenues generated from Junket Operation.
>
> xxx xxx xxx
>
> **SECTION 21. FRANCHISE TAX.** PAGCOR shall pay the franchise tax on actual Gross Gaming Revenues generated by the Casino ('Franchise Tax'). The License Fees as stipulated under Section 20, hereof is inclusive of the Franchise Tax. As provided under the PAGCOR Charter, the Franchise Tax shall be due and payable quarterly to the national government by PAGCOR. (Underlining supplied)

The PAGCOR's obligation to pay the franchise tax to the National Government on a quarterly basis is mandated under Section 13(2)(a) of P.D. No. 1869.

As a franchise holder, it is PAGCOR that is required to pay the five percent (5%) franchise tax to the National Government pursuant to P.D. No. 1869 while the licensee is obligated to pay license fees based on gross gaming revenues pursuant to the Provisional License granted by PAGCOR.

Records show that petitioner earned a net gaming revenue share, which was determined in accordance with the Operating Agreement with *MCE Leisure*, using the following formulas:

For Mass Market Payment:[52]

Mass Market Gross Win	
less the PAGCOR License Fee (Mass Market)	
Mass Market Net Win	15% of Mass Market Net Win (PLAI NW)
less Management Allowance (2%) (Mass Market)	
Mass Market Net Win after Management Allowance (Mass Market)	
less Mass Market Casino Operating Expenses	
Mass Market Casino Gaming EBITDA	
less Deductible (7%) (Mass Market)	
Mass Market Casino Gaming EBITDA after Deductible (Mass Market)	50% of Mass Market Casino Gaming EBITDA after Deductible (Mass Market) (PLAI MM EBITDA)

For VIP Payment:[53]

VIP Market Gross Win	
less PAGCOR License Fee (VIP)	
Less Commissions and Incentives and VIP Bad Debt Expenses	
VIP Net Win	2% of VIP Net Win (PLAI VIP NW)
less Management Allowance (2%) (VIP)	
VIP Net Win after Management Allowance	
less VIP Operating Expenses	
VIP Casino Gaming EBITDA	
less Deductible (7%) (VIP)	
VIP Casino Gaming EBITDA after Deductible (VIP)	50% of VIP Casino Gaming EBITDA after Deductible (VIP) (PLAI VIP EBITDA)

[52] Docket – Vol. III, p. 1698.
[53] Docket – Vol. III, p. 1700.

Pursuant to Schedule 2[54] of the Operating Agreement, the monthly Mass Payment to petitioner shall be the higher of (1) fifteen percent (15%) of Mass Market Net Win and (2) fifty percent (50%) of Mass Market Casino Gaming Earnings Before Interest, Tax, Depreciation and Amortization (EBITDA) after Deductible (Mass Market).[55] On the other hand, the monthly VIP Payment is computed with the higher of (1) two percent (2%) of VIP Net Win and (2) fifty percent (50%) of VIP Casino Gaming EBITDA after Deductible (VIP), less the sum of the monthly VIP Payments made during the relevant fiscal period to date.[56]

A scrutiny of the above formulae shows that the license fees due to PAGCOR are being deducted from the mass and VIP markets gross wins before computing the petitioner's share. This means that, when petitioner receives its net share in the gross gaming revenue of the casino, the license fee, which is inclusive of the five percent (5%) franchise tax, was already deducted from the gross win revenue.

On the basis of the above formulae, petitioner reported its net gaming revenue share in the amount of ₱1,642,976,365.00 for CY 2016 in its audited Income Statement,[57] computed as follows:

Gaming revenue share (Gross)	₱2,171,573,454.00
Less: PAGCOR license fee paid by MCE Leisure	528,597,089.00
Gaming revenue share (NET)	₱1,642,976,365.00[58]

From the above computation, it can be observed that the license fee due to PAGCOR in the amount of ₱528,597,089.00 was indeed deducted by *MCE Leisure* from the gross gaming revenue share of petitioner. The deducted license fee was then remitted/paid by *MCE Leisure* to PAGCOR as part of the following official receipts:[59]

[54] Docket – Vol. III, p. 1697.
[55] Exhibit "P-22", Docket – Vol. II, 1048.
[56] *Id.*, pp. 1048-1049.
[57] Exhibit "P-13", Docket – Vol. III, pp. 1790-1822.
[58] *Id.*, p. 1814.
[59] Docket – Vol. III, pp. 1742-1789.

Remittance of License Fees to PAGCOR (Nature)	CY 2016	Exhibit	Amount	
			In Dollar	In Peso
Junket Operations	January	"P-12-a"	$ 127,373.26	
Casino Operations	January	"P-12-b"		₱ 170,252,725.43
Casino Operations	February	"P-12-c"		7,630,454.20
Poker Tournament	February	"P-12-d"		173,585.00
Texas Holder Poker Operations	February	"P-12-e"		2,018,951.25
Casino Operations	February	"P-12-f"		205,315,708.71
Junket Operations	February	"P-12-g"	163,462.40	
Poker Tournament	March	"P-12-h"		163,554.00
Casino Operations	March	"P-12-i"		152,359,442.82
Texas Holder Poker Operations	March	"P-12-j"		2,109,509.38
Texas Holder Poker Operations	April	"P-12-k"		2,052,943.13
Junket Operations	March	"P-12-l"	269,149.44	
COD Poker Tournament	April	"P-12-m"		95,245.00
Casino Operations	April	"P-12-n"		227,849,277.24
Poker Tournament	May	"P-12-o"		842,320.00
Texas Holder Poker Operations	May	"P-12-p"		2,955,528.13
Casino Operations	May	"P-12-q"		230,855,484.97
Junket Operations	May	"P-12-r"	137,525.28	
COD Poker Tournament	June	"P-12-s"		135,655.00
Texas Holder Poker Operations	June	"P-12-t"		1,962,818.75
Casino Operations	June	"P-12-u"		202,527,830.03
COD Poker Tournament	July	"P-12-v"		467,382.50
Texas Holder Poker Operations	August	"P-12-w"		3,327,407.50
COD Poker Tournament	August	"P-12-x"		1,613,840.00
Casino Operations	August	"P-12-y"		487,546,487.94
Junket Operations	August	"P-12-z"	1,441,230.15	
COD Poker Tournament	September	"P-12-aa"		227,645.00
Casino Operations	July	"P-12-bb"		226,629,295.30
Texas Holder Poker Operations	July	"P-12-cc"		2,660,621.25
Junket Operations	July	"P-12-dd"	97,173.66	
Texas Holder Poker Operations	September	"P-12-ff"		1,935,670.63
Casino Operations	September	"P-12-gg"		393,917,157.42
Junket Operations	September	"P-12-hh"	381,062.92	
Junket Operations	October	"P-12-ii"	609,289.10	
COD Poker Tournament	October	"P-12-"jj		159,875.00
Texas Holder Poker Operations	October	"P-12-kk"		2,305,843.75
Casino Operations	October	"P-12-ll"		463,503,056.28
COD Poker Tournament	November	"P-12-mm"		382,130.00
Texas Holder Poker Operations	November	"P-12-nn"		2,444,259.38
Casino Operations	November	"P-12-oo"		442,233,728.00
Junket Operations	November	"P-12-pp"	612,935.09	
Junket Operations	December	"P-12-qq"	355,686.66	
Casino Operations	December	"P-12-rr"		580,048,351.15
COD Poker Tournament	December	"P-12-ss"		978,852.50
Texas Holder Poker Operations	December	"P-12-tt"		2,778,434.38
Texas Holder Poker Operations	December	"P-12-uu"		1,657,442.50
COD Poker Tournament	January	"P-12-vv"		54,095.00
TOTAL			**$ 4,194,887.96**	**₱3,824,172,608.52**

We find the above documents sufficient to prove that the license fee in the sum of ₱528,597,089.00, inclusive of the five percent (5%) franchise tax, was paid by petitioner to PAGCOR through *MCE Leisure*.

Moreover, the net gaming revenue share was supported by the following official receipts issued by petitioner to *MCE Leisure*, *viz*:[60]

CY 2016	Exhibit	Zero Rated Sales	Withholding Tax	Amount Due
January	"P-11-a"	₱ 104,905,122.00	₱ 2,409,865.00	₱ 102,495,257.00
February	"P-11-b"	117,458,260.00	2,691,677.00	114,766,583.00
March	"P-11-c"	102,954,087.00	2,359,901.00	100,594,186.00
April	"P-11-d"	121,565,572.00	1,476,218.00	120,089,354.00
May	"P-11-e"	132,742,404.00	2,654,847.72	130,087,556.28
June	"P-11-f"	121,569,646.00	2,431,393.07	119,138,252.93
July	"P-11-g"	127,468,739.00	2,549,374.78	124,919,364.22
August	"P-11-h"	146,556,385.63	2,931,127.72	143,625,257.91
September	"P-11-I"	129,273,990.05	2,585,479.80	126,688,510.25
October	"P-11-j"	154,280,320.60	3,085,606.41	151,194,714.19
November	"P-11-k"	147,533,208.95	2,950,664.18	144,582,544.77
December	"P-11-l"	235,867,590.67	4,717,351.81	231,150,238.86
TOTAL		**₱1,642,175,325.90**	₱ 32,843,506.49	₱1,609,331,819.41

which petitioner reported in its 2016 audited Income Statement in the sum of ₱1,642,976,365.00.[61] While we note that the amount in the official receipts issued by petitioner is less than the amount reported in the audited Income Statement, this Court believes that it is not an issue to the present refund case. What is material is for petitioner to show that its gaming revenue share generated from the casino operations was subjected to five percent (5%) franchise tax in order to be exempt from the payment of corporate income tax.

The records show that, the bigger amount of ₱1,642,976,365.00 was the basis of petitioner in computing its income tax liability for the CY 2016 in the amount of ₱98,851,263.00[62] which was then reconciled and reflected in the 2016 AITR, detailed as follows:

Gaming revenue share (Gross)		₱ 2,171,573,454.00
Less: PAGCOR license fee paid by MCE Leisure		528,597,089.00
Gaming revenue share		**₱1,642,976,365.00**
Add: Interest income		6,300,329.00
Total		₱ 1,649,276,694.00
Less:		
Cost of Services	₱ 306,874,483	
General and Administrative Expenses	185,188,482	492,062,965.00
Income before income tax		₱ 1,157,213,729.00
Less: Provision for current income tax		**98,851,263.00**
Net Income after income tax		**₱1,058,362,466.00**

[60] Docket – Vol. III, pp. 1730-1741. See also Sworn Statement of Jackson T. Ongsip, Exhibit "P-22", Docket – Vol. II, pp. 1053-1056.

[61] The reported revenue per audited Income Statement is bigger than the official receipts offered in evidence.

[62] *Id.*, p. 1796.

Schedule 9 - Reconciliation of Net Income Per Books Against Taxable Income

Net Income per books		**₱1,058,362,466.00**
Add: Non-deductible Expenses/Taxable Other Income		
Provision for income tax		98,851,263.00
Non deductible expenses under Optional Standard Deduction		18,317,892.00
Total		₱ 1,175,531,621.00
Less:		
Interest income subject to final tax	₱ 6,300,329.00	
Non-taxable net revenue	620,057,610.00	
Optional standard deduction	219,669,473.00	
Total		846,027,412.00
Net Taxable Income (declared in the AITR)		**₱ 329,504,209.00**
Tax Due (P329,504,209.00 x 30%)		**₱ 98,851,262.70**
Less: Income Tax Payments		
Quarterly Income Tax Payments	₱ 84,517,225.00	
Creditable Withholding Taxes	30,867,686.00	**115,384,911.00**
Total Amount Payable/(Overpayment)		(₱ 16,533,648.30)

Considering that petitioner is exempt from the payment of corporate income tax, its total payment of ₱115,384,911.00 appears to have been erroneously paid which may be refundable pursuant to Sections 204(C) and 229 of the NIRC of 1997, as amended. Petitioner must, however, still prove the actual payment of the subject income tax.

Records show that, out of ₱115,384,911.00, petitioner was able to establish the actual income tax payment in the sum of ₱115,384,908.62 based on the following evidence,[63] to wit:

	Exhibit	Amount
Payment under Regular/Normal Rate from Previous Quarters		
First Quarter 2016	"P-15" and "P-15-a"	₱ 49,142,799.47
Second Quarter 2016	"P-16" and "P-16-a"	35,374,424.64
Tax Withheld per BIR Form 2307		
April to June 2016	"P-18-a"	14,334,038.71
July to September 2016	"P-18-b"	7,911,895.41
October to December 2016	"P-18-c"	8,621,750.39
Total Income Tax Payment		₱ 115,384,908.62

In sum, petitioner was able to prove that it is a licensee of PAGCOR entitled to the tax exemption privileges pursuant to Section 13(2)(b) of P.D. No. 1869. Being exempt from all kinds of taxes, except the five percent (5%) franchise tax, petitioner's income tax payment for the CY 2016 becomes erroneous and respondent is bound to refund the same.

Well-entrenched in our jurisprudence that tax refunds are in the nature of tax exemptions. As such they are regarded as in derogation of sovereign

[63] Docket – Vol. III, pp. 1835-1848 and 1858-1860.

authority and to be construed *strictissimi juris* against the person or entity claiming the exemption.[64] The burden of proof is upon him who claims the exemption in his favor and he must be able to justify his claim by the clearest grant of organic or statute law.[65] Here, petitioner was able to discharge the burden of proof as required by law, thereby, entitling it to the refund sought.

WHEREFORE, the instant Petition for Review filed by petitioner PremiumLeisure and Amusement, Inc. (PLAI) is hereby **GRANTED**.

Accordingly, the assailed Decision dated May 26, 2022 and Resolution dated October 18, 2022 rendered by the CTA First Division in CTA Case No. 10060 are **REVERSED** and **SET ASIDE**. The respondent is **ORDERED** to refund to petitioner the amount of One Hundred Fifteen Million Three Hundred Eighty-Four Thousand Nine Hundred Eight Pesos and Sixty-Two Centavos (₱115,384,908.62), representing erroneously paid income tax for calendar year 2016.

SO ORDERED.

CORAZON G. FERRER-FLORES
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

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[64] *Commissioner of Internal Revenue v. S.C. Johnson and Son, Inc.*, G.R. No. 12705, June 25, 1999.
[65] *Ibid.*

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

With due respect, with Dissenting Opinion
MARIAN IVY F. REYES-FAJARDO
Associate Justice

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 case was 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

PREMIUMLEISURE AND AMUSEMENT, INC. (PLAI), *Petitioner,*	**CTA EB No. 2712** (CTA Case No. 10060)
	Present:
-versus-	**DEL ROSARIO,** *P.J.*, **RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID, FERRER-FLORES,** and **ANGELES,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: APR 2 2 2024 4:20 pm

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DISSENTING OPINION

REYES-FAJARDO, *J.*:

My esteemed colleagues allowed petitioner to refund or credit, the amount of ₱115,384,908.62, representing its alleged erroneously paid income tax (IT) for calendar year (CY) 2016. Specifically, it was ruled that petitioner successfully proved payment of the five percent (5%) franchise tax because the latter's Consortium, through co-licensee MCE Leisure (Philippines) Corporation (MCEL), remitted license fees, inclusive of petitioner's five percent (5%) franchise tax to the Philippine Amusement and Gaming Corporation (PAGCOR). Hence, the majority concluded that petitioner is exempted from paying IT under Section 13(2) of Presidential Decree (PD) No. 1869, *despite the lack of proof of remittance by PAGCOR of said franchise tax to the Bureau of Internal Revenue (BIR).*

I respectfully differ.

Prefatorily, the tax exemption is specific to PAGCOR under PD No. 1869. This is supported by the legislative records of the Bicameral Conference Meeting of the Committee on Ways and Means dated October 27, 1997, stating that the exemption of PAGCOR from the payment of corporate income tax was due to the acquiescence of the Committee on Ways and Means to the request of PAGCOR that it be exempt from such tax.[1] Meanwhile, the tax exemption of its contractees and licensees is simply derived from PAGCOR's tax exemption. Section 13(2)(a) and (b) of PD No. 1869 attest to this, thus:

> SECTION 13. Exemptions. -
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> ...
>
> (2) Income and other taxes. — (a) Franchise Holder: No tax of any kind or form, income or otherwise, as well as fees, charges or levies of whatever nature, whether National or Local, shall be assessed and collected under this Franchise from the Corporation; nor shall any form of tax or charge attach in any way to the earnings of the Corporation, except a **Franchise Tax of five (5%) percent of the gross revenue or earnings derived by the Corporation from its operation under this Franchise. Such tax shall be due and payable quarterly to the National Government and shall be in lieu of all kinds of taxes, levies, fees or assessments of any kind, nature or description, levied, established or collected by any municipal, provincial, or national government authority.**
>
> (b) Others: The exemptions herein granted for earnings derived from the operations conducted under the franchise specifically from the payment of any tax, income or otherwise, as well as any form of charges, fees or levies, **shall inure to the benefit of and extend to corporation(s), association(s), agency(ies), or individual(s) with whom the Corporation or operator has any contractual relationship in connection with the operations of the casino(s) authorized to be conducted under this Franchise** and to those receiving compensation or other remuneration from the Corporation or operator as a result of

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1 See *Philippine Amusement and Gaming Corporation v. The Commissioner of Internal Revenue, et al.*, G.R. Nos. 210689-90, November 22, 2017.

essential facilities furnished and/or technical services rendered to the Corporation or operator.

...[2]

Black defines the term *"in lieu of"* as *"instead of; in place of; in exchange or return for."*[3] Reading this in conjunction with Section 13(2)(a) and (b) of PD No. 1869, the payment of five percent (5%) franchise tax to the National Government is in place of tax liability/ies which may possibly be incurred by PAGCOR, its contractors, and licensees. Precisely, **proof of payment** of the five percent (5%) franchise tax **to the National Government** is indispensable for tax exemption in said law to arise. *Bloomberry Resorts and Hotels, Inc. v. Bureau of Internal Revenue*[4] confirmed:

> As the PAGCOR Charter states in unequivocal terms that exemptions granted for earnings derived from the operations conducted under the franchise specifically from the payment of any tax, income or otherwise, as well as any form of charges, fees or levies, shall inure to the benefit of and extend to corporation(s), association(s), agency(ies), or individual(s) with whom the PAGCOR or operator has any contractual relationship in connection with the operations of the casino(s) authorized to be conducted under this Franchise, **so it must be that all contractees and licensees of PAGCOR, upon payment of the 5% franchise tax, shall likewise be exempted from all other taxes, including corporate income tax realized from the operation of casinos.**
>
> . . .
>
> Plainly, too, **upon payment of the 5% franchise tax**, petitioner's income from its gaming operations of gambling casinos, gaming clubs and other similar recreation or amusement places, and gaming pools, defined within the purview of the aforesaid section, **is not subject to corporate income tax.**[5]

Here, petitioner, through MCEL, **remitted license fees to PAGCOR** in relation to the gaming revenues. So too are these license fees inclusive of its five percent (5%) franchise tax. Yet, the remittance alone does ***not*** equate to valid payment to the National Government for purposes of tax exemption in Section 13(2) of PD No. 1869.

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2 Boldfacing supplied.
3 Black's Law Dictionary, p. 791 (7th Edition, 1999). Citations omitted.
4 G.R. No. 212530, August 10, 2016.
5 Emphasis and underscoring supplied.

Payment is described as delivery of money or performance of obligation.[6] One of the conditions for payment to be valid is that it must be made to the person in whose favor the obligation has been constituted, or his successor in interest, or any person authorized to receive it.[7] In this regard, the collection of national internal revenue taxes is among the mandates and duties of the Bureau of Internal Revenue (BIR).[8] National internal revenue taxes covers "... [s]uch other taxes as are or hereafter may be imposed and collected by the [BIR]."[9] The five percent (5%) franchise tax referred to in Section 13(2) of PD No. 1869 is no exception. Thus, the agent of the National Government to whom the five (5%) percent franchise tax must be paid is the BIR, and *not* PAGCOR.

Significantly, and of late, Revenue Memorandum Circular No. 32-2022[10] elucidated that the license fees paid by licensees to PAGCOR is distinct from the five percent (5%) franchise tax payable to the BIR. Also, said franchise tax must directly be paid to the BIR:

> VI. REMITTANCE OF THE 5% FRANCHISE TAX
>
> **The license/regulatory fees paid by Licensees to PAGCOR is different and distinct from the 5% franchise tax payable to the BIR. The license fee is being paid to PAGCOR by virtue of the license to establish and operate a casino and does not include the franchise tax mandated to be paid to the government under Section 13 (2) (a) of PD No. 1869, as amended. Such franchise tax is payable directly to the BIR, specifically to the concerned Revenue District Office (RDO) where the Licensee is registered.** The Licensee shall remit the franchise tax to the BIR using BIR Form 2553 indicating the Alphanumeric Tax Code (ATC) OT 010.[11]

Though RMC No. 32-2022 has yet to be issued at the time petitioner's refund came to the fore, the subsequent issuance thereof by the BIR strengthens the premise that it is the latter who is the agent of the National Government, insofar as payment of the five

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6 Article 1232 of Republic Act No. 386 (Civil Code).
7 Article 1240 of the Civil Code; and *Culaba, et al. v. CA*, G.R. No. 125862, April 15, 2004.
8 See Section 2, 1997 National Internal Revenue Code (NIRC), as amended.
9 See Section 21(g), NIRC, as amended.
10 SUBJECT: Clarifying the Tax Treatment of the Philippine Amusement and Gaming Corporation (PAGCOR), Its Licensees and Contractees.
11 Emphasis supplied.

percent (5%) franchise tax in Section 13(2) of PD No. 1869 is concerned.[12]

Summing it up, there must be proof that the franchise tax remitted to PAGCOR reached the hands of the BIR, or, at the very least, proof that PAGCOR is the duly-constituted agent of the BIR in collecting said tax. *Sans* such proof, there is *no* valid payment to the National Government, and consequently, *no* tax exemption to speak of in Section 13(2) of PD No. 1869.

The stringency of my construal regarding proof of payment to the BIR as precondition for tax exemption in Section 13(2) of PD No. 1869 is plain and evident—just as PAGCOR is commanded by said law to establish payment of the five percent (5%) franchise tax to the BIR, for it to be exempt from taxes on its gaming operations, under paragraph (a) thereof, with more reason should said precondition be applied on its licensees and contractees—the entities whose authorities and tax-exempt privileges were merely derived from PAGCOR itself.

Simply put, if PAGCOR failed to prove that it remitted the five percent (5%) franchise tax to the BIR, then it *cannot* claim tax exemption under Section 13(2) of PD No. 1869. The same treatment should be accorded to its licensees and contractees. After all, the spring cannot rise above its source.

To stress, what was established here is that MCEL remitted the license fees, inclusive of petitioner's five percent (5%) franchise tax to PAGCOR. There was a dearth of proof showing that PAGCOR remitted said franchise tax to the BIR; nor was agency relationship[13]

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12 In *CBK Power Company Limited v. Commissioner of Internal Revenue*, G.R. No. 247918, February 1, 2023, the principle of contemporaneous construction was discussed as follows: "... The Court has the ultimate authority to determine the validity of implementing rules and regulations. However, in the absence of any showing that such implementing rules and regulations go beyond the language and intent of the law that it seeks to enforce or that they violate any other law or rule or are manifestly erroneous, such rules and regulations, which constitute an administrative agency's contemporaneous interpretation of the law, carries persuasive value. It is well settled that an administrative agency's contemporaneous interpretation of the law that it is duty bound to enforce deserves great weight."

13 In *Yun Kwang Byun v. Philippine Amusement and Gaming Corporation*, G.R. No. 163553, December 11, 2009, it was held that: "the law makes no presumption of agency and proving its existence, nature and extent is incumbent upon the person alleging it."

between the BIR and PAGCOR with respect to collection of such franchise tax exhibited by petitioner. It means that the payment of the five percent (5%) franchise tax to the National Government (BIR), essential for petitioner's tax exemption under Section 13(2) of PD No. 1869 was *not* met. *A fortiori,* the IT for CY 2016 paid by petitioner is *not* an illegal or erroneous tax. Precisely, the refund based on Section 204(C) and 229 of the NIRC, as amended, desired by the latter must be rejected.

ON THESE ACCOUNTS, I **VOTE** to: (1) **DENY** the Petition for Review in CTA EB No. 2712; and (2) **AFFIRM** the Decision dated May 26, 2022 and Resolution dated October 18, 2022 in CTA Case No. 10060.

Marian Ivy F. Reyes-Fajardo

MARIAN IVY F. REYES-FAJARDO
Associate Justice