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years and One (1) day of *prision mayor* as *minimum* to *Fourteen* (14) years and Eight (8) months of *reclusion temporal* as *maximum*.

(2) The awards of moral and exemplary damages are set aside, while the award of actual damages is reduced from ₱50,000.00 to ₱35,482.50.

(3) Accused-appellant Antonio V. Eribal is further ordered to pay the heirs of Lin Ho Chan the sum of ₱50,000.00 as indemnity for the death of CHAN.Costs against the accused-appellant.

SO ORDERED.

Melo, Kapunan, and *Pardo, JJ.,* concur.

THIRD DIVISION

[G.R. No. 127708. March 25, 1999]

CITY GOVERNMENT OF SAN PABLO, LAGUNA, CITY TREASURER OF SAN PABLO, LAGUNA, and THE SANGGUNIANG PANGLUNSOD OF SAN PABLO, LAGUNA, *petitioners, vs.* **HONORABLE BIENVENIDO V. REYES, in his capacity as Presiding Judge, Regional Trial Court, Branch 29, San Pablo City and the MANILA ELECTRIC COMPANY,** *respondents.*

SYNOPSIS

This is a petition for review under Rule 45 of the Revised Rules of Court assailing the decision of the Regional Trial Court of San Pablo City declaring the imposition of franchise tax under Section 2.09 Article D of Ordinance No. 56, otherwise known as the Revenue Code of the City of San Pablo as

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ineffective and void insofar as private respondent is concerned for being violative of Act No. 3648, Republic Act No. 2340 and PD 551. The RTC also granted private respondent's claim for refund of franchise taxes paid under protest.

Petitioners' position was that RA 7160, The Local Government Code of 1991 (LGC), expressly repealed Act No. 3648, RA No. 2340 and PD 551, and that pursuant to the provisions of Sections 137 and 193 of the Local Government Code, the province or city now has the power to impose a franchise tax on a business enjoying a franchise. On the other hand, private respondent invoked the non-impairment clause of the Constitution to justify its exemption from local tax.

The Supreme Court reversed and set aside the decision of the trial court. Petitioners correctly relied on the provisions of Sections 137 and 193 of the LGC to support their position that private respondent's exemption has been withdrawn. The explicit language of Section 137 which authorizes the province to impose franchise tax "notwithstanding any exemption granted by any law or other special law" is all encompassing and clear. The franchise tax is imposable despite any exemption enjoyed under special laws. Moreover, Section 193 buttresses the withdrawal of extant tax exemption privileges. Thus, in the absence of any provision of the Code to the contrary, and which the Court found no other provision in point, private respondent's tax exemption privileges under existing law was clearly intended to be withdrawn. Reading together Sections 137 and 193 of the LGC, the Court concluded that under the LGC, the local government unit may now impose a local tax at a rate not exceeding 50% of 1% of the gross annual receipts for the preceding calendar year based on the incoming receipts realized within its territorial jurisdiction.

Private respondent's invocation of the non-impairment clause of the Constitution was unavailing. Under the 1935, the 1973 and the 1987 Constitutions, no franchise or right shall be granted except under the condition that it shall be subject to amendment, alteration or repeal by the National Assembly when the public interest so requires. With or without the reservation clause, franchises are subject to alterations through a reasonable exercise of the police power. They are also subject to alteration by the power to tax, which like police power cannot be contracted away.

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SYLLABUS

1. **POLITICAL LAW; PUBLIC CORPORATIONS; LOCAL GOVERNMENT CODE; SECTION 534(f) THEREOF; PARTAKES OF THE NATURE OF GENERAL REPEALING CLAUSE.**— Section 534 (f), the repealing clause of the LGC, provides that all general and special laws, acts, city charters, decrees, executive orders, proclamations and administrative regulations or parts thereof which are inconsistent with any of the provisions of the Code are hereby repealed or modified accordingly. This clause partakes of the nature of a general repealing clause. It is certainly not an express repealing clause because it fails to designate the specific act or acts identified by number or title, that are intended to be repealed.

2. **ID.; ID.; ID.; SECTION 137 AND 193 THEREOF; TAX EXEMPTION PRIVILEGES CONSIDERED WITHDRAWN UPON EFFECTIVITY THEREOF; EXCEPTIONS; TAX EXEMPTIONS ENJOYED BY MERALCO CONSIDERED WITHDRAWN; CASE AT BAR.**— It is our view that petitioners correctly rely on the provisions of Sections 137 and 193 of the LGC to support their position that MERALCO's tax exemption has been withdrawn. The explicit language of Section 137 which authorizes the province to impose franchise tax "notwithstanding any exemption granted by any law or other special law" is all-encompassing and clear. The franchise tax is imposable despite any exemption enjoyed under special laws. Section 193 buttresses the withdrawal of extant tax exemption privileges. By stating that 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 or controlled corporations except 1) local water districts, 2) cooperatives duly registered under R.A. 6938, (3) non-stock and non-profit hospitals and educational institutions, are withdrawn upon the effectivity of this code, the obvious import is to limit the exemptions to the three enumerated entities. It is a basic precept of statutory construction that the express mention of one person, thing, act, or consequence excludes all others as expressed in the familiar maxim *expressio unius est exclusio alterius*. In the absence of any provision of the Code to the contrary, and we find no other provision in point, any existing tax exemption or incentive enjoyed by

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MERALCO under existing law was clearly intended to be withdrawn.

3. **ID.; ID.; ID.; ID.; LOCAL GOVERNMENT UNIT ALLOWED TO IMPOSE A LOCAL TAX AT A RATE NOT EXCEEDING 50% OF 1% OF THE GROSS ANNUAL RECEIPTS.**— Reading together Sections 137 and 193 of the LGC, we conclude that under the LGC the local government unit may now impose a local tax at a rate not exceeding 50% of 1% of the gross annual receipts for the preceding calendar year based on the incoming receipts realized within its territorial jurisdiction. The legislative purpose to withdraw tax privileges enjoyed under existing law or charter is clearly manifested by the language used in Sections 137 and 193 categorically withdrawing such exemption subject only to the exceptions enumerated. Since it would be not only tedious and impractical to attempt to enumerate all the existing statutes providing for special tax exemptions or privileges, the LGC provided for an express, albeit general, withdrawal of such exemptions or privileges. No more unequivocal language could have been used.

4. **ID.; ID;; ID.; ID.; PHRASE "SHALL BE IN LIEU OF ALL TAXES" FOUND IN SPECIAL FRANCHISES HAVE TO GIVE WAY TO THE PEREMPTORY LANGUAGE THEREOF WITHDRAWING TAX EXEMPTION PRIVILEGES.**— It is true that the phrase "in lieu of all taxes" found in special franchises has been held in several cases to exempt the franchise holder from payment of tax on its corporate franchise imposed by the Internal Revenue Code, as the charter is in the nature of a private contract and the exemption is part of the inducement for the acceptance of the franchise, and that the imposition of another franchise tax by the local authority would constitute an impairment of contract between the government and the corporation. But these "magic words" contained in the phrase "shall be in lieu of all taxes" have to give way to the peremptory language of the LGC specifically providing for the withdrawal of such exemption privileges. Accordingly in *Mactan Cebu International Airport Authority vs. Marcos*, this Court held that Section 193 of the LGC prescribes the general rule, *viz.*, the tax exemptions or incentives granted to or presently enjoyed by natural or juridical persons are withdrawn upon the effectivity of the LGC except with respect to those entities expressly enumerated. In the same vein, We

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must hold that the express withdrawal upon effectivity of the LGC of all exemptions only as provided therein, can no longer be invoked by Meralco to disclaim liability for the local tax.

5. **CONSTITUTIONAL LAW; BILL OF RIGHTS; NON-IMPAIRMENT CLAUSE; CANNOT BE INVOKED TO UPHOLD MERALCO'S EXEMPTION FROM LOCAL TAX; FRANCHISES SUBJECT TO ALTERATION THROUGH REASONABLE EXERCISE OF THE POLICE POWER AND THE POWER TO TAX.**— Private respondent's invocation of the non-impairment clause of the Constitution is accordingly unavaling. The LGC was enacted in pursuance of the constitutional policy to ensure autonomy to local governments and to enable them to attain fullest development as self-reliant communities. There is further basis for the conclusion that the non-impairment of contract clause cannot be invoked to uphold Meralco's exemption from the local tax. Escudero Electric Co. was originally given the legislative franchise under Act. 3648 to operate an electric light and power system in the City of San Pablo and nearby municipalities. The term of the franchise under Act No. 3648 is a period of fifty years from the Act's approval in 1929. The said law provided that the franchise is granted upon the condition that it shall be subject to amendment, or repeal by the Congress of the United States. Under the 1935, the 1973 and the 1987 Constitutions, no franchise or right shall be granted except under the condition that it shall be subject to amendment, alteration or repeal by the National Assembly when the public interest so requires. With or without the reservation clause, franchises are subject to alterations through a reasonable exercise of the police power; they are also subject to alteration by the power to tax, which like police power cannot be contracted away.

6. **STATUTORY CONSTRUCTION; IN INTERPRETING STATUTORY PROVISIONS ON MUNICIPAL FISCAL POWERS, DOUBTS SHOULD BE RESOLVED IN FAVOR OF MUNICIPAL CORPORATIONS.**— The power to tax is primarily vested in Congress. However, in our jurisdiction, it may be exercised by local legislative bodies, no longer merely by virtue of a valid delegation as before, but pursuant to direct authority conferred by Section 5, Article X of the Constitution. The important legal effect of Section 5 is that henceforth, in interpreting statutory provisions on municipal

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fiscal powers, doubts will have to be resolved in favor of municipal corporations.

7. **ID.; GENERAL LAW; CANNOT BE CONSTRUED TO HAVE REPEALED A SPECIAL LAW BY MERE IMPLICATION UNLESS INTENT TO REPEAL IS MANIFEST.**— We are mindful of the established rule that repeals by implication are not favored as laws are presumed to be passed with deliberation and full knowledge of all laws existing on the subject. A general law cannot be construed to have repealed a special law by mere implication unless the intent to repeal or alter is manifest and it must be convincingly demonstrated that the two laws are so clearly repugnant and patently inconsistent that they cannot co-exist.

APPEARANCES OF COUNSEL

Eleno M. Mendoza, Jr. for petitioners.

Quiason Makalintal Barot Torres & Ibarra for private respondent.

D E C I S I O N

GONZAGA-REYES, *J.*:

This is a petition under Rule 45 of the Rules of Court to review on a pure question of law the decision of the Regional Trial Court (RTC) of San Pablo City, Branch 29 in Civil Case No. SP-4459(96), entitled "Manila Electric Company *vs.* City of San Pablo, Laguna, City Treasurer of San Pablo Laguna, and the Sangguniang Panglunsod of San Pablo City, Laguna." The RTC declared the imposition of a franchise tax under Section 2.09 Article D of Ordinance No. 56 otherwise known as the Revenue Code of the City of San Pablo as ineffective and void insofar as the respondent MERALCO is concerned for being violative of Act No. 3648, Republic Act No. 2340 and PD 551. The RTC also granted MERALCO'S claim for refund of franchise taxes paid under protest.

The following antecedent facts are undisputed:

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Act No. 3648 granted the Escudero Electric Service Company a legislative franchise to maintain and operate an electric light and power system in the City of San Pablo and nearby municipalities Section 10 of Act No. 3648 provides:

"x x x In consideration of the franchise and rights hereby granted, the grantee shall pay unto the municipal treasury of each municipality in which it is supplying electric current to the public under this franchise, a tax equal to two percentum of the gross earnings from electric current sold or supplied under this franchise in each said municipality. Said tax shall be due and payable quarterly and 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 insular, now or in the future, on its poles, wires, insulators, switches, transformers, and structures, installations, conductors, and accessories placed in and over and under all public property, including public streets and highways, provincial roads, bridges and public squares, and on its franchise, rights, privileges, receipts, revenues and profits from which taxes the grantee is hereby expressly exempted."

Escudero's franchise was transferred to the plaintiff (herein respondent) MERALCO under Republic Act No. 2340.

Presidential Decree No. 551 was enacted on September 11, 1974. Section 1 thereof provides the following:

"Section 1. Any provision of law or local ordinance to the contrary notwithstanding, the franchise tax payable by all grantees of franchise to generate, distribute and sell electric current for light, heat and power shall be two percent (2%) of their gross receipts received from the sale of electric current and from transactions incident to the generation, distribution and sale of electric current.

Such franchise tax shall be payable to the Commissioner of Internal Revenue or his duly authorized representative on or before the twentieth day of the month following the end of each calendar quarter or month as may be provided in the respective franchise or pertinent municipal regulation and shall, any provision of the Local Tax Code or any other law to the contrary notwithstanding, be in lieu of all taxes and assessments of whatever nature imposed by any national or local authority on earnings, receipts, income and privilege of generation, distribution and sale of electric current."

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Republic Act No. 7160, otherwise known as the "Local Government Code of 1991" (hereinafter referred to as LGC) took effect on January 1, 1992. The said Code authorizes the province/city to impose a tax on business enjoying a franchise at a rate not exceeding fifty percent (50%) of one percent (1%) of the gross annual receipts for the preceding calendar year realized within its jurisdiction.

On October 5, 1992, the Sangguniang Panglunsod of San Pablo City enacted Ordinance No. 56, otherwise known as the Revenue Code of the City of San Pablo. The said Ordinance took effect on October 30, 1992:[1]

Section 2.09 Article D of said Ordinance provides:

"Sec. 2.09. Franchise Tax – There is hereby imposed a tax on business enjoying a franchise, at a rate of fifty percent (50%) of one percent (1%) of the gross annual receipts, which shall include both cash sales and sales on account realized during the preceding calendar year within the city."

Pursuant to the above-quoted Section 2.09, the petitioner City Treasurer sent to private respondent a letter demanding payment of the aforesaid franchise tax. From 1994 to 1996, private respondent paid "under protest" a total amount of P1,857,711.67.[2]

The private respondent subsequently filed this action before the Regional Trial Court to declare Ordinance No. 56 null and void insofar as it imposes the franchise tax upon private respondent MERALCO[3] and to claim for a refund of the taxes paid.

The Court ruled in favor of MERALCO and upheld its argument that the LGC did not expressly or impliedly repeal the tax exemption/incentive enjoyed by it under its charter. The dispositive portion of the decision reads:

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[1] Petition for Review, p. 3.

[2] *Ibid.*, p. 4 and Respondent's Memorandum, p. 3.

[3] Petition for Review, p. 4 and Respondent's Memorandum, p. 4.

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"WHEREFORE, the imposition of a franchise tax under Sec. 2.09 Article D of Ordinance No. 56 otherwise known as the Revenue Code of the City of San Pablo, is declared ineffective and null and void insofar as the plaintiff MERALCO is concerned for being violative of Republic Act No. 2340, PD 551, and Republic Act No. 7160 and the defendants are ordered to refund to the plaintiff the amount of ONE MILLION EIGHT HUNDRED FIFTY SEVEN THOUSAND SEVEN HUNDRED ELEVEN & 67/100 (₱1,857,711.67) and such other amounts as may have been paid by the plaintiff under said Revenue Ordinance No. 56 after the filing of the complaint.[4]

SO ORDERED."

Its motion for reconsideration having been denied by the trial court[5] the petitioners filed the instant petition with this Court raising pure questions of law based on the following grounds:

I. RESPONDENT JUDGE GRAVELY ERRED IN HOLDING THAT ACT NO. 3648, REPUBLIC ACT NO. 2340 AND PRESIDENTIAL DECREE NO. 551, AS AMENDED, INSOFAR AS THEY GRANT TAX INCENTIVES, PRIVILEGES AND IMMUNITIES TO PRIVATE RESPONDENT, HAVE NOT BEEN REPEALED BY REPUBLIC ACT NO. 7160.

II. RESPONDENT JUDGE GRAVELY ERRED IN RULING THAT SECTION 193 OF REPUBLIC ACT NO. 7160 HAS NOT WITHDRAWN THE TAX INCENTIVES, PRIVILEGES AND IMMUNITIES BEING ENJOYED BY THE PRIVATE RESPONDENT UNDER ACT NO. 3648, REPUBLIC ACT NO. 2340 AND PRESIDENTIAL DECREE NO. 551, AS AMENDED.

III. RESPONDENT JUDGE GRAVELY ERRED IN HOLDING THAT THE FRANCHISE TAX IN QUESTION CONSTITUTES AN IMPAIRMENT OF THE CONTRACT BETWEEN THE GOVERNMENT AND THE PRIVATE RESPONDENT.

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[4] *Ibid.*

[5] Order of January 10, 1996, p. 41, *Rollo*.

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Petitioners' position is that RA 7160 (LGC) expressly repealed Act No. 3648, Republic Act No. 2340 and Presidential Decree 551 and that pursuant to the provisions of Sections 137 and 193 of the LGC, the province or city now has the power to impose a franchise tax on a business enjoying a franchise. Petitioners rely on the ruling in the case of *Mactan Cebu International Airport Authority vs. Marcos*[6] where the Supreme Court held that the exemption from real property tax granted to Mactan Cebu International Airport Authority under its charter has been withdrawn upon the effectivity of the LGC.

In addition, the petitioners cite in their Memorandum dated December 8, 1997 an administrative interpretation made by the Bureau of Local Government Finance of the Department of Finance in its 3rd indorsement dated February 15, 1994 to the effect that the earlier ruling of the Department of Finance that holders of franchise which contain the phrase "in lieu of all taxes" proviso are exempt from the payment of any kind of tax is no longer applicable upon the effectivity of the LGC in view of the withdrawal of tax exemption privileges as provided in Sections 193 and 234 thereof.

We resolve to reverse the court *a quo*.

The pivotal issue is whether the City of San Pablo may impose a local franchise tax pursuant to the LGC upon the Manila Electric Company which pays a tax equal to two percent of its gross receipts *in lieu of* all taxes and assessments of whatever nature imposed by any national or local authority on savings or income.

It is necessary to reproduce the pertinent provisions of the LGC.

Section 137 – *Franchise Tax* – Notwithstanding any exemption granted by any law or other special law, the province may impose a tax on business enjoying a franchise, at a rate not exceeding fifty percent 50% of one percent 1% of the gross annual receipts for the preceding calendar year based on the incoming receipts, or realized, within its territorial jurisdiction. xxx"

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[6] 261 SCRA 667, (1996).

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Section 151 – *Scope of Taxing Powers* – Except as otherwise provided in this Code, the city, may levy the taxes, fees, and charges which the province or municipality may impose: *Provided, however*, That the taxes, fees and charges levied and collected by highly urbanized and independent component cities shall accrue to them and distributed in accordance with the provisions of this Code.

The rates of taxes that the city may levy may exceed the maximum rates allowed for the province or municipality by not more than fifty percent (50%) except the rates of professional and amusement taxes.

Section 193 – *Withdrawal of Tax Exemption 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 or controlled corporations, except local water districts, cooperatives duly registered under R.A. 6938, non-stock and non-profit hospitals and educational institutions, are hereby withdrawn upon the effectivity of this Code.

Section 534 (f) – Repealing Clause – All general and special laws, acts, city charters, decrees, executive orders, proclamations and administrative regulations, or part or parts thereof which are inconsistent with any of the provisions of this code are hereby repealed or modified accordingly.

Section 534 (f), the repealing clause of the LGC, provides that all general and special laws, acts, city charters, decrees, executive orders, proclamations and administrative regulations or parts thereof which are inconsistent with any of the provisions of the Code are hereby repealed or modified accordingly.

This clause partakes of the nature of a general repealing clause.[7] It is certainly not an express repealing clause because it fails to designate the specific act or acts identified by number or title, that are intended to be repealed.[8]

Was there an implied repeal by Republic Act No. 7160 of the MERALCO franchise insofar as the latter imposes a 2% tax "in lieu of all taxes and assessments of whatever nature"?

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[7] *Ty vs. Trampe*, 250 SCRA 500 at 512 (1995).

[8] *Mecano vs. Commission on Audit*, 216 SCRA 500 at 504 [1992]; *Berces Sr., vs. Guingona, Jr.*, 241 SCRA 539 at 544 [1995].

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We rule affirmatively.

We are mindful of the established rule that repeals by implication are not favored as laws are presumed to be passed with deliberation and full knowledge of all laws existing on the subject. A general law cannot be construed to have repealed a special law by mere implication unless the intent to repeal or alter is manifest[9] and it must be convincingly demonstrated that the two laws are so clearly repugnant and patently inconsistent that they cannot co-exist.[10]

It is our view that petitioners correctly rely on the provisions of Sections 137 and 193 of the LGC to support their position that MERALCO's tax exemption has been withdrawn. The explicit language of Section 137 which authorizes the province to impose franchise tax "notwithstanding any exemption granted by any law or other special law" is all-encompassing and clear. The franchise tax is imposable despite any exemption enjoyed under special laws.

Section 193 buttresses the withdrawal of extant tax exemption privileges. By stating that 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 or controlled corporations except 1) local water districts, 2) cooperatives duly registered under R.A. 6938, (3) non-stock and non-profit hospitals and educational institutions, are withdrawn upon the effectivity of this code, the obvious import is to limit the exemptions to the three enumerated entities. It is a basic precept of statutory construction that the express mention of one person, thing, act, or consequence excludes all others as expressed in the familiar maxim *expressio unius est exclusio alterius*.[11] In the absence of any provision

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[9] *Laguna Lake Development Authority vs. Court of Appeals*, 251 SCRA 42 at 56 (1995).

[10] *Villegas vs. Subido*, 41 SCRA 190 at 197 (1971); *Mecano vs. Commission on Audit, Supra.*

[11] *Commissioner of Customs vs. Court of Tax Appeals*, 224 SCRA 665 at pp. 669-670, (1993).

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of the Code to the contrary, and we find no other provision in point, any existing tax exemption or incentive enjoyed by MERALCO under existing law was clearly intended to be withdrawn.

Reading together Sections 137 and 193 of the LGC, we conclude that under the LGC the local government unit may now impose a local tax at a rate not exceeding 50% of 1% of the gross annual receipts for the preceding calendar year based on the incoming receipts realized within its territorial jurisdiction. The legislative purpose to withdraw tax privileges enjoyed under existing law or charter is clearly manifested by the language used in Sections 137 and 193 categorically withdrawing such exemption subject only to the exceptions enumerated. Since it would be not only tedious and impractical to attempt to enumerate all the existing statutes providing for special tax exemptions or privileges, the LGC provided for an express, albeit general, withdrawal of such exemptions or privileges. No more unequivocal language could have been used.

It is true that the phrase "in lieu of all taxes" found in special franchises has been held in several cases to exempt the franchise holder from payment of tax on its corporate franchise imposed by the Internal Revenue Code, as the charter is in the nature of a private contract and the exemption is part of the inducement for the acceptance of the franchise, and that the imposition of another franchise tax by the local authority would constitute an impairment of contract between the government and the corporation.[12] But these "magic words" contained in the phrase "shall be in lieu of all taxes"[13] have to give way to the peremptory language of the LGC specifically providing for the withdrawal of such exemption privileges.

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[12] *Cotabato Light and Power Co. vs. City of Cotabato*, 32 SCRA 231; *Commissioner of Internal Revenue vs. Lingayen Gulf Electric Power Co.*, 164 SCRA 27 at 34 (1988), *Province of Misamis Oriental vs. Cagayan Electric Power and Light Co., Inc.*, 181 SCRA 38 at 43 (1990).

[13] *Province of Misamis Oriental vs. Cagayan Electric Power and Light Co. Inc.*, *supra*, at p. 42.

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Accordingly in *Mactan Cebu International Airport Authority vs. Marcos*,[14] this Court held that Section 193 of the LGC prescribes the general rule, *viz.*, the tax exemptions or incentives granted to or presently enjoyed by natural or juridical persons are withdrawn upon the effectivity of the LGC except with respect to those entities expressly enumerated. In the same vein We must hold that the express withdrawal upon effectivity of the LGC of all exemptions only as provided therein, can no longer be invoked by Meralco to disclaim liability for the local tax.

Private respondents further argue that the "in lieu of" provision contained in PD 551, Act No. 3648 and RA 2340 does not partake of the nature of an exemption, but is a "commutative tax." This contention was raised but was not upheld in *Cagayan Electric Power and Light Co. Inc. vs. Commissioner of Internal Revenue*[15] wherein the Supreme Court stated:

"xxx 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 xxx.

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

Private respondent's invocation of the non-impairment clause of the Constitution is accordingly unavailing. The LGC was enacted in pursuance of the constitutional policy to ensure autonomy to local governments[16] and to enable them to attain fullest development as self-reliant communities.[17] Thus in *Mactan Cebu International Airport Authority vs. Marcos*, *supra*, this Court pointed out, in upholding the withdrawal of the real

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[14] *Supra.*

[15] 138 SCRA 629 at p. 631.

[16] Section 25, Art. II and § 2, Art. X Constitution.

[17] § 2(a) Local Government Code of 1991.

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estate tax exemption previously enjoyed by the Mactan Cebu International Airport Authority, as follows:

"Note that as reproduced in Section 234(a) the phrase "and any government-owned or controlled corporation so exempt by its charter" was excluded. The justification for this restricted exemption in Section 234(a) seems obvious: to limit further tax exemption privileges especially in light of the general provision on withdrawal of tax exemption privileges in Section 193 and the special provision on withdrawal of exemption from payment of real property taxes in the last paragraph of Section 234. These policy considerations are consistent with the State policy to ensure autonomy to local governments and the objective of the LGC that they enjoy genuine and meaningful local autonomy to enable them to attain their fullest development as self-reliant communities and make them effective partners in the attainment of national goals. The power to tax is the most effective instrument to raise needed revenues to finance and support myriad activites of local government units for the delivery of basic services essential to the promotion of the general welfare and the enhancement of peace, progress, and prosperity of the people. It may also be relevant to recall that the original reasons for the withdrawal of tax exemption privileges granted to government-owned or controlled corporations and all other units of government were that such privilege resulted in serious tax base erosion and distortions in the tax treatment of similarly situated enterprises, and there was a need for these entities to share in the requirements of development, fiscal or otherwise, by paying the taxes and other charges due from them."[18]

The Court therein concluded that:

"nothing can prevent Congress from decreeing that even instrumentalities or agencies of the Government performing governmental functions may be subject to tax. Where it is done precisely to fulfill a constitutional mandate and national policy, no one can doubt its wisdom."[19]

The power to tax is primarily vested in Congress. However, in our jurisdiction, it may be exercised by local legislative bodies,

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[18] *Mactan Cebu International Airport Authority vs. Marcos*, p. 690.

[19] *Ibid.*, p. 692.

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no longer merely by virtue of a valid delegation as before, but pursuant to direct authority conferred by Section 5, Article X of the Constitution.[20] Thus Article X, Section 5 of the Constitution reads:

"Section 5 – Each Local Government unit shall have the power to create its own sources of revenue and to levy taxes, fees and charges subject to such guidelines and limitations as the Congress may provide, consistent with the basic policy of local autonomy. Such taxes, fees and charges shall accrue exclusively to the Local Governments."

The important legal effect of Section 5 is that henceforth, in interpreting statutory provisions on municipal fiscal powers, doubts will have to be resolved in favor of municipal corporations.[21]

There is further basis for the conclusion that the non-impairment of contract clause cannot be invoked to uphold Meralco's exemption from the local tax. Escudero Electric Co. was originally given the legislative franchise under Act 3648 to operate an electric light and power system in the City of San Pablo and nearby municipalities. The term of the franchise under Act No. 3648 is a period of fifty years from the Act's approval in 1929. The said law provided that the franchise is granted upon the condition that it shall be subject to amendment, or repeal by the Congress of the United States.[22] Under the 1935,[23] the 1973[24] and the 1987[25] Constitutions, no franchise or right shall be granted except under the condition that it shall be subject to amendment, alteration or repeal by the National Assembly when the public interest so requires. With or without the reservation clause, franchises are subject to alterations through a reasonable exercise of the police power; they are

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[20] Isagani A. Cruz, Constitutional Law, (1991), at p. 84.

[21] Bernas, The Constitution of the Philippines, 1st ed., p. 381.

[22] Act No. 3648, § 12.

[23] Article XIV, § 8.

[24] Article XIV, § 5.

[25] Article XII, § 11.

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also subject to alteration by the power to tax, which like police power cannot be contracted away.[26]

Finally, while the matter is not of controlling significance, the Court notes that whereas the original Escudero franchise exempted the franchise holder from all taxes levied or collected "now or in the future"[27] this phrase is noticeably omitted in the counterpart provision of P.D. 551; that said omission is intended not to foreclose future taxes may reasonably be deduced by statutory construction.

WHEREFORE, the instant petition is *GRANTED*. The decision of the Regional Trial Court of San Pablo City, appealed from is hereby reversed and set aside, and the complaint of MERALCO is hereby *DISMISSED*.

No pronouncement as to costs.

SO ORDERED.

Romero (Chairman), Vitug, Panganiban, and *Purisima, JJ.*, concur.

SECOND DIVISION

[G.R. No. 128386. March 25, 1999]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JUDITO ALQUIZALAS *Y* ALQUILITA,** *accused-appellant.*

SYNOPSIS

Appellant was charged by her 15-year old cousin, Marissa Bayang, with rape committed on October 5, 1995. Evidence

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[26] Bernas, *Supra*, p. 341.

[27] § 10, Act No. 3648.