Local Franchise Tax: Issues and Concerns*

I. Introduction

Each local government unit (LGU) has the power to create its own sources of revenue and levy taxes, fees, and charges, consistent with the basic policy of local autonomy. One of the local impositions is the franchise tax levied on businesses enjoying a franchise at a rate not exceeding 50% of 1% of the gross annual receipts for the preceding calendar year based on the incoming receipt, or realized within its territorial jurisdiction (Tabunda, 1992).

The franchise tax refers to a tax paid by certain enterprises that want to do business in various areas. The said tax is also called a privilege tax, which means granting the business the right to be chartered and/or to operate within a certain region. Contrary to what the term implies, a franchise tax is not a tax imposed on the franchise. It is charged to corporations, partnerships, and other entities that do business within the boundaries of a jurisdiction. (Silver, n.d.)

This study will discuss the taxation of businesses enjoying a franchise. It will also present sample cases on the local franchise tax referred to the Bureau of Local Government Finance (BLGF) and the Supreme Court (SC) to provide clarifications on the implementation and imposition of the said tax under the Local Government Code (LGC) of 1991, as amended.

II. Background Information

Section 131(m) of the LGC of 1991, as amended, defined "franchise" as the right or privilege, affected with public interest, which is conferred upon private persons or corporations, under such terms and conditions as the government and its political subdivisions may impose in the interest of public welfare, security, and safety. Prior to the enactment of the LGC of 1991, the imposition of the local franchise tax was authorized under Section 9 of Presidential Decree (PD) No. 231[1], to wit:

> *"SECTION 9. Franchise Tax. – Any provision of special laws to the contrary notwithstanding, the province may impose a tax on business enjoying a franchise, based on the gross receipts realized within its territorial jurisdiction, at the rate of not exceeding one-half of one percent of the gross annual receipts for the preceding calendar year.*

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[1] Entitled, "Enacting a Local Tax Code for Provinces, Cities, Municipalities and Barrios", 01 July 1973.

In the case of a newly started business, the rate shall not exceed three thousand pesos per year. Sixty percent of the proceeds of the tax shall accrue to the general fund of the province and forty percent to the general fund of the municipalities serviced by the business on the basis of the gross annual receipts derived therefrom by the franchise holder. In the case of a newly started business, forty percent (40%) of the proceeds of the tax shall be divided equally among the municipalities serviced by the business."

Section 23 of PD 231, on the other hand, states that the city has the authority to levy and collect taxes, fees, and other impositions that the province or the municipality may levy and collect.

The imposition of the local franchise tax was reiterated in Section 137 of the LGC of 1991, as amended, by providing the following provisions:

"SECTION 137. Franchise Tax. - Notwithstanding any exemption granted by any law or other special law, the province may impose a tax on businesses enjoying a franchise, at a rate not exceeding fifty percent (50%) of one percent (1%) of the gross annual receipts for the preceding calendar year based on the incoming receipt, or realized, within its territorial jurisdiction.

In the case of a newly started business, the tax shall not exceed one-twentieth (1/20) of one percent (1%) of the capital investment. In the succeeding calendar year, regardless of when the business started to operate, the tax shall be based on the gross receipts for the preceding calendar year, or any fraction thereof, as provided herein."

Moreover, under Sections 447(3), 458(3), and 468(3) of Book III of the LGC of 1991, as amended, the municipality, city, and province, respectively, through their respective Sanggunians, are expressly authorized to grant, among others, franchises subject to the provisions of Book II of the Code.

III. Selected Cases on the Local Franchise Tax

There are instances when taxpayers are confused about the imposition of both the business tax and the local franchise tax, especially in cases when both taxes are levied on the same gross receipts by the same taxing authority. This would seem that the said imposition is unjust and improper double taxation, especially if such a business holds a legislative franchise.

In such cases, it is justified that the imposition of the business tax and local franchise tax are separate and distinct taxes. They are of different natures and are imposed under different provisions of the LGC of 1991, as amended. Further, there had already been previous SC decisions that upheld the imposition of the said taxes by the LGU and ruled that such does not constitute double taxation. The law does not allow the same taxation body from imposing two taxes on the same matter for the same purpose. Double taxation must be of the same kind or character to be a valid issue.

In applying this definition, while both the business tax and the local franchise tax are based on gross receipts and sales, they are different in nature or character. The local franchise tax is imposed on the exercise of enjoying a franchise, while the business tax is imposed on the privilege of engaging in one's line of business.

The following are selected cases related to the local franchise tax handled by the BLGF and the SC, and corresponding opinions and decisions, respectively, on the matter.

Case 1: Radio Communications of the Philippines, Inc. position on the municipality's imposition of the franchise tax (BLGF Opinion, 1993)

Representation: The Radio Communications of the Philippines, Inc.'s (RCPI's) stand that the municipality may not impose the franchise tax already granted to the province pursuant to Section 137 of the LGC of 1991, as amended.

Issue: Whether the RCPI's contention that the power to impose a tax on business enjoying a franchise has been vested by the Code to the province, hence, the municipality may no longer exercise the imposition of the same.

BLGF Opinion: This contention is correct insofar as municipalities that belong to a province are concerned. However, this does not apply to the municipalities of Metropolitan Manila, which are authorized under Section 144 of the LGC of 1991, as amended, as implemented by Article 236 of its Implementing Rules and Regulations (IRR), to levy the franchise tax imposable by provinces under Section 137 of the Code. Accordingly, the Municipality of Pateros may exercise the power to impose and collect the franchise tax under Section 137 of the LGC of 1991, as amended, as implemented by Article 226 of the IRR on businesses holding a franchise located within its territorial jurisdiction such as the RCPI.

Case 2: Motorized Tricycle Operators Permit and franchise fee considered as franchise tax (BLGF Opinion, 2000)

Representation: The Municipal Treasurer of Bayombong, Nueva Vizcaya is imposing both a permit fee and a local franchise fee from the Motorized Tricycle Operators.

Issue: The Provincial Legal Officer, Bayombong, Nueva Vizcaya seeking clarification on whether:

i. The Motorized Tricycle Operators Permit (MTOP) franchise fee is considered as franchise tax;

ii. The P100.00 franchise fee is considered an excess payment for a franchise tax or fee granted by the Sangguniang Bayan; and

iii. The said collection by the Municipal Treasurer from tricycle operators is illegal, there being no authority in Tax Ordinance No. 035-1992.

BLGF Opinion: Query (i): Under Section 131 of the LGC of 1991, as amended, as implemented by Article 220 (l) and (m) of the IRR, the term ***Fee*** means a charge fixed by law or ordinance for the regulation or inspection of a business activity. It shall also include charges fixed by the law or agency for the service of a public officer in the discharge of his official duties. On the other hand, a ***Franchise*** is a right or privilege, affected with public interest which is conferred upon private persons or corporations, under such terms and conditions as the government and its political subdivisions may impose in the interest of public welfare, security, and safety. Thus, it is clear that a fee is distinct and different from a franchise and therefore, the MTOP and franchise fee cannot be considered as a franchise tax.

Query (ii): The power to impose franchise fees, upon prior public hearings, is vested with local governments, through the enactment of the appropriate ordinance pursuant to Section 186 of the Code, which states as follows:

> *"SECTION 186. Power to Levy Other Taxes, Fees or Charges. — LGUs may exercise the power to levy taxes, fees or charges on any base or subject not otherwise specifically enumerated herein or taxed under the provisions of the National Internal Revenue Code (NIRC) of 1997, as amended, or other applicable laws: Provided, That the taxes, fees or charges shall not be unjust, excessive, oppressive, confiscatory or contrary to declared national policy: Provided, further, That the ordinance levying such taxes, fees or charges shall not be enacted without any prior public hearing conducted for the purpose."*

Given the foregoing, Section 186 does not prescribe any fixed amount or ceiling for the rates of a fee or charge that the local Sanggunian may impose in a local tax ordinance. However, it is well-settled in jurisprudence that fees and charges must only be commensurate to the expenses incurred or for the service rendered by the LGU in the regulation or inspection of a business activity. For this purpose, there is no reason to say that the P100.00 franchise fee is excessive.

Query (iii): It must be pointed out that before any tax, fee or charge may be collected from a taxpayer, the same must first be levied under a duly enacted tax ordinance. In the absence of such a tax ordinance, there will be no basis for the collection of any tax, fee or charge from the said taxpayer.

Case 3: Imposition of the local franchise tax of both province and municipality (BLGF Opinion, 1993)

Representation: Query of the Municipal Vice-Mayor of Sibulan, Negros Oriental regarding the collection of franchise tax pursuant to Republic Act (RA) No. 7160.

Issue: Whether the contention of the Vice Mayor of Sibulan, Negros Oriental that both the province and municipality are authorized to collect franchise tax pursuant to Sections 137 and 447 of the LGC of 1991, as amended, quoted as follows:

> *"SECTION 137. Franchise Tax. — Notwithstanding any exemption granted by any law or other special law, the province may impose a tax on businesses*

enjoying a franchise, at a rate not exceeding fifty percent (50%) of one percent (1%) of the gross annual receipts for the preceding calendar year based on the incoming receipt, or realized, within its territorial jurisdiction.

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SECTION 447. Powers, Duties, Functions, and Compensation. — (a) The sangguniang bayan, as the legislative body of the municipality, shall enact ordinances, approve resolutions, and appropriate funds for the general welfare of the municipality and its inhabitants pursuant to Section 16 of this Code and in the proper exercise of the corporate powers of the municipality as provided for under Section 22 of this Code, and shall:

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(3) Subject to the provisions of Book II of this Code, grant franchises, enact ordinances authorizing the issuance of permits or licenses, or enact ordinances levying taxes, fees and charges upon such conditions and for such purposes intended to promote the general welfare of the inhabitants of the municipality, and pursuant to this legislative authority shall:

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BLGF Opinion: Under the said provisions, it is clear that the municipality has the authority to grant franchises. However, the authority to collect franchise tax is under the taxing power of the province and not the municipality pursuant to the provision of Section 142 of the LGC of 1991, as amended, which provides that "Except as otherwise provided in this Code, municipalities may levy taxes, fees, and charges not otherwise levied by provinces." There is no provision in the LGC of 1991, as amended, that authorizes municipalities to levy the franchise tax. Accordingly, municipalities may only levy taxes, fees, and charges not otherwise levied by provinces and these are taxes on business, fees, and charges that cover the cost of regulation, inspection, and licensing for sealing and weights and measures, and fishing rentals.

Case 4: City Treasurer of Koronadal City requests opinion regarding the implementation of the provisions of Section 150 of RA 7160 (BLGF Opinion, 2003)

Representation: Marbel Telephone System, Inc. (MTSI) with its principal office located in Koronadal City, has three toll exchange offices situated in Polomolok and Surallah, both in the province of South Cotabato and in said City. It is represented further that the exchange toll in Koronadal City covers four areas, namely: Koronadal City and the municipalities of Tupi, Tampakan, and Tantangan, all in South Cotabato through wireless connections. Furthermore, sales derived from the operations of said toll exchange covering said areas are recorded in its principal office.

Issue: The Provincial Treasurer of South Cotabato demanded from the MTSI that the gross receipts collected from the three municipalities mentioned above be segregated from the

revenues collected from Koronadal City allegedly as the basis for the imposition of franchise tax accruing to the three municipalities, which are all within the jurisdiction of said province. Accordingly, the MTSI paid to the province the supposed franchise tax based on the gross receipts from said municipalities. However, the City Treasurer contends that the action of the Provincial Treasurer is not in accordance with the provisions of Section 150 (a) of the LGC of 1991, as amended, as quoted hereunder:

> *"SECTION 150. Situs of the Tax. — (a) For purposes of collection of the taxes under Sec. 143 of this Code, manufacturers, xxx xxx xxx, maintaining or operating branch or sales outlets elsewhere shall record the sale in the branch or sales outlet elsewhere shall record the sale in the branch or sales outlet making the sale or transaction, and the tax thereon shall accrue and shall be paid to the municipality where such branch or sales outlet is located. In cases where there is no such branch or sales outlet in the city or municipality where the sale or transaction is made, the sale shall be duly recorded in the principal office and the taxes due shall accrue and shall be paid to such city or municipality."*

BLGF Opinion: Article 226 (b) of the IRR implementing Section 137 of the LGC of 1991, as amended, the pertinent portions of which are quoted hereunder:

> "ART. 226. *Franchise Tax. — (a) Notwithstanding any exemption granted by any law or other special law, the province may impose a tax on businesses enjoying a franchise, at a rate not exceeding fifty percent (50%) of one percent (1%) of the gross annual receipts, which shall include both cash sales and sales on account realized during the preceding calendar year within its territorial jurisdiction, excluding the territorial limits of any city located in the province.*
>
> *(b) The province, however, shall not impose the tax on business enjoying franchise operating within the territorial jurisdiction of any highly-urbanized or component city located within the province."*

Article 226 emphasized that the province shall impose the tax on businesses enjoying a franchise within its territorial jurisdiction, excluding the territorial limits of any city located therein. Considering that the Municipalities of Tupi, Tampakan, and Tantangan are within the territorial jurisdiction of South Cotabato, the action taken by the Provincial Treasurer thereof is in full accord with the law.

Case 5: Imus became a component city on June 30, 2012, and its City Ordinance was only enacted on March 10, 2014 (BLGF Opinion, 2014)

Representation: Sangguniang Panlungsod (SP) Resolution No. 02-2014-91 enacted by the Sangguniang Panlungsod of Imus authorizing and empowering the OIC-City Treasurer to put on hold all remittances with the Cavite Provincial Treasurer's office until such time that the Province of Cavite has remitted and transferred the local tax, including the LFT that is due to the City of Imus.

Issue: Whether the OIC-City Treasurer's request for the Provincial Treasurer of Cavite to remit and transfer to the City of Imus the LFT remitted by the Manila Electric Company (MERALCO) from July 2012 up to April 2014, is valid.

BLGF Opinion: Before any tax, fee, or charge may be collected from a taxpayer, the same must first be levied under a duly enacted tax ordinance. In the absence of such a tax ordinance, there will be no basis for the collection of any tax, fee, or charge from the taxpayer. As mentioned above, Imus became a component city on 30 June 2012, and its City Ordinance was only enacted on 10 March 2014. Thus, it is evident that the City of Imus shall have to remit to the Provincial Government the corresponding shares for prior years' real property tax (RPT) collections, including local taxes, fees, and charges imposed by the City of Imus. Likewise, the City of Imus is advised to submit a copy of its Ordinance enacted after its conversion into a component city together with a copy of the approval of the Energy Regulatory Commission before the franchise tax remitted by MERALCO to the Province is transferred to and remitted to the City of Imus.

Case 6: Exemption of the Lanao del Norte Electric Cooperative Inc., (LANECO) from payment of the franchise tax (BLGF Opinion, 1997)

Representation: On 15 October 1996, the Provincial Treasurer of Lanao del Norte sent a demand letter to the Manager of LANECO to collect the payment of franchise tax covering the years 1993 to 1996 equivalent to 50% of 1% of the gross annual income receipts of the preceding year.

Issue: Whether LANECO, an electric cooperative, which is a non-stock and non-profit corporation, is exempted from the payment of franchise tax.

BLGF Opinion: The Department of Finance (DOF) has expressed a uniform view on previous similar cases concerning the tax exemption of cooperatives. For so long as a cooperative is duly registered with the Cooperative Development Authority (CDA) under the provisions of RA 6938[2], it shall remain exempt from the payment of local taxes. It was emphasized, however, that the exemption enjoyed by such cooperatives does not include payment of service charges or rentals for the use of property and equipment or public utilities owned by local governments such as charges for actual consumption of water, electric power, toll fees for use of public roads and bridges, and the like.

Case 7: The Philippine Telephone Corporation operating within the jurisdiction of a province is liable to pay the LFT pursuant to the provision of Section 137 of RA 7160 (BLGF Opinion, 1994)

Representation: The Philippine Telephone Corporation (PILTEL) is not liable to pay the franchise tax imposed under Section 9, Article 3 of Provincial Tax Ordinance No. 1, series of 1992 enacted pursuant to RA 7160, in view of the provisions of Section 6 of RA 7293[3],

[2] Entitled, "An Act to Ordain a Cooperative Code of the Philippines", 10 March 1990.

[3] Approved 27 March 1992.

which is an Act further amending RA 6030[4], as amended by RA 6531[5], entitled "An Act granting the Pilipino Telephone Corporation a franchise to install, operate and maintain telephone systems in certain areas throughout the Philippines, extending the term of its franchise to another 25 years from date of its expiration, and for other purposes".

Issue: Whether the PILTEL operating within the jurisdiction of the province of Marinduque is liable to pay franchise tax pursuant to the provision of Section 137 of RA 7160.

BLGF Opinion: RA 7293 became effective on 27 March 1992, while RA 7160 took effect on 01 January 1992. On the other hand, the taxes and other impositions levied under Provincial Ordinance No. 1 of the province of Marinduque, which became effective on 23 February 1992, began to accrue at the beginning of the following quarter, or on 01 April 1992. It follows, therefore, that PILTEL shall be exempt until the term of its franchise expires, which was extended for 25 years from 03 August 1994 to 03 August 2019. It should be noted, however, that the exemption refers only to the payment of the franchise tax imposable by provinces (and cities) but not to real property and other taxes referred to in Section 6 of RA 7293. Likewise, the company shall be liable to pay regulatory fees and service charges which the LGUs may impose under duly-approved local tax ordinances.

Case 8: The opinion of the Eastern Telecommunication Phils., Inc. that said corporation is exempt from payment of local franchise and business taxes under the LGC **(**BLGF Opinion, 1997)

Representation: The Eastern Telecommunication Phils., Inc. (ETPI) is a congressional/statutory franchise grantee pursuant to RA 808[6], as amended by PD 489[7] and RA 5002[8] authorizing it to construct and operate telecommunications systems and services

[4] Entitled, "An Act Granting the Pilipino Telephone Corporation a Franchise to Install, Operate and Maintain Telephone System in and Between the Provinces, Cities and Municipalities in the Bicol Province and Mindanao", 04 August 1969.

[5] Entitled, "An Act Amending Republic Act Numbered Six Thousand Thirty, entitled "An Act Granting the Pilipino Telephone Corporation a Franchise to Install, Operate and Maintain Telephone Systems in and Between the Provinces, Cities, and Municipalities in the Bicol Provinces and Mindanao"", 22 July 1972.

[6] Entitled, "An Act Granting to "The Eastern Extension Australasia and China Telegraph Company Limited" and Its Permitted Assigns, A Franchise to Land, Construct, Maintain, and Operate at Manila in the Philippines A Submarine Telegraph Cable Connecting Manila with Hongkong and Prescribing the Conditions of the Same", 21 June 1952.

[7] Entitled, "Authorizing the Eastern Extension Australasia and China Telegraph Company, Limited, the Franchise Granted to the Company Under Republic Act No. 808, as Amended by Republic Act No. 5002, to the Eastern Telecommunications Philippines, Inc.", 24 June 1974.

[8] Entitled, "An Act Amending Certain Sections of Republic Act Numbered Eight Hundred Eight, Entitled "An Act Granting to 'The Eastern Extension Australasia and China Telegraph Company Limited' and Its Permitted Assigns, A Franchise to Land, Construct, Maintain, and Operate at Manila in the Philippines a Submarine Telegraph Cable Connecting Manila with Hongkong and Prescribing the Conditions of the Same"", 17 June 1967.

within the Philippines and internationally. The ETPI franchise was approved on 21 June 1952 and has a term of 50 years which will expire on 21 June 2002. Section 8 of said franchise, likewise, contains the "in lieu of all taxes" *proviso*.

Issue: Whether the ETPI is exempt from payment of local franchise and business taxes under the LGC of 1991, as amended.

BLGF Opinion: Section 193 of the LGC of 1991, as amended, states that *"Unless otherwise provided in this Code, tax exemptions or incentives granted to, or presently enjoyed by all persons, whether natural or juridical, including government-owned or controlled corporations, except local water districts, cooperatives duly registered under RA No. 6938, non-stock and non-profit hospitals and educational institutions, are hereby withdrawn upon the effectivity of this Code."* Considering that the franchise holders of the telecommunications industry are not among those specifically mentioned in the aforequoted Section 193, then any tax exemption they may have been enjoying shall be deemed withdrawn upon the effectivity of the LGC on 01 January 1992.

On the other hand, Section 23 of RA 7925[9], quoted hereunder, which was approved on 01 March 1995, provides for the equality of treatment in the telecommunications industry:

> *"SEC. 23. Equality of Treatment in the Telecommunications Industry. — Any advantage, favor, privilege, exemption, or immunity granted under existing franchises, or may hereafter be granted, shall ipso facto become part of previously granted telecommunications franchises and shall be accorded immediately and unconditionally to the grantees of such franchises: Provided, however, That the foregoing shall neither apply to nor affect provisions of telecommunications franchises concerning territory covered by the franchise, the life span of the franchise, or the type of service authorized by the franchise."*

Accordingly, the ETPI shall be exempt from the payment of franchise and business taxes imposable by LGUs under Sections 137 and 143, respectively, of the LGC of 1991, as amended, upon the effectivity of RA 7925 on 16 March 1995. However, the ETPI shall be liable to pay the franchise and business taxes on its gross receipts realized from 01 January 1992, up to 15 March 1995, during which period the ETPI was not enjoying the "most favored clause" *proviso* of RA 7925. Moreover, the said company shall still be liable to pay annually the mayor's permit and other regulatory fees or service charges that the LGU concerned may have imposed under a duly-enacted tax ordinance, the exemption being applicable to the LFT and business taxes only. Likewise, all other real properties of the ETPI not used in connection with the operation of its franchise shall remain taxable, or subject to the RPT imposed by the LGU or LGUs where such properties are located.

[9] Entitled, "An Act to Promote and Govern the Development of Philippine Telecommunications and the Delivery of Public Telecommunications Services", 01 March 1995.

Case 9: Exemption of the Liberty Broadcasting Network, Inc. from payment of franchise and business taxes (BLGF Opinion, 1998)

Representation: The Liberty Broadcasting Network, Inc. (LBNI) is a telecommunications company seeking a ruling relative to its exemption from the payment of franchise and business taxes.

Issue: Whether the LBNI should be exempt from the payment of franchise and business taxes similarly as its competitor telecommunication companies are enjoying. Section 4 of RA 4154[10], as amended, granting the LBNI a congressional franchise provides that:

> *"Sec. 4. In the event of any competing individual, partnership or corporation receiving from the congress a similar franchise in which there shall be any term or terms more favorable than those herein granted or tending to place the herein grantee at any disadvantage, then such term or terms shall ipso facto become a part of the terms hereof and shall operate equally in favor of the grantee as in the case of said competing individual, partnership or corporation."*

In relation thereto, Section 23 of RA 7925, otherwise known as the "Public Telecommunication Policy Act of the Philippines", which was approved on 01 March 1995, provides as follows:

> *"Sec. 23. Equality of Treatment in the Telecommunication Industry. — Any advantage, favor, privilege, exemption, or immunity granted under existing franchises, or may hereafter be granted, shall ipso facto become part of previously granted telecommunications franchises and shall be recorded immediately and unconditionally to the grantees of such franchises; Provided, however, That the foregoing shall neither apply to nor affect provisions of telecommunications franchises concerning territory covered by the franchise, the life span of the franchise, or the type of service authorized by the franchise."*

BLGF Opinion: On the basis of the aforequoted Section 23 of RA 7925, the LBNI as a telecommunications franchise holder becomes automatically covered by the tax exemption provisions of RA 7925, which took effect on 16 March 1995. Accordingly, the LBNI shall be exempt from the payment of franchise and business taxes imposable by LGUs under Sections 137 and 143, respectively, of the LGC of 1991, as amended, upon the effectivity of RA 7925. However, the LBNI shall be liable to pay the franchise and business taxes on its gross receipts realized from 01 January 1992, up to 15 March 1995, during which period the LBNI was not enjoying the "most favored clause" *proviso* of RA 7925.

[10] Entitled, "An Act to Amend Republic Act Numbered Fifteen Hundred and Fifty-Three, Entitled "An Act Granting Eliseo B. Lemia Temporary Permit to Construct, Maintain and Operate Radio Broadcasting Stations and Stations for Television in the Philippines"", 20 June 1964.

Case 10: Applicability of the LFT to Isla Communications Co., Inc. (BLGF Opinion, 1998)

Representation: Section 14 of RA 7372[11] granting the Isla Communications Co., Inc. (ISLACOM) a congressional franchise which was approved on 10 April 1992, containing the "in lieu of all taxes" clause, quoted as follows:

> *"Sec. 14. The grantee, its successors or assigns shall be liable to pay the same taxes on their real estate, buildings, and personal property, exclusive of this franchise, as other persons or corporations which are now or hereafter may be required by law to pay. In addition, thereto, the grantee, its successors, or assigns shall pay a franchise tax equivalent to three percent (3%) of all gross receipts of the business transacted under this franchise by the grantee, its successors, or assigns and the said percentage shall be in lieu of all taxes on this franchise or earnings thereof: . . ."*

Issue: Whether the ISLACOM is not subject to the LFT.

BLGF Opinion: Considering, therefore, that RA 7372 having been approved on 10 April 1992, is a later law, its provisions should prevail over those of the LGC of 1991, which took effect on 01 January 1992. Thus, the ISLACOM should be considered exempt from the franchise tax the local governments may impose under Section 137 of the Code. However, the corporation shall be liable to pay the Mayor's permit and other regulatory fees or service charges that the local government concerned may have imposed under a duly-enacted tax ordinance, its exemption being applicable only to local franchise and business taxes.

Case 11: Innove Communications, Inc. claiming exemption from the LFT by express provision of its legislative franchise (BLGF Opinion, 2010)

Representation: Innove Communications, Inc. expresses its legislative franchise (RA 7372), particularly Section 14 thereof which reads:

> *"Sec. 14. The grantee, its successors or assigns shall be liable to pay the same taxes on real estate, buildings, and personal property, exclusive of this franchise, as other persons or corporations which are now or hereafter may be required by law to pay. In addition thereto, the grantee, its successors or assigns shall pay a franchise tax equivalent to three percent (3%) of all gross receipts of the business transacted under this franchise by the grantee, its successors or assigns and the said percentage shall be in lieu of all taxes on this franchise or earnings thereof: Provided, that the grantee, its successors or assigns shall continue to be liable for income taxes payable under Title II of the NIRC pursuant*

[11] Entitled, "An Act Renewing for Another Twenty-five (25) Years the Franchise Granted to the Isla Communications Company, Inc., Presently Known as Innove Communications Inc., Amending for the Purpose Republic Act No. 7372, Entitled "An Act Granting Isla Communications Co. a Franchise to Install, Operate and Maintain Telecommunications Services within the Territory of the Republic of the Philippines and International Points for Other Purposes"", 14 December 2018.

to Sec. 2 of Executive Order No. 72[12] unless the latter enactment is amended or repealed, in which case the amendment or repeal shall be applicable thereto."

Issue: Whether Innove Communications, Inc. is exempted from the LFT.

BLGF Opinion: The SC ruling in the case of *SMART Communications, Inc. vs. The City of Davao (G.R. No. 155491, 16 September 2008)* denied the claim for exemption from the payment of the LFT. The pertinent portion thereof is quoted as follows:

". . . . the 'in lieu of all taxes' clause applies only to national internal revenue taxes and not to local taxes. As appropriately pointed out in the separate opinion of Justice Antonio T. Carpio in a similar case involving a demand for exemption from local franchise taxes: [T]he 'in lieu of all taxes' clause in Smart's franchise refers only to taxes, other than income tax, imposed under the NIRC. The 'in lieu of all taxes' clause does not apply to local taxes. The proviso in the first paragraph of Sec. 9 of Smart's franchise states that the grantee shall 'continue to be liable for income taxes payable under Title II of NIRC.' Also, the second paragraph of Sec. 9 speaks of tax returns filed and taxes paid to the Commissioner of Internal Revenue or his duly authorized representative in accordance with the NIRC." Moreover, the same paragraph declares that the tax returns 'shall be subject to audit by the Bureau of Internal Revenue (BIR).' Nothing is mentioned in Sect. 9 about local taxes. The clear intent is for the 'in lieu of all taxes' clause to apply only to taxes under the NIRC and not to local taxes. Even with respect to national internal revenue taxes, the 'in lieu of all taxes' clause does not apply to local tax."

Considering that the Innove Communications, Inc. is similarly situated as that of SMART Communications, Inc., it may be stated that the Innove Communications, Inc. cannot validly claim tax exemption based on Section 14 of its franchise, hence the City of Tanjay may impose a local franchise tax on the gross receipts thereof pursuant to a duly enacted tax ordinance of the said City.

Case 12: 1.0 MW Biomass Power Generation Plant and 23 MW Bunker Fired Power Plant, located at Brgy. Udiao, Rosario and Brgy. Quirino, Bacnotan, La Union, respectively (BLGF Opinion, 2015)

Representation: SurePEP, Inc. is registered as a Renewable Energy (RE) Developer of Biomass Energy Resources located in the Municipality of Rosario, La Union. There are no documents submitted with respect to the 23 MW Bunker Fried Power Plant located in Bacnotan of the same province. RA 9513, otherwise known as the "Renewable Energy Act of 2008", does not provide for any local tax privileges except for the special realty tax rate of 1.5% provided under Section 15(c) of the Act.

[12] Entitled, "Providing for the Preparation and Implementation of the Comprehensive Land Use Plans of Local Government Units Pursuant to the Local Government Code of 1991 and Other Pertinent Laws", 25 March 1993.

Issue: Clarification as to the specific taxes and fees that the Province and the Municipalities of Rosario and Bacnotan may impose, aside from the real property taxes on these businesses or entities.

BLGF Opinion: Section 6 of RA 9136, otherwise known as the "Electric Power Industry Reform Act of 2001 (EPIRA)", the pertinent portion of which is quoted as follows:

> *"SEC. 6. Generation Sector. — . . . Any law to the contrary notwithstanding, power generation shall not be considered a public utility operation. For this purpose, any person or entity engaged or which shall engage in power generation and supply of electricity shall not be required to secure a national franchise."*

In view of the aforequoted provision of the EPIRA Law, the SurePEP is not liable for the payment of the LFT to the province. Likewise, the operator of the 23 MW Bunker Fired Power Plant is not liable for the payment of the said franchise tax. For the operation of a power plant, the SurePEP, Inc. shall be subject to the local business tax pursuant to Section 143 of the LGC of 1991, as amended, as implemented under a duly enacted ordinance to the municipality of Rosario having jurisdiction over the place where the generating plant is located based on the gross sales derived from the locality. For the same reason, the Municipality of Bacnotan may likewise impose the business tax on the operator of the 23 MW Bunker Fired Power Plant located thereat.

Case 13: Franchise Tax Bill No. 14-02 of the Province of Bukidnon for the bulk water production venture of Rio Verde Consortium, Inc. at the Municipality of Baungon, Bukidnon which was denied payment by Rio Verde for reason that they are exempt from paying franchise (BLGF Opinion, 2015)

Representation: Rio Verde was given a tax holiday for four years from 2007-2010 by the Board of Investments. In 2012-2013, Rio Verde paid franchise taxes to the province amounting to P239,672.55 and P461,429.22, respectively. Rio Verde is supplying the bulk water to Cagayan de Oro Water District (CDOWD) and being sourced out from the municipality of Baungon, Bukidnon. Similarly, the CDOWD distributes water to the residents of the said City. Further, it is a private business operated under private contracts with selected customers and not devoted to public use.

Issue: Whether Rio Verde is exempt from paying franchise tax to the Provincial Treasurer, Province of Bukidnon relative to Franchise Tax Bill No. 14-02 dated 24 June 2014 of said province amounting to P660,417.28 for CY 2014.

BLGF Opinion: Rio Verde is not a grantee of any franchise. Thus, cannot be validly classified as a public utility as it does not sell directly to the consumer or the general public but supply the bulk water to the CDOWD. Hence, Rio Verde is not subject to Section 137 of the LGC of 1991, as amended, as implemented under Provincial Ordinance 92-03. However, considering that the 4-year tax holiday of Rio Verde lapsed in 2010, the company is subject to local business tax (LBT) for providing the bulk water to the CDOWD in case of a city or a municipality, as may be provided under its duly enacted revenue code or tax ordinance. On the other hand, since the CDOWD is the one selling water directly to consumers or the general public at large hence,

it may be classified as a public utility, provided a franchise for such operation is issued by the proper regulating agency of the government.

IV. Comments and Observations

On whether municipalities within a province can issue and impose a franchise tax

The franchise granted pursuant to the provision of the LGC of 1991, as amended, may be associated with the regular permit to operate issued by the office of the local chief executive, except that, since entities subject thereof are endowed with public interest, it requires an act of the legislative body of the local governments.

It is clear, under the LGC of 1991, as amended, that the authority to grant franchises is vested in the legislative body of the concerned local governments. However, the franchise referred to under the LGC of 1991, as amended, pertains only to businesses that can be operated within the jurisdiction, which affects the welfare, security, and safety of its constituents. A franchise may be granted by the Sanggunian Bayan for the establishment, construction, operation, and maintenance of markets, slaughterhouses, tricycle terminals, and similar enterprises within the municipality.

The authority to collect franchise tax is under the taxing power of the province and not the municipality, pursuant to the provision of Section 142 of the LGC of 1991, as amended, which provides that "Except as otherwise provided in this Code, municipalities may levy taxes, fees, and charges not otherwise levied by provinces." There is no provision in the LGC of 1991, as amended, that authorizes municipalities to levy the franchise tax. The province has the authority to impose the LFT and in such cases, the component municipalities may only charge reasonable fees and permits to said establishments. Only cities may levy the same as stated in Section 151 of the LGC of 1991, as amended.

To reiterate, as a catch-all provision, municipalities are allowed to impose a tax on any businesses not specifically mentioned in the Code, which the Sangguniang Bayan may deem proper to tax (Tabunda, 1992). It is fair to mention, however, that provinces are required to share with municipalities within their jurisdiction the proceeds from certain taxes and fees that they impose. One reason for this requirement is that it is the municipalities that collect such taxes and fees for the province.

On whether municipalities in the Metropolitan Manila Area may impose the tax on franchises provided under Section 137 of the LGC of 1991, as amended

Pursuant to PD 824, municipalities in the Metro Manila Areas (MMAs) were referred to as the cities of Makati, Mandaluyong, San Juan, Las Piñas, Malabon, Navotas, Pasig, Pateros, Parañaque, Marikina, Muntinlupa, and Taguig that were municipalities in the province of Rizal; and the municipality of Valenzuela, in the province of Bulacan, which were under the territorial jurisdiction of the Metropolitan Manila Commission. Presently, Pateros is the lone municipality in the MMA (GOVPH, 1975).

The IRR of the LGC of 1991, as amended, provides the following:

> "Article 236 – *Rates of tax in Municipalities within the Metropolitan Manila Area – (a)* The municipalities within the MMA may levy the taxes on business enumerated in Article 233 of this Rule or the rules which shall not exceed 50% the maximum rates prescribed in the said businesses.
>
> (b) The said municipalities within MMA, pursuant to Article 275 of this Rule, may levy and collect taxes which may be imposed by the province under Articles 225, 226, 227, 228, 229, 230 at rates not exceeding those prescribed thereof."

The SC (G.R. No. 181710, 2018) held that the provision provided by the IRR on the imposition of the local franchise tax may not be given effect to the authorized municipalities in the MMA. The SC further explained that only the province under Section 137 and the city under Section 151 of the LGC of 1991, as amended, are authorized to impose the local franchise tax. In the case of municipalities in the MMA, there is no express provision in the basic law authorizing them to impose the taxes levied and collected by the province or granting them the status of a taxing power of a city. The conversion of the municipality into a city does not lend validity to a void ordinance, which grants an MMA the power to levy a franchise tax, which is contrary to the provisions of the LGC of 1991, as amended. It must be underscored that the transition to a cityhood does not cure the original infirmity of such regulation.

Citing the case of US vs Tupasi Molina (G.R. No. L-9878, 1914), the SC implies the administrative regulations adopted legislative authority by a particular department must be in harmony with the provisions of the law, and should be for the purpose of carrying into effect its general provisions. Thus, municipalities within the MMA may not rely on Article 136 of the IRR to impose the LFT. In the absence of a concrete provision of law, Section 142 of the LGC, which provides that, "*Except as otherwise provided in the Code, municipalities may levy taxes, fees and charges not otherwise levied by province",* stands and applies to municipalities in MMA.

Furthermore, under the LGC of 1991, as amended, a municipality is bereft of authority to levy and impose a franchise tax on franchise holders within its territorial jurisdiction. That authority belongs to provinces and cities only. A franchise tax levied by a municipality is, thus, null and void. The nullity is not cured by the subsequent conversion of the municipality into a city (G.R. No. 181710, 2018).

On the imposition of the local franchise tax on entities enjoying a legislative franchise

Jurisprudence prior to the enactment of the LGC of 1991, as amended, was bent to honor existing franchise grants containing the *"in lieu of any and all taxes"* clause. This has been established by the consistent declaration of the SC in the cases of Butuan Sawmill Inc. vs. City of Butuan (G.R. No. L-21516, 1966) and LANECO vs. Provincial Government of Lanao del Norte (G.R. No. 185420, 2017) that, local governments are without power to tax electric companies already subject to franchise tax imposed by the national government. It must be noted prior to the enactment of the Local Taxation Code, entities with their respective legislative franchise exemptions from local taxes already existed. The enactment of the Local Tax Code did not change their exempt status from local taxes considering that the said Code did not expressly repeal the provision of the legislative franchise.

The pronouncement under Section 9 of the Local Tax Code, *"Any provision of special laws to the contrary notwithstanding, the province may impose a tax on business enjoying franchise x x x",* did not convince the SC that there was an express repeal of the existing franchises considering the established rule against implied repeal.

The SC further stated that under the LGC, and in the absence of a court ruling to the contrary, it is argued that there is an expressed amendment of the exemption previously granted under any other laws and special laws prior to its entitlement, the opening statement of Section 137 provides, "*Notwithstanding any exemption granted by any law or other special law, the province may impose a tax on businesses enjoying a franchise x x x",* specifically repealed the exemption previously enjoyed by the franchised entities. Thus, only those entities granted legislative franchises after the enactment of the LGC may be exempted from the imposition of local taxes including the LFT, if their franchise grant such exemption. Hence, the SC adopted the interpretation denying the provinces and cities the authority to impose the LFT only to holders of franchises, which constitute the "in lieu of all taxes" proviso, but not on grantees whose franchises do not contain such terms.

Conversely, the SC reversed its ruling stating that tax exemptions should be granted only by clear and unequivocal provision of law on the basis of language too plain to be mistaken. They cannot be extended by mere implication or inference (G.R. No. 143867, 2003). Earlier decisions and dicta to the contrary, that a statute authorizing or directing the grant or transfer of the "privileges" of a corporation that enjoys immunity from taxation or regulation should not be interpreted as including that immunity. Hence, in 2003 the "in lieu of all taxes" in the PLDT vs the City of Davao, the SC struck down the PLDT's argument that the "in lieu of all taxes" clause in Smart, exempts the PLDT from the payment of the LFT imposed by the City of Davao.

The "in lieu of all taxes" clause in Smart's franchise refers only to taxes, other than income tax, imposed under the NIRC of 1997, as amended. The "in lieu of all taxes" clause does not apply to local taxes. The clear intent is for the aforementioned clause to apply only to taxes under the NIRC of 1997, as amended, and not to local taxes. Accordingly, Congress did not expressly exempt Smart from local taxes. The Congress used the clause only in reference to national internal revenue taxes. The only interpretation, under the rule on a strict construction of tax exemptions, is that the "in lieu of all taxes" clause in Smart's franchise refers only to national and not to local taxes.

V. Conclusion and Recommendation

The authority of municipalities to grant franchises should not be confused with the authority of the province to impose the tax. The former may levy reasonable fees and charges commensurate to the cost of regulation and services rendered, while the imposition and collection of the local franchise tax is within the taxing powers of the province.

Cases that caused confusion and misinterpretation have already clarified opinions provided by the BLGF and the SC. As in all revenue measures, it is up to the particular local

government to enact the necessary tax ordinance that would enable it to exercise its power to impose a given tax, in this case, the local franchise tax.

If there is a need to further clarify and strictly enforce the local franchise tax, the involvement of certain government agencies detailing the guidelines for the levy and imposition of the local franchise tax may be recommended.

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