

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

MINDANAO GEOTHERMAL  
PARTNERSHIP AND MINDANAO II  
GEOTHERMAL PARTNERSHIP  
(MARUBENI-OXBOW CONSORTIUM),  
Petitioner-Appellants,

CBAA CASE NO. M-16

In Re: Claim for refund of  
real estate taxes paid under  
protest in the amount of  
P34,362,591.92  
LBAA Case No. 02-2001

- versus -

CITY TREASURER OF KIDAPAWAN,  
Respondent-Appellee,

- and -

LOCAL BOARD OF ASSESSMENT  
APPEALS OF KIDAPAWAN CITY,  
Appellee.

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## R E S O L U T I O N

Before us is a motion filed by Petitioners-Appellants on August 8, 2003 seeking reconsideration from the decision of this Board dated July 8, 2003.

Alleging that they received a copy of the said decision on July 24, 2003, Petitioners-Appellants pray that the same be reversed and another one issued:

“1. ordering the appellee City Treasurer of Kidapawan to refund the real estate taxes paid under protest by appellants in the amount of P34,362,591.92;

“2. declaring PNOC-EDC as the appropriate taxable entity for the real property taxes in respect of the Power Plants; and

“3. declaring PNOC-EDC exempt from payment of real property taxes in respect of the Power Plants under Section 234 of the Local Government Code.

Petitioners-Appellants argue that since the PNOC-EDC is considered the “facility user”, PNOC-EDC should be considered the appropriate taxable entity with respect to the subject machinery and equipment; that, consequently, PNOC-

EDC, being a government-owned or –controlled corporation engaged in the generation and distribution of electric power, should be exempt from the payment of the real property tax as provided under Section 234 (c) of the Local Government Code of 1991; and that the machinery and equipment are actually used to generate electricity upon and subject to the instructions of PNOC-EDC, exclusively for delivery to NPC, on behalf of PNOC-EDC.

We agree with Petitioners-Appellants that PNOC-EDC is the “facility user” and that the subject machinery and equipment are used to generate electricity upon and subject to the instructions of PNOC-EDC, exclusively for delivery to NPC, on behalf of PNOC-EDC. The fact remains, however, that under Article 2.3 of the Build-Operate-Transfer (BOT) Arrangement dated December 14, 1994 between PNOC-ENERGY DEVELOPMENT CORPORATION, referred to as PNOC-EDC, and the MARUBENI-OXBOW CONSORTIUM (Petitioners-Appellants herein), referred to as the Operator, Petitioners-Appellants own the subject machinery and equipment, thus:

“2.3 Ownership

(a) From the Effectivity Date until the Termination Date, the Buyout Date or the Transfer Date whichever comes earlier, the Operator shall own the Power Plant and all the fixtures, fittings, machinery and equipment on the Site and used in connection with the Power Plant which have been supplied by it or at its cost (but excluding the Site), and the Operator shall operate and maintain the Power Plant of PNOC-EDC delivered in accordance with this Agreement into electric capacity and energy.

(b) On the Buyout Date, the Transfer Date or the Termination Date, whichever comes earlier, ownership, management and operation of the Power Plant shall be transferred by the Operator to PNOC-EDC in accordance with Article 9, 13 or 15, applicable. (Emphasis supplied.)

In their attempt to shift the liability of the subject real property taxes to PNOC-EDC, Petitioners-Appellants contends that the filing of the claim for refund of real property taxes were made with the concurrence of PNOC-EDC pursuant to Section 8.6(c) of the Agreement for Finance, Engineering, Supply, Installation, Construction, Testing, Commissioning, Operation and Maintenance of the 47-MW Mindanao I Geothermal Power Plant under the BOT Arrangement, which provides that the “Operator shall apply for and shall use good faith efforts to obtain all exemptions from any such taxes available to the Operator.”

Be that as it may, an application for tax exemption does not carry with it the automatic grant of the same exemption.

WHEREFORE, this Board resolved to DENY the instant Motion for Reconsideration for lack of merit.

SO ORDERED.

Manila, Philippines, August 25, 2003.

*(Signed)*  
CESAR S. GUTIERREZ  
Chairman

*(Signed)*  
ANGEL P. PALOMARES  
Member

(VACANT)  
Member