Sonley is ordered to immediately **VACATE** the subject property and premises and **SURRENDER** the same to respondent Anchor Savings Bank/Equicom Savings Bank.

SO ORDERED.

Carpio (*Chairperson*) and *Leonen, JJ.,* concur.

Brion, J., on leave.

Mendoza, J., on official leave.

THIRD DIVISION

[G.R. No. 212530. August 10, 2016]

BLOOMBERRY RESORTS AND HOTELS, INC., *petitioner, vs.* **BUREAU OF INTERNAL REVENUE, REPRESENTED BY COMMISSIONER KIM S. JACINTO-HENARES,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; NON-EXHAUSTION OF ADMINISTRATIVE REMEDIES; THE COURT BY PREROGATIVE TAKES COGNIZANCE OF THE CASE QUESTIONING THE VALIDITY OF THE SUBJECT REVENUE MEMORANDUM CIRCULAR.— [In] questioning the validity of the subject revenue memorandum circular, petitioner should not have resorted directly before this Court considering that it appears to have failed to comply with the doctrine of exhaustion of administrative remedies and the rule on hierarchy of courts, a clear indication that the case was not yet ripe for judicial remedy. Notably, however, in addition to the justifiable grounds relied upon by petitioner for its

immediate recourse (*i.e.*, pure question of law, patently illegal act by the BIR, national interest, and prevention of multiplicity of suits), we intend to avail of our jurisdictional prerogative in order not to further delay the disposition of the issues at hand, and also to promote the vital interest of substantial justice. To add, in recent years, this Court has consistently acted on direct actions assailing the validity of various revenue regulations, revenue memorandum circulars, and the likes, issued by the CIR. The position we now take is more in accord with latest jurisprudence. Upon the exercise of this prerogative, we are ushered into the merits of the case.

2. TAXATION; TAX EXEMPTION UNDER PAGCOR'S CHARTER (PD 1869) REMAINS IN EFFECT DESPITE AMENDMENTS TO THE NIRC OF 1997; INCOME DERIVED BY PAGCOR FROM ITS GAMING OPERATIONS IS SUBJECT ONLY TO 5% FRANCHISE TAX, IN LIEU OF ALL OTHER TAXES, INCLUDING CORPORATE INCOME TAX; PRIVILEGE INURES TO THE BENEFIT OF ITS CONTRACTEES AND LICENSEES. — [In] *PAGCOR v. The Bureau of Internal Revenue, et al.*, x x x [t]he Court through Justice Diosdado M. Peralta, categorically followed what was simply provided under the PAGCOR Charter (PD No. 1869, as amended by RA No. 9487), by proclaiming that despite amendments to the NIRC of 1997, the said Charter remains in effect. Thus, income derived by PAGCOR from its *gaming operations* such as the operation and licensing of gambling casinos, gaming clubs and other similar recreation or amusement places, gaming pools and related operations is subject only to 5% franchise tax, *in lieu* of all other taxes, including corporate income tax. The Court concluded that the **CIR committed grave abuse of discretion amounting to lack or excess of jurisdiction when it issued RMC No. 33-2013 subjecting both income from gaming operations and other related services to corporate income tax and 5% franchise tax considering that it unduly expands the Court's Decision dated 15 March 2011 without due process, which creates additional burden upon PAGCOR.** x x x [W]hether or not PAGCOR's tax privilege of paying only the 5% franchise tax *in lieu* of all other taxes inures to the benefit of third parties with contractual relationship with it in connection with the operation of casinos, x x x the PAGCOR Charter states in

> unequivocal terms that exemptions granted for earnings derived from the operations conducted under the franchise specifically from the payment of any tax, income or otherwise, as well as any form of charges, fees or levies, ***shall inure to the benefit of and extend to*** corporation(s), association(s), agency(ies), or individual(s) with whom the PAGCOR or operator has any contractual relationship in connection with the operations of the casino(s) authorized to be conducted under this Franchise, so it must be that all *contractees and licensees* of PAGCOR, upon payment of the 5% franchise tax, shall likewise be exempted from all other taxes, including corporate income tax realized from the operation of casinos.

APPEARANCES OF COUNSEL

Picazo Buyco Tan Fider & Santos for petitioner.
Office of the Solicitor General for respondent.

D E C I S I O N

PEREZ, *J.*:

This is a Petition for *Certiorari* and Prohibition under Rule 65 of the Rules on Court seeking: (a) to annul the issuance by the Commissioner of Internal Revenue (CIR) of an alleged unlawful governmental regulation, specifically the provision of Revenue Memorandum Circular (RMC) No. 33-2013[1] dated 17 April 2013 subjecting *contractees and licensees* of the Philippine Amusement and Gaming Corporation (PAGCOR) to income tax under the National Internal Revenue Code (NIRC) of 1997, as amended; and (b) to enjoin respondent CIR from implementing the assailed provision of RMC No. 33-2013.[2]

The Facts

As narrated in the present petition, the factual antecedents of the case reveal that, on 8 April 2009, PAGCOR granted to

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[1] *Rollo*, pp. 32-34.

[2] *Id*. at 4.

petitioner a provisional license to establish and operate an integrated resort and casino complex at the Entertainment City project site of PAGCOR. Petitioner and its parent company, Sureste Properties, Inc., own and operate Solaire Resort & Casino. Thus, being one of its licensees, petitioner only pays PAGCOR license fees, *in lieu* of all taxes, as contained in its provisional license and consistent with the PAGCOR Charter or Presidential Decree (PD) No. 1869,[3] which provides the exemption from taxes of persons or entities contracting with PAGCOR in casino operations.

However, when Republic Act (R.A.) No. 9337 took effect,[4] it amended Section 27(C) of the NIRC of 1997, which excluded PAGCOR from the enumeration of government-owned or controlled corporations (GOCCs) exempt from paying corporate income tax. The enactment of the law led to the case of *PAGCOR v. The Bureau of Internal Revenue, et al.*,[5] where PAGCOR questioned the validity or constitutionality of R.A. No. 9337 removing its exemption from paying corporate income tax, and therefore alleging the same to be void for being repugnant to the equal protection and the non-impairment clauses embodied in the 1987 Philippine Constitution. Subsequently, the Court articulated that Section 1 of RA No. 9337, amending Section 27(C) of the NIRC of 1997, which removed PAGCOR's exemption from corporate income tax, was indeed valid and constitutional.

Consequently, in implementing the aforesaid amendments made by R.A. No. 9337, respondent issued RMC No. 33-2013 dated 17 April 2013 declaring that PAGCOR, in addition to the five percent (5%) franchise tax of its gross revenue under Section 13(2)(a) of PD No. 1869, is now subject to corporate

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[3] As amended by Republic Act No. 9487 also known as "AN ACT FURTHER AMENDING PRESIDENTIAL DECREE NO. 1869, OTHERWISE KNOWN AS PAGCOR CHARTER," duly approved on 20 June 2007.

[4] 1 November 2005.

[5] 660 Phil. 636 (2011).

income tax under the NIRC of 1997, as amended. In addition, a provision therein states that PAGCOR's *contractees and licensees*, being entities duly authorized and licensed by it to perform gambling casinos, gaming clubs and other similar recreation or amusement places, and gaming pools, are likewise subject to income tax under the NIRC of 1997, as amended.

Aggrieved, as it now being considered liable to pay corporate income tax in addition to the 5% franchise tax, petitioner immediately elevated the matter through a petition for *certiorari* and prohibition before this Court asserting the following arguments: (i) PD No. 1869, as amended by R.A. No. 9487, is an existing valid law, and expressly and clearly exempts the *contractees and licensees* of PAGCOR from the payment of all kinds of taxes except the 5% franchise tax on its gross gaming revenue; (ii) This clear exemption from taxes of PAGCOR's contracting parties under Section 13(2)(b) of PD No. 1869, as amended by R.A. No. 9487, was not repealed by the deletion of PAGCOR in the list of tax-exempt entities under the NIRC; (iii) Respondent CIR acted without or in excess of its jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction when she issued the assailed provision in RMC No. 33-2013 which, in effect, repealed or amended PD No. 1869; and (iv) Respondent CIR, in issuing the assailed provision in RMC No. 33-2013, will adversely affect an industry which seeks to create income for the government, promote tourism and generate jobs for the Filipino people.[6]

To rationalize its direct recourse before this Court, petitioner submits the following justification:

(a) What is involved is a pure question of law, *i.e.* whether or not petitioner is exempted from payment of all taxes, national or local, except the 5% franchise tax by virtue of Section 13(2)(b) of PD No. 1869, as amended;

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[6] *Rollo*, pp. 15-24.

(b) The rule on exhaustion of administrative remedies is disregarded, among others, when: (i) the administrative action is patently illegal amounting to lack or excess of jurisdiction; (ii) to require exhaustion of administrative remedies would be unreasonable; and (iii) it would amount to nullification of a claim;

(c) The gaming business funded by private investors under license by PAGCOR is a new industry which involves national interest. Hence, the inclusion of the assailed provision in RMC No. 33-2013 which implements income taxes on PAGCOR's licensees and operators when an exemption for such is specifically provided for by PD No. 1869, as amended, being unlawful and unwarranted legislation by the respondent, seriously affects national interest as it effectively curtails the basis for the investments in the industry and resulting tourist interest and jobs generated by the industry; and

(d) The assailed provision of RMC No. 33-2013 affects not only petitioner or other locators and PAGCOR licensees in Entertainment City, Parañaque City, but also the rest of private casinos licensed by PAGCOR operating in economic zones. Thus, in order to prevent multiplicity of suits and to avoid a situation when different local courts issue differing opinions on one question of law, direct recourse to this Court is likewise sought.[7]

It is the contention of petitioner that although Section 4 of the NIRC of 1997, as amended, gives respondent CIR the power to interpret the provisions of tax laws through administrative issuances, she cannot, in the exercise of such power, issue administrative rulings or circulars not consistent with the law sought to be applied since administrative issuances must not override, supplant or modify the law, but must remain consistent with the law they intend to carry out. Since the assailed provision

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[7] *Id*. at 5-11.

in RMC No. 33-2013 subjecting the *contractees and licensees* of PAGCOR to income tax under the NIRC of 1997, as amended, contravenes the provision of the PAGCOR Charter granting tax exemptions to corporations, associations, agencies, or individuals with whom PAGCOR has any contractual relationship in connection with the operations of the casinos authorized to be conducted under the PAGCOR Charter, it is petitioner's position that the assailed provision was issued by respondent CIR with grave abuse of discretion amounting to lack or excess of jurisdiction.

Respondent, in her Comment filed on 18 December 2014,[8] counters that there was no grave abuse of discretion on her part when she issued the subject revenue memorandum circular since it did not alter, modify or amend the intent and meaning of Section 13(2)(b) of PD No. 1869, as amended, insofar as the imposition is concerned, considering that it merely clarified the taxability of PAGCOR and its *contractees and licensees* for income tax purposes as well as other franchise grantees similarly situated under prevailing laws; that prohibition will not lie to restrain a purely administrative act, nor enjoin acts already done, being a preventive remedy; and that tax exemptions are strictly construed against the taxpayer.

The Issues

Hence, we are now presented with the following issues for our consideration and resolution: (i) whether or not the assailed provision of RMC No. 33-2013 subjecting the *contractees and licensees* of PAGCOR to income tax under the NIRC of 1997, as amended, was issued by respondent CIR with grave abuse of discretion amounting to lack or excess of jurisdiction; and (ii) whether or not said provision is valid or constitutional considering that Section 13(2)(b) of PD No. 1869, as amended (PAGCOR Charter), grants tax exemptions to such *contractees and licensees*.

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[8] *Id*. at 94-106.

Our Ruling

At the outset, although it is true that direct recourse before this Court is occasionally allowed in exceptional cases without strict observance of the rules on hierarchy of courts and on exhaustion of administrative remedies, we find the imperious need to first determine whether or not this case falls within the said exceptions, before we delve into the merits of the instant petition.

We thus find need to look back at the dispositions rendered in *Asia International Auctioneers, Inc., et al. v. Parayno, Jr.*,[9] wherein we ruled that revenue memorandum circulars[10] are considered administrative *rulings* issued from time to time by the CIR. It has been explained that these are actually rulings or opinions of the CIR issued pursuant to her power under Section 4[11] of the NIRC of 1997, as amended, to make rulings or opinions in connection with the implementation of the provisions of internal revenue laws, including ruling on the classification of articles of sales and similar purposes. Therefore,

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[9] 565 Phil. 255, 269-270 (2007).

[10] Revenue Memorandum Circulars (RMC) – These issuances shall disseminate and embody pertinent and applicable portions, as well as amplifications of the rules, precedents, laws, regulations, opinions and other orders and directives issued by or administered by the Commissioner of Internal Revenue, and by offices and agencies other than the Bureau of Internal Revenue, for the information, guidance or compliance of revenue personnel [paragraph (f), Revenue Administrative Order No. 2-2001 issued on 22 October 2001].

[11] Section 4. *Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases*. – **The power to interpret the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance.**

The power to decide disputed assessment, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or **other matters arising under this Code or other laws or portions thereof administered by the Bureau of Internal Revenue is vested in the Commissioner, subject to the exclusive appellate jurisdiction of the Court of Tax Appeals.** (Emphasis supplied)

it was held that under R.A. No. 1125,[12] which was thereafter amended by RA No. 9282,[13] such rulings of the CIR (including revenue memorandum circulars) are appealable to the Court of Tax Appeals (CTA), and not to any other courts.

In the same case, we further declared that "failure to ask the CIR for a reconsideration of the assailed revenue regulations and RMCs is another reason why a case directly filed before us should be dismissed. It is settled that the premature invocation of the court's intervention is fatal to one's cause of action. If a remedy within the administrative machinery can still be resorted to by giving the administrative officer every opportunity to decide on a matter that comes within his jurisdiction, then such remedy must first be exhausted before the court's power of judicial review can be sought. The party with an administrative remedy must not only initiate the prescribed administrative procedure to obtain relief but also to pursue it to its appropriate conclusion before seeking judicial intervention in order to give the administrative agency an opportunity to decide the matter itself correctly and prevent unnecessary and premature resort to the court."[14]

Then, in *The Philippine American Life and General Insurance Company v. Secretary of Finance*,[15] we had the occasion to

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[12] "AN ACT CREATING THE COURT OF TAX APPEALS" which took effect on 16 June 1954.

[13] "AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP AMENDING FOR THE PURPOSE CERTAIN SECTIONS OF REPUBLIC ACT NO.1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES" which took effect on 23 April 2004. This Act was a consolidation of S. No. 2712 and H. No. 6673 finally passed by the Senate and the House of Representatives on 8 December 2003 and 2 February 2004, respectively.

[14] *Supra* note 9 at 270-271.

[15] G.R. No. 210987, 24 November 2014, 741 SCRA 578.

elucidate that the CIR's power to interpret the provisions of the Tax Code and other tax laws is subject to the review by the Secretary of Finance; and thereafter, the latter's ruling may be appealed to the CTA, having the technical knowledge over the subject controversies. Also, the Court held that "the power of the CTA includes that of determining whether or not there has been grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the [regional trial court] in issuing an interlocutory order in cases falling within the exclusive appellate jurisdiction of the tax court. It, thus, follows that the CTA, by constitutional mandate, is vested with jurisdiction to issue writs of certiorari in these cases."[16] Stated differently, the CTA "can now rule not only on the propriety of an assessment or tax treatment of a certain transaction, but also on the validity of the revenue regulation or revenue memorandum circular on which the said assessment is based."[17]

From the foregoing jurisprudential pronouncements, it would appear that in questioning the validity of the subject revenue memorandum circular, petitioner should not have resorted directly before this Court considering that it appears to have failed to comply with the doctrine of exhaustion of administrative remedies and the rule on hierarchy of courts, a clear indication that the case was not yet ripe for judicial remedy. Notably, however, in addition to the justifiable grounds relied upon by petitioner for its immediate recourse (*i.e.* pure question of law, patently illegal act by the BIR, national interest, and prevention of multiplicity of suits), we intend to avail of our jurisdictional prerogative in order not to further delay the disposition of the issues at hand, and also to promote the vital interest of substantial justice. To add, in recent years, this Court has consistently acted on direct actions assailing the validity of various revenue regulations, revenue memorandum circulars, and the likes, issued by the CIR. The position we now take is more in accord with

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[16] *Id*. at 599-600 citing *City of Manila v. Grecia-Cuerdo*, G.R. No. 175723, 4 February 2014, 715 SCRA 182, 202. (Emphasis and underlining omitted)

[17] *Id*. at 600.

latest jurisprudence. Upon the exercise of this prerogative, we are ushered into the merits of the case.

The determination of the submissions of petitioner will have to follow the pilot case of *PAGCOR v. The Bureau of Internal Revenue, et al.*,[18] where this Court clarified its earlier ruling in G.R. No. 172087[19] involving the same parties, and expressed that: (i) Section 1 of RA No. 9337, amending Section 27(C) of the NIRC of 1997, as amended, which excluded PAGCOR from the enumeration of GOCCs exempted from corporate income tax, is valid and constitutional; (ii) PAGCOR's tax privilege of paying five percent (5%) franchise tax *in lieu* of all other taxes with respect to its income from gaming operations is not repealed or amended by Section 1(c) of R.A. No. 9337; (iii) PAGCOR's income from gaming operations is subject to the 5% franchise tax only; and (iv) PAGCOR's income from other related services is subject to corporate income tax only.

The Court sitting En Banc expounded on the matter in this wise:

> After a thorough study of the arguments and points raised by the parties, and in accordance with our Decision dated March 15, 2011, we sustain [PAGCOR's] contention that its **income from gaming operations is subject only to five percent (5%) franchise tax under P.D. No. 1869, as amended,** while its income from other related services is subject to corporate income tax pursuant to P.D. No. 1869, as amended, as well as R.A. No. 9337. This is demonstrable.
>
> ***First***. Under P.D. No. 1869, as amended, [PAGCOR] is subject to income tax only with respect to its operation of related services. Accordingly, the income tax exemption ordained under Section 27(c) of R.A. No. 8424 clearly pertains only to [PAGCOR's] income from operation of related services. **Such income tax exemption could not have been applicable to [PAGCOR's] income from gaming operations as it is already exempt therefrom under P.D. No. 1869, as amended**, to wit:

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[18] G.R. No. 215427, 10 December 2014, 744 SCRA 712.

[19] *PAGCOR v. The Bureau of Internal Revenue, et al.*, *supra* note 5.

SECTION 13. Exemptions. –

x x x x x x x x x

(2) Income and other taxes. — (a) Franchise Holder: ***No tax of any kind or form, income or otherwise, as well as fees, charges or levies of whatever nature, whether National or Local, shall be assessed and collected under this Franchise from the Corporation; nor shall any form of tax or charge attach in any way to the earnings of the Corporation, except a Franchise Tax of five (5%) percent of the gross revenue or earnings derived by the Corporation from its operation under this Franchise.*** Such tax shall be due and payable quarterly to the National Government and shall be in lieu of all kinds of taxes, levies, fees or assessments of any kind, nature or description, levied, established or collected by any municipal, provincial, or national government authority.

Indeed, the grant of tax exemption or the withdrawal thereof assumes that the person or entity involved is subject to tax. This is the most sound and logical interpretation because [PAGCOR] could not have been exempted from paying taxes which it was not liable to pay in the first place. **This is clear from the wordings of P.D. No. 1869, as amended, imposing a franchise tax of five percent (5%) on its gross revenue or earnings derived by [PAGCOR] from its operation under the Franchise *in lieu* of all taxes of any kind or form, as well as fees, charges or levies of whatever nature, which necessarily include corporate income tax**.

In other words, **there was no need for Congress to grant tax exemption to [PAGCOR] with respect to its income from gaming operations as the same is already exempted from all taxes of any kind or form, income or otherwise, whether national or local, under its Charter, save only for the five percent (5%) franchise tax. The exemption attached to the income from gaming operations exists independently from the enactment of R.A. No. 8424**. To adopt an assumption otherwise would be downright ridiculous, if not deleterious, since [PAGCOR] would be in a worse position if the exemption was granted (then withdrawn) than when it was not granted at all in the first place.[20] (Emphasis supplied)

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[20] *PAGCOR v. The Bureau of Internal Revenue, et al., supra* note 18 at 724-725.

Furthermore,

Second. Every effort must be exerted to avoid a conflict between statutes; so that if reasonable construction is possible, the laws must be reconciled in the manner.

As we see it, there is no conflict between P.D. No. 1869, as amended, and R.A. No. 9337. The former lays down the taxes imposable upon [PAGCOR], as follows: (1) *a five percent (5%) franchise tax* of the gross revenues or earnings derived from its operations conducted under the Franchise, which shall be due and payable *in lieu* of all kinds of taxes, levies, fees or assessments of any kind, nature or description, levied, established or collected by any municipal, provincial or national government authority; and (2) *income tax* for income realized from other necessary and related services, shows and entertainment of [PAGCOR]. **With the enactment of R.A. No. 9337, which withdrew the income tax exemption under R.A. No. 8424, [PAGCOR's] tax liability on income from other related services was merely reinstated**.

It cannot be gainsaid, therefore, that the nature of taxes imposable is well defined for each kind of activity or operation. There is no inconsistency between the statutes; and in fact, they complement each other.

Third. Even assuming that an inconsistency exists, P.D. No. 1869, as amended, which expressly provides the tax treatment of [PAGCOR's] income prevails over R.A. No. 9337, which is a general law. **It is a canon of statutory construction that a special law prevails over a general law — regardless of their dates of passage — and the special is to be considered as remaining an exception to the general**. x x x

x x x x x x x x x

Where a general law is enacted to regulate an industry, it is common for individual franchises subsequently granted to restate the rights and privileges already mentioned in the general law, or to amend the later law, as may be needed, to conform to the general law. However, if no provision or amendment is stated in the franchise to effect the provisions of the general law, it cannot be said that the same is the intent of the lawmakers, for repeal of laws by implication is not favored.

In this regard, **we agree with [PAGCOR] that if the lawmakers had intended to withdraw [PAGCOR's] tax exemption of its**

gaming income, then Section 13(2)(a) of P.D. 1869 should have been amended expressly in R.A. No. 9487, or the same, at the very least, should have been mentioned in the repealing clause of R.A. No. 9337. However, the repealing clause never mentioned [PAGCOR's] Charter as one of the laws being repealed. On the other hand, the repeal of other special laws, namely, Section 13 of R.A. No. 6395 as well as Section 6, fifth paragraph of R.A. No. 9136, is categorically provided under Section 24(a) (b) of R.A. No. 9337, x x x.

x x x x x x x x x

When [PAGCOR's] franchise was extended on June 20, 2007 without revoking or withdrawing its tax exemption, it effectively reinstated and reiterated all of [PAGCOR's] rights, privileges and authority granted under its Charter. Otherwise, Congress would have painstakingly enumerated the rights and privileges that it wants to withdraw, given that a franchise is a legislative grant of a special privilege to a person. **Thus, the extension of [PAGCOR's] franchise under the same terms and conditions means a continuation of its tax exempt status with respect to its income from gaming operations**. Moreover, all laws, rules and regulations, or parts thereof, which are inconsistent with the provisions of P.D. 1869, as amended, a special law, are considered repealed, amended and modified, consistent with Section 2 of R.A. No. 9487, thus:

> SECTION 2. *Repealing Clause.* – All laws, decrees, executive orders, proclamations, rules and regulations and other issuances, or parts thereof, which are inconsistent with the provisions of this Act, are hereby repealed, amended and modified.

It is settled that where a statute is susceptible of more than one interpretation, the court should adopt such reasonable and beneficial construction which will render the provision thereof operative and effective, as well as harmonious with each other.

Given that [PAGCOR's] Charter is not deemed repealed or amended by R.A. No. 9337, [PAGCOR's] income derived from gaming operations is subject only to the five percent (5%) franchise tax, in accordance with P.D. 1869, as amended. With respect to [PAGCOR's] income from operation of other related services, the same is subject to income tax only. The five percent (5%) franchise tax finds no application with respect to [PAGCOR's] income from

other related services, in view of the express provision of Section 14(5) of P.D. No. 1869, as amended, x x x.[21] (Emphasis supplied)

The Court through Justice Diosdado M. Peralta, categorically followed what was simply provided under the PAGCOR Charter (PD No. 1869, as amended by RA No. 9487), by proclaiming that despite amendments to the NIRC of 1997, the said Charter remains in effect. Thus, income derived by PAGCOR from its *gaming operations* such as the operation and licensing of gambling casinos, gaming clubs and other similar recreation or amusement places, gaming pools and related operations is subject only to 5% franchise tax, *in lieu* of all other taxes, including corporate income tax. The Court concluded that the **CIR committed grave abuse of discretion amounting to lack or excess of jurisdiction when it issued RMC No. 33-2013 subjecting both income from gaming operations and other related services to corporate income tax and 5% franchise tax considering that it unduly expands the Court's Decision dated 15 March 2011 without due process, which creates additional burden upon PAGCOR**.

Noticeably, however, the High Court in the abovementioned case intentionally did not rule on the issue of whether or not PAGCOR's tax privilege of paying only the 5% franchise tax *in lieu* of all other taxes inures to the benefit of third parties with contractual relationship with it in connection with the operation of casinos, such as petitioner herein. The Court sitting En Banc simply stated that:

> The resolution of the instant petition is limited to clarifying the tax treatment of [PAGCOR's] income *vis-a-vis* our Decision dated March 15, 2011. This Decision (dated 10 December 2014) is not meant to expand our original Decision (dated 15 March 2011) by delving into new issues involving [PAGCOR's] contractees and licensees. For one, the latter are not parties to the instant case, and may not therefore stand to benefit or bear the consequences if this resolution. For another, to answer the fourth issue raised by [PAGCOR] relative to its contractees and licensees would be downright premature

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[21] *Id*. at 726-729.

and iniquitous as the same would effectively countenance sidesteps to judicial process.[22]

Bearing in mind the parties involved and the similarities of the issues submitted in the present case, we are now presented with the prospect of finally resolving the confusion caused by the amendments introduced by RA No. 9337 to the NIRC of 1997, and the subsequent issuance of RMC No. 33-2013, affecting the tax regime not only of PAGCOR but also its *contractees and licensees* under the existing laws and prevailing jurisprudence.

Section 13 of PD No. 1869 evidently states that payment of the 5% franchise tax by PAGCOR and its *contractees and licensees* exempts them from payment of any other taxes, including corporate income tax, quoted hereunder for ready reference:

Sec. 13. *Exemptions*. –

x x x x x x x x x

(2) **Income and other taxes. — (a) Franchise Holder: No tax of any kind or form, income or otherwise, as well as fees, charges or levies of whatever nature, whether National or Local, shall be assessed and collected under this Franchise from the Corporation; nor shall any form of tax or charge attach in any way to the earnings of the Corporation, except a Franchise Tax of five (5%) percent of the gross revenue or earnings derived by the Corporation from its operation under this Franchise.** Such tax shall be due and payable quarterly to the National Government and shall be in lieu of all kinds of taxes, levies, fees or assessments of any kind, nature or description, levied, established or collected by any municipal, provincial, or national government authority.

(b) Others: The exemptions herein granted for earnings derived from the operations conducted under the franchise specifically from the payment of any tax, income or otherwise, as well as any form of charges, fees or levies, shall inure to the benefit of and extend to corporation(s), association(s), agency(ies), or

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[22] *Id*. at 731.

individual(s) with whom the Corporation or operator has any contractual relationship in connection with the operations of the casino(s) authorized to be conducted under this Franchise and to those receiving compensation or other remuneration from the Corporation or operator as a result of essential facilities furnished and/or technical services rendered to the Corporation or operator. (Emphasis and underlining supplied)

As previously recognized, the above-quoted provision providing for the said exemption was neither amended nor repealed by any subsequent laws (*i.e.* Section 1 of R.A. No. 9337 which amended Section 27(C) of the NIRC of 1997); thus, it is still in effect. Guided by the doctrinal teachings in resolving the case at bench, it is without a doubt that, like PAGCOR, its *contractees and licensees* remain exempted from the payment of corporate income tax and other taxes since the law is clear that said exemption inures to their benefit.

We adhere to the cardinal rule in statutory construction that when the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation. As has been our consistent ruling, where the law speaks in clear and categorical language, there is no occasion for interpretation; there is only room for application.[23]

As the PAGCOR Charter states in unequivocal terms that exemptions granted for earnings derived from the operations conducted under the franchise specifically from the payment of any tax, income or otherwise, as well as any form of charges, fees or levies, ***shall inure to the benefit of and extend to*** corporation(s), association(s), agency(ies), or individual(s) with whom the PAGCOR or operator has any contractual relationship in connection with the operations of the casino(s) authorized to be conducted under this Franchise, so it must be that all *contractees and licensees* of PAGCOR, upon payment of the 5% franchise tax, shall likewise be exempted from all other

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[23] *Amores v. House of Representatives Electoral Tribunal, et al.*, 636 Phil. 600, 608 (2010) citing *Twin Ace Holdings Corporation v. Rufina and Company*, 523 Phil. 766, 777 (2006).

taxes, including corporate income tax realized from the operation of casinos.

For the same reasons that made us conclude in the 10 December 2014 Decision of the Court sitting En Banc in G.R. No. 215427 that PAGCOR is subject to corporate income tax for "other related services", we find it logical that its *contractees and licensees* shall likewise pay corporate income tax for income derived from such "related services."

Simply then, in this case, we adhere to the principle that since the statute is clear and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. This is the plain meaning rule or *verba legis,* as expressed in the maxim *index animi sermo* or speech is the index of intention.[24]

Plainly, too, upon payment of the 5% franchise tax, petitioner's income from its gaming operations of gambling casinos, gaming clubs and other similar recreation or amusement places, and gaming pools, defined within the purview of the aforesaid section, is not subject to corporate income tax.

WHEREFORE, the petition is **GRANTED**. Accordingly, respondent Bureau of Internal Revenue, represented by Commissioner Kim S. Jacinto-Henares is hereby **ORDERED** to **CEASE AND DESIST** from implementing Revenue Memorandum Circular No. 33-2013 insofar as it imposes corporate income tax on petitioner Bloomberry Resorts and Hotels, Inc.'s income derived from its gaming operations.

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Peralta, Reyes,* and *Jardeleza, JJ.,* concur.

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[24] *Padua v. People*, 581 Phil. 488, 501 (2008).