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

GMA NETWORK, INC.,
Petitioner-Appellant,

CBAA CASE NO. V – 27

-versus-

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

-and-

JOSELITO R. ALMODIENTE, in his capacity as CITY TREASURER OF THE CITY OF ROXAS,
Respondent-Appellee.
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D E C I S I O N

This appeal, received by this Board on September 29, 2008, is from the Resolution dated August 20, 2008 of the Local Board of Assessment Appeals of the City of Roxas (the "Local Board").

Alleging that it received a copy of the Resolution appealed from on August 29, 2008, Petitioner-Appellant GMA Network, Inc. ("GMA" for brevity), formerly known as *Republic Broadcasting System, Inc.*, states that:

1. Petitioner 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;

2. In pursuit of this legislative franchise, petitioner GMA acquired lands, constructed broadcast stations and installed machineries thereon that are necessary and essential to the operation of a television and radio network in Metro Manila and various provinces;

3. In 1998, petitioner GMA opened its television relay station in Lawa-an, Roxas City which (was) constructed on the land (the "subject land") it had acquired (with) a building (the "subject building");

4. The subject properties are being used as tower antenna transmitter site and are listed in the assessment roll pursuant to which Tax Declaration Nos. 1562 and 1563 were issued by the Office of the City Assessor, Roxas City;

5. Petitioner GMA has mistakenly paid the real property taxes collected by respondent City Treasurer on the subject properties since it started operating therein, including the taxable periods 2006 up to 2007, in the principal amount of Php 8,714.70;

6. In year 2006, 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, buildings and personal property located in Quezon City which are actually, directly and exclusively used in the pursuit of its franchise;

7. The following year, the Supreme Court promulgated its decision in the case of *Digital Telecommunications Philippines, Inc. (Digitel) v. Province of Pangasinan (February 23, 2007, 516 SCRA 558)* which reiterated the Bayantel ruling that the legislative franchise constitutes 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;

8. Invoking the Bayantel and Digitel rulings, petitioner GMA served a letter dated January 25, 2008 to respondent treasurer which he received on February 12, 2008 claiming for refund of real property taxes erroneously collected for the period 2006 to 2007 in the principal amount of Php 8,714.70 pursuant to Section 253 of R.A. 7160;

9. However despite the lapse of 60 days from February 12, 2008, respondent City Treasurer failed to act upon petitioner GMA's claim for refund;

10. On April 14, 2008, petitioner-appellant GMA filed a petition with the LBAA of the City of Roxas from the **denial by inaction** of respondent-appellee City Treasurer of its claim for refund in accordance with Section 253 of the Local Government Code (R.A. 7160, hereinafter, "the Code") in relation to the *2005 Manual of Assessment on Real Property and Assessment Operations* which provides that a real property taxpayer who is aggrieved by the decision, action or inaction of the local treasurer over a claim for refund of erroneously collected real property tax may appeal to the LBAA within sixty (60) days from the receipt of the decision or within sixty (60) days from receipt by the local treasurer of the claim but without taking any action thereon. Thus:

> "RULE 2. Local Board of Assessment Appeals –
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> SECTION 1. Jurisdiction. – **The Local Board shall have original jurisdiction to hear and decide appeals of owners/administrators of real property** from the action of the Provincial or City Assessors, or the Municipal Assessors in the Metro Manila Area, in the assessment of their real properties, and **from the action of the Provincial or City Treasurers, or Municipal Treasurers in the Metro Manila Area, regarding collection of real property taxes,** special levies, or other real property taxes under Title Two, Book II of R.A. No. 7160.
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> Section 2. Person Who May Appeal. – Any owner or administrator of real property, or any person having legal interest therein, who is not satisfied with the action of the provincial, city or municipal assessor in the appraisal/assessment of his property may appeal to the Local Board of Assessment Appeals of the province or city, or municipality within the Metro Manila Area, where the property is located. **A real property taxpayer who is aggrieved by the decision, action or inaction of the provincial, city or municipal treasurer over excessive realty tax paid under**

protest, or on claim for refund of illegally or erroneously collected real property tax, including special levies on real property, may likewise appeal to the Local Board as provided in these rules.

SECTION 4. Period of Appeal. (a) the owner, administrator or person who is not satisfied with the assessment of his property may, within sixty (60) days from the date of receipt of the written notice of assessment, appeal to the Local Board concerned.

Any real property taxpayer who is aggrieved by the decision, action or inaction of the provincial or city treasurer, or municipal treasurer within the Metropolitan Manila Area, on his written claim for refund or credit may appeal to the Local Board concerned as follows:

A. If, within sixty (60) days from the date or receipt by the treasurer concerned of the written claim for refund or credit for tax paid under protest, the *treasurer concerned fails to make any decision* thereon, *the appeal may be made within sixty (60) days from the date of receipt by the treasurer concerned of the said written claim for refund or credit*; or

xxx."

11. On June 30, 2008, GMA received an Order dated June 24, 2008 from the LBAA requiring it to submit original or certified true copy (of) its SEC Certificate of Registration and other documents to prove that GMA Network, Inc. is formerly known as Republic Broadcasting System, Inc. On July 8, 2008, GMA submitted its Compliance dated July 4, 2008 with the LBAA's Order dated June 24, 2008;

12. On July 4, 2008, GMA received a copy of the City Treasurer's letter-comment dated May 26, 2008 alleging that the subject real property taxes were collected in view of the assessment made by the City Assessor on the subject properties which were listed in the assessment roll of taxable properties. The City Treasurer further averred that GMA did not present any proof of its tax exemption within 30 days from the date of declaration of real property as prescribed by Sec. 206 of R.A. No. 7160;

13. On June 20, 2008 (?), GMA filed by registered mail its Reply dated June 16, 2008 refuting the City Treasurer's allegations in his Comment asserting that Sec. 206 is not applicable in the instant case but instead Sec. 253 should be applied considering that a claim for real property tax refund is involved. GMA emphasized that pursuant to Sec. 206, it also filed a separate request for exclusion from the assessment roll on January 3, 2008, before the City Assessor in order for the latter to address separately GMA's claim that the subject properties should be delisted, cancelled or dropped from the roll of taxable real properties of the city but the said City Assessor has not yet acted upon such request up to this time;

14. On August 29, 2008, GMA received a copy of the Resolution dated August 20, 2008 denying the appeal of GMA based on the following grounds:

    a. the issue of whether or not GMA's real properties are exempt from real property taxes should first be settled under Sec. 206 of R.A. 7160 before GMA can claim for tax refund;

    b. GMA is deemed to have waived its right to claim for tax refund because payment of the subject real property taxes was not made under protest;

    c. part of the subject properties, although being used actually, directly and exclusively in pursuit of GMA's franchise, was found to have been operating illegally for want of Mayor's Permit;

15. Under Section 229 of the Local Government Code, the owner of the property or the person having legal interest therein or the assessor who is not satisfied with the decision of the Local Board of Assessment Appeals may within thirty (30) days after receipt of the decision of said Board, appeal to the Central Board of Assessment Appeals. In relation, Sec. 3, Rule 3 of the LBAA and CBAA Rules of Procedure likewise provides that any party in a case before the Local Board who feels aggrieved by the decision, resolution or order of the said Local Board may, within thirty (30) days from and after receipt of the said decision, resolution or order, appeal to the Central Board. Hence, this appeal.

GROUNDS FOR THE APPEAL

I. THE LBAA OF ROXAS CITY ERRED:

IN HOLDING THAT THE ISSUE OF WHETHER OR NOT GMA'S REAL PROPERTIES ARE EXEMPT FROM REAL PROPERTY TAXES SHOULD FIRST BE:

(a) SETTLED BEFORE THE OFFICE OF THE CITY ASSESSOR UNDER SEC. 206 OF R.A. 7160 BEFORE GMA CAN CLAIM FOR TAX REFUND; and

(b) IN HOLDING THAT GMA IS DEEMED TO HAVE WAIVED ITS RIGHT TO CLAIM FOR TAX REFUND BECAUSE ITS PAYMENTS OF THE SUBJECT REAL PROPERTY TAXES WERE NOT MADE UNDER PROTEST PURSUANT TO SEC. 252 OF R.A. 7160

II. THE LBAA OF ROXAS CITY ERRED IN RELYING ON FACTUAL FINDINGS THAT GMA'S RELAY STATION WAS OPERATING IN THE CITY WITHOUT MAYOR'S PERMIT WHICH IS NOT ALLEGED IN THE CITY TREASURER'S COMMENT WITHOUT AFFORDING GMA WITH AN OPPORTUNITY TO REFUTE THE SAME.

Anent the First Ground, the LBAA of the City of Roxas ruled in its Resolution dated August 20, 2008 that:

1. The issue of whether or not the Petitioner's real properties are *exempt* from real property taxes should first be settled under Section 206 of R.A. 7160 because the Petitioner hinges its claim for refund primarily on the declaration that its real properties in Lawa-an, Roxas City are exempt from realty taxes;

2. The Petitioner could have submitted proof of tax exemption as early as 2007 since the Petitioner already had knowledge of the Bayantel case which was promulgated on March 6, 2006, when it paid realty taxes on March 10, 2006 and February 8, 2007;

3. The Petitioner should have filed an appeal of the assessment way back in 2006 and 2007. On February 23, 2007 and Digitel case was promulgated, the Petitioner could have filed its appeal under Section 226; and

4. Most significantly, the Petitioner should have paid its realty taxes ***under protest*** as far back as March 20,1992 when its legislative franchise was approved in accordance with Section 252 of R.A. 7160.

Anent the Local Board's Ruling No. 1, in relation to the Ground No. I (a), the Local Board and the Treasurer believe that, for a claim for refund under the

provisions of Section 253 of RA 7160 to prosper, the taxpayer/claimant must first satisfy the requirements provided for in Section 206 of the same Code. Said Sections 206 and 253 provide as follows, viz:

> "SEC. 206. *Proof of Exemption of Real Property from Taxation*. – Every person by or for whom real property is declared, who shall claim tax exemption for such property under this Title shall file with the provincial, city or municipal assessor within thirty (30) days from the date of the declaration of real property sufficient documentary evidence in support of such claim including corporate charters, title of ownership, articles of incorporation, by-laws, contracts, affidavits, certifications and mortgage deeds, and similar documents.
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> "If the required evidence is not submitted within the period herein prescribed, the property shall be listed as taxable in the assessment roll. However, if the property shall be proven to be tax-exempt, the same shall be dropped from the assessment roll."
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> "SEC. 253. *Repayment of Excessive Collections.* – When an assessment of basic real property tax, or any other tax levied under this Title, is found to be illegal or erroneous and the tax is accordingly reduced or adjusted, the taxpayer may file a written claim for refund or credit for taxes and interests with the provincial or city treasurer within two (2) years from the date the taxpayer is entitled to such reduction or adjustment.
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> "The provincial or city treasurer shall decide the claim for tax refund or credit within sixty (60) days from receipt thereof. In case the claim for tax refund or credit is denied, the taxpayer may avail of the remedies as provided in Chapter 3, Title II, Book II of this Code."

The first paragraph of Section 206 of the Code presupposes that a taxpayer's exempt status was not in doubt as of the date of the declaration of the subject real property. It is not the case in this appeal. Petitioner-Appellant's claim for exemption is based on the pronouncements of the Supreme Court in *The City Government of Quezon City and the City Treasurer of Quezon City, Dr. Victor G. Endriga vs. Bayan Telecommunications Incorporated* (G.R. No. 162015, March 6, 2006) and in *Digital Telecommunications, Incorporated vs. Province of Pangasinan, represented by Ramon A. Crisostomo, Pangasinan Provincial Treasurer* (G.R. 152534, February 23, 2007) proclaiming that Bayan Telecommunications Incorporated (Bayantel) and Digital Telecommunications, Incorporated (Digitel) are exempt from payment of the real property tax as supposed to be provided for in the tax provisions of their respective franchises. GMA based its claim for refund on the said decisions, claiming that the tax

provisions in its own franchise are similar in substance to those found in the franchises of Bayantel and Digitel.

The said decisions supposedly rendered *illegal or erroneous* the realty tax assessments against the real properties of GMA which the latter used actually, directly and exclusively in the operations or pursuit of its franchise. Accordingly, "the taxpayer may file a written claim for refund or credit for taxes and interests with the provincial or city treasurer within two (2) years from the date the taxpayer is entitled to such reduction or adjustment."

However, the Local Board and the Treasurer argue that the requirements of Section 206 of the Code must be complied with first, before the said two decisions of the Supreme Court, as well as the provisions of Section 253 of the Code, are given effect.

When does an exemption commence? "An exemption becomes effectual from the time the constitution, statute or ordinance takes effect, or in case the exemption is contained in a charter where a corporation is created by a special law, from the time of acceptance of the charter . . ." (Sec. 711, p. 1490-1499, Cooley's Taxation, Vol. 2 4th ed., cited in Art. III, B, [1], Assessment Regulation No. 8-78, quoted in Cabaluna, Real Property Tax Code, Annotated).

If, indeed, GMA is exempt from payment of the realty tax by virtue of the tax provisions of its franchise, such exemption was supposed to be effective from the time of acceptance or approval of its franchise. We believe that presentation of documentary evidence as proof of exemption is not limited to the thirty-day period after declaration of the real property because of the phrase "if the property shall be proven to be tax-exempt, the same shall be dropped from the assessment roll" in the second paragraph of Section 206 of the Code. We likewise believe that the provisions of said section is confirmatory in nature, that is, for records purposes only. Regardless of the time the requirements of Section 206 of the Code is complied with, the exemption remains effective from

the time the exempting provisions of the constitution, statute or ordinance took effect, or in case the exemption is contained in a charter where a corporation is created or contained in a franchise, as in the case of GMA, from the time of acceptance or approval of the charter or franchise, except that the claim for refund shall be subject to the limitations provided for in Section 253 of the Code.

On Ruling No. 2 of the LBAA, if a claim for exemption is based on a Supreme Court decision, the only proof of exemption that should be presented to the Office of the Assessor is the court decision itself and the taxpayer concerned would not be in delay if the claim for refund or credit is filed within two (2) years from the moment the taxpayer became entitled to such refund or credit.

On Ruling No. 3 of the Local Board, Section 226 of the Code does not apply in this case since it governs appeals to the Local Board by any owner or person having legal interest in the property who is not satisfied with the action of the assessor in the assessment of his property, thus:

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

On Ruling No. 4 of the Local Board, Section 252 of the Code has no bearing on this appeal. This Section of the Code refers to payments which a taxpayer is compelled to pay even though the same taxpayer believes he is not liable thereto. On the other hand, under Section 253 of the Code, the taxpayer honestly believed that, at the time he paid the tax, such tax was legally and correctly due from him. The claim for refund or credit follows only after knowing that such payment was erroneous or illegal.

We believe, therefore, that the operative law on this case is Section 253 of the Code.

With respect to the Second Ground, the LBAA, in its Resolution of August 20, 2008, ruled that, for want of a Mayor's Permit, "we could *not* declare that the Petitioner's real properties in Lawa-an, Roxas City are exempt from realty taxes on the ground that said properties are not being operated legally."

Petitioner GMA was not given an opportunity by the LBAA to explain the matter of the Mayor's Permit. However, in the instant appeal, GMA submitted documentary proof that the certification (of lack of Mayor's Permit), upon which the LBAA based its conclusion, pertains to another entity, "RGMA Network, Inc.", a separate and distinct juridical entity from Petitioner GMA.

GMA argues that it has secured the appropriate permits and licenses from the National Telecommunications Commission as required by its franchise, but if it, too, is required to secure Mayor's Permits, it would be subject only to the surcharges for late payment, in addition to the basic permit fees.

We agree. The existence or non-existence of a Mayor's Permit does not determine the taxability or non-taxability of a real property to real property tax. Real Property Taxation is governed under Title Two, Book II of R.A. 7160, while Mayor's Permits are governed by respective ordinances. These things have separate applications.

The most important matter in this case is: **"Whether or not the real properties which are actually, directly and exclusively used in the pursuit or operation of Petitioner-Appellant's franchise are exempt from payment of the real property tax."** Although this matter is not made an issue in this appeal, the parties hereto being resigned to the thought that every

pronouncement of the Supreme Court is correct – until the Court reverses itself – we thought that a grievous wrong would be perpetuated if we shied away from it.

As already stated, Petitioner GMA based its claim for exemption on the pronouncements of the Supreme Court in the cases of *The City Government of Quezon City and the City Treasurer of Quezon City, Dr. Victor G. Endriga vs. Bayan Telecommunications Incorporated* (Bayantel) (G.R. No. 162015, March 6, 2006) and *Digital Telecommunications Philippines, Incorporated* (Digitel) *vs. Province of Pangasinan, represented by Ramon A. Crisostomo, Pangasinan Provincial Treasurer* (G.R. No. 152534, February 23, 2007). Therefore, the appropriate question would be: **Was the Supreme Court correct in declaring that the real properties of Bayantel and Digitel which were actually, directly and exclusively used in the pursuit of their respective franchises exempt from payment of the real property tax?**

In the Bayantel case, the Second Division of the Supreme Court ruled that the real properties which are actually, exclusively and directly used in the operation of its franchise are exempt from real property taxes, thus:

> "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 its 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 at all by virtue of Section 11 of Rep. Act No. 7633.
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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 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."

The ruling in the Bayantel case was reiterated in the Digitel case where the Third Division of the Supreme Court held that:

> "Succinctly put, had the Congress of the Philippines intended to tax each and every real property of petitioner DIGITEL, regardless of whether or not it is used in the business or operation of its franchise, it would not have incorporated a qualifying phrase, which such manifestation admittedly is. And, to our minds, the issue in this case no longer dwells on whether Congress has the power to exempt petitioner DIGITEL's properties from realty taxes by its enactment of Republic Act No. 7678 which contains the phrase *"exclusive of this franchise,"* in the face of the mandate of the Local Government Code. The more pertinent issue to consider is whether or not, by passing Republic Act No. 7678, Congress intended to exempt petitioner DIGITEL's real properties actually, directly and exclusively used by the grantee in its franchise.
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> "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:
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> "The Court view 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.
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> "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. Said exemption, however, merely applies from the time of the effectivity of petitioner DIGITEL's legislative franchise and not a moment sooner."

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

> "SEC. 11. The grantee, its successors or assigns shall be liable to pay the same taxes on their real estate, buildings and personal property, ***exclusive of*** this franchise, as other persons or corporations are now or hereafter may be required by law to pay. ***In addition thereto,*** the grantee, its successors or assigns shall pay a franchise tax equivalent to three percent (3%) of all gross receipts of the telephone or other telecommunications businesses transacted under this franchise by the grantee, its successors or assigns and the said percentage shall be **in lieu of all taxes** on this franchise or earnings thereof. Provided, That the grantee, its successors or assigns shall continue to be liable for income taxes payable under Title II of the National Internal Revenue Code x x x." (Emphasis supplied)

Section 5 of Rep. Act No. 7678 (DIGITEL's franchise approved on February 17, 1994), states:

> "SECTION 5. Tax Provisions. – The grantee shall be liable to pay the same taxes on 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. ***In addition thereto,*** the grantee shall pay to the Bureau of Internal Revenue each year, within thirty (30) days after the audit

> and approval of the accounts, a franchise tax as may be prescribed by law of all gross receipts of the telephone or other telecommunications businesses transacted under this franchise by the grantee: Provided, That the grantee shall continue to be liable for income tax payable under Title II of the National Internal Revenue Code pursuant to Section 2 of Executive Order No. 72 unless the latter enactment is amended or repealed, in which case the amendment or repeal shall be applicable thereto x x x." (Emphasis supplied)

Section 8 of RA 7252 (Petitioner's legislative franchise approved on March 2, 1992) provides as follows:

> "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." (Emphasis supplied)

Petitioner-Appellant argues that, since its legislative franchise is obviously patterned after, if not an exact copy of, the legislative franchises of Bayantel and Digitel, it follows that its real properties that are actually, exclusively and directly used in the 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.

Webster's Third International Dictionary of the English Language Unabridged (1966 ed., p. 793) defines the phrase **"exclusive of"** as a preposition meaning **"<u>not taking into account: excluding from consideration</u>** (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-adverb meaning ***"not including, not counting".***

In jurisprudence, a franchise, as a right and privilege, is regarded as property, separate and distinct from the property which the corporation itself may 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 GMA's franchise, as simplified, would read thus:

> "The grantee, its successors or assigns shall be liable to pay the same taxes on their real estate, buildings, and personal property, **not including this franchise,** as other persons or corporations are now or hereafter may be required by law to pay."

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 subject to the ***franchise tax*** which "shall be ***in lieu of all (other) taxes.***"

The Second and Third Divisions of the Supreme Court, in Bayantel and in Digitel cases, respectively, discussed the **"meaning"** of the phrase "***exclusive of*** this franchise". In both cases the Supreme Court 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 its franchise" 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"***, 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 operation of its franchise.

In the Bayantel case the Supreme Court said:

> "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:
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> > '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.)'
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> "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.
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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 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:
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> "The Court view 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.
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> "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. 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-adverb ***"EXCLUSIVE OF"***, the telecommunications companies' properties, both real and personal – except the franchise (which is 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 one 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 telecommunications businesses transacted under this franchise by the grantee, its successors or assigns and the said percentage shall be **in lieu of all taxes** on this franchise or earnings thereof. Provided, That the grantee, its successors or assigns shall continue to be liable for income taxes payable under Title II of the National Internal Revenue Code x x x." (Emphasis supplied)

Section 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, 2005), the First Division of the Supreme Court ruled:

> "As found by the appellee 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 is 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 franchise of Smart, Islacom, TeleTech, Bell, Major Telecoms, Island Country, and IslaTel, ***all expressly declare that the franchisee*** **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 may 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 shall 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 RCPI on certain imported items, the tax provisions in the franchises of Radio Communications of the Philippines, Inc. (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 personal property <u>not used in connection with the conduct of its business under its franchise</u>, 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 Batangase v. RETELCO, Inc. (CA-G.R. CV No. 21897, January 21, 1992), to be erroneous, thus:

> "Reliance is placed by the trail 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 rule 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 favored, 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 rendered. 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 remotely suggests that Congress intended to exempt certain telecommunication companies from payment of the real property tax.

At any rate, 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 Divisions' in the *Bayantel* and *Digitel* cases, respectively. Said the Court:

Bayantel 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 expressly 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 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 of 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 **DENIED.**

SO ORDERED.

Manila, Philippines, August 13, 2009.

(Signed)
CESAR S. GUTIERREZ
Chairman

(Signed)
ANGEL P. PALOMARES
Member

(Signed)
RAFAEL O. CORTES
Member