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instrumentality) engages in business, it abdicates part of its sovereign prerogatives and descends to the level of a citizen and thereby subjects itself to the laws and regulations governing the relation of labor and management."

ACCORDINGLY, the decision of the Court of Appeals in CA-G.R. No. 31178-R is set aside; and the employees and workers of the UP Land Grant are hereby declared to be within the coverage of Rep. Act 1880 as well as Com. Act 444. No costs.

SO ORDERED.

Aquino (Chairman), Concepcion Jr., Abad Santos, Cuevas, and *Alampay, JJ.*, concur.

SECOND DIVISION

[G.R. No. 60126. September 25, 1985]

CAGAYAN ELECTRIC POWER & LIGHT CO., INC., *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE and COURT OF TAX APPEALS,** *respondents.*

SYLLABUS

POLITICAL LAW; FRANCHISE; LEGISLATIVE; A FRANCHISE IS SUBJECT TO AMENDMENT, ALTERATION OR REPEAL BY THE CONGRESS WHEN THE PUBLIC INTEREST SO REQUIRES.— We hold that Congress could impair petitioner's legislative franchise by making it liable for income tax from which heretofore it was exempted by virtue of the exemption provided for in Section 3 of its franchise. The Constitution provides that a franchise is subject to amendment, alteration

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or repeal by the Congress when the public interest so requires (Sec. 8, Art. XIV, 1935 Constitution; Sec. 5, Art. XIV, 1973 Constitution). Section 1 of petitioner's franchise, Republic Act No. 3247, provides that it is subject to the provisions of the Constitution and to the terms and conditions established in Act No. 3636 whose Section 12 provides that the franchise is subject to amendment, alteration or repeal by Congress. Republic Act No. 5431, in amending Section 24 of the Tax Code by subjecting to income tax all corporate taxpayers not expressly exempted therein and in Section 27 of the Code, had the effect of *withdrawing petitioner's exemption from income tax.*

APPEARANCES OF COUNSEL

Quasha, De Guzman, Makalintal & Barot for petitioner.

D E C I S I O N

AQUINO, *J.*:

This is about the liability of petitioner Cagayan Electric Power & Light Co., Inc. for income tax amounting to ₱75,149.73 for the more than seven-month period of the year 1969 *in addition to franchise tax.*

The petitioner is the holder of a legislative franchise, Republic Act No. 3247, under which its payment of 3% tax on its gross earnings from the sale of electric current is "in lieu of all taxes and assessments of whatever authority upon privileges, earnings, income, franchise, and poles, wires, transformers, and insulators of the grantee, from which taxes and assessments the grantee is hereby expressly exempted" (Sec. 3).

On June 27, 1968, Republic Act No. 5431 amended Section 24 of the Tax Code by making liable for income tax *all corporate taxpayers* not specifically exempt under paragraph (c) (1) of said section and Section 27 of the Tax Code notwithstanding the "provisions of existing special or general laws to the contrary." Thus, franchise companies were subjected to *income tax in addition to franchise tax.*

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However, in petitioner's case, its franchise was amended by Republic Act No. 6020, effective *August 4, 1969*, by authorizing the petitioner to furnish electricity to the municipalities of Villanueva and Jasaan, Misamis Oriental in addition to Cagayan de Oro City and the municipalities of Tagoloan and Opol. The amendment *reenacted* the tax exemption in its original charter or neutralized the modification made by Republic Act No. 5431 more than a year before.

By reason of the amendment to Section 24 of the Tax Code, the Commissioner of Internal Revenue in a demand letter dated February 15, 1973 required the petitioner to pay deficiency income taxes for *1968 to 1971*. The petitioner contested the assessments. The Commissioner cancelled the assessments for 1970 and 1971 but insisted on those for 1968 and 1969.

The petitioner filed a petition for review with the Tax Court, which on February 26, 1982 held the petitioner liable *only for the income tax for the period from January 1 to August 3, 1969* or before the passage of Republic Act No. 6020 which reiterated its tax exemption. The petitioner appealed to this Court.

It contends that the Tax Court erred (1) in not holding that the franchise tax paid by the petitioner is a commutative tax which already includes the income tax; (2) in holding that Republic Act No. 5431 as amended, altered or repealed petitioner's franchise; (3) in holding that petitioner's franchise is a contract which can be impaired by an implied repeal and (4) in not holding that Section 24(d) of the Tax Code should be construed strictly against the Government.

We hold that Congress could impair petitioner's legislative franchise by making it liable for income tax from which heretofore it was exempted by virtue of the exemption provided for in Section 3 of its franchise.

The Constitution provides that a franchise is subject to amendment, alteration or repeal by the Congress when the public interest so requires (Sec. 8, Art. XIV, 1935 Constitution; Sec. 5. Art. XIV, 1973 Constitution).

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Section 1 of petitioner's franchise, Republic Act No. 3247, provides that it is subject to the provisions of the Constitution and to the terms and conditions established in Act No. 3636 whose Section 12 provides that the franchise is subject to amendment, alteration or repeal by Congress.

Republic Act No. 5431, in amending Section 24 of the Tax Code by subjecting to income tax all corporate taxpayers not expressly exempted therein and in Section 27 of the Code, had the effect of *withdrawing petitioner's exemption from income tax*.

The Tax Court acted correctly in holding that the exemption was restored by the subsequent enactment on August 4, 1969 of Republic Act No. 6020 which reenacted the said tax exemption. Hence, the petitioner is liable only for the income tax for the period from January 1 to August 3, 1969 when its tax exemption was modified by Republic Act No. 5431.

It is relevant to note that franchise companies, like the Philippine Long Distance Telephone Company, have been paying income tax in addition to the franchise tax.

However, it cannot be denied that the said 1969 assessment appears to be highly controversial. The Commissioner at the outset was not certain as to petitioner's income tax liability. It had reason not to pay income tax because of the tax exemption in its franchise.

For this reason, it should be liable only for *tax proper* and should not be held liable for the surcharge and interest. (*Advertising Associates, Inc. vs. Commissioner of Internal Revenue and Court of Tax Appeals*, G. R. No. 59758, December 26, 1984, 133 SCRA 765; *Imus Electric Co., Inc. vs. Commissioner of Internal Revenue*, 125 Phil. 1024; *C.M. Hoskins & Co., Inc. vs. Commissioner of Internal Revenue*, L-28383, June 22, 1976, 71 SCRA 511.)

WHEREFORE, the judgment of the Tax Court is affirmed with the modification that the petitioner is liable only for the tax proper and that it should not pay the delinquency penalties. No costs.

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SO ORDERED.

Concepcion Jr., Abad Santos, Escolin, Cuevas, and *Alampay, JJ.*, concur.

SECOND DIVISION

[G.R. No. 62038. September 25, 1985]

NATIONAL ELECTRIFICATION ADMINISTRATION (NEA) AND ORIENTAL MINDORO ELECTRIC COOPERATIVE I (ORMECO), *petitioners, vs.* **HON. FILEMON MENDOZA IN HIS CAPACITY AS PRESIDING JUDGE, COURT OF FIRST INSTANCE OF ORIENTAL MINDORO, BRANCH I and the INTEGRATED BAR OF THE PHILIPPINES (IBP), ORIENTAL MINDORO CHAPTER,** *respondents.*

SYLLABUS

1. ADMINISTRATIVE LAW; DOCTRINE OF EXHAUSTION OF ADMINISTRATIVE REMEDIES; APPLICABILITY OF DOCTRINE TO CASE AT BAR.— Private respondent should have first exhausted the administrative remedies still available to it by appealing the challenged order of NEA approving the increased rates, to the President of the Philippines who exercises the power of supervision over the National Electrification Administration, Section 13 of the Organic Law of NEA, as found in P.D. No. 269 as amended. Considering that the President has the power to review on appeal the orders or acts of petitioner NEA, the failure of private respondent IBP to undertake such an appeal bars it from resorting to a judicial suit. In the case of *Tan vs. Director of Forestry*, 125 SCRA 205, it was there stressed that the administrative remedies must first be exhausted before resort can be had to courts.