

Republic of the Philippines  
**CENTRAL BOARD OF ASSESSMENT APPEALS**  
Manila

PHILIPPINE FISHERIES  
DEVELOPMENT AUTHORITY,  
Petitioner-Appellant,

- versus -

LOCAL BOARD OF ASSESSMENT APPEALS  
OF ZAMBOANGA CITY,

Appellee,

CBAA CASE NO. M-15  
(LBAA CASE NO. 97-001)

- and -

CITY OF ZAMBOANGA, ZAMBOANGA  
CITY ASSESSOR and ZAMBOANGA  
CITY TREASURER,  
Respondents-Appellees.

x - - - - - x

**DECISION**

This is an appeal filed on November 16, 2001 by Petitioner-Appellant Philippine Fisheries Development Authority (PFDA for brevity) from the Decision rendered on October 5, 2001 by the Local Board of Assessment Appeals of the City of Zamboanga in LBAA Case No. 97-001.

It appears from the records that PFDA, a government-owned and – controlled corporation, operated the “Zamboanga Fishing Port Complex” (ZFPC) located within the territorial jurisdiction of Zamboanga City. The said complex (ZFPC) was assessed by the assessor of Zamboanga City. Whereupon, PFDA filed a petition with the LBAA of Zamboanga City on July 9, 1997. The “Statement of Facts” of said petition contained, among others thins, the following:

“1. Beginning April 23, 1981, the then Ministry (now Department) of Public Works and Highways reclaimed from the sea a 12-hectare parcel of land contiguous and adjacent to Barangay Sangali, Zamboanga City, on which reclamation site, the said Ministry constructed and developed the ZFPC (Zamboanga Fishing Port Complex) consisting of a breakwater, a landing quay, a refrigeration building, a market hall, a fabrication shop building, carpentry shop building, foundry shop building, fresh water pumphouse, seal water pumphouse, winch house and other port related facilities and machineries.

“2. The ZFPC, being a land reclaimed from the sea belongs to the Republic of the Philippines pursuant to Article 5 of the Law of Waters of 1886 (Gov’t. vs. Cabangis, 53 Phil. 112; Lamprea vs. Director of Lands, 67 Phil. 388).

“3. The improvements thereon, having been constructed by then Ministry of Public Works and Highways (MPWH) and financed from the coffers of the National Government are likewise property of the Republic of the Philippines.

“4. The reclamation and construction of the ZFPC was financed by Loan No. PH-P dated November 9, 1978 obtained by the Philippine Government from the Overseas Economic Cooperation Fund of Japan and was undertaken to support the government’s food production and fishery industry development program by providing post harvest facilities geared to preserve and enhance fish quality and value; services to improve the efficiency of fishing vessels; and marketing facilities and related services to ensure equitable distribution of fishery products to the citizenry.

“5. Upon its completion something in 1988, the ZFPC was turned-over by then MPWH to petitioner conformably with Sec. 11 of P.D. 977, as amended, which reads:

“Sec. 11. x x x

“Other fishing port complexes and related facilities may be established by the Board, with the approval of the President of the Philippines, to be governed and operated by the Authority.”

“6. Title to the ZFPC and all machineries and facilities built or introduced thereon by then MPWH, remain with the National Government.

“7. The entire port complex is thus a property of public dominion in accordance with Article 420 of the New Civil Code, which provides:

“Art. 420. The following things are property of public dominion:

“1. Those intended for public use, such as roads, torrents, ports and bridges constructed by the state, banks shores, roadsteads and others of similar character.” x x x

“8. On August 18, 1993, respondent City of Zamboanga acting through the Assistant City Assessor, Benjamin M. Bermas, sent a letter to the General Manager of the ZFPC, Al Haji Khalid B. Habing, enclosing therewith a copy of tax declaration No. 02-16067-0797 of the ZFPC, and the corresponding computation of the real property taxes due for the years 1992 and 1993. A photocopy of the latter dated August 18, 1993 is attached as Annex “A” and made an integral part hereof.

“9. Ms. Habing, the manager of ZFPC, promptly filed a claim for exemption of the ZFPC from real property taxes. A photocopy of the claim for exemption is attached as Annex “B” and made an integral part hereof.

“10. On October 14, 1993, respondent City of Zamboanga, acting through respondent City Treasurer Rizalina V. Eisma, sent to “the Manager of the port complex” a billing for the alleged real property taxes due on the port complex supposedly amounting to:

<u>YEAR</u>	<u>T.D. NO.</u>	<u>ASSESSED VALUE</u>	<u>BASIC AND SEF TAX</u>
1992-F	02-16067-797	P71,408,860.00	P1,428,177.20
1993-F	02-16067-797	P71,408,860.00	<u>P1,428,177.20</u>
			P2,856,354.40
		Less 10% Discount 1993	<u>P 142,817.12</u>
		TOTAL	<u>P2,713,536.12</u>

“A photocopy of the notice of billing is attached as Annex “C” and made an integral part hereof.

“11. On December 13, 1993, Port Manager Habing wrote respondent City Assessor, reiterating his claim for exemption of the ZFPC from real property taxes. A photocopy of the letter dated December 13, 1993 is attached as Annex “D” and made an integral part hereof.

"12. Thereafter, series of communication were exchanged between the Manager of the ZFPC and respondent City Treasurer discussing the validity of the claim for the tax exemption by the ZFPC.

"13. On July 26, 1994, respondent City of Zamboanga, acting through respondent City Treasurer sent the petitioner, through the Manager of the port complex, a Notice of Delinquency in the payment of the Real Property Taxes, a copy of which is attached (as) Annex "E" and made an integral part hereof.

"14. On August 1, 1994, respondent City Treasurer issued a "Warrant of Levy" against the port complex including the facilities found therein, a copy of which is attached as Annex "F" and made an integral part hereof.

"15. On August 9, 1994, petitioner, through the manager of the ZFPC, received from respondent City Treasurer a "Notice of Sale of Delinquent Property," (copy attached as Annex "G" and made an integral part hereof) threatening to sell at (sic) facilities thereon on August 28, 1994 at 10:00 a.m. at the open stage, City Hall, Zamboanga City.

"16. Being a property of the State or the Republic of the Philippines, the port complex is exempt from real property taxes under Section 234 of the Local Government Code of 1991.

"17. Assuming, without admitting, that petitioner is liable for real property taxes to respondent City of Zamboanga, the ZFPC including its facilities cannot be levied upon and sold at auction sale to answer for the tax liabilities of petitioner because said ZFPC and its facilities are owned by the Republic of the Philippines, a third party to the collection of the alleged real property taxes against the petitioner.

"18. It is axiomatic that property of a third person cannot be held to answer for the debts or liabilities of another (Lopez vs. Alvarez, 9 Phil. 28; Alvaran vs. Marquez, 11 Phil. 263).

"19. Furthermore, the ZFPC, being a property of public dominion under Art. 420(1) of the Civil Code of the Philippines as the said port complex is intended for public use and was constructed by the State or Republic of the Philippines, cannot be levied upon or attached by execution (Tufexi vs. Olaguera, 32 Phil. 654; Tan Toco vs. Mun. Council of Iloilo, 49 Phil. 52).

"20. Moreover, applying by analogy the Bureau of Local Government Finance (BLGF) Memorandum Circular No. 02-95 dated February 1, 1995 (copy attached as Annex "H" and made an integral part hereof) to the instant case of petitioner, the BLGF instructed, among others, all Assessors of Metropolitan Manila, Provincial, City and Municipal Treasurers, Provincial, City and Municipal Assessors and others concerned to hold in abeyance all real property tax collection activities against PPA until such time that the Supreme Court has finally decided the case of "Philippine Ports Authority vs. City of Iloilo, G.R. Number 109791" wherein the main issue is whether ports/piers which are properties of the public dominion under Section 420 of the Civil Code of the Philippines which belong to the State (Republic of the Philippines) and only the administrative jurisdiction of such ports/piers within the port zone is vested in PPA, can be validly taxed by the City of Iloilo, a local government unit.

"21. On August 24, 1994, petitioner filed a Complaint against said respondents for "Nullification of Assessment and Injunction with Prayer for Preliminary Injunction and Temporary Restraining Order" with the Regional Trial Court of Zamboanga City. However, said complaint was dismissed by the said Court for being premature and wanting the necessary remedy under the Doctrine of the primacy of administrative remedy. Thereafter, such dismissal was sustained by the Court of Appeals.

"22. Hence, this appeal from the said action of respondent Zamboanga City Assessor."

Respondents filed their Answer with the LBAA of Zamboanga City on September 1, 1997. Among others, the same Answer alleged that:

1. The period within which Petitioner should have filed the instant petition had long expired;
2. Petitioner is a government-owned or –controlled corporation;
3. Petitioner is the owner or, at least, the beneficial user of the real properties in question in view of the turnover of said properties from the MPWH, in relation to Sections 4, 5 and 11 of P.D. 977, Petitioner’s own Charter, which Sections provide as follows:

“Sec. 4. – Functions and Powers. – The Authority shall have the following functions and powers;

“To acquire, hold and dispose real and personal property in the exercise of its functions and powers.

“Sec. 5. – Capitalization. – The capitalization of the Authority shall consists of (1) the existing assets of Navota Fish Landing and such other property existing or which may be transferred to the Authority by the Bureau of Fisheries and Aquatic Resources and other agencies of the government; and (2) cash contribution by the Government in the amount provided for the development and expenditures of the Authority as approved by the Office of the President and incorporated in the Annual Appropriation Act.”

“Sec. 11. – The Navotas Fishing Port and Fish Market; Other Fish Market Facilities/Infrastructures. – The Navotas Fish Market which is bounded on the North, by the Manila Bay, on the East, by the (proposed) Roxas Boulevard Extension, on the South, (by the Manila Bay, and on the West, by the Breakwater, including all lands, piers, wharves, quays, landings, anchorages, basin, breakwaters, markets and other infrastructures facilities therein, is hereby transferred to and placed under the exclusive jurisdiction, control, administration and supervision of the Authority.

“Other fish markets and related facilities may be established by Board, with the approval of the President of the Philippines to be governed and operated by the Authority under this Decree.”

4. Petitioner’s separate and distinct personality is further bolstered by the provisions of Sec. 4, par. (G) and (H) of P.D. 977 which provide as follows:

“G) To have perpetual succession under its corporate name;

“H) To prescribe and amend its by-laws to adopt and use a corporate seal; to sue and be sued; to enter into contracts; and to exercise the general corporate powers conferred by the laws upon the private and government-owned or controlled corporations.”

Then, as stated at the outset, the Local Board rendered its decision on October 5, 2001, the dispositive portion of which is as follows:

“WHEREFORE, premises considered, herein petition is DISMISSED for failure of herein Petitioner to file their appeal within the reglementary period as prescribed by Section 226 of R.A. 7160 otherwise known as the Local Government Code of 1991.”

Petitioner-Appellant virtually reproduced the allegations contained in its Petition before the Local Board. In the instant petition, PFDA raised the following issues:

“1. WHETHER OR NOT PETITIONER PFDA AS AN INSTRUMENTALITY OF THE NATIONAL GOVERNMENT CAN BE SUBJECT TO THE POWER OF TAXATION BY THE CITY OF ZAMBOANGAN.

“2. WHETHER OR NOT THE CITY OF ZAMBOANGA HAS JURISDICTION OR AUTHORITY TO IMPOSE REAL PROPERTY TAX ON A RECLAIMED LAND WHICH BELONGS TO THE REPUBLIC OF THE PHILIPPINES.

“3. WHETHER OR NOT THE PETITION FOR EXEMPTION FROM REAL ESTATE TAXES FILED BY PETITIONER PFDA BEFORE THE LOCAL BOARD OF ASSESSMENT APPEALS OF THE CITY OF ZAMBOANGA PRESCRIBED.”

Petitioner-Appellant does not question the decision of the Local Board as to the fact that Petitioner-Appellant’s petition with the Local Board was filed way out of the reglementary period prescribed under Sec. 226 of R.A. 7160. What is asserting is its right to present evidence of exemption as provided for under Sec. 206 of the same Code which states as follows:

“SEC. 206. *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 or ownership, articles of incorporation, by-laws, contracts, affidavits, certifications and mortgage deeds, and similar documents.

“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.”

Although barred from questioning the assessment under Tax Declaration No. 02-61067-0797 under the provisions of Sec. 226 of R.A. 7160, We believe, indeed, that Petitioner-Appellant still had the right to present evidence of exemption under the above-quoted provision of law. In fact, if the first application for exemption is denied for insufficiency of evidence, the applicant may still file another application for exemption based on a new set evidence or under different circumstances.

In a letter dated December 01, 1993 to the City Assessor of Zamboanga City, the Manager of PFDA stated that:

“1. The Philippine Fisheries Development Authority was created under Presidential Decree No. 977 as amended by law it is non profit in character and it is funded by Overseas Economic Cooperative Fund (OECF), (Japan International Cooperation Agency (JICA). It is exempted from payment of income tax.

"2. The outlays and expenditures of the Philippine Fisheries Development Authority are incorporated in the Annual Budget of the National Government. The reclaimed area and the structure were panned and the reclamation of the land and construction of the building by the Republic of the Philippines.

"3. Up to now, the Republic of the Philippines has not yet consolidated its title over the reclaimed land and building.

"4. The very Presidential Decree creating the Philippine Fisheries Development Authority does not authorize the Authority to acquire and dispose of property. The assessment made by your office is without legal background because the land and structure therein belong to the Republic of the Philippines and not the Philippine Fisheries Development Authority and the income from the operation are income of the National Government and the expenditure and outlays are appropriation in the national budget.

"5. Attached herewith is a Certificate of the City Register of Deeds to the effect that the Philippine Fisheries Development Authority does not own any taxable real property in Zamboanga City.

"6. So under the circumstance, may I request that the property presently administered by the Philippine Fisheries Development Authorities being property of the Republic of the Philippines are exempted of accrued realty tax be recalled and cancelled."

Petitioner PFDA argues that the ZFPC and improvements thereon are owned by the Republic of the Philippines and, as such, are exempted from the payment of the real property tax pursuant to the provisions of Sec. 234 of R.A. 7160 which provides as follows:

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

"(a) Real property owned by the Republic of the Philippines or any of its political subdivisions except when the beneficial use thereof has been granted, for consideration or otherwise, to a taxable person.

"xxx."

Upon the other hand, Respondent-Appellees argued that Petitioner-Appellant is a government-owned or –controlled corporation and that all tax exemptions were withdrawn by R.A. 7160 pursuant to the provisions of Section 193 and the last paragraph of Section 234 thereof, thus:

"Sec. 193. *Withdrawal of Tax Exemptions Privileges*. – Unless otherwise provided in this Code, tax exemptions or incentives granted to, or presently enjoyed by, all persons, whether natural or juridical, including government-owned controlled corporations, except local water districts, cooperatives registered under R.A. 6938, non-stock and non-profit hospitals and educational institutions, are hereby withdrawn upon the effectivity of this Code."

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

"(a) Real property owned by the Republic of the Philippines or any of its political subdivisions except when the beneficial use thereof has been granted, for consideration or otherwise, to a taxable person.

"xxx."

“Except as provided herein, any exemption from the payment of real property tax previously granted to, or presently enjoyed by, all persons, whether natural or juridical, including all government-owned or –controlled corporations are hereby withdrawn upon the effectivity of this Code.”

To contradict certain allegations of the Petitioner-Appellant, Respondent-Appellee cited Sections 4, 5, 10 and 11 of P.D. 977, Petitioner-Appellant’s own Charter, thus:

“Sec. 4.- Functions and Powers. – The Authority shall have the following functions and powers:

“To acquire, hold and dispose real and personal property in the exercise of its functions and powers:

“Sec. 5. Capitalization. – The capitalization of the Authority, shall consist of (1) the existing assets of Navotas Fishing Landing and such other property existing or which may be transferred to the Authority by the Bureau of Fisheries and Aquatic Resources and other agencies of the government; and (2) cash contribution by the Government in the amount provided for the development and expenditures of the Authority as approved by the Office of the President and incorporated in the Annual Appropriations Act.”

“Sec. 10. Non-profit Character of the Authority; Exemptions from Taxes. – The Authority shall be non-profit x x x.

“The Authority shall be exempted from the payment of income tax.”

“Sec. 11. The Navotas Fishing Port and Fish Market; Other Fish Market Facilities/Infrastructures. – The Navotas Fish Market which is bounded on the North, by the Manila Bay, on the East, by the (proposed) Roxas Boulevard Extension, on the South, by the Manila Bay, and on the West, by the Breakwater, including all lands, piers, wharves, quays, landings, anchorages, basins, breakwaters, markets, and other infrastructures facilities therein, is hereby transferred to and placed under the exclusive jurisdiction, control, administration and supervision of the Authority.”

Section 193 and the last paragraph of Section 234, both of R.A. 7160, are similar in nature in that they both provide for the withdrawal of tax exemptions. But while Section 193 deals with all kinds of local taxes and incentives, Section 234 deals specifically with real property taxes. Section 234, therefore, is the more applicable provision of law in this case.

Petitioner-Appellant admits that it is a government-owned corporation. Sections 4, 5, and 11 of P.D. 977, Petitioner-Appellant’s Charter, give Petitioner-Appellant the power to exercise the rights of ownership over the properties in question.

Petitioner-Appellant insists that the properties in question are owned by the Republic. We agree. Since Petitioner-Appellant is wholly owned by the government, it follows that what Petitioner-Appellant owns is also owned by the

government. However, the ownership by the Republic over the properties in question is indirect in nature, the direct owner thereof being the government-owned corporation itself. To interpret otherwise would be to disregard altogether the last paragraph of Section 234 of R.A. 7160, insofar as government-owned or –controlled corporations are concerned.

Petitioner-Appellant insists that the entire port complex is a property of public dominion in accordance with Article 420 of the New Civil Code, which provides that those intended for public use, such as roads, canals, rivers, torrents, ports and bridges constructed by the State, banks, shores, roadsteads, and others of similar character, are property of public dominion. Even those properties of the State which are not for public use but are intended for some public service or for the development of the national wealth are also property of public dominion.

The last paragraph of Section 234, R.A. 7160, does not, however, distinguish real property in the hands of government-owned or –controlled corporations as to whether or not they are of public dominion or patrimonial in nature. Public dominion or patrimonial in nature, all real properties in the hands of said government-owned or –controlled corporations are subject to the payment of real property tax upon the effectivity of R.A. 7160.

Since the provisions of Section 234 of R.A. 7160 are sufficiently clear, we find no justification to resort to the Civil Code.

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

Manila, Philippines, May 10, 2002.

*(Signed)*  
CESAR S. GUTIERREZ  
Chairman

*(Signed)*  
ANGEL P. PALOMARES  
Member

(VACANT)  
Member