



Republic of the Philippines
Department of Finance
CENTRAL BOARD OF ASSESSMENT APPEALS
7th Floor, EDC Bldg., BSP Complex
Roxas Boulevard, Manila

**METROPOLITAN WATERWORKS AND
SEWERAGE SYSTEM,**

Petitioner-Appellant,

CBAA CASE NO. L-105
(LBAA CASE NO. 002)

-versus-

**LOCAL BOARD OF ASSESSMENT
APPEALS OF THE PROVINCE OF
RIZAL,**

Appellee,

-and-

**THE PROVINCIAL ASSESSOR AND
TREASURER OF RIZAL,
THE MUNICIPALITY OF ANGONO,
RIZAL, HON. EVA DOLORES A.
RIVERA, OIC-MUNICIPAL TREASURER
AND HERBERT H. VOCALAN, OIC-
MUNICIPAL ASSESOR OF ANGONO,
RIZAL,**

Respondents-Appellees.

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DECISION

Before this Board is an Appeal, filed on May 17, 2010 by Petitioner-Appellant METROPOLITAN WATERWORKS AND SEWERAGE AUTHORITY ("MWSS"), from the Resolution rendered by the Local Board of Assessment Appeals of the Province of Rizal ("LBAA") on 27 January 2010 in LBAA Case No. 02, denying Petitioner-Appellants Appeal with the LBAA.

In its Memorandum Appeal, Appellant MWSS averred:

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“THE PARTIES

“1. Appellant MWSS is an instrumentality of the government of the Republic of the Philippines created by virtue of its Charter, Republic Act No. 6234, as amended, (“R.A. 6234”). Appellant MWSS has jurisdiction, supervision and control over all waterworks and sewerage systems within Metropolitan Manila, the entire province of Rizal and portions of the province of Cavite and holds office at the MWSS Compound, Katipunan Road, Balara, Quezon City. Appellant MWSS may be served with notices and other processes of this Honorable Board through the undersigned counsel.

“2. Respondent-Appellee, Municipality of Angono (Appellee **Angono**), is a local government unit in whose territorial jurisdiction part of Appellant MWSS’ waterworks properties and facilities are located. Angono is being impleaded herein as the local government unit that assessed the real property taxes against Appellant MWSS, through the other Respondents-Appellees, namely EVA DOLORES A. RIVERA, OIC-Municipal Treasurer of Angono (the “**Treasurer**”) and HERBER (sic) H. VOCALAN, OIC-Municipal Assessor of Angono (the “**Assessor**”) who are impleaded in their official capacities. Respondent Appellees Treasurer and Assessor of Angono, Rizal, hold their respective offices at the Municipal Hall of Angono where they may be served with notices and other processes of this Honorable Board.

NATURE OF THE APPEAL

“3. This is an appeal from the Resolution dated 27 January 2010, issued by the Local Board of Assessment Appeals (“LBAA”) upholding the assessment made by the Respondents-Appellees for payment of real property taxes (RPT) against Appellant MWSS in connection with the waterworks properties and facilities being administered by the latter for and on behalf of the Republic of the Philippines.

TIMELINESS AND GROUNDS RELIED ON FOR THE ALLOWANCE OF APPEAL

“4. On 16 April 2010, Appellant MWSS received the Resolution from the LBAA, dated 27 January 2010, dismissing the Petition of herein Appellant MWSS.

“5. Under Section 229 (c) of Republic Act No. 7160, as amended, otherwise known as the Local Government Code of 1991 (“R.A. 7160”). “x x x [T]he owners of the property or the person having legal interest therein or the assessor who is not satisfied with the decision of the Board may, within thirty (30) days after receipt of the decision of said Board, appeal to the Central Board of Assessment Appeals,” Appellant MWSS is a person having legal interest in the properties subject of assessment, is appealing, not being satisfied with the Resolution of the LBAA dated 27 January 2010, by way of filing the instant Appeal Memorandum with this Honorable Board. Under Section 229 (c) of R.A. 7160, MWSS has thirty (30) days from

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16 April 2010 or until 16 May 2010, within which to file this Appeal Memorandum. Hence, the instant Appeal Memorandum is timely filed.

STATEMENT OF FACTS AND OF THE CASE

"6. By way of background, Appellant MWSS was created under R.A. 6234, with the following declaration of policy by the State:

"The proper operation and maintenance of waterworks system to insure an uninterrupted and adequate supply and distribution of potable water for domestic and other purposes and the proper operation and maintenance of sewerage systems are essential public services because they are vital to public health and safety. It is therefore declared a policy of the state that the establishment, operation and maintenance of such systems must be supervised and controlled by the state."

"7. Under R.A. 6234, Appellant MWSS' mandate is to generate and provide water supply for Metro Manila including the province of Rizal and portions of the province of Cavite. Pursuant to and in compliance with this mandate, Appellant MWSS administers, for and on behalf of the Republic of the Philippines, certain properties comprising of land, machineries, and other facilities constructed by the State (the "MWSS Properties").

"8. These MWSS Properties are intended for public purpose and devoted to public use, being properties exclusively used for the supply and generation of water, and are declared in the name of Appellant MWSS, but owned by the Republic of the Philippines. The MWSS Properties include the following:

TAX DEC. NUMBER	ASSESSED VALUE	LOCATION
A-006-08818	179,300	San Isidro, Angono, Rizal
A-004-02077	291,200	Kalayaan, Angono, Rizal
A-004-02076	337,010	Kalayaan, Angono, Rizal

Copies of Tax Declaration Nos. A-006-08818, A-004-02077 and A-004-02076 are hereto attached as **Annexes "B" to "B-2"**, respectively, and made integral parts hereof.

"9. On 17 March 2008, Appellant MWSS received Notices of Assessment from the Appellee Treasurer, demanding payment in the total amount of Philippine Pesos: Thirteen Thousand Three Hundred Twenty-three and 84/100 (P13,323.84), covering the period 1 January 2008 to 31 December 2008, representing RPT allegedly payable on the subject MWSS Properties. Thus:

TAX DEC. NUMBER	ASSESSED VALUE	LOCATION	PERIOD COVERED	TAX DUE
A-006-08818	179,300	San Isidro, Angono, Rizal	CY 2008	2,958.44
A-004-02077	291,200	Kalayaan, Angono, Rizal	CY 2008	4,804.80
A-004-02076	337,010	Kalayaan, Angono, Rizal	CY 2008	5,560.60

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Copies of the Notices of Assessment are hereto attached as **Annexes "C" to "C-2"** and made integral parts hereof.

"10. On 31 March 2008, Appellant MWSS paid under protest the total amount stated in the Notice of Assessment (Annexes "C to C-2"), while the protest letter was filed on 03 April 2008. A copy of the Protest Letter which is hereto attached as **Annex "D"**, and made an integral part thereof.

"11. On 29 April 2008, Appellant MWSS received a copy of the Appellee Treasurer's letter dated 18 April 2008 denying its protest. Appellant MWSS had sixty (60) days from 29 April 2008 or until 28 June 2008 within which to file its Petition to the LBAA. Within the reglementary period, Appellant MWSS filed its Petition to the LBAA, a copy of which is attached and made an integral part hereof as **Annex "E"**.

"12. An Answer/Comment was filed by Appellee Assessor admitting most of the allegations of the Petition, except the fact that Appellant MWSS is exempt from the payment of real property tax and that there was no ordinance that exempted herein Appellant from the payment of real property tax.

"13. Hearings were held and thereafter, the parties were ordered to submit their respective Memoranda, thereafter, the matter was considered submitted for resolution.

"14. On 16 April 2010, herein Appellant MWSS received a copy of the assailed Resolution of the Local Board of Assessment Appeals dismissing Appellant's Petition and finding Appellant MWSS' (sic) liable for the payment of real property tax. The dispositive portion of the assailed Resolution reads:

"WHEREFORE, this Board finds respondents' action of assessing petitioner's properties as liable for real property tax to be in order. Accordingly, the instant petition is DENIED.

SO ORDERED."

A copy of the Resolution is hereto attached as **Annex "A"** and made an integral part hereof.

"15. Appellant assails the foregoing Resolution dated 27 January 2010 and in support hereof, submits the following:

ASSIGNMENT OF ERRORS

"1. The LBAA erred in holding that the tax exemption of Appellant MWSS under its Charter has been withdrawn upon the effectivity of R.A. 7160, as amended.

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"2. The LBAA erred in not holding that Appellant MWSS is a government instrumentality and is exempt from payment of real property tax under Section 133(o) of R.A. 7160.

"3. The LBAA erred in not finding that the properties titled in the name of Appellant MWSS, are properties of public dominion and, thus, are beyond the commerce of man.

"4. The LBAA erred when it failed to take into consideration the damaging impact the assessment will have to the numerous beneficiaries of water supply within Appellant's service area.

"DISCUSSIONS

"1. THE LBAA ERRED IN HOLDING THAT THE TAX EXEMPTION OF APPELLANT MWSS UNDER ITS CHARTER HAS BEEN WITHDRAWN UPON THE EFFECTIVITY OF R.A. 7160, AS AMENDED.

"2. THE LBAA ERRED IN NOT HOLDING THAT APPELLANT MWSS IS A GOVERNMENT INSTRUMENTALITY AND IS EXEMPT FROM PAYMENT OF REAL PROPERTY TAX UNDER SECTION 133(O) OF R.A. 7160.

"16. Section 133(o) of R.A. 7160 clearly provides that government instrumentalities are beyond the reach of the local government units' power to tax, to wit:

"SECTION 133. COMMON LIMITATIONS ON THE TAXING POWERS OF LOCAL GOVERNMENT UNITS. – Unless otherwise provided herein, the exercise of the taxing powers of provinces, cities, municipalities, and barangays shall not extend to the levy of the following:

xxx

xxx

xxx

(o) Taxes, fees or charges of any kind on the **National Government, its agencies and instrumentalities**, and local government units." (Underscoring supplied.)

"17. Appellant MWSS is, in truth and in fact, an instrumentality of the government as provided under Section 2 (10) of Executive Order No. 292, otherwise known as the Administrative Code of 1987 ("E.O. No. 292"). Considering the very nature of Petitioner MWSS pursuant to its Charter, MWSS falls squarely within the definition of "instrumentality" under Section 2(10) of E.O. 292, which provides:

"Section 2 General Terms Defined. – Unless the specific words of the text, or the context as a whole, or a particular statute, shall require a different meaning:

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(10) "Instrumentality" refers to any agency of the National Government, not integrated within the department framework vested with special functions or jurisdiction by law, endowed with some if not all corporate powers, administering special funds, and enjoying operational autonomy, usually through a charter. The term includes regulatory agencies, chartered institutions and government-owned or controlled corporations." (Underscoring supplied.)

"18. Considering its creation, powers and jurisdiction under R.A. 6234, Appellant MWSS is, by law, clearly an instrumentality of the national government. Following the aforesaid Section 133(o) and the ruling of the Supreme Court in the case of **Basco v. PAGCOR**, 197 SCRA 52, 53 that "*local governments have no power to tax instrumentalities of the National Government*", Appellant MWSS should not be subject to liability for RPT as assessed and imposed by the Municipality of Angono.

"19. The Supreme Court, in the landmark case of **Manila International Airport Authority v. Court of Appeals**, G.R. No. 18125, (sic) 20 July 2006, (MIAA case) and in the case of **Philippine Fisheries Development Authority v. Court of Appeals**, G.R. No. 169836, 31 July 2007 (the "Philippine Fisheries Case"), has confirmed the general exemption from real property taxation granted to government instrumentalities under Section 133 of R.A. 7160 when it said:

"xxx the Court made a distinction between a GOCC and an instrumentality. Thus:

'SEC. 2. General Terms Defined. – xxx

(13) Government-owned or controlled corporation refers to any agency **organized as a stock or non-stock corporation**, vested with functions relating to public needs whether government (sic) or proprietary in nature, and owned by the Government directly or through its instrumentalities either wholly, or, where applicable as in the case of stock corporations, to the extent of at least fifty-one (51) percent of its capital stock: xxx

A Government-owned or controlled corporation must be **"organized as a stock or non-stock corporation."** MIAA is not organized as a stock or non-stock corporation. MIAA is not a stock corporation because it has no capital stock dividend (sic) into shares. MIAA has no stockholders or voting shares.

xxx

xxx

xxx

Section 3 of the Corporation Code defines a stock corporation as one whose "capital stock is divided into shares and x x x." **MIAA has capital but it is not divided into shares of stock. MIAA has no stockholders or voting shares. Hence, MIAA is not a stock corporation.**

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MIAA is also not a non-stock corporation because it has no members. Section 87 of the Corporation Code defines a non-stock corporation as “one where no part of its income is distributable as dividends to its members, trustees or officers.”

A non-stock corporation must have members. Even if we assume that the Government is considered as the sole member of MIAA, this will not make MIAA a non-stock corporation. Non-stock corporations cannot distribute any part of their income to their members. Section 11 of the MIAA Charter mandates MIAA to remit 20% of its annual gross operating income to the National Treasury. This prevents MIAA from qualifying as a non-stock corporation.

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

Since MIAA is neither a stock nor a non-stock corporation, MIAA does not qualify as a government-owned or controlled corporation. (Emphasis supplied)”

Thus, for an entity to be considered as a GOCC, it must either be organized as a stock or non-stock corporation. Two requisites must concur before one may be classified as a stock corporation, namely: (1) that it has a capital stock divided into shares, and (2) that it is authorized to distribute dividends and allotments of surplus and profits to its stockholders. If only one requisite is present, it cannot be properly classified as a stock corporation. As for non-stock corporations, they must have members and must not distribute any part of their income to said members.

On the basis of the parameters set in the MIAA case, the Authority should be classified as an instrumentality of the national government. As such, it is generally exempt from payment of real property tax, except those portions which have been leased to private entities. (Emphasis and underscoring supplied.)

“20. It bears underscoring that appellant MWSS is neither a stock or non-stock corporation as defined under the MIAA case and the Philippine Fisheries case. Therefore, appellant MWSS does not qualify as a government-owned or controlled corporation like MIAA and PFDA, Appellant MWSS is not a stock corporation because although Appellant MWSS has capitalization and share, Appellant MWSS has no authority to distribute dividends and allotments of surplus and profits to its stockholders. The capital stock of MWSS pursuant to its Charter cannot be transferred, negotiated, pledged, mortgaged or otherwise given as a security for payment of obligation. MWSS does not have blanket authority in the disposition of its income. According to its Charter, any income should be disposed to be used for its capital expenditures and operating expenses.

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Appellant MWSS is likewise characterized as non-profit. All its returns and income shall be used for its operation, expansion and improvements. Neither is appellant MWSS organized for charitable or religious purposes. Clearly, Appellant MWSS is an instrumentality of the National Government.

“21. Based on R.A. 6234, Appellant MWSS is vested with regulatory functions in that it has jurisdiction and power to supervise and control all waterworks and sewerage systems within its stated territory, to wit:

“Section 2 (c) – The System shall own and/or have jurisdiction, supervision and control over all waterworks and sewerage systems in the territory comprising the cities of Manila, Pasay, Quezon, Cavite and Caloocan, and the municipalities of Antipolo, Cainta, Las Piñas, Makati, Malabon, Mandaluyong, Marikina, Montalban, Navotas, Parañaque, Pasig, Pateros, San Juan, San Mateo, Taguig, Taytay, all of Rizal province, the municipalities of Bacoor, Imus, Kawit, Noveleta, Rosario, all of Cavite province and Valenzuela, Bulacan. All other waterworks and sewerage systems now under the supervision and control of National Waterworks and Sewerage Authority (NWSA), shall remain with the System,” (Underscoring supplied.)

“22. As an administrative or regulatory body, the MWSS is also given the power to grant franchises and approve the operation of waterworks within its territory, to wit:

“Section 3 (j) – To acquire, purchase, hold, transfer, sell, lease, rent, mortgage, encumber, and otherwise dispose of real and personal property, including rights and franchises, consistent with the purpose for which the System is created and reasonable (sic) required for the transaction of the lawful business of the same;

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Section 3 (n) – To approve, regulate, and supervise the establishment, operation and maintenance of waterworks and deepwells within its jurisdiction operated for commercial, industrial and governmental purposes and to fix just and equitable rates or fees that may be charged to customers thereof; xxx” (Underscoring supplied.)

“23. Furthermore, Sections 13 and 18 of R.A. 6234 clearly provides that the income of Appellant MWSS shall be devoted exclusively for the enhancement of its public utility service, thus:

“SECTION 13. Disposition of Income. – The income of the System shall (be) dispose of according to the following priorities:

First, to pay its contractual and statutory obligations and to meet its essential current operating expenses;

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Second, to serve (sic) at least fifty per cent (50%) of the balance exclusively for the expansion, development and improvement of the System; and

Third, to allocate the residue to enhance the efficient operation and maintenance of the System which include increase of administrative expenses or increases or adjustment of salaries and other benefits of the employees.”

SECTION 18. Non-Profit Character of the System, Exemption from all Taxes, Duties, Fees, Imposts and Other Charges by Government and Governmental Instrumentalities. – The System shall be non-profit and shall devote all its returns from its capital investment as well as excess revenues from its operations, for expansion and improvement. To enable the System to pay its indebtedness and obligations and the furtherance and effective implementation of the policy enumerated in Section one of this Act, the System is hereby declared exempt:

- (a) From the payment of all taxes, duties, fees, impost, charges and restrictions of the Republic of the Philippines, its provinces, cities, municipalities, and other government agencies and instrumentalities including taxes, duties, fees, impost, and other (sic) provided for under the Tariff and Customs Code of the Philippines, Republic Act Numbered Nineteen Hundred Thirty Seven, as amended and further amended by Presidential Decree No. 34, dated October 27, 1972, and costs and service fees in any Court of (sic) administrative proceedings in which it may be a party;
- (b) From all income taxes, franchise taxes, and realty taxes to be paid in (sic) the National Government, its provinces, cities, municipalities and other Government agencies and instrumentalities; and
- (c) From all impost, duties, compensating taxes, and advance sales tax, and wharfage fees on import of foreign goods required for its operation and projects.” (Underscoring supplied.)

“24. To ensure that the Appellant will be able to sustain its operations and services to the public, the law clearly provided that it should not be taxed by either by (sic) the National Government or any of its provinces, cities, municipalities and other government agencies and instrumentalities. Allowing a different interpretation to the intent of the law could pose a detrimental effect, not only to the Appellant’s ability to provide the service required of it, but also in the areas over which it generates and supplies water including the Municipality of Angono.

“25. Applying the foregoing principles enunciated by the Supreme Court and the express provisions in the Charter of MWSS (R.A. 6234), it is indubitably obvious that Appellant MWSS is an instrumentality of the government and, as instrumentality, is exempt from the payment of real

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property tax, among others as expressly exempted by the Local Government Code (RA 7160).

“26. Appellant MWSS respectfully reiterates its humble submission that the general exemption from real property taxation granted to government instrumentalities under Section 133(o) of R.A. 7160 should be respected and that the rule on strict interpretation does not apply in the case of exemptions in favor of a government political subdivision or instrumentality (Cooley on Law of Taxation, 4th edition, 1414 [1927]). As further explained by the Supreme Court in the case of *Maceda v. Macaraig Jr.*, G.R. No. 88291, 31 May 1991 (Citing C. Dallas Sands, Statutes and Statutory Construction, Vol. 3, p. 207, citing Crosby vs. U.S., 292F. Supp. 314; Pasadena vs. Los Angeles County, 187 P. 418 and other cases):

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

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

“27. Clearly, there can be no other conclusion than that Appellant MWSS is an instrumentality of the national government as defined in the MIAA case and Philippine Fisheries case. Therefore, Appellant MWSS cannot be made liable for taxes imposed by the local government unit such as that of the Municipality of Angono, Rizal as clearly exempted by R.A. 7160. More importantly, Appellant MWSS’ Charter, R.A. 6234, expressly exempted Appellant MWSS from payment of national and local tax.”

“III. THE LBAA ERRED IN NOT FINDING THAT THE PROPERTIES TITLED IN THE NAME OF APPELLANT MWSS, ARE PROPERTIES OF PUBLIC DOMINION AND, THUS, ARE BEYOND THE COMMERCE OF MAN.

“28. As previously elucidated under R.A. 6234, the mandate of Appellant MWSS is to generate and provide water supply for Metro Manila and its environs. Pursuant to and in compliance with this mandate, Appellant MWSS administers for and on behalf of the Republic of the Philippines, the MWSS Properties, which comprise of land, machineries, and facilities constructed by the State. It bears special emphasis that these MWSS Properties are intended for public purpose and devoted to public

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use, as the same are exclusively used for the supply and generation of water for the public.

“29. The following provisions of the New Civil Code of the Philippines clearly prove that the MWSS Properties should be properly classified as properties forming part of public dominion:

“Article 419. Property is either of public dominion or of private ownership.

Article 420. The following properties are property of **public dominion**:

(1) Those intended for public use, such as roads, canals, rivers, torrents, ports and bridges constructed by the State, banks, shores, roadsteads, and others of similar character;

(2) Those which belong to the State, without being for public use, and **are intended for some public service** or for the development of national wealth.

Article 421. All other property of the State, which is not of the character stated in the preceding article, is patrimonial property.” (Emphasis supplied.)

“30. It is emphasized that Section 217 of R.A. 7160 provides that the actual use of real property must be the basis of assessment. It cannot be doubted that the MWSS Properties, which are being exclusively used for the supply and generation of water, are intended for public use and public service. Being properties forming part of public dominion, the MWSS Properties are undoubtedly properties which belong to the State or the Republic of the Philippines, with Appellant MWSS merely holding such properties in trust on behalf of or for the benefit of the Republic of the Philippines, in accordance with Appellant MWSS’ mandate to generate and provide water supply for Metro Manila and its environs.

“31. The Supreme Court, sitting *en banc*, in the case of **Manila International Airport Authority v. Court of Appeals**, *supra*, clearly held that properties of public dominion belongs to the State or the Republic of the Philippines, declaring thus:

“The Airport Lands and Buildings of MIAA, which its Charter calls the ‘principal airport of the Philippines for both international and domestic air traffic,’ are properties of public dominion because they are intended for public use. As properties of public dominion, they indisputably belong to the State or the Republic of the Philippines.” (Underscoring supplied.)

“32. Likewise in the case of **Board of Assessment Appeals, Province of Laguna v. Court of Appeals**, G.R. No. L-18125, 8 SCRA 225 (1963) (the “Board of Assessment Case”), the Supreme Court, again sitting *en banc*, categorically held that the water pipes, reservoir, intake and buildings of the National Waterworks and Sewerage Authority (the predecessor of Appellant MWSS) being used in the operation of its waterworks system in

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the municipalities of Cabuyao, Sta. Rosa and Biñan, Province of Laguna, are part of public dominion and hence, exempt from real property taxation. The properties in the Board of Assessment Case are similar in nature and use to the MWSS Properties which are now the subject of the assessment made by the Appellee Municipality of Binangonan.

“33. The State, being the source of power to tax, its own properties cannot be presumed to be within the contemplation of any tax it imposes. Otherwise, a farcical situation arises. It is thus humbly submitted that this Honorable Board must adhere to the legal precept that *“when public property is involved, exemption is the rule and taxation, the exemption (sic).”* (SSS v. City of Bacolod, 15 SCRA 412, 417)”

“I. THE LBAA ERRED WHEN IT FAILED TO TAKE INTO CONSIDERATION THE DAMAGING IMPACT THE ASSESSMENT WILL HAVE TO THE NUMEROUS BENEFICIARIES OF WATER SUPPLY WITHIN APPELLANT’S SERVICE AREA.

“34. It also bears special emphasis that should Appellees be allowed to continue its unfounded and baseless assessment upon herein Appellant MWSS, it will not be Appellant who shall stand to suffer on the tremendous exactions being made by all the local government units in general, and the Municipality of Angono in particular, but the residents of Metro Manila and other surrounding provinces within Appellant’s service area and jurisdiction, including the province of Rizal of which the Municipality of Angono is an essential part, and to whom Appellant is generating and supplying water through the MWSS Properties that were made subject of the contested assessment.

“35. Furthermore, should this Honorable Board decide that the MWSS Properties are taxable properties and may be the subject of levy, the same would result to the possible deprivation of water of the entire service area and jurisdiction of Appellant MWSS. The same shall also result in the takeover of government property, installations and facilities, to the detriment of the public and even impede the financial and booming investment areas in the covered service area of Appellant MWSS.”

“PRAYER

“WHEREFORE, it is respectfully prayed of this Honorable Board that the Appeal be given due course and a Decision be rendered:

(a) SETTING ASIDE the 27 January 2010 Resolution of the Local Board of Assessment Appeals;

(b) DECLARING THE ASSESSMENT made by the Municipality of Angono as **INVALID OR VOID AB INITIO** for lack of legal and factual basis;

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(c) DIRECTING the OIC-City Assessor and OIC-Treasurer of Angono, Rizal TO CANCEL TAX DECLARATIONS TD Nos. A-006-00818, A-004-02077 & A-004-0276 (sic) for being properties of public dominion; and

(d) Ordering the REFUND of all the real property taxes paid under protest by Appellant MWSS.”

ANTECEDENTS AFTER THE FILING OF INSTANT APPEAL

After the filing by the Petitioner-Appellant MWSS of the instant Appeal on May 17, 2010, the following incidents transpired:

1. On September 7, 2010, this Board received Respondents-Appellees' Answer which was sent by registered mail on August 23, 2010.

2. On May 10, 2011, this Board issued an Order dismissing the Appeal for MWSS' failure to implead the proper respondents-appellees, namely, the Provincial Assessor and the Provincial Treasurer of Rizal, and for lack of interest to prosecute the Appeal - the Petitioner-Appellant having failed, despite due notice, to appear at the hearing scheduled for that day.

3. On June 02, 2011, this Board received a copy of Petitioner-Appellant's Motion for Reconsideration of this Board's May 10, 2011 Order.

4. On June 17, 2011, this Board, after hearing on the aforementioned Petitioner's Motion for Reconsideration, reconsidered its Order of May 10, 2011 and issued another Order requiring Respondents to file their Comment/Opposition to said Motion.

5. On July 21, 2011, this Board, considering that Respondents did not file any comment/opposition to said motion despite the opportunity given

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them, issued an Order granting Petitioner's Motion for Reconsideration and ordering Petitioner to implead the Provincial Treasurer and Provincial Assessor within ten (10) days from receipt of said Order.

6. In compliance of this Board's Order of July 21, 2011, Petitioner-Appellant sent its Amended Appeal Memorandum by registered mail on November 21, 2011 which reached this Board on November 25, 2011.

7. In an Order dated June 5, 2012, this Board directed the Provincial Assessor and Provincial Treasurer of Rizal to file their respective Answer/Comment to Appellant's Amended Appeal Memorandum within ten (10) days from receipt of said Order.

8. On June 25, 2012, this Board received from Respondent MA. TERESA E. LASQUETY, OIC-Provincial Assessor and Provincial Treasurer of Rizal Province, copies of her "COMMENT (To Petitioner-Appellant's Amended Appeal Memorandum dated 18 November 2011)" dated June 22, 2012.

9. In compliance with an Order of this Board, the parties hereto filed their respective Position Papers: Respondents-Appellees, on November 16, 2012; and Petitioner-Appellant, on November 26, 2012.

FINDINGS OF THIS BOARD

In paragraphs 3 to 7 and 15 of the Petition filed on June 27, 2008 by MWSS before the LBAA of the Province of Rizal, MWSS stated the following:

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"NATURE OF THIS PETITION

"3. This is an appeal from the action of the Respondents Municipal Assessor and Municipal Treasurer of Angono in the assessment and collection of real property taxes ("**RPT**") against Petitioner MWSS in connection with waterworks and sewerage properties and facilities being administered by the latter for and on behalf of the Republic of the Philippines.

"TIMELINESS OF THE PETITION

"4. On March 17, 2008, Petitioner MWSS received a **Statement of Account** from the Respondent Municipal Treasurer, demanding the payment of RPT in the total amount of Philippine Pesos: Thirteen Thousand Three Hundred Twenty Three Pesos and Eighty Four Centavos (Php13,323.84), covering the period 01 January 2008 until 31 December 2008 ("**Notice of Assessment**"). Photocopy of the Notice of Assessment is hereto attached as Annex (sic) "A" to "A-2" and made an integral part hereof. (Emphasis CBAА's)

"5. On March 31, 2008, Petitioner MWSS paid under protest the RPT and, filed the protest letter dated April 03, 2008 which was received on April 09, 2008 by the respondent Municipality of Angono. Photocopies of the Official Receipts of RPT and the Protest Letter are hereto attached as Annexes "B" and "C", respectively.

"6. In reply, the Respondent Municipal Treasurer denied the protest through a letter dated April 18, 2008 citing Sec. 216 of RA 6234 and DOF Local Assessment Regulation 1-92 and attached the xerox copy of the legal opinion of the Legal Officer of the Municipality of Angono in support of the said denial. The said letter was received by Petitioner MWSS on April 29, 2008. Photocopies of the said letter of the Municipal Treasurer with attachments are hereto attached as Annexes "D" to "D-3". Petitioner MWSS has sixty (60) days from April 29, 2008 or until June 28, 2008 within which to file this Petition/Protest before this Honorable Board.

"GROUNDS FOR ALLOWANCE OF THE PETITION

"7. Pursuant to **Section 252 and Section 226 et seq. of Republic Act No. 7160**, as amended, otherwise known as the *Local Government Code of 1991* ("**R.A. 7160**"), and the rules and regulations implementing R.A. 7160, Petitioner MWSS, which is a person having **legal interest in the properties subject of the assessment**, is appealing the assessment by way of filing the instant Petition with this Honorable Board since it does not agree and takes exception to the action of the Respondents." (Emphasis CBAА's)

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"LONE ISSUE TO BE RESOLVED"

"15. Whether or not Petitioner MWSS is liable to pay for the real property tax due on the MWSS Properties located in the Municipality of Angono, Rizal pursuant to Sections 133(o) and 234(a) of R.A. 7160, notwithstanding that it is an instrumentality of the government of the Republic of the Philippines and such properties form part of public dominion."

As above-stated, Petitioner-Appellant's Appeal is "Pursuant to Section 252 and Section 226 et seq. of Republic Act No. 7160." According to Black's Law Dictionary, 8th Edition, "*et seq.*" means "*and those (pages or sections) that follow.*" Under Title Two, Book II (Real Property Taxation) of the LGC, there are twenty-five (25) sections that follow Section 226 (Sections 227- 251) and thirty-two (32) more sections that follow Section 252 (Sections 253-294). We do not know whether or not MWSS had in mind all of these sections that follow Section 252 and Section 226. Anyway, we shall concern ourselves only with Sections 252 and 226.

Sections 252 of the LGC provides:

"SEC. 252. *Payment Under Protest.* – (a) No protest shall be entertained unless the taxpayer first pays the tax. There shall be annotated on the tax receipts the words "paid under protest". The protest in writing must be filed within thirty (30) days from payment of the tax to the provincial, city treasurer or municipal treasurer, in the case of a municipality within Metropolitan Manila Area, who shall decide the protest within sixty (60) days from receipt.

"x x x

"(d) In the event that the protest is denied or upon the lapse of the sixty-day period prescribed in subparagraph (a), the taxpayer may avail of the remedies as provided for in Chapter 3, Title Two, Book II of this Code."

Section 252, above-quoted, does not exactly lay out the "grounds" or "reasons" for which any protest may be lodged against the treasurer. It

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would, however, be quite absurd and unfair to blame or condemn the treasurer for the actions of other people, which actions the treasurer has nothing to do with.

The treasurer is responsible for the collection of the real property tax with, when applicable, interest thereon and related expenses, and the enforcement of the remedies provided for in Title Two, Book II of the LGC or any other applicable laws.¹ To arrive at the tax due on an assessment, the treasurer merely applies the tax rates (approved by the sanggunian concerned) to the assessed value as determined by the assessor. Only the assessor is authorized to make the assessment. The treasurer does not have anything to do with it. The treasurer takes notice of the assessment only after the assessor furnishes the treasurer with the assessment roll.²

The provisions of Section 252 of the Code would apply only: (a) in a case where the taxpayer believes that the **assessment made by the assessor is satisfactory or correct**, but that the **treasurer's computation of the tax due thereon is erroneous**; and/or (b) in a case where an assessment (made by the assessor) **had been previously declared as null and void in a final judgment by a competent authority**, but the treasurer still tries to collect realty taxes thereon.

¹ Section 247, R.A. 7160

² Section 248, *ibid.*

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The term “Assessment” is defined as “the act or process of determining the value of property, or portion thereof subject to tax, including the discovery, listing, classification, and appraisal of properties.”³

The act or process of assessment is the duty and function of the assessor.

MWSS believes that the MWSS Properties are, for certain reasons, exempt from real property taxation and, therefore, the treasurer has no business trying to collect realty taxes on said properties. This contention is untenable. The proximate cause of Petitioner’s Appeal is the action of the respondent assessor in assessing the said properties as taxable. The realty taxes, as computed by the respondent treasurer, are merely the result of the assessor’s action. Clearly, the appeal is properly the subject matter of Section 226 of the LGC, which provides:

“SEC. 226. Local Board of Assessment Appeals. – Any owner or person having legal interest in the property who is not satisfied with the action of the provincial, city or municipal assessor in the assessment of his property may, within sixty (60) days from the date of receipt of the written notice of assessment, appeal to the Board of Assessment Appeals of the province or city by filing a petition under oath in the form prescribed for the purpose, together with copies of the tax declarations and such affidavits or documents submitted in support of the appeal.”

Petitioner MWSS portrayed the “Statement of Account” MWSS received on March 17, 2008 from the Municipal Treasurer as the “Notice of Assessment” from the Assessor. The truth of the matter is that what MWSS received on that very day were copies of “Statements of Account”⁴ dated

³ Section 199(f), *ibid.*

⁴ Annexes “A” to “A-2” to MWSS’ Petition with the LBAA

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March 17, 2008 for realty taxes due for the calendar year 2008 on three (3) parcels of land described under Tax Declaration Nos. 00-A-006-08818, 00-A-004-02077 and 00-A-004-02076,⁵ thus:

FOR CALENDAR YEAR 2008:

TAX DEC. NOS.	MARKET VALUE	ASSESSED VALUE	NET BASIC TAX & SEF DUE	DATE PAID	O.R. NO.
A-006-08818	P1,793,000.00	P179,300.00	P 2,958.44	03-31-2008	0359522
A-004-02077	2,912,030.00	291,200.00	4,804.80	03-31-2008	0359522
A-004-02076	3,370,070.00	337,010.00	5,560.66	03-31-2008	0359522
Total Paid			P13,323.90		

The "Statements of Account"⁶ each stated that the taxes for the calendar year 2007 were fully paid on December 29, 2006, thus:

FOR CALENDAR YEAR 2007

TAX DEC. NOS.	MARKET VALUE	ASSESSED VALUE	NET BASIC TAX & SEF DUE	DATE PAID	O.R. NO.
A-006-08818	P1,793,000.00	P179,300.00	P 2,958.44	12-29-2006	5891389
A-004-02077	2,912,030.00	291,203.00	4,804.80	12-29-2006	5891387
A-004-02076	3,370,080.00	337,008.00	5,560.66	12-29-2006	5891388
Total Paid			P13,323.90		

The records do now show the date when the subject properties were last assessed or reassessed. The machine copies of the tax declarations annexes to Appellant's petition filed respectively with the LBAA and CBAA do not show the back portions of said tax declarations where the effectivity of the assessments and the signatures of the Assessors are usually found. It is, however, interesting to see that, on the face of the machine copies of the said tax declarations, the note "Computed 3/05/2001" appears.

At least it can be presumed that the subject properties were last assessed or reassessed prior to the year 2007 since the realty taxes for the calendar years 2007 and 2008 were identical in amounts and the realty

⁵ Annexes "E" to "E-2" to *ibid*.

⁶ Annexes "A" to "A-2" of *ibid*; Annexes "A" to "C" of MWSS' Position Paper

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taxes for calendar year 2007 were paid on December 29, 2006 per Official Receipt Nos. 5891387, 5891388 and 5891389.

The date when the Appellant MWSS received the "Notice(s) of Assessment" required under the provisions of Section 226 of the LGC is not at issue in this case. However, in view of the fact that Appellant MWSS willingly paid the realty taxes for the calendar year 2007 on December 29, 2006, it could safely be presumed that said notices were received by Petitioner MWSS on or before the said date of December 29, 2006.

We believe, therefore, and so hold that the instant Appeal was: (a) erroneously directed against the Treasurer; and (b) as against the Assessor, filed out of time. The appeal to the LBAA on the action of the assessor should have been instituted within sixty (60) days from receipt of the notice of assessment from the assessor.

Petitioner MWSS may cry foul and say that this Board, in resolving this Appeal, resorted to mere technicalities.

We are aware, and fully agree, that Rules of Procedure should be liberally construed to the end that substantial justice may be served. Technical rules of procedure should be used to promote, not frustrate justice.⁷

In a number of cases, however, the Honorable Supreme Court set the conditions when the rules of procedure may not be unduly relaxed, thus:

⁷ See *Antonio T. Donato vs. Court of Appeals, et al.*, G.R. No. 129638, December 8, 2003

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“The liberal construction of the Rules of Court is resorted to only to promote substantial justice, not to delay or undermine the legal processes. The Rules are designed to assure the orderly and predictable course of justice. Unduly relaxing them would be an injustice to the innocent parties who honor and obey them, and unfairly reward those who neglect or fail to follow them.”⁸

“Rules of procedure must be followed except only when, for persuasive reasons, they may be relaxed to relieve a litigant of an injustice commensurate with his failure to comply with the prescribed procedure. Concomitant to a liberal application of the rules of procedure should be an effort on the part of the party invoking liberality to adequately explain his failure to abide by the rules.”⁹

“Rules of procedure are intended to insure the orderly administration of justice and the protection of substantive rights in judicial and extra-judicial proceedings. It is a mistake to suppose that substantive law and adjective law are contradictory to each other or, as has often been suggested, that enforcement of procedural rules should never be permitted if it will result in prejudice to the substantive rights of the litigants. This is not exactly true; the concept is much misunderstood. As a matter of fact, the policy of the courts is to give effects to both kinds of law, as complimenting each other, in the just and speedy resolution of the dispute between the parties. Observance of both substantive rights is equally guaranteed by due process whatever the source of such rights, be it the constitution itself or only a statute or a rule of court.”¹⁰

“Strict observance of the Rules indispensable to the prevention of needless delays and to the orderly and speedy dispatch of judicial business is an imperative necessity.”¹¹

Besides, Section 226 of the LGC (which prescribes, among others, the prescriptive period for appeals to the LBAA) is not merely a procedural rule. It is the law which determines the jurisdiction of the LBAA. Settled is the principle that the requirement regarding the perfection of appeals within

⁸ *Boaz International Trading Corporation and F. R. Cement Corporation vs. Woodward Japan, Inc. and North Front Shipping Services, Inc.*, G.R. No. 147793, December 11, 2003

⁹ *Cresenciano Duremdes vs. Agustin Duremdes*, G.R. No. 138256, November 12, 2003

¹⁰ *Limpot v. Court of Appeals*, 170 SCRA 367 [1989]; *Lim Tupaz v. Court of Appeals*, G.R. No. 89571, Feb. 6, 1991, 193 SCRA 597; *Santos v. Court of Appeals*, G.R. No. 92862, July 04, 1991, 198 SCRA 806; *Sps. Ruben and Luz Galang v. Court of Appeals*, G.R. No. 76221, July 29, 1991, 199 SCRA 683; cited in *Herrera, Remedial Law*, 2000 Ed., p. 277

¹¹ *Manila RR Co. v. Attorney General*, 20 Phil. 523; cited in *Herrera, Remedial Law*, 2000 Ed., p. 278

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the reglementary period is not only mandatory but also jurisdictional.¹² The collection of taxes should not be left to uncertainty for an indefinite period of time. As the Honorable Supreme Court said in *Jose B.L. Reyes, et al. v. Pedro Almanzor, et al.*,¹³ “Verily, taxes are the lifeblood of the government and so should be collected without unnecessary hindrance.”

**PETITIONER MWSS REALTY TAX
EXEMPTION UNDER ITS CHARTER
(R.A. 6234) HAD BEEN WITHDRAWN
UPON THE EFFECTIVITY OF R.A. 7160.**

In No. 23 of its Appeal Memorandum, MWSS quoted, among others, Section 18(b) of R.A. 6234, as amended, Appellant’s Charter, thus:

“SECTION 18. Non-Profit Character of the System, Exemption from all Taxes, Duties, Fees, Imposts and Other Charges by Government and Governmental Instrumentalities. – The System shall be non-profit and shall devote all its returns from its capital investment as well as excess revenues from its operations, for expansion and improvement. To enable the System to pay its indebtedness and obligations and the furtherance and effective implementation of the policy enumerated in Section one of this Act, the System is hereby declared exempt:

“x x x

(b) From all income taxes, franchise taxes, and realty taxes to be paid in (sic) the National Government, its provinces, cities, municipalities and other Government agencies and instrumentalities;”

The last paragraph of Sec. 234 of the LGC provides:

“SEC. 234. *Exemptions from Real Property Tax*. – The following are exempted from payment of the real property tax:

“x x x

“Except as provided herein, any exemption from payment of real property tax previously granted to, or presently enjoyed by, all **persons, whether natural or juridical**, including all government-owned or –

¹² *Roman Catholic Bishop vs. Director of Lands*, 34 Phil. 623 [1916]

¹³ G.R. No. L-49839-46, April 26, 1991

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controlled corporations are hereby withdrawn upon the effectivity of this Code.”

There is no doubt that R.A. 6234, as amended, was passed ahead of R.A. 7160 and that MWSS is certainly a **person** – a **juridical person**. The last paragraph of Sec. 234 of R.A. 7160 is plain enough: the realty tax exemptions “previously granted to, or presently enjoyed by, all **persons, whether natural or juridical**, x x x are hereby withdrawn upon the effectivity of this Code.”

SECTION 133(O) OF R.A. 7160, BEING NOT APPLICABLE TO REAL PROPERTY TAXATION, HAS NO BEARING IN THIS CASE.

As quoted by MWSS, Section 2(10) of the Administrative Code of 1987 (E.O. No. 292) provides:

“Section 2 General Terms Defined. – Unless the specific words of the text, or the context as a whole, or a particular statute, shall require a different meaning:

xxx xxx xxx

“(10) “Instrumentality” refers to any agency of the National Government **not integrated within the department framework** vested with special functions or jurisdiction by law, endowed with some if not all corporate powers, administering special funds, and enjoying operational autonomy, usually through a charter. This term includes regulatory agencies, chartered institutions and government-owned or controlled corporations.” (Underscoring supplied.)

Section 25, Chapter 6, Title V, Book IV of the same Executive Order No. 292 provides that MWSS is one of the agencies and corporations attached to the Department of Public Works and Highways, thus:

“Sec. 25. Attached Agencies and Corporation. – Agencies and corporations attached to the Department shall continue to operate and function in accordance with their respective charters/laws/executive

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orders creating them. Accordingly, Metropolitan Waterworks and Sewerage System, the Local Water Utilities Administration, the National Irrigation Administration, and the National Water Resources Council, among others, **shall continue to be attached to the Department.** x x x”
(Emphasis supplied)

Section 3(n) of Republic Act No. 10149, which was signed into law by the President on June 06, 2011, provides:

“Section 3. Definition of Terms. –

“x x x

“(n) Government Instrumentalities with Corporate Powers (GICP)/Government Corporate Entities (GCE) refer to instrumentalities or agencies of the government, **which are neither corporations nor agencies integrated within the departmental framework**, but vested by law with special functions or jurisdiction, endowed with some if not all corporate powers, administering special funds, and enjoying operational autonomy usually through a charter including, but not limited to, the following: the Manila International Airport Authority (MIAA), the Philippine Ports Authority (PPA), the Philippine Deposit Insurance Corporation (PDIC), the **Metropolitan Waterworks and Sewerage System (MWSS)**, the Laguna Lake Development Authority (LLDA), the Philippine Fisheries Development Authority (PFDA), the Bases Conversion and Development Authority (BCDA), the Cebu Port Authority (CPA), the Cagayan de Oro Port Authority, the San Fernando Valley Port Authority, the Local Water Utilities Administration (LWUA) and the Asian Productivity Organization (APO).”
(Emphasis supplied)

With the express declaration in R.A. 10149 that MWSS is as an instrumentality of the government, it would seem that MWSS is no longer attached to the Department of Public Works and Highways as was provided under Section 25, Chapter 6, Title V, Book IV of Executive Order No. 292.

Being a government instrumentality, also as expressly provided under Section 133(o) of the LGC, MWSS is exempt from payment of local taxes, fees or charges, thus:

“SEC. 133. *Common Limitations on the Taxing Powers of Local Government Units.* – Unless otherwise provided herein, the exercise of the

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taxing powers of provinces, cities, municipalities, and barangays shall not extend to the levy of the following:

“x x x

“(o) Taxes, fees, or charges of any kind on the National Government, its agencies and instrumentalities, and local government units.”

Section 133(o) of the LGC, however, does not concern us. The instant Appeal concerns real property taxes or, precisely stated, the claimed exemption therefrom. Besides, we have no jurisdiction over appeals involving the LGC provisions on local taxes, fees, or charges (Title One, Book II of the LGC) to which Section 133 belongs.

The provisions of Local Government Taxation (Title One, Book II) were substantially taken from the provisions of the “Local Tax Code” promulgated under PD 231 which took effect on July 1, 1973 and subsequently amended by PD 426 which took effect upon its issuance on May 30, 1974.

The provisions of the Real Property Taxation (Title Two, Book II), in turn, were substantially taken from the provisions of PD 464, the “Real Property Tax Code”, which was promulgated by the President on May 20, 1974 and took effect on June 1, 1974.

The provisions of PD 231, as amended, were never intended to have overlapping effects with the provisions of PD 464 as far as real property taxation is concerned, just as the provisions of Title One, Book II of the LGC

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were never meant to encroach on or upon the domain of Title Two, Book II of the LGC.

In *Benguet Corporation vs. Central Board of Assessment Appeals, et al.*,¹⁴ (the “Benguet Case), the Honorable Supreme Court ruled that the provisions of PD 231 were not pertinent to real property taxation, thus:

“Petitioner argues that realty taxes are local taxes because they are levied by local government units, citing Sec. 39 of P.D. 464, which provides:

‘Sec. 39. *Rates of Levy.* – The provincial, city or municipal board or council shall fix a uniform rate of real property tax applicable to their respective localities x xxx’

“While the local government units are charged with fixing the rate of real property taxes, it does not necessarily follow from that authority the determination of whether or not to impose the tax. In fact, local governments have no alternative but to collect taxes as mandated in Sec. 38 of the Real Property Tax Code, which states:

‘Sec. 38. *Incidence of Real Property Tax.* – There shall be levied, assessed and collected in all provinces, cities and municipalities an annual *ad valorem* tax on real property, such as land, buildings, machinery and other improvements affixed or attached to real property not hereinafter specifically exempted.’

“It is thus clear from the foregoing that it is the national government, expressing itself through the legislative branch, that levies the real property tax. Consequently, when local governments are required to fix the rates, they are merely constituted as agents of the national government in the enforcement of the Real Property Tax Code. The delegation of the taxing power is not even involved here because the national government has already imposed realty tax in Sec. 38 above-quoted, leaving only the enforcement to be done by local governments.

“The challenge of petitioner against the applicability of *Meralco Securities Industrial Corporation v. Central Board of Assessment Appeals, et al.* (199 Phil. 453; G.R. No. L-46245, May 31, 1982), is unavailing, absent any cogent reason to overturn the same. Thus –

‘Meralco Securities argues that the realty tax is a local tax or levy and not a tax of general application. This argument is untenable because the realty tax has always been imposed by the lawmaking body and later by the President of the Philippines in the exercise of his lawmaking powers, as shown in Sections 342 *et seq.*

¹⁴ G.R. No. 100959, June 29, 1992

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of the Revised Administrative Code, Act No. 3995, Commonwealth Act No. 470 and Presidential Decree No. 464.

'The realty tax is enforced throughout the Philippines and not merely in a particular municipality or city but the proceeds of the tax accrue to the province, city, municipality and barrio where the realty taxed is situated (Sec. 86, P.D. 464). In contrast, a local tax is imposed by the municipal or city council by virtue of the Local Tax Code, Presidential Decree No. 231, which took effect on July 1, 1973 (69 O.G. 6197).'

"Consequently, the provisions of Sec. 52 of the Mineral Resources Development Decree of 1974 (P.D. 463), and Secs. 5 (m), 17 (d) and 22 (c) of the Local Tax Code (P.D. 231) cited by petitioner are mere limitations on the taxing power of local government units; they are not pertinent to the issue before Us and, therefore, cannot and should not affect the imposition of real property tax by the national government." (Emphasis supplied; Sections 38 and 39 of PD 464 are now Sections 232 and 233, respectively, of Title Two, Book II of the LGC.)

In much the same way, the provisions of Title Two, Book II of the LGC bear no application to local taxes fees, or charges under Title One, Book II of the Code. Thus, in *Luz R. Yamane, in her capacity as the City Treasurer of Makati City vs. BA Lepanto Condominium Corporation*,¹⁵ (the "Yumane Case") the Honorable Supreme Court, while considering whether a local government unit can, under the Local Government Code, impel a condominium corporation to pay business taxes, stated:

"The most well-known mode of local government taxation is perhaps the real property tax, which is governed by Title II, Book II of the Code, and which bears no application in this case. A different set of provisions, found under Title I of Book II, governs other taxes imposable by local government units, including business taxes. . . ." (Emphasis supplied)

Provinces, cities, municipalities, and barangays may exercise their taxing and other revenue-raising powers with respect to local taxes, fess, or

¹⁵ G.R. No. 154993, October 25, 2005

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charges.¹⁶ On the other hand, only a province or city or a municipality within the Metropolitan Manila Area may levy real property taxes.¹⁷ Section 135 through Section 163 of the LGC enumerates the local taxes, fees, or charges that the province (Article One), municipalities (Article Two), cities (Article Three) and barangays (Article Four) may impose, none of which is the real property tax.

The *real property tax* is not mentioned in Chapter 2 of Title One, Book II, or anywhere in said Title. It follows that, **under said Title One, Book II of the Code**, the LGUs have no power to impose real property taxes. Therefore, it would be quite absurd to limit the LGUs' power to levy the real property tax **under said Title One, Book II of the Code**, since the LGUs do not have such power **under said Title One, Book II of the Code in the first place**.

Section 133(o) under "Local Government Taxation" (Title One, Book II of the LGC) prohibits the LGUs from imposing local taxes, fees and charges on the National Government, its agencies and instrumentalities, and other LGUs. In other words, the National Government, its agencies and instrumentalities and other LGUs are **exempt** from payment of the local taxes, fees and charges.

The exemption of the real properties owned by the Republic of the Philippines and any of its political subdivisions from payment of the real

¹⁶ Sec. 128, R.A. 7160

¹⁷ Sec. 232, *ibid.*

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property tax is provided in Section 234(a) under “Real Property Taxation” (Title Two, Book II of the LGC), thus:

“SEC. 234. *Exemptions from Real Property Taxation.* – The following are exempted from payment of the real property tax:

“(a) Real property owned by the Republic of the Philippines or any of its political subdivisions except when the beneficial use thereof has been granted, for consideration or otherwise, to a taxable person;”

Now, if it is correct to say that government instrumentalities are exempted from payment of the real property tax because of the provisions of Section 133(o) of the LGC, Section 234(a) of the same Code is rendered ineffectual. In fact, since the Honorable Supreme Court, in *Manila International Airport Authority v. Court of Appeals*,¹⁸ the “MIAA Case”, and in *Philippine Fisheries Development Authority v. Court of Appeals*,¹⁹ the “Philippine Fisheries Case”, did not state that, of the provisions on “Local Government Taxation”, only Section 133(o) is applicable to Real Property Taxation, it follows that all of the provisions of Title One, Book II of the LGC are also applicable, not only to local taxes, fees, and charges, but to real property taxes as well. In which case, Title Two, Book II (Real Property Taxation) of the LGC would have no use at all.

On the doctrine of *stare decisis*, we believe that this doctrine applies only when the precedent-setting decision on a given subject was correctly rendered and the times have not altered the perceptions that existed when

¹⁸ G.R. No. 155650, 20 July 2006

¹⁹ G.R. No. 169836, 31 July 2007

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the same precedent-setting decision was rendered. But, what if the supposedly precedent-setting decision is patently erroneous?

The Honorable Supreme Court, in a number of cases, had the occasion to rule on this matter, thus:

“The principle of *stare decisis* does not mean blind adherence to precedents. The doctrines or rule laid down, which has been followed for years, no matter how sound it may be, if found to be contrary to law, must be abandoned. The principle of *stare decisis* does not and should not apply when there is conflict between the precedent and the law. The duty of this Court is to forsake and abandon any doctrine or rule found to be in violation of the law in force.”²⁰

“The rule of *stare decisis* is entitled to respect. Stability in the law, particularly in the business field, is desirable. But idolatrous reverence for precedent, simply as precedent, no longer rules. More important than anything else is that the court should be right.”²¹

“Thus, the Court rules that the Office of the Solicitor General is not authorized to represent a public official at any stage of a *criminal* case. For this reason, the doctrine announced in *Anti-Graft League of the Philippines, Inc. v. Hon. Ortega* and *Solicitor General v. Garrido*, and all decided cases affirming the same; in so far as they are inconsistent with this pronouncement, should be deemed abandoned. The principle of *stare decisis* notwithstanding, it is well-settled that a doctrine which should be abandoned or modified should be abandoned or modified accordingly. After all, more important than anything else is that this Court should be right.”²²

Incidentally the “Benguet Case” (29 June 1992) and the “Yumane Case” (25 October 2005) preceded the “MIAA Case” (20 July 2006) and the “Philippine Fisheries Case” (31 July 2007).

We believe, therefore, and so hold that, even if we brushed aside the fact that the instant Appeal was filed out of time, the MWSS Properties are

²⁰ *Jose Tan Chong v. Secretary of Labor*, G.R. No. 47616, September 16, 1947; and *Lam Swee Sang v. The Commonwealth of the Philippines*, G.R. No. 47623, September 16, 1947, 79 Phil. 249

²¹ *Philippine Trust Company et al. v. L. P. Mitchell et al.*, G.R. No. L-38398 December 8, 1933, 59 Phil. 39

²² *Illuminado Urbano and Marcial Acapulco vs. Francisco I. Chavez, et al.*, G.R. No. 87977 March 19, 1990 and *Nemesio G. Co vs. Regional Trial Court of Pasig [Branch 165], et al.*, G.R. No. 88578 March 19, 1990, citing *Phil Trust Company and Smith, Bell & Co. v. Mitchell*, 59 Phil. 30, 36 (1933), cited with approval in *Koppel (Phil.), Inc. v. Yatco*, 77 Phil, 496, 515 (1946) and *Olague v. Military Commission No. 34*, 150 SCRA 144,165 (1987)

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not exempt from payment of the real property tax by virtue of the provisions of Section 133(o) of the LGC.

THE PROPERTIES TITLED IN THE NAME OF APPELLANT MWSS, ARE NOT PROPERTIES OF PUBLIC DOMINION.

In *Philippine Ports Authority vs. City of Iloilo*,²³ the Supreme Court said:

“Now before us, petitioner contradicts its earlier admission by claiming that the subject warehouse is a property of public dominion. This inconsistency is made more apparent by looking closely at what public dominion means. Tolentino explains this in this wise:

‘Private ownership is defined elsewhere in the Code; but the meaning of public dominion is nowhere defined. From the context of various provisions, it is clear that **public dominion does not carry the idea of ownership; property of public dominion is not owned by the State, but pertains to the State**, which as territorial sovereign exercises certain judicial prerogatives over such property. The *ownership of such property*, which has the special characteristics of a collective ownership for the general use and enjoyment, by virtue of their application to the satisfaction of collective needs, *is in the social group*, whether national, provincial, or municipal. Their purpose is not to serve the State as a juridical person, but the citizens; *they are intended for the common and public welfare, and so they cannot be the object of appropriation, either by the State or by private persons.*’ (2 A. TOLENTINO, COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE 30 [1994], citing Manresa 66-69)

“Following the above, **properties of public dominion are owned by the general public and cannot be declared to be owned by a public corporation, such as petitioner.** (Emphasis supplied)

“xxx

“Petitioner, however, seeks to be excused from liability for taxes by invoking the pronouncement in *Basco v. PAGCOR* [197 SCRA 52 (1991)] (Basco) quoted hereunder:

‘PAGCOR has a dual role, to operate and to regulate gambling casinos. The latter role is governmental, which places it in the category of an agency or instrumentality of the Government. *Being an instrumentality of the Government, PAGCOR should be and actually is exempt from local taxes.* Otherwise, its operation might be burdened, impeded or subject to control by a mere Local government. [Emphasis supplied]

²³ G.R. No. 109791, July 14, 2003

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“Petitioner points out that its exercise of regulatory functions as decreed by its charter (P.D. 857, Secs. 26-29) places it within the category of an ‘agency or instrumentality of the government,’ which, according to Basco, is beyond the reach of local taxation.

“Reliance in the abovesited case is unavailing considering that P.D. 1931 was never raised therein, and given that the issue in said case focused on the constitutionality of P.D. 1869, the charter of PAGCOR.

Moreover, the charter, *per se*, of the Petitioner-Appellant specifically provides that it shall own all waterworks and sewerage system in the territory²⁴ and it shall have the power to acquire, purchase, hold, transfer, sell, lease, rent, mortgage, encumber, and otherwise dispose of real and personal property x x x.²⁵ The contention of Petitioner-Appellant that it merely holds these properties in trust is without any basis either in fact or in law. The titles to the real properties speak for themselves that they are under the full ownership and control of the Petitioner-Appellant, and not the Republic of the Philippines.

Besides, though the purpose for which the MWSS was created was impelled by public service, however, its services are accessible only to those who pay the required fees. It is thus apparent that the Petitioner-Appellant does not exist solely for public service and its services are not exclusively for public use.

One of the characteristics of Properties of Public Dominion is that, “in general, they can be used by everybody.”²⁶ Accordingly, this Board believes, and so hold that, even if we brushed aside the fact that the instant appeal

²⁴ Sec. 2(c), R.A. 6234

²⁵ Sec. 3(j), *ibid.*

²⁶ Professor Edgardo L. Paras, Civil Code of the Philippines, Annotated, Fourth Edition 1965, Vol. II, p. 28

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was filed out of time, the subject properties, are not properties of public dominion.

IT IS NOT THE DUTY OF THIS BOARD TO CONSIDER THE DAMAGING IMPACT THE QUESTIONED ASSESSMENT MAY HAVE ON THE BENEFICIARIES OF WATER SUPPLY WITHIN THE APPELLANT'S SERVICE AREA.

The fear of the Petitioner-Appellant that the assessments would cause undue damage to the public is more imaginary than real. At any rate, this Board's quasi-judicial function is limited to the interpretation of the law applicable on the case – not what the law should be.

WHEREFORE, premises considered, the instant Appeal is hereby DENIED.

SO ORDERED.

Manila, Philippines, March 21, 2013.

SIGNED
OFELIA A. MARQUEZ
Chairman

SIGNED
ROBERTO D. GEOTINA
Member

SIGNED
CAMILO L. MONTENEGRO
Member