Republic of the Philippines
CENTRAL BOARD OF ASSESSMENT APPEALS
Manila

GMA NETWORK, INC.,
Petitioner-Appellant,

-versus-

CBAA CASE NO. V-30
(LBAA Case No. 6491-6494)

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

-and-

EUSTAQUIO B. CESA, in his capacity as the CITY ASSESSOR OF THE CITY OF CEBU,
Respondent-Appellee.
x----------x

D E C I S I O N

This appeal, the notice and the memorandum thereof being received by this Board on August 07, 2009, is from the Order of Appellee Local Board of Assessment Appeals for the City of Cebu dated April 17, 2009, the dispositive portion of which reads as follows:

> "WHEREFORE, the Petition is hereby DISMISSED for lack of merit. In the meantime, the Board sustain *(sic)* the tax liability of the petitioner for and over Tax Declaration Nos.:
>
> *a. GRC6-03-020-00204*
> *b. GRC6-03-020-00201*
> *c. GRC6-03-020-00200*
> *d. GRC6-03-020-00203"*

Alleging that it received a copy of the said Order on July 9, 2009, Appellant GMA Network, Inc. through counsel, states that:

1. Petitioner-Appellant GMA Network, Inc. ("GMA", formerly "Republic Broadcasting System") is a grantee of a legislative franchise to operate radio and television broadcasting stations in the country under Republic Act No. 7252, otherwise known as *"An Act Granting the Republic Broadcasting System, Inc. A Franchise To Construct, Install, Operate and Maintain Radio and Television Broadcasting Stations in the Philippines"* which took effect on 2 March 1992. In particular, Congress granted GMA the license "to construct, install, operate and maintain for commercial purposes and in the public interest, **radio and television broadcasting stations** in the Philippines **with the corresponding auxiliary, special broadcast and other program and distribution services and relay stations,** and to install **radio telecommunication facilities** for private use in its broadcast services" for a term of 25 years.

2. In pursuit of its legislative franchise, GMA acquired lands, constructed buildings and improvements, and placed machineries thereon that are necessary and essential to the operation of a television network and radio broadcasting stations. These include the real properties of petitioner-appellant GMA located in Brgy. Lahug, Cebu City consisting of four (4) parcels of land which are being used as a television relay transmitter site of petitioner-appellant GMA;

3. The said real properties were listed in the assessment roll pursuant to which tax declarations *(Nos. GRC6-03-020-00204, GRC6-03-020-00201, GRC6-03-020-00200, and GRC6-03-020-00203)* were issued by the Office of the City Assessor, City of Cebu, and real property tax imposed;

4. 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, building and personal property located in Quezon City which are actually, directly and exclusively used in the pursuit of its franchise on the basis of the *"exclusive of this franchise"* clause found in Bayantel's legislative franchise. In the more recent case of *Digital Telecommunications Philippines, Inc. (Digitel) v. Province of Pangasinan (February 23, 2007, 516 SCRA 558)* the Supreme Court reiterated the *Bayantel* ruling in finding that the *"exclusive of this franchise"* clause is an express exemption from payment of real property taxes on real properties that are exclusively, actually and directly used in pursuit of Digitel's franchise.

5. Pursuant to Section 206, Chapter II, Title II, Book II of R.A. 7160, otherwise known as "The Local Government Code" and in light of the Supreme Court pronouncements interpreting the *"exclusive of this franchise"* clause in the *Bayantel* and *Digitel* cases, GMA served a letter dated November 29, 2007 with the respondent Assessor requesting the exclusion, cancellation or dropping from the roll of assessments petitioner-appellant GMA's four (4) parcels of land described in the said tax declarations where petitioner-appellant GMA's buildings, equipments and machineries used for its broadcast business are situated and are, therefore, being actually, directly and exclusively used by petitioner-appellant GMA in pursuit of its franchise for the operation of television broadcasting station;

6. On February 18, 2008, GMA received a copy of the letter-reply of respondent Assessor dated February 11, 2008 denying GMA's request for cancellation;

7. Section 226, Chapter III, Title II, Book II of the Local Government Code provides that:

> "Section 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."

8. Under Section 199(f), Title II, Book II, of the Local Government Code of 1991, "assessment" is defined as the "act or process of determining the value of a property, or proportion thereof subject to tax, <u>including the discovery, **listing, classification** and appraisal of properties</u>."

9. In the case of *System Plus Computer College of Caloocan City vs. Local Government of Caloocan City*, the Supreme Court explained that the term "assessment" found in the above-cited Section 226 should be construed

in line with Section 199(f) of the Local Government Code and that "the determination made by the City Assessor with regard to the taxability of the subject real properties squarely falls within its power to assess properties for taxation purposes subject to appeal before the Local Board of Assessment Appeals." Viewed in this proper context, the sixty (60) day period of appeal will refer not only to the period from the date of receipt of a standard written notice of assessment but also to the period from the date of receipt of written notices with regard to any action by the local assessor on a matter of "assessment". As in this case, a determination by the respondent-appellee Assessor that the properties of petitioner-appellant GMA are taxable and therefore cannot be dropped from the assessment roll falls within the definition of "assessment", hence, appealable to the LBAA;

10. On April 18, 2008 and within the sixty (60) day period, petitioner-appellant GMA filed the petition with the LBAA of Cebu City assailing the letter-reply dated February 11, 2008 of respondent-appellee Assessor restating his earlier ruling that he cannot accede to GMA's request for exclusion;

11. On August 26, 2008 Petitioner-Appellant GMA received a copy of Respondent-Appellee's Comment/Opposition dated August 15, 2008, to which GMA filed a Reply to Comment dated September 9, 2008;

12. On February 19, 2009, GMA received a copy of Respondent-Appellee's Manifestation and/or Rejoinder to Reply to Comment dated February 16, 2009; and

13. On April 17, 2009, Appellee Local Board issued the questioned Order.

14. Hence, this appeal.

STATEMENT OF THE ISSUE

WHETHER OR NOT THE LBAA OF THE CITY OF CEBU ERRED WHEN IT DENIED PETITIONER-APPELLANT GMA'S CLAIM FOR EXCLUSION FOR AND OVER THE SUBJECT TAX DECLARATIONS

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

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:

> 'Indeed, the grant of taxing powers to local government units under the Constitution and the LGC does not affect the power of Congress to grant exemptions to certain persons, pursuant to a declared national policy. The legal effect of the constitutional grant to local government units simply means that in interpreting statutory provisions on municipal taxing powers, doubts must be resolved in favor of municipal corporations. (Emphasis supplied.)'

"As we see it, then, the issue in this case no longer dwells on whether Congress has the power to exempt Bayantel's properties from realty taxes by

the enactment of Rep. Act No. 7633 which amended Bayantel's original franchise. The more decisive question turns on whether Congress actually did exempt Bayantel's properties by virtue of Section 11 of Rep. Act No. 7633.

"Admittedly, Rep. Act No. 7633 was enacted subsequent to the LGC. Perfectly aware that the LGC has already withdrawn Bayantel's former exemption from realty taxes, Congress opted to pass Rep. Act No. 7633 using, under Section 11 thereof, exactly the same defining phrase *"exclusive of this franchise"* which was the basis for Bayantel's exemption from realty taxes prior to the LGC. In plain language, Section 11 of Rep. Act No. 7633 which was the basis for Bayantel's exemption from realty taxes prior to the LGC. In plain language, Section 11 of Rep. Act No. 7633 states that "the grantee, its successors or assigns shall be liable to pay the same taxes on their real estate, buildings and personal property, exclusive of this franchise, as other persons or corporations are now or hereafter may be required by law to pay." The Court views this subsequent piece of legislation as an express and real intention on the part of Congress to once again remove from the LGC's delegated taxing power, all of the franchisee's (Bayantel's) properties that are actually, directly and exclusively used in the pursuit of its franchise."

In the Digitel case, the Supreme Court ruled:

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

"The Court views this subsequent piece of legislation as an express and real intention on the part of Congress to once again remove from the LGC's delegated taxing power, all of the franchisee's x x x properties that are actually, directly and exclusively used in the pursuit of its franchise.

"In view of the unequivocal intent of Congress to exempt from real property tax those real properties actually, directly and exclusively used by petitioner DIGITEL in the pursuit of 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."

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"***.

Readers' 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 the franchises of Bayantel, Digitel, and GMA, as simplified, would read thus:

Bayantel and Digitel:

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

GMA Network:

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

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

The Second and Third Divisions of the Supreme Court, in Bayantel and in Digitel cases, respectively, both ruled that the phrase *"exclusive of this franchise"* means that "all of the franchisees' (Bayantel's and Digitel's) real properties that are actually, directly and exclusively used in the pursuit of their respective franchises" are exempt from realty taxes.

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

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 in itself a personal property) – are liable to payment of taxes **as other persons or corporations are now or hereafter may be required by law to pay.**

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

> "SECTION 14. (a) The grantee shall be liable to pay the same taxes on its real estate, buildings and personal property, ***exclusive of*** the franchise, as other persons or corporations are now or hereafter may be required by law to pay. (b) The grantee ***shall further pay*** to the Treasurer of the Philippines each year, within ten days after the audit and approval of the accounts as prescribed in this Act, one and 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 withdrew 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 appellate court, RCPI's radio relay station tower, radio station building, and machinery shed are real properties and are thus subject to the real property tax. Section 14 of RA 2036, as amended by RA 4054, states that "[i]n consideration of the franchise and rights hereby granted and any provision of law to the contrary notwithstanding, **the grantee shall pay the same taxes as are now or may hereafter be required by law** from individuals, co-partnerships, private, public or quasi-public associations, corporations or joint stock companies, **on real estate, buildings** and other personal property x x x." **The clear language of Section 14 states that RCPI shall pay the real estate tax.**
>
> "The "in lieu of all taxes" clause in Section 14 of RA 2036, as amended by RA 4054, cannot exempt RCPI from the real estate tax because **the same Section 14 expressly states** that **RCPI "shall pay the same taxes** x x x **on real estate, buildings** x x x." The "in lieu of all taxes" clause in the third sentence of Section 14 cannot negate the first sentence of the same Section 14, which imposes the real estate tax on RCPI. The Court must give effect to both provisions of the same Section 14. This means that the real estate tax is an exception to the "in lieu of all taxes" clause.
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> "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 franchises of Smart, Islacom, TeleTech, Bell, Major Telecoms, Island Country, and IslaTel, ***all expressly declare that the franchise*** **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 RCPI, Bayantel and Digitel are similar, if not identical in substance. All three tax provisions do not exempt the respective grantees 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 not used in connection with the conduct of its business under its franchise, as other persons or corporations are now or hereafter may be required to pay;** (Underscoring supplied)
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> 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.**
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> 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.
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> Be guided accordingly.

ANGELINA M. MAGSINO
Deputy Executive Director
Officer-in-Charge"

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

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

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

Prof. Ricardo L. Paras, in his commentary under Article 8 of his *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 of 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 decision in *Bayantel* (March 6, 2006) and *Digitel* (February 23, 2007).

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

At any rate, the Supreme Court had already atoned for its erroneous rulings in *The City Government of Quezon City v. Bayan Telecommunications, Inc. (Bayantel) (March 6, 2006, 484 SCRA 169)* and *Digital Telecommunications Philippines, Inc. (Digitel) v. Province of Pangasinan (February 23, 2007, 516 SCRA 558)* cases. In *Digital Telecommunications Philippines, Inc. vs. City of Batangas, et al.* (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 the petitioner, as the franchisee, shall pay the "same taxes on its real estate, buildings, and personal property exclusive of this franchise as other persons or corporations are now or hereafter may be required by law to pay."

The heading of Section 5 is "Tax Provisions," not Tax Exemptions. To reiterate, the phrase "exemption from real estate tax" or other words conveying the exemption from realty tax do not appear in the first sentence of Section 5. The phrase "exclusive of this franchise" in the first sentence of Section 5 merely qualifies the phrase "personal property" to exclude petitioner's legislative franchise, which is an intangible personal property. Petitioner's franchise is subject to tax in the second sentence of Section 5 which imposes the "franchise tax." Thus, there is no grant of tax exemption in the first sentence of Section 5.

The interpretation of the phrase "exclusive of this franchise" in the *Bayantel* and *Digitel* cases goes against the basic principle in construing tax exemptions. In *PLDT v. City of Davao* (G.R. No. 143867, 25 March 2003, 399 SCRA 442, 453), the Court held that tax exemptions should be granted only by clear and unequivocal provision of law on the basis of language too plain to be mistaken. They cannot be extended by mere implication or inference.

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

While acknowledging impliedly the Supreme Court's decision in *Digital Telecommunications Philippines, Inc. vs. City Government of Batangas, et al.* (G.R. No. 156040, December 11, 2008), *supra,* Petitioner-Appellant says that this case "was decided in December 2008 and has no retroactive application to cases which involved refund or taxes erroneously collected while the rulings in the *Bayantel* case and the earlier *Digitel* case are in effect. It should be emphasized that the prospective application of statutes applies to 'judge-made' laws in accordance with Articles 4 and 8 of the Civil Code."

Article 4 of the New Civil Code provides that "**Laws shall have no retroactive effect,** unless the contrary is provided." On the other hand, Article 8 of the Code provides that **"Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines."**

In his *Civil Code of the Philippines, Annotated, 4th Edition 1965, Vol. One, pp. 30-31,* Prof. Ricardo L. Paras commented under Article 8 thereof as follows:

> **"Are Judicial Decisions Laws?**
>
> "While it is true that judicial decisions which apply or interpret the Constitution or the laws are *part of the legal system* of the Philippines *(Art. 8, new Civil Code),* **still they are NOT laws,** for if this were so, the courts would be allowed to legislate contrary to the principle of separation of powers. Indeed, the Courts exist for stating what the law is, not for giving it. *(Jus dicere, non jus dare.)*" (Emphasis supplied)

Thus, even if the decisions of the Supreme Court were considered "judge-made" laws, the same remain "decisions" and not laws.

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

SO ORDERED.

Manila, Philippines, May 28, 2010.

(Signed)
CESAR S. GUTIERREZ
Chairman

(Signed)
ANGEL P. PALOMARES
Member

(Signed)
RAFAEL O. CORTES
Member