



Republic of the Philippines
CENTRAL BOARD OF ASSESSMENT APPEALS
Manila

GMA NETWORK, INC.,
Petitioner-Appellant,

-versus-

CBAA CASE NO. L-95
(LBAA Case No. 03-2008)
City of Dagupan

**THE LOCAL BOARD OF
ASSESSMENT APPEALS OF THE
CITY OF DAGUPAN,**
Appellee,

-and-

**GEORGE M. MEJIA, in his capacity
as OIC Assessor, City of Dagupan,**
Respondent-Appellee.

x-----x

D E C I S I O N

This Appeal, received by this Board on February 23, 2009, is from the Decision rendered by the Local Board of Assessment Appeals (the "LBAA") of the City of Dagupan on November 25, 2008 in LBAA Case No. 03-2008, a copy of which was received by Petitioner-Appellant on January 22, 2009.

In said Decision the LBAA dismissed Petitioner-Appellant's Appeal therewith for being filed outside the reglementary period, citing Section 30 of the Real Property Tax Code, and "for insufficiency of evidence." The provisions of Section 30 of the Real Property Tax Code cited by the LBAA were reproduced in Section 226 of the Local Government Code of 1991 (the "LGC").

Petitioner-Appellant GMA Network, Inc. ("GMA" for brevity) states:

"Petitioner-appellant GMA (formerly known as "*Republic Broadcasting System, Inc.*") is a private corporation duly organized and existing under Philippine laws with principal office at GMA Network Center, EDSA corner Timog Ave., Diliman, Quezon City. It is engaged in the business of radio and television broadcasting of all kinds and types on a commercial and/or sustaining basis.

"1. On March 2, 1992, Congress passed Republic Act No. 7252, otherwise known as "*An Act Granting the Republic Broadcasting System, Inc. A Franchise to Construct, Install, Operate and Maintain Radio and Television Broadcasting Stations in the Philippines,*" granting petitioner GMA a legislative franchise for the operation of radio and television broadcasting stations, in particular, "to construct, install, operate and maintain for commercial purposes and in the public interest, radio and television broadcasting stations in the Philippines with the corresponding auxiliary, special broadcast and other program and distribution services and relay stations, and to install radio communications facilities for private use in its broadcast services" for a term of 25 years.

"A copy of R.A. 7252 is hereto attached and made an integral part as **Annex "B"**;

"2. In August 1995, the Articles of Incorporation of petitioner-appellant GMA was amended to reflect the change of name of the corporation from "Republic Broadcasting System, Inc." to "GMA Network, Inc.";

"A copy of the Amended Articles of Incorporation of petitioner-appellant GMA dated August 9, 1995 is hereto attached and made an integral part as **Annex "C"**;

"3. In pursuit of its legislative franchise, petitioner GMA acquired lands, constructed buildings and improvements, and placed machineries thereon that are necessary and essential to the operation of a television network and radio broadcasting stations. These include the real properties of petitioner GMA located in the City of Dagupan consisting of a parcel of land and machineries which are being used by petitioner GMA for its television and radio relay station in the City of Dagupan, as follows:

| "Tax Declaration No. | Property |
|-----------------------------|---|
| "4183803 "22-0087-M | Land Audio Console, FM transmitter, FM antenna, Power Generator and Guyed Pole |

"4. The said real properties were listed in the assessment roll pursuant to which tax declarations were issued by the Office of the City Assessor, City of Dagupan, and real property tax imposed thereon.

"Copies of Tax Declaration Nos. 4183803 and 22-0087-M are hereto attached and made integral parts as **Annexes "D" and "E"**, respectively;

"5. In year 2006, the Supreme Court issued a decision in the case of *City of Government of Quezon City v. Bayan Telecommunications, Inc.* (March 6, 2006, 484 SCRA 169), where the Supreme Court upheld Bayantel's exemption from real estate tax on its real estate, buildings and personal property located in Quezon City which are actually, directly and exclusively used in the pursuit of its franchise on the basis of the "exclusive of this franchise" clause found in Bayantel's legislative franchise. In the more recent case of *Digital Telecommunications Philippines, Inc. (Digitel) v. Province of Pangasinan* (February 23, 2007, 516 SCRA 558), the Supreme Court reiterated the *Bayantel* ruling in finding that the "exclusive of this franchise" clause is an express exemption from payment of real property taxes on real properties that are exclusively, actually and directly used in pursuit of Digitel's franchise;

"6. Pursuant to Section 206 of the Local Government Code and in light of the Supreme Court pronouncements interpreting the "exclusive of this franchise" clause in the *Bayantel* and *Digitel* cases, petitioner-appellant GMA filed a letter dated January 14, 2007 (Actually dated December 27, 2007; see Annex "F" of Appellant's Appeal Memorandum, p. 56, Rollo) with the respondent-appellee Assessor requesting the exclusion, cancellation or dropping from the roll of assessments petitioner-appellant GMA's **land and machineries** covered by Tax Declaration Nos. 4183803 and 22-0087-M situated in Dagupan City which are being actually, directly and exclusively used in pursuit of petitioner-appellant GMA's franchise;

"A copy of the letter dated December 27, 2007 is hereto attached and made an integral part as **Annex "F"**;

"7. On April 23, 2008, petitioner-appellant GMA received a copy of the Indorsement of City Treasurer Romelita F. Alcantara in which a copy of the 2nd Indorsement dated April 15, 2008 of OIC City Assessor Virginia M. Diocares is enclosed wherein it was ruled that petitioner-appellant GMA's properties are taxable and there is no basis for the claim for tax exemption for these properties, hence, the tax declarations over petitioner-appellant GMA's properties shall remain active and listed in the city tax rolls.

"A copy of the Indorsement of City Treasurer Romelita F. Alcantara is hereto attached and made an integral part as **Annex "G"**;

"8. On June 22, 2008 and within the sixty (60) day-period from receipt of the denial of its request for refund as stated in the Indorsement of City Treasurer Romelita F. Alcantara, petitioner-appellant GMA filed the petition dated June 20, 2008 pursuant to Section 199(f) Title II, Book II, of the Local Government Code of 1991, "assessment" is defined as the "act or process of determining the value of a property, or proportion thereof subject to tax, including the discovery, listing, classification and appraisal of properties" and as ruled by the Supreme Court in the case of *Systems Plus Computer College of Calocan City vs. Local Government of Calocan City*.

"A copy of the Petition dated June 20, 2008 is hereto attached and made an integral part as **Annex "H"**;

"9. In the Order dated July 7, 2008, the appellee Local Board of Assessment Appeals of the City of Dagupan (LBAA) directed respondent-appellee Assessor to file his answer/comment on the petition within fifteen (15) days from receipt of the same.

“A copy of the Order dated July 7, 2008 is hereto attached and made an integral part as **Annex “I”**;

“10. Petitioner-appellant GMA received a copy of the Comment dated July 21, 2008 on July 23, 2008 to which it filed a Reply dated August 7, 2008.

“Copies of the Comment dated July 21, 2008 and Reply dated August 7, 2008 are hereto attached and made integral parts as **Annexes “J”** and **“K”**, respectively;

“11. In the Order dated September 1, 2008, the appellee LBAA Board directed the parties to file their respective memoranda within thirty (30) days from receipt of the said Order.

“A copy of the Order dated September 1, 2008 is hereto attached and made an integral part as **Annex “L”**;

“12. In compliance with the aforestated order, parties filed their respective memoranda, afterwhich the petition is deemed submitted for decision.

“Copies of petitioner-appellant’s Memorandum dated October 7, 2008 and respondent-appellee Assessor’s Memorandum dated October 2, 2008 are hereto attached and made integral parts as **Annexes “M”** and **“N”**, respectively;

“13. On January 22, 2009, petitioner GMA received a copy of the Decision dated November 25, 2008 which denied the appeal of petitioner GMA.

“A copy of the Decision dated November 25, 2008 is hereto attached and made an integral part as **Annex “A”**;

“14. Under Section 229 of the Local Government Code, the owner 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. Hence, this appeal.

“STATEMENT OF THE ISSUES

“I

“WHETHER THE LBAA OF THE CITY OF DAGUPAN ERRED WHEN IT RULED THAT PETITIONER-APPELLANT GMA IS NOT ENTITLED TO EXEMPTION UNDER REPUBLIC ACT NO. 7252 BECAUSE EXEMPTION CANNOT BE PRESUMED AND IS HIGHLY DISFAVORED BY LAW.

“II

“WHETHER THE APPELLEE LBAA ERRED WHEN IT RULED THAT PETITIONER-APPELLANT GMA IS NOT ENTITLED TO EXEMPTION UNDER REPUBLIC ACT NO. 7252 BECAUSE THE EXEMPTION WAS GRANTED TO PHILIPPINES BROADCASTING SYSTEM, AND NOT TO GMA NETWORK, INC.

“III

“WHETHER THE APPELLEE LBAA ERRED WHEN IT RULED THAT THE APPEAL TAKEN BY PETITIONER-APPELLANT GMA IS OUTSIDE THE REGLEMENTARY PERIOD.

“IV

“WHETHER THE APPELLEE LBAA ERRED WHEN IT DISMISSED THE PETITION FOR INSUFFICIENCY OF EVIDENCE.

“PRAYER

“Premises considered, it is respectfully prayed that:

“(a) the Decision dated November 25, 2008 be REVERSED and SET ASIDE; and

“(b) the properties of petitioner-appellant GMA covered by Tax Declaration Nos. 4183803 and 22-0087-M be ordered excluded, cancelled or dropped from the roll of realty tax assessments of the City of Dagupan.

“Petitioner prays for such other reliefs that are just and equitable under the premises.”

CBAА’S RULING

Due to its implication, the third issue raised by GMA is herein discussed ahead of the others.

“III. WHETHER THE APPELLEE LBAA ERRED WHEN IT RULED THAT THE APPEAL TAKEN BY PETITIONER-APPELLANT GMA IS OUTSIDE THE REGLEMENTARY PERIOD.”

Tax Declaration Nos. 4183803 and 22-0087-M¹, GMA’s instant Appeal, show that they were prepared on “08-24-06” and “Feb. 10, 2006”, respectively. In her Comment dated July 21, 2008, Respondent City Assessor stated that “the written Notice of Assessment was sent (to) and received by GMA sometime in the year 2006.”

¹ Annexes “D” and “E”, respectively.

In its Decision dated November 25, 2008, the LBAA stated that GMA's appeal therewith "was filed on June 20, 2008, hence outside the reglamentary (*sic*) period."

GMA "submits that this is error. The subject petition was filed within the reglementary period even as petitioner-appellant GMA received a copy of the written Notice of Assessment sometime in the year 2006." GMA seems to convey that the 60-day period within which to appeal to the LBAA should be reckoned from the date of receipt of the "denial" by Respondent Assessor of GMA's request for the exclusion, cancellation or dropping from the roll of assessments GMA's land and machineries.

We do not agree. As clearly stated in Section 226 of the LGC, the 60-day reglementary period for appeals to the LBAA starts from the date of receipt by Petitioner of the "written notice of assessment" sent out by the assessor, thus:

"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 declaration and such affidavits or documents submitted in support of the appeal." (Emphasis supplied)

Petitioner was not and is not prevented by law to ask the Assessor for the exclusion, cancellation or dropping of the subject properties from the roll of assessments. But the assessor is under no obligation to entertain "requests for re-adjustments" from taxpayers as the assessor's assessment duties end with the sending out of the written notices of assessment.

Thus, in *Callanta v. Office of the Ombudsman*², the Supreme Court ruled:

“Indeed, the long standing practice adverted to by petitioner does not justify a continuance of their acts. We cannot sanction such compromising situations. Henceforth, whenever the local assessor sends a notice to the owner or lawful possessor or real property of its revised assessed value, the former shall thereafter no longer have any jurisdiction to entertain any request for a review or readjustment. The appropriate forum where the aggrieved party may bring his appeal is the LBAA as provided by law. (Cited in *Cipriano P. Cabaluna, Jr.*, Real Property Taxation [Annotated], p. 170) (Emphasis supplied)

On page 16 of its instant Appeal Memorandum³, Petitioner GMA admits that it “received a copy of the written Notice of Assessment sometime in the year 2006.” Even granting that GMA received such copy of the written Notice of Assessment as late as December 31, 2006, GMA had sixty (60) days from then, or until March 1, 2007, to appeal to the LBAA. GMA’s Appeal to the LBAA was filed on June 20, 2008, or One Hundred Eleven (111) after the reglementary period for appeals to the LBAA expired. Therefore, the LBAA was right in declaring that GMA’s appeal with the LBAA was filed out of the reglementary period prescribed by law.

Since GMA’s appeal with the LBAA was filed out of time, the LBAA should have dismissed the said appeal for lack of jurisdiction. Consequently, this Board has no business discussing any of the other issues of the case for the same reason. However, for the enlightenment of the parties hereto, we deem it necessary and proper to do so.

The ultimate issue in this appeal is:

**WHETHER OR NOT GMA IS EXEMPTED FROM
PAYMENT OF THE REAL PROPERTY TAX BY**

² 285 SCRA 649.

³ Rollo, page 19.

**VIRTUE OF SECTION 8 OF R.A. 7252, GMA'S
FRANCHISE.**

GMA believes that, since the Tax Provisions of its franchise are similar to those of the franchises of Bayan Telecommunications Incorporated (Bayantel) and Digital Telecommunications Philippines, Incorporated (Digitel), GMA is also exempt from real property taxation, owing to pronouncements of the Supreme Court in *The City Government of Quezon City, et al. vs. Bayan Telecommunications Incorporated (Bayantel)*⁴ and *Digital Telecommunications Philippines, Incorporated (Digitel) vs. Province of Pangasinan, et al.*⁵

Section 11 of RA 7633, which amended on July 20, 1992 RA 3259 (Bayantel's original franchise), reads as follows:

"SEC. 11. 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 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 telephone or other telecommunications businesses 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 National Internal Revenue Code x x x." (Emphasis supplied)

Section 5 of RA 7678 (Digitel's franchise approved on February 17, 1994), states:

"SECTION 5. Tax Provisions. - The grantee 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 are now or hereafter may be required by law to pay. **In addition thereto**, the grantee shall pay to the Bureau of Internal Revenue each year, within thirty (30) days after the audit and approval of the accounts, a franchise tax as may be prescribed by law of all gross receipts of the telephone or other telecommunications businesses transacted under this franchise by the

⁴ G.R. No. 162015, March 6, 2006.

⁵ G.R. No. 152534, February 23, 2007.

grantee: Provided, That the grantee shall continue to be liable for income taxes payable under Title II of the National Internal Revenue Code pursuant to Section 2 of Executive Order No. 72 unless the latter enactment is amended or repealed, in which case the amendment or repeal shall be applicable thereto x x x." (Emphasis supplied)

The Second Division of the Supreme Court ruled in the Bayantel case that the phrase "**exclusive of** this franchise" means that "all of the franchisee's (Bayantel's) properties that are actually, directly and **exclusively** used in the pursuit of its franchise" are exempt from realty taxes. The Third Division of the Court, in the Digitel case, adopted the Second Division's ruling in the Bayantel case.

Webster's Third International Dictionary of the English Language Unabridged (1966 ed., p. 793) defines the phrase "**exclusive of**" as a preposition meaning "**not taking into consideration; excluding from consideration**". Webster's New World Dictionary, Warner Books Paperback Edition (1990), and Webster's New World Pocket Dictionary, Third Edition (1997), both define the phrase "**exclusive of**" as "**not including**".

Reader's Digest Encyclopedic Dictionary, First Edition (1994), classifies the phrase "**exclusive of**" as a quasi-adverb meaning "**not including; not counting**".

In jurisprudence, a franchise, as a right and privilege, is regarded as property, separate and distinct from the property which the corporation itself may acquire⁶.

⁶ Fletcher's Cyclopedic of the Law of Private Corporation, Vol. 6A, pages 427-428, citing Horn Silver Min. Co. vs. New York, 143 U.S. 305 36 L. Ed. 164 12 Sup. Ct.-403; City of Campbell vs. Arkansas-Missouri Power Co. 55F (2d) 560, as quoted in *The City Government of Batangas vs. Republic Telephone Company, Inc.* CA-G.R. CV No. 21897, January 21, 1992.

Applying the above-cited meaning of the phrase “exclusive of” and considering the fact that a franchise is an intangible personal property, the opening sentence of Section 8, R.A. 7252 (GMA’s franchise), as simplified, would read as follows:

“SECTION 8. Tax Provisions. - The grantee, its successors or assigns, shall be liable to pay the same taxes as other persons or corporations are now or hereafter may be required by law to pay on their (a) real estate, buildings and (b) personal property, **not including** this franchise, . . .”

There is nothing in the wording of Section 8 of R.A. 7252 which remotely exempts GMA from payment of the real property tax on the subject real properties. On the contrary, it is clearly stated in the first paragraph of said Section 8, that “The grantee, its successors or assigns, shall be liable to pay the same taxes on their real estate, buildings . . . as other corporations are now or hereafter may be required by law to pay.”

At any rate, in *Digital Telecommunications Philippines, Inc. vs. City Government of Batangas, et al.*⁷, the Supreme Court, **en banc**, reversed the decisions of its Second and Third Divisions in the *Bayantel* and *Digitel* cases, respectively, stating that:

“The interpretation of the phrase “exclusive of this franchise” in the *Bayantel* and *Digitel* cases goes against the basic principle of construing tax exemptions. In *PLDT v. City of Davao* (G.R. No. 143867, 25 March 2003, 399 SCRA 442, 453), the Court held 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.

“Tax exemptions must be clear and unequivocal. A taxpayer claiming a tax exemption must point to a specific provision of law conferring on the taxpayer, in clear and plain terms, exemption from a common burden. Any doubt whether a tax exemption exists is resolved against the taxpayer.”

⁷ G.R. No. 156040, December 11, 2008.

Since the ruling by the Supreme Court's Second Division in the Bayantel case, *supra*, and by the Third Division in the Digitel case, *supra*, were, as aforesaid, reversed by the Court *en banc* in *Digital Telecommunications Philippines, Inc. vs. City Government of Batangas, et. al.*, *supra*, the claim for refund or tax credit by Petitioner-Appellant GMA must necessary fail for lack of legal basis.

WHEREFORE, premises considered, the instant Appeal is hereby **DENIED** for lack of merit.

SO ORDERED.

Manila, Philippines, October 23, 2012.

SIGNED
OFELIA A. MARQUEZ
Chairman

SIGNED
ROBERTO D. GEOTINA
Member

SIGNED
CAMILO L. MONTENEGRO
Member