



Republic of the Philippines
CENTRAL BOARD OF ASSESSMENT APPEALS
Manila

NATIONAL GRID CORPORATION OF
THE PHILIPPINES,

Petitioner-Appellant,

-versus-

THE LOCAL BOARD OF
ASSESSMENT APPEALS OF THE
CITY OF BUTUAN,

Appellee,

-and-

THE CITY TREASURER OF THE CITY
OF BUTUAN,

Respondent-Appellee,

X-----X

CBAA CASE NO. M-32
LBAA Case No.1
Series of 2009

DECISION

This is an appeal from the Decision rendered by the Local Board of Assessment Appeals for the City of Butuan on December 28, 2009 in a case entitled "National Grid Corporation of the Philippines vs. City Assessor" and docketed as LBAA Case No. 1, Series of 2009.

The records of this case show that, sometime between January, 2008 and February 27, 2009, Respondent City Assessor issued tax declarations for specific real properties located in Barangays Salvacion and Bonbon in Butuan City, with the National Power Corporation (NPC) as the registered owner thereof, as follows:

Tax Declaration No.	Kind of Property	Property Location	Market Value	Assmt. Level	Assessed Value	Date Issued	Effective Year
08-10-0007-00150	Building	Salvacion	P 421,030	35%	P 147,360	9/12/08	2009
08-10-0007-00151	Building	Salvacion	953,410	10%	95,340	9/12/08	2009
08-07-0001-01322	Building	Bonbon	2,430,520	10%	243,050	9/26/09	2009
08-10-0007-00152	Machinery	Salvacion	289,810	80%	231,850	9/12/08	2009
08-07-0001-01313	Building	Bonbon	619,760	10%	61,980	11/27/08	2009
08-07-0001-01314	Building	Bonbon	915,660	10%	91,570	01/20/08	2009
08-07-0001-01315	Building	Bonbon	434,280	10%	43,430	01/20/08	2009
08-07-0001-01316	Building	Bonbon	849,970	10%	85,000	01/20/08	2009
08-07-0001-01317	Building	Bonbon	117,250	10%	11,720	02/26/08	2009
08-07-0001-01318	Building	Bonbon	549,670	10%	54,970	11/27/08	2009
08-07-0001-01319	Building	Bonbon	198,480	10%	19,850	02/26/09	2009

08-07-0001-01321	Building	Bonbon	244,680	10%		02/26/09	2009
08-07-0001-01546	Machinery	Bonbon	1,031,290	10%		02/27/09	2009
08-07-0001-01547	Machinery	Bonbon	1,557,470	10%		02/27/09	2009
08-07-0001-01548	Machinery	Bonbon	1,298,610	10%		02/26/09	2009

The name of Petitioner-Appellant National Grid Corporation of the Philippines (NGCP) does not appear in any capacity, on either the above-listed tax declarations or on the covering notices of assessment. Anyway, Petitioner filed with the Local Board of Assessment Appeals of the City of Butuan (the "LBAA") a Petition *Ad Cautelam*, with the above-listed tax declarations as the subjects thereof. In said petition, NGCP averred:

1. The Petitioner is a corporate entity created and existing by virtue of the corporation law of the Philippines;

2. That Petitioner was granted a national franchise by Republic Act No. 9511, approved on Dec. 1, 2008 and otherwise known as "AN ACT GRANTING THE NATIONAL GRID CORPORATION OF THE PHILIPPINES A FRANCHISE TO ENGAGE IN THE BUSINESS OF CONVEYING OR TRANSMITTING ELECTRICITY THROUGH HIGH VOLTAGE BACK-BONE SYSTEM OF INTERCONNECTED TRANSMISSION LINES, SUBSTATIONS AND RELATED FACILITIES, AND FOR OTHER PURPOSES", whereby NGCP assumed the operation, maintenance and expansion management of the transmission line and substation facilities, and other related equipment, machineries and installations of the National Transmission Corporation (for brevity TRANSCO), a government corporation created and existing by virtue of Republic Act No. 9136 otherwise known as the Electric Power Industry Reform Act of 2001;

3. That pursuant to Republic Act No. 9136, TRANSCO was created to assume the transmission functions of the National Power Corporation in the planning, construction and centralized operation and maintenance of its high voltage transmission lines facilities, including grid interconnections and ancillary services. It owns the real properties occupied by its electric power sub-stations and related equipment, machineries and installations;

4. That Petitioner now enjoyed the beneficial use and possession of the real properties where the transmission lines and substations facilities are located under Republic Act No. 9511. However, TRANSCO retained legal title and ownership of the said properties;

5. That Petitioner's Office of the Regional Legal Services received on March 4, 2009 copies of the above-listed tax declarations and notices of assessments;

6. That, pursuant to Section 234(c) of Republic Act No. 7160, otherwise known as the "Local Government Code of 1991", TRANSCO, being government owned and controlled corporation, is exempt to pay all real property tax on machineries and equipment actually, directly, and exclusively used in the transmission of electric power. The pertinent provision in this respect reads as follows:

"Sec. 234. Exemption from Real Property Tax – The following are exempted from payment of the real property tax:

(a) xxx xxx xxx

(b) xxx xxx xxx

(c) **All machineries and equipment that are actually, directly and exclusively used by local water districts and government-owned or controlled corporations engaged in the**

supply and distribution of water and/or **generation and transmission of electric power.**” (emphasis ours)

7. That, inasmuch as the properties covered by Tax Declaration Nos. 08-10-0007-00152, 08-10-0007-001546, 08-10-0007-001547, 08-10-0007-001548, 08-10-0007-00152 were actually, directly and exclusively used in the transmission of electric power, it follows that TRANSCO was exempt to pay real property tax on these properties;

8. That, as far as buildings petitioner submits that TRANSCO being government owned and controlled corporation was liable only to 10% assessment level and hence the assessment level used in Tax Declaration No. 08-10-0007-00150 higher than 10% is not in accordance with law. The pertinent provision on this matter is Section 218 (d) of Republic Act No. 7160 otherwise known as the “Local Government Code of 1991”, which provides:

“SECTION 218. Assessment Levels. – The assessment levels to be applied to the fair market value of real property to determine its assessed value shall be fixed by ordinances of the sangguniang panlalawigan, sangguniang panlungsod or sangguniang bayan of a municipality within the Metropolitan Manila Area, at the rates not exceeding the following:

(a) On Lands:

xxx xxx xxx

(b) On Buildings and other Structures:

xxx xxx xxx

(c) On Machineries:

xxx xxx xxx

(a) **On Special Classes: The assessment levels for all lands, buildings, machineries and other improvements:**

Actual	Assessment Level
Cultural	15%
Scientific	15%
Hospital	15%
Local Water Districts	10%
<u>Government-owned or –controlled corporations engaged in the supply and distribution of water and/or generation and <u>transmission of electric power</u></u> (emphasis ours)	<u>10%</u>

9. That, in accordance with the afore-quoted provisions, petitioner submits that the City Assessor of Butuan exceeded its authority in assessing real property tax on machineries covered by Tax Declaration Nos. 08-10-0007-001546, 08-10-0007-001547, 08-10-0007-001548, 08-10-0007-00152 when in truth and in fact TRANSCO is expressly exempted, and in using higher assessment level for Tax Declaration No. 08-10-0007-00150 when the law expressly limits to 10% assessment level for TRANSCO, a government owned and controlled corporation engaged in the transmission of electric power;

10. That Petitioner likewise submits that the properties covered by the said Tax Declarations and Notices of Assessment are now used exclusively by NGCP for its substations facilities in accordance with its franchise under Republic Act No. 9511;

11. That, pursuant to Section 9 of Republic Act No. 9511, NGCP enjoys exemption from payment of real property tax for properties used in connection with its franchise, viz:

“Section 9. Tax Provisions. – In consideration of the franchise and rights hereby granted, the Grantee, its successors and assigns, shall pay a franchise tax equivalent to three percent (3%) of all gross receipts derived by the Grantee from its operation under this franchise. **Said tax**

shall be in lieu of income tax and any and all taxes, duties, fees, and charges of any kind, nature, or description levied, established or collected by any authority whatsoever, local or national, on its franchise, rights, privileges, receipts, revenues and profits, and on properties used in connection with its franchise, from which taxes, duties and charges, the Grantee is hereby expressly exempted xxx xxx xxx” (emphasis ours)

12. That, as such petitioner submits that it is exempt from payment of the said real property tax because the properties covered by the said Tax Declarations and Notices of Assessment are being used by NGCP exclusively pursuant to its franchise to operate and maintain the country’s electric transmission system;

13. That, accordingly, TRANSCO is not liable to pay the said real property tax because the subject assessments took effect in the year 2009, at the time NGCP expressly exempt to pay real property tax has already taken over the operations of TRANSCO;

14. That, hence, pursuant to Section 226 of Republic Act No. 7160, petitioner respectfully contests by way of the instant appeal to the Honorable Board of Assessment Appeals the subject Tax Declarations and Notices of Assessment on the ground that the same are violative of Sec. 234 (c) and 218 (d) of Republic Act No. 7160 and Sec. 9 of republic Act No. 9511.

Petitioner prayed that the Local Board of assessment Appeals of the City

of Butuan issue and Order:

1. DIRECTING, pendent lite, the City Treasurer of Butuan City to CEASE and DESIST from collecting the real property tax covered by Tax Declaration Nos. 08-10-0007-001546, 08-10-0007-001547, 08-10-0007-001548, 08-10-0007-00152 (FOR MACHINERIES), 08-07-0001-01313, 08-07-0001-01314, 08-07-0001-01315, 08-07-0001-01316, 08-07-0001-01317, 08-07-0001-01318, 08-07-0001-01319, 08-07-0001-0321, 08-07-0001-01322, 08-10-0001-00150, 08-10-0007-00151, (FOR BUILDINGS);
2. DECLARING the contested assessment as null and void for being contrary to law;
3. DECLARING the City Assessor of Butuan City to CEASE and DESIST from issuing further assessment on the properties covered by said Tax Declarations and Notices of Assessment on the ground that the same is contrary to law.

Respondent-Appellee City Assessor filed her “Answer with Responsive

Pleading” with the LBAA on June 8, 2009 saying that:

1. NGCP is taxable under the “beneficial use theory”
2. Respondent admits “that TRANSCO, being a government-owned and controlled corporation, was liable only to 10% assessment level . . .”
3. It is premature for NGCP to ask for exemption from real property tax as no tax has yet been imposed upon the National Gird Corporation of the Philippines; and
4. NGCP, being not a government-owned and controlled corporation, is not exempt from payment of the real property tax under the provisions of Section 234(c) of R.A. 7160 (Local Government Code of 1991), nor under Section 9 of R.A. 9511 (NGCP’s franchise).

Not satisfied, Petitioner NGCP filed with this Board, on February 22, 2010, an appeal questioning the said LBAA decision.

Alleging that it received a copy of the assailed Decision on January 21, 2010, NGCP based its appeal on the following grounds, namely:

I

The LBAA gravely erred when it ruled that Section 9 of R.A. 9511 does not exempt NGCP from the payment of the real property tax on the properties in question; and

II

The LBAA gravely erred when it held that the provision in NGCP's franchise that "the Grantee shall be liable to pay the same taxes on their real estate, buildings and personal property, exclusive of this franchise," is not applicable in the case at bar.

Anent the first ground, Petitioner-Appellant National Grid Corporation of the Philippines (NGCP) avers:

1. That NGCP is a corporate vehicle of the consortium which was awarded the concession to assume the power transmission function of the National Transmission Corporation (TRANSCO) through a public bidding conducted pursuant to R.A. 9136, otherwise known as the "Electric Power Industry Reform Act of 2001" (EPIRA);

2. That TRANSCO was created to assume the electrical transmission function of the National Power Corporation (NPC). All assets owned by NPC relative to its power transmission operation, including the operation of the transmission system and grid, were accordingly transferred to TRANSCO as provided under Section 8 of R.A. 9136, the Electric Industry Reform Act.

3. That NPC was exempt from real property taxation from the time of its creation in 1936 until 31 December 1991. Upon the effectivity of R.A. 7160, otherwise known as the Local Government Code of the Philippines ("LGC"), on 01 January 1992, NPC's exemption from real property tax was withdrawn, **except that pertaining to machineries and equipment actually, directly and exclusively used in the generation and transmission of electric power**, which was fixed at a ten percent (10%) assessment level in accordance with Sections 234(c) and 218 thereof. As will be shown below, the machineries subject matter of the assailed assessments are actually, directly and exclusively used in the transmission of electric power nationwide; hence, exempt from real property tax;

4. That TRANSCO's transmission function were subsequently privatized and formally turned-over to NGCP effective 15 January 2009. Republic Act No. 9511, enacted on 01 December 2008, granted a legislative franchise to NGCP to engage in the business of conveying or transmitting electricity through high voltage back-bone system of interconnection transmission lines, substations and related facilities, for other purposes. Section 9 of R.A. 9511 expressly provides, as follows:

"Section 9. Tax Provisions. – In consideration of the franchise and rights hereby granted, the Grantee, its successors and assigns, shall pay a franchise tax equivalent to three percent (3%) of all gross receipts derived by the Grantee from its operation under this franchise. Said tax shall be in lieu of income tax and any and all taxes, duties, fees, and charges of any kind, nature, or description levied, established or collected

by any authority whatsoever, local or national, on its franchise, rights, privileges, receipts, revenues and profits, and on properties used in connection with its franchise, from which taxes, duties and charges, the Grantee is hereby expressly exempted: Provided, 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 corporations are now or hereafter may be required by law to pay: Provided, further, That payment by Grantee of the concession fees due to PSALM under the concession agreement shall not be subject to income tax and value-added tax (VAT)." (Emphasis ours)

5. That it is clear from the foregoing provision that apart from the 3% franchise tax due to the national government, NGCP is **exempt from payment of the real property tax and any and all taxes, duties, fees and charges of any kind, nature or description levied, established or collected by any authority whatsoever, local or national**, including local government units;

6. That **the properties subject of the tax assessments herein are machineries and buildings which form part of the Butuan Substation and Communication facilities used by NGCP in connection with its franchise.** This fact was even admitted by the Respondent-Appellee in her Answer. The substation consisting of machineries, equipment, control house and other appurtenant services facilities are undoubtedly **indispensable in the transmission of electric power.** Without said properties, there would be no transmission of cheap and continuous electric power to Butuan City, Agusan del Norte and the other cities and provinces within the CARAGA Region. The said substation is connected to the other substations through the transmission lines comprising the Mindanao Grid;

7. That **the same is true in respect of NGCP's Communication facilities.** NGCP's current transmission system requires the application of communication facilities for use in (a) the supervision of machineries and equipment; (b) for load Data Acquisition and Dispatching; (c) Planning and maintenance; (d) and other communication uses necessary for the efficient, continuous and reliable operation and maintenance of the electric transmission system of the Mindanao Grid, as mandated by RA 9511;

8. That, verily, the properties subject matter of the same are, by their nature and purpose, necessary for the operation and maintenance of NGCP's transmission business. The properties are thus, clearly exempt from real property taxation;

9. That, in the fairly recent case of *Smart vs. The City of Davao* (G.R. No. 155491, Sept. 16, 2008), the Supreme court ruled:

"If the Congress intended the 'in lieu of all taxes' clause in Smart franchise to also apply to local taxes, Congress would have expressly mentioned the exemption from municipal and provincial taxes. Congress could have used the language in Section 9(b) of Clavecilla's old franchise, as follows:

"xxx in lieu of any of all taxes of any kind, nature and description, levied collected by any authority whatsoever, *municipal and provincial or national*, from which grantee is hereby expressly exempted, xxx (Emphasis supplied.)"

10. That Smart's legislative franchise under Republic Act No. 7229 states:

"Section 9. Tax Provisions. The grantee, its successors or assign shall be liable to pay the same taxes on their real estate buildings and personal property, exclusive of this franchise, as other person or corporations which are now or thereafter may be required by law to pay. In addition thereto, the grantee, its successor-in-interest shall be pay a franchise tax equivalent to three percent (3%) of all gross receipts of the business transacted under this franchise by the grantee, its successors or assigns

and the said percentage shall be in lieu of all taxes on this franchise or earnings thereof: xxx.” (Omission and emphasis ours.)

11. That, if Congress intended to make the Petitioner liable to pay the real property tax in connection with its franchise, an exception should have been provided in its franchise following the Supreme Court’s declaration in the very recent case of *Commissioner of Internal Revenue vs. Philippine Airlines* (G.R. No. 180043, 4 July 2009), to wit:

“The language used in Section 13 of Presidential Decree No. 1590, granting respondent tax exemption, is clearly all-inclusive. The basic corporation income tax or franchise tax paid by respondent shall be **‘in lieu of all other taxes, duties, royalties, registration, license, and other fees and charges of any kind, nature, or description imposed, levied, established, assessed or collected by any municipal, city, provincial, or national authority or government agency, now or in the future x x x,’ except only real property tax**. Even a meticulous examination of Presidential Decree No. 1590 will not reveal any provision therein limiting the tax exemption of respondent to final withholding tax on interest income or excluding from said exemption the OCT.” (Emphasis supplied.)

12. That, unlike Section 234 (c) of R.A. 7160, R.A. 9511 does not limit the coverage of NGCP’s exemption to “machineries and equipment,” nor does it distinguish between real and personal properties. As long as the properties are used in connection with NGCP’s nationwide power transmission business, they are not subject to real property taxation.

The second ground for the appeal states that “The LBAA gravely erred when it held that the provision in NGCP’s franchise that ‘the Grantee shall be liable to pay the same taxes on their real estate, buildings and personal property, exclusive of this franchise’ is **not** applicable in the case at bar.” As the second ground is presently worded, NGCP is insisting that the underlined phrase is, indeed, applicable in the case at bar. However, we shall give petitioner the benefit of the doubt and consider the adverb ‘not’ as a typographical error since, in its arguments/discussion on the subject support the premise that the underlined phrase is not applicable in the case at bar.

On the second ground, NGCP argues:

1. That the recent case of *Digital Telecommunications Philippines, Inc. (Digitel) vs. City of Batangas*, G.R. No. 156040, 11 December 2008, where the subject matter of the case was the interpretation was Digitel’s franchise, particularly, Section 5 thereof, which reads:

“Sec. 5. Tax Provisions. – **The Grantee shall be liable to pay the same taxes on its real estate, buildings, and persons property exclusive of this franchise as other personal 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 communications businesses transacted under this franchise by the

grantee: *Provided*, That the grantee shall continue to be liable for income taxes payable under Title II of the National Internal Revenue 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 and underscoring ours.)

2. That, in ruling that Digitel is liable to pay real property taxes, the Supreme Court held:

“Petitioner claims that the first sentence refers only to real properties, and that the phrase ‘exclusive of this franchise’ exempts petitioner from realty tax on its real properties used in its telecommunications business. This claim has no basis in the language of the law as written in the first sentence of Section 5. First, the first sentence expressly refers to taxes on ‘real estate’ and on ‘personal property.’ Clearly, the first sentence does not refer only to taxes on real properties, but also taxes on personal properties.

X X X

Second, there is no language in the first sentence of Section 5 expressly or even impliedly exempting petitioner from the **realty tax**. The phrase ‘exemption from real estate tax,’ ‘free from real estate tax’ or ‘not subject to real estate tax’ do not appear in the first sentence. No matter how one reads the first sentence, there is no grant of exemption, express or implied, from realty tax. In fact, the first sentence expressly imposes taxes on both real and personal properties, excluding only the intangible personal property that is the franchise.

A tax exemption cannot arise from vague inference. The first sentence of Section 5 does not grant any express or even implied exemption from realty tax. On the contrary, the first sentence categorically states that the franchise is subject to the ‘**same taxes** currently imposed and those taxes that may be subsequently imposed, on other persons or corporations,’ taxpayers that admittedly are all subject to realty tax. The first sentence does not limit the imposition of the ‘same taxes’ to realty tax only but even to ‘those taxes’ that may in the future be imposed on other taxpayers, which future taxes shall also be imposed on petitioner. Thus, the first sentence of Section 5 imposes on petitioner not only realty tax but also other taxes.

The phrase ‘personal property exclusive of this franchise’ merely means that ‘personal property’ does not include the franchise even if the franchise is an intangible personal property. Stated differently, the first sentence of Section 5 provides that petitioner shall pay tax on its real properties as well as on its personal properties but the franchise, which is an intangible personal property, shall not be deemed personal property.” (Emphasis supplied)

3. That “compared to Digitels’ franchise, **NGCP’s franchise is clear, unambiguous, and leaves no room for interpretation.** Section 9 of R.A. 9511 uses the phrase ‘on properties used in connection with its franchise’ to characterize its tax exemption. Without a doubt, any property used by the NGCP in connection with its transmission business is exempt from real property tax.”

In her Answer/Comment to the instant appeal, received by this Board on April 8, 2010, Respondent City Assessor avers:

1. That petitioner-appellant is liable to pay taxes on all its real properties whether or not they are used in connection with the franchise of the petitioner-appellant;

2. That the legislative intent would have required to state in clear and unequivocal language in the main provision of Section 9 of R.A. 9511 that “REAL

PROPERTIES used in connection with its franchise, from which taxes, duties and charges, the grantee is hereby expressly exempted,” if the intention was indeed to exempt the grantee from paying realty tax;

3. That, in the context of real property taxation, the word property or properties refer to properties other than real;

The real issues in this case could be appropriately presented in three (3) questions, namely:

1. **As far as NGCP is concerned, are the subject machinery and equipment exempt from real property taxes under Section 234(c) of the LGC?**
2. **As far as NGCP is concerned, should the subject buildings be classified as “Special Class” of realty under Section 218(d) of the LGC?**
3. **Is NGCP exempt from payment of the real property tax on subject real properties by virtue of Section 9 of Rep. Act. No. 9511 (NGCP’s franchise)?**

Anent the first question, it is indubitable that the subject machinery and equipment, while being actually, directly and exclusively used by TRANSCO in the generation and transmission of electric power, were exempt from realty taxes pursuant to the provisions of Section 234(c) of the Local Government Code of 1991 (LGC).

NGCP seems to imply that it is now in the same category or situation as TRANSCO was before NGCP came into the picture. NGCP argues that, since it is now NGCP that is using the properties in question, it follows that the privileges, enjoyed TRANSCO before the use of the same properties was eventually transferred to NGCP, should inure to the benefit of NGCP.

Section 234 of the LGC provides as follows:

“SEC. 234. *Exemption from Real Property Tax.* – 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;

(b) Charitable institutions, churches, parsonages or convents appurtenant thereto, mosques, non-profit or religious cemeteries and all lands, buildings, and improvements actually, directly, and exclusively used for religious, charitable or educational purpose;

(c) All machineries and equipment that are actually, directly and exclusively used by local water districts and government-owned or –controlled corporations engaged in the supply and distribution of water and/or generation and transmission of electric power;

(d) All real property owned by duly registered cooperatives as provided for under R.A. 6938; and

(e) Machinery and equipment used for pollution and environmental protection.” (Underlining supplied)

To be exempt from payment of the real property tax under Section 234(c) of the LGC, the subject machinery and equipment must be actually, directly and exclusively used by local water districts and/or government-owned or –controlled corporations engaged in the supply and distribution of water and/or generation and transmission of electric power.

Although the subject machinery and equipment are actually, directly and exclusively used by NGCP in the generation and transmission of electric power, NGCP, by its own admission, is a private corporation organized, registered and existing under and by virtue of the laws of the Philippines – not a government-owned or –controlled corporation. *Ergo*, Section 234(c) of the LGC does not apply to NGCP in this case.

On the second question, it is also indubitable that the buildings, owned and used by NPC and later, TRANSCO, were subject only to 10% assessment level under Section 218(d) of the LGC, in accordance with Section 216 of the same LGC, thus:

“SEC. 218. *Assessment Levels.* The assessment levels to be applied to the fair market value of real property to determine its assessed value shall be fixed by ordinances of the sangguniang panlalawigan, sangguniang panlungsod or sangguniang bayan of a municipality within the Metropolitan Manila Area, at the rates not exceeding the following:

xxx

(a) On Special Classes: The assessment for all lands, building, machineries and other improvements:

<u>Actual Use</u>	<u>Assessment Level</u>
Cultural	15%
Scientific	15%
Hospital	15%
Local water district	10%
Government-owned or –controlled corporations engaged in the supply and distribution of water and/or generation and transmission of electric power	10%

“Section 216. *Special Classes of Real Property.* All lands, buildings, and other improvements thereon actually, directly and exclusively used for hospitals, cultural, or scientific purposes, and those owned and used by local water districts, and government-owned or controlled corporations rendering essential public services in the supply and distribution of water and/or generation and transmission of electric power shall be classified as special.” (emphasis ours)

NGCP questioned the assessment level of 35% placed for a building under T.D. No. 08-10-0007-00150 with NPC as the owner-declarant. By posing such a question, NGCP seems to imply that the same building, while being used by NGCP, should be subjected to the assessment level of only 10%. However, as in the case of Section 234(c) of the LGC, Section 216 thereof basically requires ownership and use by “government-owned or controlled corporations rendering essential public services in the x x x generation and transmission of electric power.” NGCP is not the owner nor a government-owned or controlled corporation, therefore said Sections 216 and 218(d) do not apply thereto.

The third question centers on the provisions of Section 9 of R.A. 9511 (NGCP’s franchise) which provides, thus:

“Section 9. *Tax Provisions.* – In consideration of the franchise and rights hereby granted, the Grantee, its successors and assigns, shall pay a franchise tax equivalent to three percent (3%) of all gross receipts derived by the Grantee from its operation under this franchise. **Said tax shall be in lieu of income tax and any and all taxes, duties, fees, and charges of any kind, nature, or description levied, established or collected by any authority whatsoever, local or national, on its franchise,** rights, privileges, receipts, revenues and profits, **and on properties used in connection with its franchise, from which taxes, duties and charges, the Grantee is hereby expressly exempted:** *Provided,* 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 corporations are now or hereafter may be required by law to pay: *Provided, further,* That payment by Grantee of the concession fees due to PSALM under the concession agreement shall not be subject to income tax and value-added tax (VAT).”

NGCP claims exemption from payment of the realty tax on the properties in question because the same properties “are now used **exclusively** by NGCP for its substations facilities in accordance with its franchise”, obviously referring to the phrase “exclusive of this franchise” found in the above-quoted Section 9 of R.A. 9511.

As in the Supreme Court decisions in *City Government of Quezon City vs. Bayan Telecommunications, Inc.* [March 6, 2006, 484 SCRA 169] (the “Bayantel”

case) and *Digital Telecommunications Philippines, Inc. vs. Province of Pangasinan* [February 23, 2007, 516 SCRA 558] (the “Digitel” case), NGCP **misinterpreted** the phrase “exclusive of this franchise” to mean that “all properties that are actually, directly and exclusively used by NGCP in the pursuit of its franchise are exempt from payment of the real property tax. When one consults a dictionary – any English dictionary, for that matter – one would discover that the phrase “exclusive of” simply means “not including.” An franchise is an intangible personal property. Therefore, the phrase “personal property, exclusive of this franchise” means “personal property, not including of this franchise”. Incidentally, the subject matter in this case is the real property tax. Personal properties, including the franchise, should be left out of the discussion in this case.

Concentrated only on real property taxation, the first *proviso* in Section 9 of R.A. 9511 should read as clearly as follows:

“*Provided, 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.*”

It should be emphasized that the decisions rendered by the Second and Third Divisions of the Supreme Court in the Bayantel and Digitel cases, respectively, were reversed by the same Court *en banc* in *Digital Telecommunications Philippines, Inc. vs. City Government of Batangas* (G.R. No. 156040, December 11, 2008).

NGCP also states that it is exempt from payment of the real property tax because of the first part of the second sentence in Section 9 of R.A. 9511 which says “**Said tax shall be in lieu of income tax and any and all taxes,** duties, fees and charges **of any kind, nature or description levied, established or collected by any authority whatsoever, local or national, on its franchise,** rights, privileges, receipts, revenues and profits” The “**said tax**” just mentioned refers to the three percent (3%) franchise tax on **gross receipts**

derived by the Grantee from its operation under the franchise. This means that the said **gross receipts** cannot be subjected to any kind of tax other than the stated three percent (3%) franchise tax. Gross receipts, revenues and profits, like the “franchise”, are personal properties, not real properties.

We believe, however, that the underlined phrase “**duties, fees and charges**” should not have been included in the list of taxes which the franchise, rights, privileges, receipts, revenue and profits are exempted from. The word “duties” could only mean “customs duties” which are imposed on imported items. It is quite hard to imagine that gross receipts from the operation of NGCP’s franchise and/or the rights and privileges granted thereunder could be subjected to import or customs duties under any set of circumstances.

Another reason advanced by NGCP to support its claim for exemption from realty tax is the phrase “**and on properties used in connection with its franchise, from which taxes**, duties and charges, **the Grantee is hereby expressly exempted**” which completed the second sentence of Section 9 of R.A. 9511. NGCP claims that, literally, all properties used in connection with its franchise are exempt from all taxes, including the real property tax.

Simplified and concentrated on *properties used in connection with its franchise*, the second sentence of Section 9 of R.A. 9511 would read: “**Said tax shall be in lieu of income tax and any and all taxes . . . on properties used in connection with its franchise, from which taxes, duties and charges, the Grantee is hereby expressly exempted.**” This statement implies that said **properties used in connection with its franchise** are also subject to the three percent (3%) franchise tax. There is no question that properties, other than the gross receipts, revenues or profits derived from the operation of the franchise, are **not** subject to the three percent (3%) franchise tax.

In *Radio Communications of the Philippines, Inc. (RCPI) vs. Provincial Assessor of South Cotabato, et al.* (G.R. No. 144486, April 13, 2005), it was

shown that the tax provisions in RCPI's franchise (Section 14 of R.A. 2036, as amended by R.A. 4054), provides as follows:

“Sec. 14. In consideration of the franchise and right granted and any provision of law to the contrary notwithstanding, **the grantee shall pay the same taxes as are now or may hereafter may be required by law** from other individuals, co-partnerships, 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, province or national from which taxes the grantee is hereby expressly exempted.” (Emphasis supplied)

The phrase **“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”** stated in the tax provisions of RCPI's franchise is **similar** to the phrase **“properties used in connection with its franchise, from which taxes, duties and charges, the Grantee is hereby expressly exempted”** found in the tax provisions of NGCP's franchise, except that the word **“customs”** is omitted in the latter case. The exemption from payment of (customs) duties, tariffs and other charges could only be applicable to the imported items used in connection with the business of the grantee.

Although engaged in the generation and transmission of electric power, Petitioner NGCP is not a government-owned or –controlled corporation. Therefore, is NGCP is not qualified for exemption from real property tax on the subject machinery and equipment under the provisions of Section 234(c) of the LGC. For the same reason, the subject buildings do not fall under the “Special Class” category under Section 218(d) but should be classified as “Industrial Buildings” under Section 218(b)(3).

Section 9 of R.A. 9511 does not exempt NGCP from payment of the real property tax. On the contrary, the first *proviso* of said Section 9 of R.A.

9511 provides 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.”

By its own admission, NGCP is the “**beneficial user**” of the subject real properties. NGCP is, therefore, taxable as such “beneficial user” of the same properties pursuant to the provisions of Section 234(a) of the Code, which provides, thus:

“SEC. 234. *Exemption from Real Property Tax.* – 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;

“xxx xxx xxx”

WHEREFORE, premises considered, the instant Appeal is hereby DISMISSED for lack of merit. Respondent City Assessor of Butuan City is hereby ORDERED to revise/correct the subject tax declarations to reflect thereon the following:

1. National Transmission Commission (TANSCO) as the owner of the subject real properties pursuant to Section 8 of Republic Act No. 9136, otherwise known as the “Electric Power Industry Reform Act of 2001”;
2. National Grid Corporation of the Philippines (NGCP) as the “beneficial user” of said real properties; and
3. The assessment levels as provided for under Sections 218(b)(3) for buildings and improvements thereon and 218(c) for industrial machinery, both of the LGC.

The dispositive portion of the Decision rendered on December 28, 2009 by the Local Board of Assessment Appeals for the City of Butuan is hereby so amended.

SO ORDERED.

Manila, Philippines, September 2, 2010.

(Signed)
CESAR S. GUTIERREZ
Chairman

(Signed)
ANGEL P. PALOMARES
Member

(Signed)
RAFAEL O. CORTES
Member