Republic of the Philippines
CENTRAL BOARD OF ASSESSMENT APPEALS
M a n i l a

GMA NETWORK, INC.,
Petitioner-Appellant,

-versus-

CBAA CASE NO. M – 31
(LBAA Case No. 08-002)

THE LOCAL BOARD OF ASSESSMENT APPEALS OF THE CITY OF COTABATO,
Appellee,

-and-

ENGR. ENRIQUE F. BARROGA, in his capacity as the CITY ASSESSOR OF THE CITY OF COTABAO,
Respondent-Appellee.
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D E C I S I O N

This appeal, received by this Board on May 12, 2009 via registered mail, is from the Order rendered on October 21, 2008 by the Local Board of Assessment Appeals of the City of Cotabato (the "LBAA") in LBAA Case No. 08-002.

Alleging that it received a copy of the assailed Order on April 13, 2009, Petitioner-Appellant further state that:

1. Petitioner-Appellant GMA Network, Inc. ("GMA") is a grantee of a legislative franchise to operate radio and television broadcasting stations in the country under 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"* which took effect on 2 March 1992. In particular, Congress granted GMA the license "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 telecommunication facilities** for private use in its broadcast services" for a term of 25 years;

2. In pursuit of its legislative franchise, GMA acquired lands, constructed buildings and improvements, and place machineries thereon that are necessary and essential to the operation of a television and radio broadcasting stations;

3. In 1998, GMA opened its television (TV) relay station in Org. Compound, Cotabato City where it acquired from Cotabato Television Corporation a building thereon covered by Tax Declaration No. GR-25-1156 (the "subject property") and various TV equipments and machineries covered by Tax Declarations Nos. 96-25-1631 and 96-25-1632;

4. The subject building is being used by GMA as its TV relay transmission site in Cotabato City and other neighboring areas;

5. On October 27, 2006, GMA, through its letter dated October 26, 2006, requested from respondent assessor the cancellation of Tax Declarations Nos. 96-25-1631 and 96-25-1632 on the ground that the properties covered by the said tax declarations were no longer used in its operation;

6. Subsequently, respondent assessor issued Tax Declaration No. 96-25-2251 with memoranda: "REVISED TO DROP THE ASSESSMENT OF NON-OPERATIONAL AND NO LONGER EXISTING MACHINES PER APPROVED INSPECTION REPORT" and indicating therein that such tax declaration was consolidated from Tax Declaration Nos. 96-25-1631 and 96-25-1632;

7. The equipments and machineries covered by Tax Declaration No. 96-25-2251, namely "audio mixer", "2 TV monitor", "antenna disk and satellite receiver", and "VHS recorder" (hereinafter the "subject equipments and machineries") are all being used by GMA in receiving television signals from its program input equipments and transmitting them to the different TV sets in different households of Cotabato City and its neighboring areas;

8. However, despite the issuance of Tax Declaration No. 96-25-2251 which supposedly replaced Tax Declaration Nos. 96-25-1631 and 96-25-1632, the City Treasurer of Cotabato continues to impose taxes on the properties covered by the latter tax declarations;

9. In year 2008, the Supreme Court promulgated a decision in the case of *City 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, building 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 a more recent case of *Digital Telecommunications Philippines, Inc. (Digitel) v. Province of Pangasinan (February 23, 2007, 516 SCRA 558)* as 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;

10. Pursuant to Section 206, Chapter II, Title II, Book II of R.A. 7160, otherwise known as "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. GMA served a letter dated March 3, 2008 with the respondent Assessor requesting the exclusion, cancellation or dropping from the roll of assessments the subject properties of GMA which are being actually, directly and exclusively used by GMA in its TV relay transmission in Cotabato City in pursuit of its franchise for the operation of television broadcasting station (the "request for exclusion");

11. On May 30, 2008, GMA received a copy of the letter-reply of respondent Assessor dated May 23, 2008 denying GMA's request relying on the legal

opinion dated May 12, 2008 of the Office for Legal Services of Cotabato City, which reads as follows:

"2nd and 3rd Indorsement
May 12, 2008

The herein set of documents are returned to the City Treasury Office and the Office of the City Assessor, this City, with the accompanying legal opinion and recommendation, viz:

The herein Claim for Refund of the subject Real Property Taxes Filed by GMA Network should be DENIED on account of the following reasons/arguments, to wit:

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3] GMA Network **cannot utilize the Digitel and Bayan Tel jurisprudence** in its favor because the subjects of the said cases are Digitel Telecommunications Philippines, Inc. and Bayan Telecommunications, Inc. Bayan Tel and Digitel *(sic)* The latter, on the one hand, and GMA Network, on the other, are distinct and separate entities, with different franchises and different business circumstances;

4] Section 193 of the Local Government Code of 1991 provides 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 6938, non-stock and non-profit hospitals and educational institutions, are hereby withdrawn upon the effectivity of this Code."

Section 234 of the same law states that:
xxx 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 controlled corporations are hereby withdrawn upon the effectivity of this Code."

The enactment of GMA's congressional franchise [R.A. No. 7252] on March 20, 1992 did not operate to revive the tax exemption privilege, for it is hard to fathom that what the Congress had withdrawn on January 1, 1992, it has resurrected barely more than two (2) months from its withdrawal.

5] Taxation is the rule, exemption therefrom is the exception. Statutes granting exemptions are construed strictly against the taxpayer and

liberally in favor of the taxing authority. A claim of exemption from tax payment must be clearly shown and based on language in the law too plain to be mistaken [Mactan Cebu International Airport Authority vs Marcos, GR No. 120082, September 11, 1996]

6] A claim for refund partakes the nature of an exemption which cannot be allowed unless granted in the most categorical language.

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Respectfully submitted.

ATTY. FROEBEL KAN M. BALLEQUE
Acting City Legal Officer"
(emphasis supplied)

12. On July 29, 2008 in compliance with Section 3 of the *Rules and Procedures for Appeals on Assessment before the Local Board of Assessment Appeals* GMA paid under protest the real property tax imposed by the City Treasurer of Cotabato City on the properties subject of the instant petition as of June 26, 2008 through Manager's Check. On the same day or within the 60-day period to appeal provided by the Local Government Code, GMA filed a petition dated July 28, 2008 before the LBAA of Cotabato City for the denial by respondent Assessor of GMA's request for exclusion, cancellation, or dropping from the assessment roll of taxable real properties;

13. On April 13, 2009, GMA received the LBAA's Order dated October 21, 2008 (the "Assailed Order") denying the appeal of GMA stating as follows:

> "A review of the records of this case shows no compelling reason to justify a reversal or even a modification of the assessment made by the respondent; (sic) City Assessor.
>
> "WHEREFORE, the instant petition is hereby ordered dismissed for lack of merit.
>
> SO ORDERED."

GROUND FOR APPEAL

I.

THE LBAA OF COTABATO CITY ERRED IN DISMISSING GMA'S PETITION WITHOUT COMPLYING WITH THE FUNDAMENTAL AND ESSENTIAL REQUIREMENTS OF ADMINISTRATIVE DUE PROCESS SINCE THE ASSAILED ORDER WAS NOT EXPRESSED IN A MANNER THAT WOULD SUFFICIENTLY INFORM THE PARTIES OF THE FACTUAL AND LEGAL BASES OF THE DECISION.

II.

THE LBAA OF COTABATO CITY ERRED WHEN IT DISMISSED GMA'S PETITION ON THE GROUND THAT THERE IS NO COMPELLING REASON

TO JUSTIFY THE REVERSAL OR MODIFICATION OF THE SUBJECT ASSESSMENTS.

ARGUMENTS AND DISCUSSION

I.

THE LBAA OF COTABATO CITY ERRED IN DISMISSING GMA'S PETITION WITHOUT COMPLYING WITH THE FUNDAMENTAL AND ESSENTIAL REQUIREMENTS OF ADMINISTRATIVE DUE PROCESS SINCE THE ASSAILED ORDER WAS NOT EXPRESSED IN A MANNER THAT WOULD SUFFICIENTLY INFORM THE PARTIES OF THE FACTUAL AND LEGAL BASES OF THE DECISION.

Petitioner-Appellant argues:

1. In the case of *Solid Homes, Inc. vs. Laserna, et al. (G.R. No. 166051, April 8, 2008),* citing the landmark case of *Ang Tibay vs. The Court of Industrial Relations (G.R. No. 46496, February 27, 1940),* the cardinal rights of parties in administrative proceedings were laid down as follows:

> The rights of parties in administrative proceedings are not violated as long as the constitutional requirement of due process has been satisfied

(citation omitted). In the landmark case of *Ang Tibay v. CIR,* we laid down the cardinal rights of parties in administrative proceedings, as follows:

1) The right to a hearing, which includes the right to present one's case and submit evidence in support thereof.

2) The tribunal must consider the evidence present.

3) The decision must have something to support itself.

4) The evidence must be substantial.

5) **The decision must be rendered on the evidence presented at the hearing, or at least contained in the record and disclosed to the parties affected.**

6) The tribunal or body or any of its judges must act on its or his own independent consideration of the law and facts of the controversy and not simply accept the views of a subordinate in arriving at a decision.

7) **The board or body should, in all controversial question, render its decision in such a manner that the parties to the proceedings can know the various issues involved, and the reason for the decision rendered.**

As can be seen above, among these rights are "the decision must be rendered on the evidence presented at the hearing, or at least contained in the record and disclosed to the parties affected;" and that the decision be rendered "in such a manner that the parties to the proceedings can know the various issues involved, and the reasons for the decisions rendered." Note that there is no requirement in *Ang Tibay* that the decision must express clearly and distinctly the facts and the law on

which it is based. **For as long as the administrative decision is grounded on evidence, and expressed in a manner that sufficiently informs the parties of the factual and legal bases of the decision, the due process requirement is satisfied."** (emphasis ours)

2. In dismissing the instant appeal of GMA, the LBAA issued a mere "Memorandum Decision". Thus, the Assailed Order simply states:

"A review of the records of this case shows no compelling reason to justify a reversal or even a modification of the assessment made by the respondent; (sic) City Assessor."

3. In the *Solid Homes* (citing *Francisco v. Permskul,* G.R. No. 81006, 12 May 1989, 173 SCRA 324, 326) case, the conditions for the validity of memorandum decisions were laid down as follows:

"The **memorandum decision**, to be valid, cannot incorporate the findings of fact and the conclusions of law of the lower court only by remote reference, which is to say that the challenged decision is not easily and immediately available to the person reading the memorandum decision. **For the incorporation by reference to be allowed, it must provided for direct access to the facts and the law being adopted, which must be contained in a statement attached to the said decision. In other words, the memorandum decision authorized under Section 40 of B.P. Blg. 129 should actually embody the findings of fact and conclusions of law of the lower court in an annex attached to and made an indispensable part of the decision.**

It is expected that this requirement will allay the suspicion that no study was made of the decision of the lower court and that its decision

was merely affirmed without a proper examination of the facts and the law on which it is based. The proximity at least of the annexed statement should suggest that such an examination has been undertaken. It is, of course, also understood that the decision being adopted should, to begin with, comply with Article VIII, Section 14 [of the Constitution] as no amount of incorporation or adoption will rectify its violation.

The Court finds necessary to emphasize that the memorandum decision should be sparingly used lest it become an addictive excuse for judicial sloth. **It is an additional condition for the validity that this kind of decision may be resorted to only in cases where the facts are in the main accepted by both parties and easily determinable by the judge and there are no doctrinal complications involved that will require an extended discussion of the law involved.** The memorandum decision may be employed in simple litigations only, such as ordinary collection cases, where the appeal is obviously groundless and deserves no more than the time needed to dismiss it.

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Henceforth, all memorandum decisions shall comply with the requirements herein set forth both as to the form prescribed and the occasions when they may be rendered. Any deviation will summon the strict enforcement of Article VIII, Section 14 of the Constitution and strike down the flawed judgment as a lawless disobedience."

4. Evidently, the Assailed Order of the LBAA failed to comply with the conditions for validity of memorandum decisions as held in the case of *Francisco v. Permskul,* much less, with the requirements of due process as enunciated in the *Ang Tibay* case. The Assailed Order failed to disclose to the parties the evidence relied upon by it in arriving at the said Order and was not rendered in such a manner that the parties to the instant proceeding can know the various issues involved and the reason for the decision rendered. The findings of fact and the legal conclusions of the LBAA were not stated in the Assailed Order or made known to the parties in some other way. The mere statement that it "reviewed the records of the case" in arriving at the Assailed Order is by no means compliance with the administrative due process mandated by law. Not even a reference to particular evidences adduced by GMA or brief discussion of the legal bases relied upon was stated in the Assailed Order by the LBAA. Neither did the LBAA properly incorporate by reference its findings of facts and conclusion of law in the Assailed Order with that of the said "records of the case" for **it did not provide for direct access to the facts and the law being adopted.** In other words, the supposed findings of facts and conclusion of law of the LBAA based on the "records of the case" were not even attached to the Assailed Order and properly referred to with particularity;

5. Due Process in administrative proceedings requires that the decisions arrived at by an administrative body tasked to hear and render decision on a particular matter within its jurisdiction must be grounded on evidence, and expressed in a manner that sufficiently informs the parties of the factual and legal bases of the decision. Such requirements is lacking in the LBAA's Assailed Order. Although the proceedings before the LBAA is not required to adhere with the technical rules applicable in judicial proceedings, it does not mean that it can entirely ignore or disregard the fundamental and essential requirements of due process in the exercise of its power to hear and decide controversies within its jurisdiction.

II.

THE LBAA OF COTABATO CITY ERRED WHEN IT DISMISSED GMA'S PETITION ON THE GROUND THAT THERE IS NO COMPELLING REASON TO JUSTIFY THE REVERSAL OR MODIFICATION OF THE SUBJECT ASSESSMENTS.

6. In complete disregard of the evidence adduced by GMA and the law and jurisprudence cited in support of its petition, the LBAA ruled that there is no compelling reason to justify reversal or modification of the subject assessments. In arriving at that ruling, the LBAA failed to consider the following:

The subject real properties of GMA are exempt from real property taxes as these are actually, directly and exclusively used in the pursuit of its legislative franchise (R.A. 7252) pursuant to the rulings in the Bayantel and Digitel cases.

7. Section 8 of GMA's legislative franchise, Republic Act No. 7252, exempts from real property taxes those real properties that are *actually, directly and exclusively used* by GMA in the pursuit of its franchise. The said provision states:

> "SECTION 8. Tax Provisions. – 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 radio/television 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 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.
>
> The grantee shall file the return with and pay the tax due thereon to the Commissioner of Internal Revenue or his duly authorized representative in accordance with the National Internal Revenue Code and the return shall be subject to audit by the Bureau of Internal Revenue." (emphasis supplied)

8. In the case of *City Government of Quezon City v. Bayan Telecommunications, Inc. (March 6, 2006, 484 SCRA 169)* which involved new tax declarations issued by the City Assessor for Bayantel's real properties in Quezon City, pursuant to the City's Revenue Code, the Supreme Court held that by virtue of the term **"exclusive of the franchise",** Bayantel is exempt from paying real estate taxes on its real estate, buildings and personal property which are actually, directly and exclusively used in the pursuit of its franchise. Said the Court:

> "There seems to be no issue as to Bayantel's exemption from real estate taxes by virtue of the term "exclusive of the franchise" qualifying the phrase "same taxes on its real estate, buildings and personal property," found in Section 14, *supra*, of its franchise, Rep. Act No. 3259, as originally granted.
>
> **The legislative intent expressed in the phrase "exclusive of this franchise" cannot be construed other than distinguishing between two (2) sets of properties, be they real or personal,** owned by the franchisee, namely, **(a) those actually, directly and exclusively used in its radio or telecommunications business, and (b) those properties which are not so used.** It is worthy to note that the properties subject of the present controversy are only those which are admittedly falling under the first category.

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Admittedly, Rep. Act No. 7633 was enacted subsequent to the LGC. Perfectly aware that the LGC has already withdrawn Bayantel's former exemption from realty taxes, Congress opted to pass Rep. Act No. 7633 using, under Section 11 thereof, exactly the same defining phrase ***"exclusive of this franchise"*** which was the basis for Bayantel's exemption from realty taxes prior to the LGC. In plain language, Section 11 of Rep. Act No. 7633 states that "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." The Court views this subsequent piece of legislation as an **express and real intention on the part of the Congress to once again remove from the LGC's delegated taxing power, all of the franchisee's (Bayantel's) properties that are actually, directly and exclusively used in the pursuit of its franchise."** (emphasis supplied)

9. The aforequoted ruling was affirmed by the Supreme Court in the subsequent case of *Digital Telecommunications Philippines, Inc. (Digitel) v. Province of Pangasinan, February 23, 2007, 516 SCRA 558,* as follows:

"As to the issue relating to the claim of payment of real property taxes, of particular import is Section 5 of Republic Act No. 7678, the legislative franchise of petitioner DIGITEL. Sec. 5 of said law again states that:

> "SECTION 5. *Tax Provisions.* – The grantee shall be *liable to pay the same taxes on its 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 xxx." (Emphasis supplied)

"Owing to the phrase *"exclusive of this franchise",* petitioner DIGITEL stands firm in its position that it is equally exempt from the payment of real property tax. It maintains that said phrase found in Section 5 above-quoted qualifies or delimits the scope of its liability respecting real property tax-that real property tax should only be imposed on its assets that are actually, directly and exclusively used in the conduct of its business pursuant to its franchise.

"According to respondent Province of Pangasinan, however, "the phrase 'exclusive (of this) franchise' in the legislative franchise of Petitioner Digitel did not specifically or categorically express that such franchise grant intended to provide privilege to the extent of impliedly repealing Republic Act no. 7160."

"Thus, the question is, whether or not petitioner DIGITEL's real properties located within the territorial jurisdiction of respondent Province of Pangasinan are exempt from real property taxes by virtue of Section 5 of Republic Act No. 7678.

"We rule in the affirmative. However, it is with the caveat that such exemption solely applies to those real properties *actually, directly and exclusively used by the grantee in its franchise*." (Emphasis supplied)

10. It should be emphasized that the subject properties, are *actually, directly and exclusively used* by GMA in the pursuit of its franchise. The subject building is being used by GMA as its TV transmitter building in the City of Cotabato and other neighboring areas which is necessary for the transmission of television signals to different household TV sets within the said area. Without this building, GMA would not be able to put up a TV relay transmitter in the city. The subject equipments and machineries are all being utilized actually,

directly, and exclusively in receiving television signals from the program input equipments of GMA and transmitting them to the different TV sets in different households of Cotabato City and its neighboring areas. In fact, the tax declarations of the subject equipments and machineries classify them as "Machinery" which is a tall evidence that these properties are indeed actually, directly, and exclusively by GMA in the pursuit of its franchise. Section 199 of R.A. 7160 (Local Government Code) defines the term "Machinery", as follows:

> "(o) 'Machinery' embraces machines, equipment, mechanical contrivances, instruments, appliances or apparatus which may or may not be attached, permanently or temporarily to the real property. It includes the physical facilities for production, the installations and appurtenant service facilities, those which are mobile, self-powered or self-propelled, and those not permanently attached to the real property which are **actually, directly and exclusively used to meet the needs of the particular industry, business or activity** and which by their very nature and purpose are designed for or necessary to its manufacturing, mining, logging, commercial, industrial or agricultural purposes;" (emphasis supplied);

11. The contention of respondent Assessor that GMA cannot utilize the *Bayantel* and *Digitel* cases because the latter are distinct and separate entities with different franchises and business circumstances is bereft of merit. A comparison of Bayantel's, Digitel's and GMA's legislative franchises readily shows a similarity, if not an exact reproduction, of the words and phrases used by our legislators in the tax provisions applicable to each grantee. Thus:

Bayantel
(R.A. 3259)

> "SECTION 14. (a) The grantee shall be liable to pay the same taxes on its real estate, buildings and personal property, ***exclusive of the franchise***, as other persons or corporations are now or hereafter may be required by law to pay. . (b) The grantee shall further pay to the Treasurer of the Philippines each year, within ten days after the audit and approval of the accounts as prescribed in this Act, one and one-half *per centum* of all gross receipts from the business transacted under this franchise by the said grantee." (Emphasis supplied)

Digitel
(R.A. 7678)

> "SECTION 5. *Tax Provisions.* – The grantee shall be liable to pay the same taxes on its 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 xxx." (Emphasis supplied)

GMA Network
(R.A. 7252)

> "SECTION 8. Tax Provisions. – 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. A franchise tax equivalent to three percent (3%) of all gross receipts of the radio/television 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 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." (Emphasis supplied)

12. GMA's legislative franchise is obviously patterned after, if not an exact copy of, the legislative franchises of *Bayantel* and *Digitel*, thus, its real properties that are actually, exclusively and directly used in pursuit of its franchise for the operation of television and radio broadcasting stations are likewise exempt from real property taxes in line with the pronouncements of the Supreme Court in the *Bayantel* and *Digitel* cases.

13. The difference between the nature of business GMA and *Bayantel* or *Digitel* is of no moment in the instant case since it is the legislative franchise itself and not the nature of the business which gave GMA the privilege of tax exemption. In claiming such privilege, GMA is not making use of the legislative franchise of *Bayantel* or *Digitel.* The tax exemption being claimed by GMA is based on its very own legislative franchise. What GMA is relying on is the interpretation made by the Supreme Court in the phrase *"exclusive of this franchise"* in the respective franchises of *Bayantel* and *Digitel* which is also present in the tax provisions of GMA. Nowhere in the said rulings of the Supreme Court did it state that such interpretation applies only to business similar to that of *Bayantel* and *Digitel.*

14. Based on the foregoing, the subject real properties are clearly exempt from real property taxation and should thus be delisted from the roll of taxable real properties of Cotabato City;

R.A. 7252, is a special statute and a later enactment of Congress, which prevails over the Local Government Code, hence, constitutes as an express tax exemption.

15. In denying GMA's request for exclusion, respondent Assessor contends that the enactment of GMA's franchise did not operate to revive the tax exemption privilege of all persons previously withdrawn by the Congress on the sheer argument that *it is hard to fathom that what the Congress had withdrawn on January 1, 1992, it has resurrected barely more than tow months from its withdrawal.* In arguing so, respondent Assessor fails to cite any authority to support such contention. On the contrary, the Supreme Court in the *Bayantel* and *Digitel* cases categorically pronounced that the legislative franchises of Bayantel and Digitel, which were both enacted by the Congress subsequent to the enactment of the Local Government Code, is an **express and real intention on the part of Congress to once again remove from the LGC's delegated taxing power**, all of the said franchisees' properties that are actually, directly and exclusively used in the pursuit of their franchise. Thus, in the *Bayantel* case, it was held that:

> "In plain language, Section 11 of Rep. Act No. 7633 states that "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." The Court views **this subsequent piece of legislation as an express and real intention on the part of Congress to once again remove from the LGC's delegated taxing power**, all of the franchisee's (Bayantel's) properties that are actually, directly and exclusively used in the pursuit of its franchise."

16. Likewise, the *Digitel* case enunciated as follow:

> **"The fact that Republic Act No. 7678 was a later piece of legislation can be taken to mean that Congress, knowing fully well that the Local Government Code had already withdrawn exemptions from real property taxes, chose to restore such immunity even to a limited degree.** Accordingly,: [t]he Court views this subsequent piece of legislation as an express and real intention on the part of Congress to once again remove from the LGC's delegated taxing power, all of the franchisee's x x x properties that are actually, directly and exclusively used in the pursuit of its franchise. (citation omitted). In

view of the unequivocal intent of Congress to exempt from real property tax those real properties actually, directly and exclusively used by petitioner DIGITEL in the pursuit of its franchise, respondent Province of Pangasinan can only levy real property tax on the remaining real properties of the grantee located within its territorial jurisdiction not part of the above-stated classification." (Emphasis supplied)

17. Based on the above rulings, it is evident that Section 8 of GMA's franchise (R.A. 7252), which was enacted on March 20, 1992, constitutes as an express grant of tax exemption in its favor since it is a special statute and a later enactment of Congress, thus, prevails over the Local Government code which was enacted on an earlier date *on January 1, 1992.*

Petitioner-Appellant prays that:

1) the Order dated October 21, 2008 be REVERSED and SET ASIDE; and

2) finding that the subject properties covered by Tax Declaration Nos. "GR 25-1156", "96-25-2251", 96-25-1631" and "96-25-1632" are exempt from real property taxation; and

3) directing the exclusion, cancellation or dropping of said properties from the roll of realty tax assessments of Cotabato City.

On June 8, 2009, in accordance with the provisions of Sections 4 and 5, Rule IV, of the Rules of Procedure Before the Central Board of Assessment Appeals, this Board advised in writing the City Assessor of Cotabato to file his Answer/Comment to the instant appeal within ten (10) days from his receipt of said request. Likewise, the Chairman of the Local Board of Assessment Appeals for the City of Cotabato was requested to forward the entire original records of LBAA Case No. 08-002 within a similar period of ten (10) days from receipt of notice. The City Assessor's Comment reached this Board on July 13, 2009. The Chairman of the LBAA did not respond.

No matter. According to the narration of facts in GMA's petition, a copy of every conceivable document which could be on file with the LBAA of Cotabato City is attached to, and made an integral part of, the instant appeal as an Annex or Exhibit.

As to the first ground, we fully agree with Petitioner-Appellant that the Order issued by the Local Board of Assessment Appeals of the City of Cotabato on October 21, 2008 in LBAA Case No. 08-002 is not in accordance with the rulings of the Supreme Court in *Ang Tibay and Solid Homes* cases, *supra*. However, the sufficiency or insufficiency in form and substance of the

Assailed Order is not controlling in this case. The issue of **"whether or not Petitioner-Appellant's real properties that are actually, directly and exclusively used in the pursuit of Petitioner's franchise are exempt from payment of the realty tax"** is.

Petitioner GMA vigorously argues that its real properties which are actually, directly and exclusively used in the pursuit of its legislative franchise are exempt from real property taxes pursuant to the Supreme Court rulings in the Bayantel and Digitel cases.

With all due respect, the Supreme Court committed a glaring error in the interpretation of the phrase **"exclusive of** this franchise" found in the tax provisions of the franchises of Bayantel and Digitel. The Second Division of the Court interpreted the phrase to mean that Bayantel's "real properties that are actually, exclusively and directly used in the pursuit of Bayantel's franchise are exempt from payment of the real property taxes." In the Digitel case, the Third Division of the Court simply adopted the ruling of the Court's Third Division 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 account: excluding from consideration** (there were four of us ***exclusive of*** the guide; ***exclusive of*** artillery)"

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-verb 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 acquire. (Fletcher's Cyclopedia 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 meanings of the phrase "exclusive of" and considering the fact that a franchise is an intangible **personal property**, the first sentence of the Tax Provisions of the franchises of Bayantel, Digitel, and GMA, as simplified, would read thus:

Bayantel and Digitel:

> "The grantee shall be liable to pay the same taxes on its (a) real properties (real estate, buildings); and (b) **personal properties**, but **not including this franchise**, as other persons or corporations are now or hereafter may be required by law to pay."

GMA Network:

> 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 properties (real estate, buildings); and (b) **personal properties** , but **not including this franchise**."

The "franchise", as a personal property, was to **be excluded from or not to be included with**, the other personal properties on which the grantee, . . . shall be "liable to pay the same taxes . . . as other persons or corporations are now or hereafter may be required by law to pay" because the franchise (or earnings thereof) shall be liable **only** to the ***franchise tax*** ". . . ***in lieu of all (other) taxes."***

The Second and Third Divisions of the Supreme Court, in Bayantel and in Digitel cases, respectively, both ruled that the phrase "*exclusive of this franchise*" means that "all of the franchisees' (Bayantel's and Digitel's)

properties that are actually, directly and exclusively used in the pursuit of their respective franchises" are exempt from realty taxes.

The Court practically changed the law by **substituting** the phrase ***"exclusive of"*** with another which says ***"NOT actually, directly and exclusively used in the pursuit of"***, meaning that "the grantee shall be liable to pay the same taxes on its real estate, buildings and personal property which are **"NOT actually, directly and exclusively used in the pursuit of"** its franchise.

> "For sure, in Philippine Long distance Telephone Company, Inc. (PLDT) vs. City of Davao, this Court has upheld the power of Congress to grant exemptions over the power of local government units to impose taxes. There, the Court wrote:
>
> > 'Indeed, the grant of taxing powers to local government units under the Constitution and the LGC does not affect the power of Congress to grant exemptions to certain persons, pursuant to a declared national policy. The legal effect of the constitutional grant to local government units simply means that in interpreting statutory provisions on municipal taxing powers, doubts must be resolved in favor of municipal corporations. (Emphasis supplied.)'
>
> "As we see it, then, the issue in this case no longer dwells on whether Congress has the power to exempt Bayantel's properties from realty taxes by the enactment of Rep. Act No. 7633 which amended Bayantel's original franchise. The more decisive question turns on whether Congress actually did exempt Bayantel's properties by virtue of Section 11 of Rep. Act No. 7633.
>
> "Admittedly, Rep. Act No. 7633 was enacted subsequent to the LGC. Perfectly aware that the LGC has already withdrawn Bayantel's former exemption from realty taxes, Congress opted to pass Rep. Act No. 7633 using, under Section 11 thereof, exactly the same defining phrase *"exclusive of this franchise"* which was the basis for Bayantel's exemption from realty taxes prior to the LGC. In plain language, Section 11 of Rep. Act No. 7633 states that "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." The Court views this subsequent piece of legislation as an express and real intention on the part of Congress to once again remove from the LGC's delegated taxing power, all of the franchisee's (Bayantel's) properties that are actually, directly and exclusively used in the pursuit of its franchise."

In the Digitel case, the Supreme Court ruled:

> "The fact that Republic Act No. 7678 was a later piece of legislation can be taken to mean that Congress, knowing fully well that the Local Government Code had already withdrawn exemptions from real property taxes, chose to restore such immunity even to a limited degree. Accordingly:

> "The Court views this subsequent piece of legislation as an express and real intention on the part of Congress to once again remove from the LGC's delegated taxing power, all of the franchisee's x x x properties that are actually, directly and exclusively used in the pursuit of its franchise.
>
> "In view of the unequivocal intent of Congress to exempt from real property tax those real properties actually, directly and exclusively used by petitioner DIGITEL in the pursuit of it franchise, respondent Province of Pangasinan can only levy real property tax on the remaining real properties of the grantee located within its territorial jurisdiction not part of the above-stated classification. Said exemption, however, merely applies from the time of the effectivity of petitioner DIGITEL's legislative franchise and not a moment sooner."

With due respect, the conclusions of the Supreme Court in both the Bayantel and Digitel cases are based on false premises. The matters of the inherent taxing power of the legislature, and/or the power of Congress to exempt certain persons, and/or the passage of Rep. Act No. 7633 (amending Bayantel's original franchise) after the effectivity of the LGC, and/or the enactment of Rep. Act No. 7678 (Digitel's franchise) subsequent to the LGC, and/or Section 23 of Rep. Act No. 7925, are all beside the point. They are not relevant in both cases.

The "Tax Provisions" common to telecommunications franchises clearly provide that **"the grantee shall be liable to pay the same taxes on its 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."** Unless the dictionaries cited herein are **WRONG** on the meaning of the preposition or quasi-verb ***"EXCLUSIVE OF",*** the telecommunications companies' properties, both real and personal – except the franchise (which is in itself a personal property) – are liable to payment of taxes **as other persons or corporations are now or hereafter may be required by law to pay.**

The tax provision of Rep. Act No. 3259 (Bayantel's original franchise, approved on June 17, 1961), embodied in Section 14, thereof, reads:

> "SECTION 14. (a) The grantee shall be liable to pay the same taxes on its real estate, buildings and personal property, ***exclusive of*** the franchise, as

> other persons or corporations are now or hereafter may be required by law to pay. (b) The grantee ***shall further pay*** to the Treasurer of the Philippines each year, within ten days after the audit and approval of the accounts as prescribed in this Act, one and a half per centum of all gross receipts from the business transacted under this franchise by the said grantee." (Emphasis supplied).

Since Bayantel, as franchise grantee under Rep. Act No. 3259, was NOT EXEMPT from realty tax, the Local Government Code of 1991 (LGC) **could not have withdrawn any realty tax exemption of Bayantel simply because such exemption did NOT LEGALLY EXIST in the first place.**

A few months after the Local Government Code of 1991 (LGC) took effect, Congress enacted Rep. Act No. 7633 on July 20, 1992, amending Bayantel's original franchise. The amendatory law (Rep. Act No. 7633) contained the following tax provision:

> "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 telecommunication businesses transacted under this franchise by the grantee, its successors or assigns and the said percentages 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 11 of Rep. Act No. 7633 is a virtual reenactment of Section 14(a) of Rep. Act No. 3259 (the original franchise of Bayantel). As Section 14(a) of Rep. Act No. 3259 **did not confer to Bayantel any exemption from the realty tax. Congress, by passing Rep. Act No. 7633, could not have "restored" any realty tax exemption which was not, in the first place, granted under the original franchise of Bayantel.**

Digitel's franchise (Rep. Act No. 7678) was approved on February 17, 1994, more than two years after the LGC took effect. The tax provisions embodied in Section 5 of R.A. 7678 are similar to those embodied in Section 14(a) of Rep. Act No. 3259 and Section 11 of Rep. Act No. 7633 (Bayantel's

original and amended franchises, respectively). Had R.A. 7678 exempted Digitel from realty taxes, it would have been a clear intention of Congress to override the last paragraph of Section 234 of the LGC, which withdraw all exemptions existing at the time the LGC took effect. As in the case of Bayantel, no such exemption was granted to Digitel. In fact, Congress emphatically provided under Section 5 of Rep. Act No. 7678, that, **with the exception of the franchise** (which is subject only to the franchise tax as may be prescribed by law on all gross receipts of the telephone or other telecommunication business transacted under this franchise by the grantee), the grantee shall be liable to pay the same taxes on its real estate, buildings, and personal property as other persons or corporations are now or hereafter may be required by law to pay.

In *RCPI vs. Provincial Assessor of South Cotabato, et al.* (G.R. No. 144486, April 13, 2006), the First Division of the Supreme Court ruled:

> "As found by the appellate court, RCPI's radio relay station tower, radio station building, and machinery shed are real properties and are thus subject to the real property tax. Section 14 of RA 2036, as amended by RA 4054, states that "[i]n consideration of the franchise and rights hereby granted and any provision of law to the contrary notwithstanding, **the grantee shall pay the same taxes as are now or may hereafter be required by law** from individuals, co-partnerships, private, public or quasi-public associations, corporations or joint stock companies, **on real estate, buildings** and other
>
> personal property x x x." **The clear language of Section 14 states that RCPI shall pay the real estate tax.**
>
> "The "in lieu of all taxes" clause in Section 14 of RA 2036, as amended by RA 4054, cannot exempt RCPI from the real estate tax because **the same Section 14 expressly states** that **RCPI "shall pay the same taxes** x x x **on real estate, buildings** x x x." The "in lieu of all taxes" clause in the third sentence of Section 14 cannot negate the first sentence of the same Section 14, which imposes the real estate tax on RCPI. The Court must give effect to both provisions of the same Section 14. This means that the real estate tax is an exception to the "in lieu of all taxes" clause.
>
> "Subsequent legislations have radically amended the "in lieu of all taxes" clause in franchises of public utilities. As RCPI correctly observes, the Local Government Code of 1991 **"withdraw all the tax exemptions existing at the time of its passage – including that of RCPI's"** with respect to local taxes like the real property tax. Also, Republic Act No. 7716 ("RA 7716") abolished the franchise tax on telecommunications companies effective 1 January 1996. To replace the franchise tax, RA 7716 imposed a 10 percent value-added-tax

on telecommunications companies under Section 102 of the National Internal Revenue Code. The present state of the law on the "in lieu of all taxes" clause in franchises of telecommunications companies was summarized as follows:

"The existing legislative policy is clearly against the revival of the "in lieu of all taxes" clause in franchises of telecommunications companies. After the VAT on telecommunications companies took effect on January 1, 1996, Congress *never* again included the "in lieu of all taxes" clause in any telecommunications franchises it subsequently approved. Also, from September 2000 to July 2001, all the fourteen telecommunications franchises approved by Congress uniformly and expressly state that the franchise shall be subject to all taxes under the National Internal Revenue Code, except the specific tax. The following substantially the uniform tax provisions in these fourteen franchises:

> 'Tax Provisions. – the grantee, its successors or assigns, shall be subject to the payment of all taxes, duties, fees, or charges and other impositions under the National Internal Revenue Code of 1997, as amended, and other applicable laws: Provided, That nothing herein shall be construed as repealing any specific tax exemptions, incentives or privileges granted under any relevant law: Provided, further, That all rights, privileges, benefits and exemptions accorded to existing and future telecommunications entities shall likewise be extended to the grantee.'

"Thus, after the imposition of the VAT on telecommunications companies, Congress refused to grant any tax exemption to telecommunications companies that sought new franchises from Congress, except the exemption from specific tax. More importantly, the uniform tax provision in these new franchises expressly states that the franchise shall pay not only all taxes, except specific tax, under the National Internal Revenue Code, but also all taxes under "other applicable laws." One of the ***"other applicable laws"*** is the Local Government Code of 1991, which empowers

local governments to impose a franchise tax on telecommunications companies. This, to reiterate, is the existing legislative policy.

"RCPI cannot also invoke the equality of treatment clause under Section 23 of Republic Act No. 7925. The franchises of Smart, Islacom, Teletech, Bell, Major Telecoms, Island Country, and Isla Tel, ***all expressly declare that the franchises*** **shall pay the real estate tax,** using words similar to Section 14 of RA 2036, as amended. The provisions of these telecommunications franchises imposing the real estate tax on franchises only **confirm** that RCPI is subject to the real estate tax. *Otherwise RCPI will stick out* like a sore thumb, being the only telecommunications company exempt from the real estate tax, in mockery of the spirit of equality of treatment that RCPI is invoking, not to mention the violation of the constitutional rule on uniformity of taxation. (underscoring supplied for emphasis).

"It is an elementary rule in taxation that exemptions are strictly construed against the taxpayer and liberally in favor of the taxing authority. It is the taxpayer's duty to justify the exemption by words too plain to be mistaken and too categorical to be misinterpreted."

It would seem that the Supreme Court completely abandoned this "elementary rule" in deciding the Bayantel and Digitel cases.

Section 14 of RA 2036 (RCPI's franchise), as amended by RA 4054, reads as follows:

> "Sec. 14. In consideration of the franchise and rights granted and any provision of law to the contrary notwithstanding, **the grantee shall pay the same taxes as are now or hereafter be required by law** from other individuals, copartnerships, private, public or quasi-public associations, corporations or joint stock companies, **on real estate, buildings and other personal property *except radio equipment, machinery and spare parts needed in connection with the business*** *of the grantee, which will be exempt from customs duties, tariffs and other taxes,* as well as those properties declared exempt in this section. **In consideration of the franchise**, a tax equal to one and one-half per centum of all gross receipts from the business transacted under this franchise by the grantee shall be paid to the Treasurer of the Philippines each year, within ten days after the audit and approval of the accounts as prescribed in this Act. Said tax shall be ***in lieu* of any and all taxes of any kind**, nature or description levied, established or collected by any authority whatsoever, municipal, provincial or national, from which taxes the grantee is hereby expressly exempted. (Emphasis supplied)

Except for the tax incentives granted to RCPI on certain imported items, the tax provisions in the franchises of RCPI, Bayantel and Digitel are similar, if not identical in substance. All three tax provisions do not exempt the grantee(s) from taxes on real estate, buildings and personal property, ***exclusive of*** – or ***not including*** – the franchise, a personal property in itself. Actually, the phrase "***exclusive of*** this franchise" in the "tax provision" of Bayantel's franchise is a forewarning that the franchise is not to be taxed as the other personal properties of the grantee because it is subject only to the franchise tax, ***in lieu of all (other) taxes."***

The tax provisions of the franchises of both Petitioner GMA and Bayantel say that "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 . . . ***In addition thereto,*** the grantee, its successors or assigns shall pay a franchise tax . . . ***in lieu of all taxes*** on this franchise or earnings thereof." On the other hand, the tax provision in Digitel's franchise states that "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 . . . ***In addition thereto,*** the grantee, shall pay to the Bureau of

Internal Revenue . . . a franchise tax . . .” If the grantees, their successors or assigns are **NOT** liable to pay the same taxes on their real estate, buildings and personal property, ***not including*** the franchise, what taxes, then, is the franchise tax **in addition thereto**? It is quite hard to imagine that Congress wanted the telecommunications companies to be subject **only** to a small percentage of their respective incomes, as franchise tax, **and nothing more**.

In the RCPI case, the First Division of the Supreme Court discussed about how the “in lieu of all taxes” clause in the tax provisions of RCPI’s franchise cannot negate the first sentence of the same tax provisions which imposes the real estate tax on RCPI.

We would like to point out, if we may, that the phrase “all taxes” contemplated by the “in lieu of all taxes” clause in the tax provisions of franchises of telecommunications companies refers to franchise and other taxes that local government units may try to impose on the franchise or earnings thereof – apart from, and in addition to, the franchise tax imposed by the national government.

In its 2nd Indorsement dated January 4, 1999, the Bureau of Local Government Finance (BLGF) opined that:

> “This Bureau finds the foregoing arguments of DIGITEL tenable considering the fact that, actually, even the Office of the President (OP) appears to share the same stand when OP, notwithstanding the subject January 21, 1992 Court of Appeals Decision, reaffirmed its position on the matter under a letter dated March 12, 1996, **which categorically declared that DIGITEL, too, shall be subject only to the following taxes, to wit:**
>
> 1. **Taxes on its real estate, buildings and personally property not used in connection with the conduct of its business under its franchise, as other persons or corporations are now or hereafter may be required to pay;** (Underscoring supplied)
>
> x x x
>
> It is likewise important to note hereon that, in adherence to the aforementioned March 12, 1996 pronouncement of the Office of the President, this Bureau, in its November 9, 1998 letter . . ., likewise maintained the same stand, which in effect expressed that **‘the claim for exemption of that company from the payment of real property taxes on the real properties**

which are used in the operations of . . . (the company's) franchise is hereby deemed meritorious.

In view thereof, the said Regional Director for Local Government Finance and the Provincial Assessor are hereby enjoined to implement the subject Opinions rendered by the Office of the President and the Department of Finance, thru the Bureau of Local Government Finance, on matters pertaining to the real property tax exemption covering real properties of DIGITEL which are used in the operation of its franchise.

Be guided accordingly.

ANGELINA M. MAGSINO
Deputy Executive Director

Officer-in-Charge"

The above-quoted opinion of the BLGF was adopted by the Regional Trial Court (RTC) of Quezon City, Branch 227, in its Civil Case No. Q-02-47292. The RTC decision in said case is the subject matter of *The City Government of Quezon City, et al. vs. Bayan Telecommunications Incorporated,* supra.

The same Opinion by the BLGF was declared by the Court of Appeals in the case of City of Batangas v. RETELCO, Inc. (CA-G.R.-CV No. 21897, January 21, 1992), to be erroneous, thus:

"Reliance is placed by the trial court in the Opinion No. 1818 dated September 1982 of the Office of the President which states that the phrase 'exclusive of this franchise' found in Section 7 of Republic Act 3662 'has been construed to mean as excluding real estate, buildings and personal property of Defendant RETELCO, Inc. directly used in the operation of its franchise, for which the latter is not subject to real estate taxes as other persons or corporations are now or hereafter may be required by law to pay.' We disagree. While administrative bodies may make opinions on the provisions of law, their opinions are, at most, persuasive and should not be given effect when they are erroneous. Administrative interpretations of law are not conclusive upon the courts (People v. Hernandez, 59 Phil. 272). (Underscoring supplied for emphasis)

"Here, it is Our well considered view that the opinion of the Office of the President is erroneous because it would render useless and ineffectual the clear import of Section 7 of Republic Act 3662 which holds RETELCO liable to pay real estate tax on its real estate, buildings and personal property, without distinction whether or not such property is directly used in the operation of its franchise. It is a well settled ruled in statutory construction that words used in the statute are there for some purpose and are not used needlessly. Corollarily, there is the rule that it is the interpretation of the statute which will give effect to all the words used therein which is favoured, as against one which will render some of the words useless and ineffective."

The Supreme Court, in *PLDT vs. Davao, et al.* (G.R. No. 143867, August 22, 2001), also rejected BLGF's 2nd Indorsement dated January 4, 1999, thus:

> "To be sure, the BLGF is not an administrative agency whose findings on questions of fact are given weight and deference in the courts . . . the BLGF was created merely to provide consultative services and technical assistance to local governments and the general public on local taxation, real property assessment, and other related matters, among others. The question raised by petitioner is a legal question, to wit, the interpretation of Section 23 of R.A. 7925. There is, therefore, no basis for claiming expertise for the BLGF that administrative agencies are said to possess in their respective fields." (Underscoring supplied)

The BLGF corrected its previous Opinions by issuing BLGF's MEMORANDUM CIRCULAR NO. 15-2004 dated October 25, 2004, addressed to "All Regional Directors for Local Government Finance; Provincial, City and Municipal Assessors and Treasurers; and others Concerned" with "Reversal of the Real Property Tax Exemption Previously Granted to Globe Telecommunications (GLOBE for brevity), in line with the Supreme Court (SC) Decision (G.R. No. 143867) dated August 22, 2001, and the Central Board of Assessment Appeals (CBAA) Decision (Case No. V-17) dated January 31, 2002."

In view of the decisions of the Supreme Court in the *Bayantel* and *Digitel* cases, the BLGF again changed its position on the interpretation of the phrase *"exclusive of"*. In any case, in *PLDT vs. Davao,* supra, the Supreme Court said that "the BLGF is not an administrative agency whose findings on questions of fact are given weight and deference in the courts…"

On the matter of the doctrine of *stare decisis,* we believe that this doctrine applies only when the original decision was correctly rendered and the times have not altered the perceptions that existed when the same original decision was made. But, what if the said original decision is patently erroneous?

Prof. Ricardo L. Paras, in his comments under Article 8 of the *Civil Code of the Philippines, Annotated, 4th Edition, 1965, Vol. One, p. 32)* said:

> "We adhere in our country to the doctrine of *stare decisis* (let it stand, *et non quieta movere)* for reasons of stability in law. The doctrine, which is really "adherence to precedents," states that once a case has been decided one way, then another case, involving exactly the same point at issue, should be decided in the same manner.
>
> **"Of course, when a case has been decided *erroneously,* such an error must not be perpetuated by blind obedience to the doctrine of *stare decisis.* No matter how sound a doctrine may be, and no matter how long it has been followed thru the years, still if found to be contrary to law, it must be abandoned. The principle of *stare decisis* does not and should not apply when there is a conflict between the precedent and the law** *(Tan Chong v. Sec. Of Labor, G.R. 47616, 79 Phil. 249).*
>
> **"While stability in the law is eminently to be desired idolatrous reverence for precedent, simply as precedent, no longer rules. More pregnant than anything else is that the court shall be right** *(Phil. Trust Co. v. Mitchell, 59 Phil. 30).* (Emphasis supplied)

Incidentally, all the three (3) Supreme Court decisions (Bayantel, Digitel and RCPI) dealt with the said tax provisions of the franchises of the telecommunications companies. Applying, therefore, the doctrine of *stare decisis,* the Supreme Court's decision in *RCPI* (April 13, 2005), being the earliest of the three, should prevail over the same court's decisions in *Bayantel* (March 6, 2006) and *Digitel* (February 23, 2007).

Petitioner-Appellant's franchise (RA 7252, approved on March 2, 1992) contains a tax provision similar in substance to those found in the franchises of RCPI, BAYANTEL and DIGITEL. It does not matter that any of the franchises, or the amendments thereof, were granted by Congress after the effectivity of the Local Government Code of 1991 (RA 7160) on January 1, 1992. Nothing in these franchises – original or amendment – remotely suggests that Congress intended to exempt certain telecommunication companies from payment of the real property tax.

At any rate, the Supreme Court had already atoned for its mistakes committed in the *City Government of Quezon City v. Bayan Telecommunications, Inc. (March 6, 2006, 484 SCRA 169)* and *Digital Telecommunications Philippines, Inc. (Digitel) v. Province of Pangasinan*

(February 23, 2007, 516 SCRA 558) cases. In *DIGITAL TELECOMMUNICATIONS PHILIPPINES, INC. VS. CITY GOVERNMENT OF BATANGAS represented by HON. ANGELITO DONDON A. DIMACUHA, Batangas City Mayor, MR. BENJAMIN S. PARGAS, Batangas City Treasurer, and ATTY. TEODULFO A. DEQUITO, Batangas City Legal Officer* (G.R. No. 156040, December 11, 2008) the Supreme Court decided **en banc** to reverse unequivocally the decisions of its Second and Third Division's in the *Bayantel* and *Digitel* cases, respectively. Said the Court:

Bayatel and Digitel Cases

> In *City Government of Quezon City v. Bayan Telecommunications, Inc.* (G.R. No. 162015, 6 March 2006, 484 SCRA 169, 181), this Court's Second Division held that "all realties which are actually, directly and exclusively used in the operation of its franchise are 'exempted' from any property tax." The Second Division added that Bayantel's franchise being national in character, the "exemption" granted applies to all its real and personal properties found anywhere within the Philippines. x x x,
>
> x x x
>
> In *Digital Telecommunications Philippines, Inc. (Digitel) v. Province of Pangasinan* (G.R. No. 152534, 23 February 2007, 516 SCRA 541, 559-560), this Court's Third Division ruled that Digitel's real properties located within the territorial jurisdiction of Pangasinan that are actually, directly and exclusively used in its franchise are exempt from realty tax under the first sentence of Section 5 of RA 7678. x x x
>
> x x x
>
> Nowhere in the language of the first sentence of Section 5 of RA 7678 does it express or even impliedly provide that petitioner's real properties that are actually, directly and exclusively used in its telecommunications business are exempt from payment of realty tax. On the contrary, the first sentence of Section 5 specifically states that the petitioner, as the franchisee, shall pay the "same taxes on its 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."
>
> The heading of Section 5 is "Tax Provisions," not Tax Exemptions. To reiterate, the phrase "exemption from real estate tax" or other words conveying exemption from realty tax do not appear in the first sentence of Section 5. The phrase "exclusive of this franchise" in the first sentence of Section 5 merely qualifies the phrase "personal property" to exclude petitioner's legislative franchise, which is an intangible personal property. Petitioner's franchise is subject to tax in the second sentence of Section 5 which imposes the "franchise tax." Thus, there is no grant of tax exemption in the first sentence of Section 5.
>
> The interpretation of the phrase "exclusive of this franchise" in the *Bayantel* and *Digitel* cases goes against the basic principle in 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.

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

SO ORDERED.

Manila, Philippines, December 18, 2009.

(Signed)
CESAR S. GUTIERREZ
Chairman

(Signed)
ANGEL P. PALOMARES
Member

(Signed)
RAFAEL O. CORTES
Member