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prosecution to prove his guilt beyond reasonable doubt. He is ordered immediately *RELEASED* from detention unless he is confined for another lawful cause.

Let a copy of this Decision be furnished the Director, Bureau of Corrections, Muntinlupa City for immediate implementation. The Director of the Bureau of Corrections is *DIRECTED* to report the action he has taken to this Court within five days from receipt of this Decision.

SO ORDERED.

Carpio (Chairperson), Brion, Del Castillo, and *Perez, JJ.,* concur.

SECOND DIVISION

[G.R. No. 183505. February 26, 2010]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **SM PRIME HOLDINGS, INC. and FIRST ASIA REALTY DEVELOPMENT CORPORATION,** *respondents.*

SYLLABUS

1. TAXATION; NATIONAL INTERNAL REVENUE CODE (NIRC); VALUE ADDED TAX (VAT); THE ENUMERATION OF SERVICES SUBJECT TO VAT UNDER SECTION 108 OF THE NIRC IS NOT EXHAUSTIVE; EXPLAINED.— Section 108 of the NIRC of the 1997 reads: SEC. 108. Value-added Tax on Sale of Services and Use or Lease of Properties. — (A) Rate and Base of Tax. — There shall be levied, assessed and collected, a value-added tax equivalent to ten percent (10%) of gross receipts derived from the sale or exchange of services, including the use or lease of properties. The phrase **"sale or exchange of services"** means the performance of all kinds of services in the Philippines for others for a fee, remuneration

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or consideration, **including** those performed or rendered by construction and service contractors; stock, real estate, commercial, customs and immigration brokers; lessors of property, whether personal or real; warehousing services; **lessors or distributors of cinematographic films;** persons engaged in milling, processing, manufacturing or repacking goods for others; proprietors, operators or keepers of hotels, motels, rest houses, pension houses, inns, resorts; proprietors or operators of restaurants, refreshment parlors, cafes and other eating places, including clubs and caterers; dealers in securities; lending investors; transportation contractors on their transport of goods or cargoes, including persons who transport goods or cargoes for hire and other domestic common carriers by land, air and water relative to their transport of goods or cargoes; services of franchise grantees of telephone and telegraph, radio and television broadcasting and all other franchise grantees except those under Section 119 of this Code; services of banks, non-bank financial intermediaries and finance companies; and non-life insurance companies (except their crop insurances), including surety, fidelity, indemnity and bonding companies; and **similar services** regardless of whether or not the performance thereof calls for the exercise or use of the physical or mental faculties. The phrase "sale or exchange of services" **shall likewise include:** (1) The lease or the use of or the right or privilege to use any copyright, patent, design or model, plan, secret formula or process, goodwill, trademark, trade brand or other like property or right; x x x **(7) The lease of motion picture films, films, tapes and discs; and** (8) The lease or the use of or the right to use radio, television, satellite transmission and cable television time. x x x A cursory reading of the foregoing provision clearly shows that the enumeration of the "sale or exchange of services" subject to VAT is not exhaustive. The words, "including," "similar services," and "shall likewise include," indicate that the enumeration is by way of example only. Among those included in the enumeration is the "lease of motion picture films, films, tapes and discs." This, however, is not the same as the showing or exhibition of motion pictures or films. As pointed out by the CTA *En Banc*: "Exhibition" in Black's Law Dictionary is defined as "To show or display. x x x To produce anything in public so that it may be taken into possession" (6th ed., p. 573). While the word "lease" is defined as "a contract by which one owning such property grants

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to another the right to possess, use and enjoy it on specified period of time in exchange for periodic payment of a stipulated price, referred to as rent (Black's Law Dictionary, 6th ed., p. 889). x x x Since the activity of showing motion pictures, films or movies by cinema/theater operators or proprietors is not included in the enumeration, it is incumbent upon the court to determine whether such activity falls under the phrase "similar services." The intent of the legislature must therefore be ascertained.

2. ID.; ID.; ID.; THE LEGISLATURE NEVER INTENDED TO INCLUDE CINEMA/THEATER OPERATORS OR PROPRIETORS IN THE COVERAGE OF VAT; RATIONALE.— The facts established herein reveal the legislative intent not to impose VAT on persons already covered by the amusement tax. This holds true even in the case of cinema/theater operators taxed under the LGC of 1991 precisely because the VAT law was intended to replace the percentage tax on certain services. The mere fact that they are taxed by the local government unit and not by the national government is immaterial. The Local Tax Code, in transferring the power to tax gross receipts derived by cinema/theater operators or proprietor from admission tickets to the local government, did not intend to treat cinema/theater houses as a separate class. No distinction must, therefore, be made between the places of amusement taxed by the national government and those taxed by the local government. To hold otherwise would impose an unreasonable burden on cinema/theater houses operators or proprietors, who would be paying an additional 10% VAT on top of the 30% amusement tax imposed by Section 140 of the LGC of 1991, or a total of 40% tax. Such imposition would result in injustice, as person taxed under the NIRC of 1997 would be in a better position than those taxed under the LGC of 1991. We need not belabor that a literal application of a law must be rejected if it will operate unjustly or lead to absurd results. Thus, we are convinced that the legislature never intended to include cinema/theater operators or proprietors in the coverage of VAT. On this point, it is *apropos* to quote the case of *Roxas v. Court of Tax Appeals*, to wit: The power of taxation is sometimes called also the power to destroy. Therefore, it should be exercised with caution to minimize injury to the proprietary rights of a taxpayer. It must be exercised fairly, equally and uniformly, lest the tax collector kill the "hen that

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lays the golden egg." And, in order to maintain the general public's trust and confidence in the Government this power must be used justly and not treacherously.

3. ID.; LOCAL GOVERNMENT CODE (LGC); THE REMOVAL OF THE PROHIBITION UNDER THE LOCAL TAX CODE DID NOT GRANT NOR RESTORE TO THE NATIONAL GOVERNMENT THE POWER TO IMPOSE AMUSEMENT TAX ON CINEMA/THEATER OPERATORS OR PROPRIETORS; EXPLAINED.— The repeal of the Local Tax Code by the LGC of 1991 is not a legal basis for the imposition of VAT on the gross receipts of cinema/theater operators or proprietors derived from admission tickets. The removal of the prohibition under the Local Tax Code did not grant nor restore to the national government the power to impose amusement tax on cinema/theater operators or proprietors. Neither did it expand the coverage of VAT. Since the imposition of a tax is a burden on the taxpayer, it cannot be presumed nor can it be extended by implication. A law will not be construed as imposing a tax unless it does so clearly, expressly, and unambiguously. As it is, the power to impose amusement tax on cinema/theater operators or proprietors remains with the local government.

4. ID.; VALUE ADDED TAX (VAT); REVENUE MEMORANDUM CIRCULAR NO. 28-2001 WHICH IMPOSES VAT ON THE GROSS RECEIPTS FROM ADMISSION TO CINEMA HOUSES IS INVALID; SUSTAINED.— *Revenue Memorandum Circular No. 28-2001 is invalid.* Considering that there is no provision of law imposing VAT on the gross receipts of cinema/theater operators or proprietors derived from admission tickets, RMC No. 28-2001 which imposes VAT on the gross receipts from admission to cinema houses must be struck down. We cannot overemphasize that RMCs must not override, supplant, or modify the law, but must remain consistent and in harmony with, the law they seek to apply and implement. In view of the foregoing, there is no need to discuss whether RMC No. 28-2001 complied with the procedural due process for tax issuances as prescribed under RMC No. 20-86. x x x Moreover, contrary to the view of petitioner, respondents need not prove their entitlement to an exemption from the coverage of VAT. The rule that tax exemptions should be construed strictly against the taxpayer presupposes that the taxpayer is clearly subject to the tax being levied against him. The reason is obvious: it is illogical and

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impractical to determine who are exempted without first determining who are covered by the provision. Thus, unless a statute imposes a tax clearly, expressly and unambiguously, what applies is the equally well-settled rule that the imposition of a tax cannot be presumed. In fact, in case of doubt, tax laws must be construed strictly against the government and in favor of the taxpayer.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Tan Acut Lopez & Pizon for respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

When the intent of the law is not apparent as worded, or when the application of the law would lead to absurdity or injustice, legislative history is all important. In such cases, courts may take judicial notice of the origin and history of the law,[1] the deliberations during the enactment,[2] as well as prior laws on the same subject matter[3] to ascertain the true intent or spirit of the law.

This Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, in relation to Republic Act (RA) No. 9282,[4]

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[1] *United States v. De Guzman,* 30 Phil. 416, 419-420 (1915).

[2] *People v. Degamo*, 450 Phil. 159, 179 (2003).

[3] *Celestial Nickel Mining Exploration Corporation v. Macroasia Corporation*, G.R. Nos. 169080, 172936, 176226 & 176319, December 19, 2007, 541 SCRA 166, 195.

[4] 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.

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seeks to set aside the April 30, 2008 Decision[5] and the June 24, 2008 Resolution[6] of the Court of Tax Appeals (CTA).

Factual Antecedents

Respondents SM Prime Holdings, Inc. (SM Prime) and First Asia Realty Development Corporation (First Asia) are domestic corporations duly organized and existing under the laws of the Republic of the Philippines. Both are engaged in the business of operating cinema houses, among others.[7]

CTA Case No. 7079

On September 26, 2003, the Bureau of Internal Revenue (BIR) sent SM Prime a Preliminary Assessment Notice (PAN) for value added tax (VAT) deficiency on cinema ticket sales in the amount of ₱119,276,047.40 for taxable year 2000.[8] In response, SM Prime filed a letter-protest dated December 15, 2003.[9]

On December 12, 2003, the BIR sent SM Prime a Formal Letter of Demand for the alleged VAT deficiency, which the latter protested in a letter dated January 14, 2004.[10]

On September 6, 2004, the BIR denied the protest filed by SM Prime and ordered it to pay the VAT deficiency for taxable year 2000 in the amount of ₱124,035,874.12.[11]

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[5] *Rollo*, pp. 98-120; penned by Associate Justice Olga Palanca-Enriquez and concurred in by Presiding Justice Ernesto D. Acosta and Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, and Caesar A. Casanova. Associate Justice Erlinda P. Uy was on official business.

[6] *Id.* at 121-123; penned by Associate Justice Olga Palanca-Enriquez and concurred in by Presiding Justice Ernesto D. Acosta and Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, and Caesar A. Casanova.

[7] *Id.* at 772.

[8] *Id.* at 100.

[9] *Id*.

[10] *Id.* at 101.

[11] *Id*.

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On October 15, 2004, SM Prime filed a Petition for Review before the CTA docketed as CTA Case No. 7079.[12]

CTA Case No. 7085

On May 15, 2002, the BIR sent First Asia a PAN for VAT deficiency on cinema ticket sales for taxable year 1999 in the total amount of ₱35,823,680.93.[13] First Asia protested the PAN in a letter dated July 9, 2002.[14]

Subsequently, the BIR issued a Formal Letter of Demand for the alleged VAT deficiency which was protested by First Asia in a letter dated December 12, 2002.[15]

On September 6, 2004, the BIR rendered a Decision denying the protest and ordering First Asia to pay the amount of ₱35,823,680.93 for VAT deficiency for taxable year 1999.[16]

Accordingly, on October 20, 2004, First Asia filed a Petition for Review before the CTA, docketed as CTA Case No. 7085.[17]

CTA Case No. 7111

On April 16, 2004, the BIR sent a PAN to First Asia for VAT deficiency on cinema ticket sales for taxable year 2000 in the amount of ₱35,840,895.78. First Asia protested the PAN through a letter dated April 22, 2004.[18]

Thereafter, the BIR issued a Formal Letter of Demand for alleged VAT deficiency.[19] First Asia protested the same in a letter dated July 9, 2004.[20]

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[12] *Id.*

[13] *Id.*

[14] *Id.*

[15] *Id.*

[16] *Id.* at 102.

[17] *Id.*

[18] *Id.*

[19] *Id.*

[20] *Id.*

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On October 5, 2004, the BIR denied the protest and ordered First Asia to pay the VAT deficiency in the amount of ₱35,840,895.78 for taxable year 2000.[21]

This prompted First Asia to file a Petition for Review before the CTA on December 16, 2004. The case was docketed as CTA Case No. 7111.[22]

CTA Case No. 7272

Re: Assessment Notice No. 008-02

A PAN for VAT deficiency on cinema ticket sales for the taxable year 2002 in the total amount of ₱32,802,912.21 was issued against First Asia by the BIR. In response, First Asia filed a protest-letter dated November 11, 2004. The BIR then sent a Formal Letter of Demand, which was protested by First Asia on December 14, 2004.[23]

Re: Assessment Notice No. 003-03

A PAN for VAT deficiency on cinema ticket sales in the total amount of ₱28,196,376.46 for the taxable year 2003 was issued by the BIR against First Asia. In a letter dated September 23, 2004, First Asia protested the PAN. A Formal Letter of Demand was thereafter issued by the BIR to First Asia, which the latter protested through a letter dated November 11, 2004.[24]

On May 11, 2005, the BIR rendered a Decision denying the protests. It ordered First Asia to pay the amounts of ₱33,610,202.91 and ₱28,590,826.50 for VAT deficiency for taxable years 2002 and 2003, respectively.[25]

Thus, on June 22, 2005, First Asia filed a Petition for Review before the CTA, docketed as CTA Case No. 7272.[26]

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[21] *Id.* at 25-26.

[22] *Id.* at 103.

[23] *Id.*

[24] *Id.* at 104.

[25] *Id.* at 700.

[26] *Id.* at 104.

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Consolidated Petitions

The Commissioner of Internal Revenue (CIR) filed his Answers to the Petitions filed by SM Prime and First Asia.[27]

On July 1, 2005, SM Prime filed a Motion to Consolidate CTA Case Nos. 7085, 7111 and 7272 with CTA Case No. 7079 on the grounds that the issues raised therein are identical and that SM Prime is a majority shareholder of First Asia. The motion was granted.[28]

Upon submission of the parties' respective memoranda, the consolidated cases were submitted for decision on the sole issue of whether gross receipts derived from admission tickets by cinema/theater operators or proprietors are subject to VAT. [29]

Ruling of the CTA First Division

On September 22, 2006, the First Division of the CTA rendered a Decision granting the Petition for Review. Resorting to the language used and the legislative history of the law, it ruled that the activity of showing cinematographic films is not a service covered by VAT under the National Internal Revenue Code (NIRC) of 1997, as amended, but an activity subject to amusement tax under RA 7160, otherwise known as the Local Government Code (LGC) of 1991. Citing House Joint Resolution No. 13, entitled *"Joint Resolution Expressing the True Intent of Congress with Respect to the Prevailing Tax Regime in the Theater and Local Film Industry Consistent with the State's Policy to Have a Viable, Sustainable and Competitive Theater and Film Industry as One of its Partners in National Development,"*[30] the CTA First Division held that the House

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[27] *Id.* at 28.

[28] *Id.* at 104-105.

[29] *Id.* at 29.

[30] Approved by the House on the Third Reading on November 15, 2005. Its counterpart in the Senate, Senate Joint Resolution No. 6, entitled *"Joint Resolution Expressing the True Intent of Congress Regarding the Imposition of the Value-Added Tax Particularly on the Theater Industry,"* is pending in the Committee.

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of Representatives resolved that there should only be one business tax applicable to theaters and movie houses, which is the 30% amusement tax imposed by cities and provinces under the LGC of 1991. Further, it held that consistent with the State's policy to have a viable, sustainable and competitive theater and film industry, the national government should be precluded from imposing its own business tax in addition to that already imposed and collected by local government units. The CTA First Division likewise found that Revenue Memorandum Circular (RMC) No. 28-2001, which imposes VAT on gross receipts from admission to cinema houses, cannot be given force and effect because it failed to comply with the procedural due process for tax issuances under RMC No. 20-86.[31] Thus, it disposed of the case as follows:

> IN VIEW OF ALL THE FOREGOING, this Court hereby **GRANTS** the Petitions for Review. Respondent's Decisions denying petitioners' protests against deficiency value-added taxes are hereby *REVERSED*. Accordingly, Assessment Notices Nos. VT-00-000098, VT-99-000057, VT-00-000122, 003-03 and 008-02 are **ORDERED** cancelled and set aside.
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> SO ORDERED.[32]

Aggrieved, the CIR moved for reconsideration which was denied by the First Division in its Resolution dated December 14, 2006.[33]

Ruling of the CTA En Banc

Thus, the CIR appealed to the CTA *En Banc*.[34] The case was docketed as CTA EB No. 244.[35] The CTA *En Banc* however

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[31] Notice, Publication and Effectivity of Internal Revenue Tax Rules and Regulations, issued by then Commissioner Bienvenido A. Tan, Jr. on July 24, 1986.

[32] *Rollo*, p. 247.

[33] *Id.* at 249-257.

[34] *Id.* at 32.

[35] *Id*.

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denied[36] the Petition for Review and dismissed[37] as well petitioner's Motion for Reconsideration.

The CTA *En Banc* held that Section 108 of the NIRC actually sets forth an exhaustive enumeration of what services are intended to be subject to VAT. And since the showing or exhibition of motion pictures, films or movies by cinema operators or proprietors is not among the enumerated activities contemplated in the phrase "sale or exchange of services," then gross receipts derived by cinema/ theater operators or proprietors from admission tickets in showing motion pictures, film or movie are not subject to VAT. It reiterated that the exhibition or showing of motion pictures, films, or movies is instead subject to amusement tax under the LGC of 1991. As regards the validity of RMC No. 28-2001, the CTA *En Banc* agreed with its First Division that the same cannot be given force and effect for failure to comply with RMC No. 20-86.

Issue

Hence, the present recourse, where petitioner alleges that the CTA *En Banc* seriously erred:

(1) In not finding/holding that the gross receipts derived by operators/proprietors of cinema houses from admission tickets [are] subject to the 10% VAT because:

   (a) THE EXHIBITION OF MOVIES BY CINEMA OPERATORS/PROPRIETORS TO THE PAYING PUBLIC IS A SALE OF SERVICE;

   (b) UNLESS EXEMPTED BY LAW, ALL SALES OF SERVICES ARE EXPRESSLY SUBJECT TO VAT UNDER SECTION 108 OF THE NIRC OF 1997;

   (c) SECTION 108 OF THE NIRC OF 1997 IS A CLEAR PROVISION OF LAW AND THE APPLICATION OF RULES OF STATUTORY CONSTRUCTION AND EXTRINSIC AIDS IS UNWARRANTED;

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[36] *Id.* at 119.

[37] *Id.* at 122.

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(d) GRANTING WITHOUT CONCEDING THAT RULES OF CONSTRUCTION ARE APPLICABLE HEREIN, STILL THE HONORABLE COURT ERRONEOUSLY APPLIED THE SAME AND PROMULGATED DANGEROUS PRECEDENTS;

(e) THERE IS NO VALID, EXISTING PROVISION OF LAW EXEMPTING RESPONDENTS' SERVICES FROM THE VAT IMPOSED UNDER SECTION 108 OF THE NIRC OF 1997;

(f) QUESTIONS ON THE WISDOM OF THE LAW ARE NOT PROPER ISSUES TO BE TRIED BY THE HONORABLE COURT; and

(g) RESPONDENTS WERE TAXED BASED ON THE PROVISION OF SECTION 108 OF THE NIRC.

(2) In ruling that the enumeration in Section 108 of the NIRC of 1997 is exhaustive in coverage;

(3) In misconstruing the NIRC of 1997 to conclude that the showing of motion pictures is merely subject to the amusement tax imposed by the Local Government Code; and

(4) In invalidating Revenue Memorandum Circular (RMC) No. 28-2001.[38]

Simply put, the issue in this case is whether the gross receipts derived by operators or proprietors of cinema/theater houses from admission tickets are subject to VAT.

Petitioner's Arguments

Petitioner argues that the enumeration of services subject to VAT in Section 108 of the NIRC is not exhaustive because it covers all sales of services unless exempted by law. He claims that the CTA erred in applying the rules on statutory construction and in using extrinsic aids in interpreting Section 108 because the provision is clear and unambiguous. Thus, he maintains that the exhibition of movies by cinema operators or proprietors to the paying public, being a sale of service, is subject to VAT.

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[38] *Id.* at 35-36.

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Respondents' Arguments

Respondents, on the other hand, argue that a plain reading of Section 108 of the NIRC of 1997 shows that the gross receipts of proprietors or operators of cinemas/theaters derived from public admission are not among the services subject to VAT. Respondents insist that gross receipts from cinema/theater admission tickets were never intended to be subject to any tax imposed by the national government. According to them, the absence of gross receipts from cinema/theater admission tickets from the list of services which are subject to the national amusement tax under Section 125 of the NIRC of 1997 reinforces this legislative intent. Respondents also highlight the fact that RMC No. 28-2001 on which the deficiency assessments were based is an unpublished administrative ruling.

Our Ruling

The petition is bereft of merit.

The enumeration of services subject to VAT under Section 108 of the NIRC is not exhaustive

Section 108 of the NIRC of the 1997 reads:

SEC. 108. Value-added Tax on Sale of Services and Use or Lease of Properties. —

(A) Rate and Base of Tax. — There shall be levied, assessed and collected, a value-added tax equivalent to ten percent (10%) of gross receipts derived from the sale or exchange of services, including the use or lease of properties.

The phrase **"sale or exchange of services"** means the performance of all kinds of services in the Philippines for others for a fee, remuneration or consideration, **including** those performed or rendered by construction and service contractors; stock, real estate, commercial, customs and immigration brokers; lessors of property, whether personal or real; warehousing services; **lessors or distributors of cinematographic films;** persons engaged in milling, processing, manufacturing or repacking goods for others; proprietors, operators or keepers of hotels, motels, rest houses, pension houses, inns, resorts; proprietors or operators of restaurants, refreshment parlors,

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cafes and other eating places, including clubs and caterers; dealers in securities; lending investors; transportation contractors on their transport of goods or cargoes, including persons who transport goods or cargoes for hire and other domestic common carriers by land, air and water relative to their transport of goods or cargoes; services of franchise grantees of telephone and telegraph, radio and television broadcasting and all other franchise grantees except those under Section 119 of this Code; services of banks, non-bank financial intermediaries and finance companies; and non-life insurance companies (except their crop insurances), including surety, fidelity, indemnity and bonding companies; and **similar services** regardless of whether or not the performance thereof calls for the exercise or use of the physical or mental faculties. The phrase "sale or exchange of services" **shall likewise include:**

(1) The lease or the use of or the right or privilege to use any copyright, patent, design or model, plan, secret formula or process, goodwill, trademark, trade brand or other like property or right;

x x x x x x x x x

(7) The lease of motion picture films, films, tapes and discs; and

(8) The lease or the use of or the right to use radio, television, satellite transmission and cable television time.

x x x (Emphasis supplied)

A cursory reading of the foregoing provision clearly shows that the enumeration of the "sale or exchange of services" subject to VAT is not exhaustive. The words, "including," "similar services," and "shall likewise include," indicate that the enumeration is by way of example only.[39]

Among those included in the enumeration is the "lease of motion picture films, films, tapes and discs." This, however, is not the same as the showing or exhibition of motion pictures or films. As pointed out by the CTA *En Banc*:

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[39] See *Binay v. Sandiganbayan*, 374 Phil. 413, 440 (1999).

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"Exhibition" in Black's Law Dictionary is defined as "To show or display. x x x To produce anything in public so that it may be taken into possession" (6th ed., p. 573). While the word "lease" is defined as "a contract by which one owning such property grants to another the right to possess, use and enjoy it on specified period of time in exchange for periodic payment of a stipulated price, referred to as rent (Black's Law Dictionary, 6th ed., p. 889). x x x[40]

Since the activity of showing motion pictures, films or movies by cinema/theater operators or proprietors is not included in the enumeration, it is incumbent upon the court to determine whether such activity falls under the phrase "similar services." The intent of the legislature must therefore be ascertained.

The legislature never intended operators or proprietors of cinema/theater houses to be covered by VAT

Under the NIRC of 1939,[41] the national government imposed amusement tax on proprietors, lessees, or operators of theaters, cinematographs, concert halls, circuses, boxing exhibitions, and other places of amusement, including cockpits, race tracks, and cabaret.[42] In the case of theaters or cinematographs, the

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[40] *Rollo*, p. 420.

[41] Commonwealth Act No. 466.

[42] SECTION 260. Amusement taxes. — There shall be collected from the proprietor, lessee, or operator of theaters, cinematographs, concert halls, circuses, boxing exhibitions, and other places of amusement the following taxes:

(a) When the amount paid for admission exceeds twenty centavos but does not exceed twenty-nine centavos, two centavos on each admission.

x x x x x x x x x

(i) When the amount paid for admission exceeds ninety-nine centavos, ten centavos on each admission.

In the case of theaters or cinematographs, the taxes herein prescribed shall first be deducted and withheld by the proprietors, lessees, or operators of such theaters or cinematographs and paid to the Collector of Internal Revenue before the gross receipts are divided between the proprietors, lessees, or operators of the theaters or cinematographs and the distributors of the cinematographic films.

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taxes were first deducted, withheld, and paid by the proprietors, lessees, or operators of such theaters or cinematographs before the gross receipts were divided between the proprietors, lessees, or operators of the theaters or cinematographs and the distributors of the cinematographic films. Section 11[43] of the Local Tax Code,[44] however, amended this provision by transferring the power to impose amusement tax[45] on admission from theaters, cinematographs, concert halls, circuses and other places of amusements exclusively to the local government. Thus, when the NIRC of 1977[46] was enacted, the national government

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In the case of cockpits, race tracks, and cabarets, x x x. For the purpose of the amusement tax, the term "gross receipts" embraces all the receipts of the proprietor, lessee, or operator of the amusement place, excluding the receipts derived by him from the sale of liquors, beverages, or other articles subject to specific tax, or from any business subject to tax under this Code.

x x x x x x x x x

[43] SECTION 11. Taxes transferred. — The imposition of the taxes provided in Sections 12, 13, 14, 15, and 16 of this Code heretofore exercised by the national government or the municipal government, shall henceforth be exercised by the provincial government, to the exclusion of the national or municipal government. To avoid any revenue loss, the province shall levy and collect such taxes as provided in said Sections 12, 13 and 14.

[44] Presidential Decree No. 231 (1973).

[45] SECTION 13. Amusement tax on admission. — The province shall impose a tax on admission to be collected from the proprietors, lessees, or operators of theaters, cinematographs, concert halls, circuses and other places of amusements at the following rates:

(a) When the amount paid for admission is one peso or less, twenty per cent; and

(b) When the amount paid for admission exceeds one peso, thirty per cent.

In the case of theaters or cinematographs, the taxes herein prescribed shall first be deducted and withheld by the proprietors, lessees, or operators of the theaters or cinematographs and paid to the provincial treasurer concerned thru the municipal treasurer before the gross receipts are divided between the proprietors, lessees, or operators of the theaters or cinematographs and the distributors of the cinematographic films.

x x x x x x x x x

[46] Presidential Decree No. 1158.

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imposed amusement tax only on proprietors, lessees or operators of cabarets, day and night clubs, Jai-Alai and race tracks.[47]

On January 1, 1988, the VAT Law[48] was promulgated. It amended certain provisions of the NIRC of 1977 by imposing a multi-stage VAT to replace the tax on original and subsequent sales tax and percentage tax on certain services. It imposed VAT on sales of services under Section 102 thereof, which provides:

SECTION 102. Value-added tax on sale of services. — (a) Rate and base of tax. — There shall be levied, assessed and collected, a value-added tax equivalent to 10% percent of gross receipts derived by any person engaged in the sale of services. The phrase "sale of services" means the performance of all kinds of services for others for a fee, remuneration or consideration, including those performed or rendered by construction and service contractors; stock, real estate, commercial, customs and immigration brokers; lessors of personal property; **lessors or distributors of cinematographic films;** persons engaged in milling, processing, manufacturing or repacking goods for others; and similar services regardless of whether or not the performance thereof calls for the exercise or use of the physical or mental faculties: Provided That the following services performed in the Philippines by VAT-registered persons shall be subject to 0%:

(1) Processing manufacturing or repacking goods for other persons doing business outside the Philippines which goods are subsequently exported, x x x

xxx xxx xxx

"Gross receipts" means the total amount of money or its equivalent representing the contract price, compensation or service fee, including the amount charged for materials supplied with the services and deposits or advance payments actually or constructively received during the taxable quarter for the service performed or to be performed for another person, excluding value-added tax.

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[47] SECTION 268. Amusement taxes. — There shall be collected from the proprietor, lessee or operator of cabarets, day and night clubs, Jai-Alai and race tracks, a tax equivalent to x x x

[48] Executive Order No. 273.

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(b) Determination of the tax. — (1) Tax billed as a separate item in the invoice. — If the tax is billed as a separate item in the invoice, the tax shall be based on the gross receipts, excluding the tax.

(2) Tax not billed separately or is billed erroneously in the invoice. — If the tax is not billed separately or is billed erroneously in the invoice, the tax shall be determined by multiplying the gross receipts (including the amount intended to cover the tax or the tax billed erroneously) by 1/11. (Emphasis supplied)

Persons subject to amusement tax under the NIRC of 1977, as amended, however, were exempted from the coverage of VAT.[49]

On February 19, 1988, then Commissioner Bienvenido A. Tan, Jr. issued RMC 8-88, which clarified that the power to impose amusement tax on gross receipts derived from admission tickets was exclusive with the local government units and that only the gross receipts of amusement places derived from sources other than from admission tickets were subject to amusement tax under the NIRC of 1977, as amended. Pertinent portions of RMC 8-88 read:

Under the Local Tax Code (P.D. 231, as amended), the jurisdiction to levy amusement tax on gross receipts arising from admission to places of amusement has been transferred to the local governments to the exclusion of the national government.

xxx xxx xxx

Since the promulgation of the Local Tax Code which took effect on June 28, 1973 none of the amendatory laws which amended the National Internal Revenue Code, including the value added tax law under Executive Order No. 273, has amended the provisions of Section 11 of the Local Tax Code. Accordingly, the sole jurisdiction for collection of amusement

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[49] SECTION 103. Exempt Transactions. — The following shall be exempt from the value-added tax:

(a) Sale of nonfood agricultural; marine and forest products in their original state by the primary producer or the owner of the land where the same are produced.

x x x x x x x x x

(j) Services rendered by persons subject to percentage tax under Title V;

x x x x x x x x x

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tax on admission receipts in places of amusement rests exclusively on the local government, to the exclusion of the national government. Since the Bureau of Internal Revenue is an agency of the national government, then it follows that it has no legal mandate to levy amusement tax on admission receipts in the said places of amusement.

Considering the foregoing legal background, the provisions under Section 123 of the National Internal Revenue Code as renumbered by Executive Order No. 273 (Sec. 228, old NIRC) pertaining to amusement taxes on places of amusement shall be implemented in accordance with BIR RULING, dated December 4, 1973 and BIR RULING NO. 231-86 dated November 5, 1986 to wit:

"x x x Accordingly, **only the gross receipts of the amusement places derived from sources other than from admission tickets shall be subject to x x x amusement tax prescribed under Section 228 of the Tax Code, as amended** (now Section 123, NIRC, as amended by E.O. 273). **The tax on gross receipts derived from admission tickets shall be levied and collected by the city government pursuant to Section 23 of Presidential Decree No. 231, as amended x x x" or by the provincial government, pursuant to Section 11 of P.D. 231, otherwise known as the Local Tax Code**. (Emphasis supplied)

On October 10, 1991, the LGC of 1991 was passed into law. The local government retained the power to impose amusement tax on proprietors, lessees, or operators of theaters, cinemas, concert halls, circuses, boxing stadia, and other places of amusement at a rate of not more than thirty percent (30%) of the gross receipts from admission fees under Section 140 thereof.[50] In the case of theaters or cinemas, the tax shall first be deducted and withheld by their proprietors, lessees, or operators and paid to the local government before the gross receipts are divided between said

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[50] SECTION 140. Amusement Tax. — (a) The province may levy an amusement tax to be collected from the proprietors, lessees, or operators of theaters, cinemas, concert halls, circuses, boxing stadia, and other places of amusement at a rate of not more than thirty percent (30%) of the gross receipts from admission fees.

(b) In the case of theaters or cinemas, the tax shall first be deducted and withheld by their proprietors, lessees, or operators and paid to the provincial treasurer before the gross receipts are divided between said proprietors, lessees, or operators and the distributors of the cinematographic films.

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proprietors, lessees, or operators and the distributors of the cinematographic films. However, the provision in the Local Tax Code expressly excluding the national government from collecting tax from the proprietors, lessees, or operators of theaters, cinematographs, concert halls, circuses and other places of amusements was no longer included.

In 1994, RA 7716 restructured the VAT system by widening its tax base and enhancing its administration. Three years later, RA 7716 was amended by RA 8241. Shortly thereafter, the NIRC of 1997[51] was signed into law. Several amendments[52] were made to expand the coverage of VAT. However, none pertain to cinema/theater operators or proprietors. At present, only lessors or distributors of cinematographic films are subject to VAT. While persons subject to amusement tax[53] under

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x x x x x x x x x

[51] Republic Act No. 8424.

[52] See Republic Act No. 8761, Republic Act No. 9010, Republic Act No. 9238 and Republic Act No. 9337.

[53] SECTION 125. Amusement Taxes. — There shall be collected from the proprietor, lessee or operator of cockpits, cabarets, night or day clubs, boxing exhibitions, professional basketball games, Jai-Alai and racetracks, a tax equivalent to:

(a) Eighteen percent (18%) in the case of cockpits;

(b) Eighteen percent (18%) in the case of cabarets, night or day clubs;

(c) Ten percent (10%) in the case of boxing exhibitions: Provided, however, That boxing exhibitions wherein World or Oriental Championships in any division is at stake shall be exempt from amusement tax: Provided, further, That at least one of the contenders for World or Oriental Championship is a citizen of the Philippines and said exhibitions are promoted by a citizen/s of the Philippines or by a corporation or association at least sixty percent (60%) of the capital of which is owned by such citizens;

(d) Fifteen percent (15%) in the case of professional basketball games as envisioned in Presidential Decree No. 871: Provided, however, That the tax herein shall be in lieu of all other percentage taxes of whatever nature and description; and

(e) Thirty percent (30%) in the case of Jai-Alai and racetracks of their gross receipts, irrespective of whether or not any amount is charged for admission.

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the NIRC of 1997 are exempt from the coverage of VAT.[54]

Based on the foregoing, the following facts can be established:

(1) Historically, the activity of showing motion pictures, films or movies by cinema/theater operators or proprietors has always been considered as a form of entertainment subject to amusement tax.

(2) Prior to the Local Tax Code, all forms of amusement tax were imposed by the national government.

(3) When the Local Tax Code was enacted, amusement tax on admission tickets from theaters, cinematographs, concert halls, circuses and other places of amusements were transferred to the local government.

(4) Under the NIRC of 1977, the national government imposed amusement tax only on proprietors, lessees or operators of cabarets, day and night clubs, Jai-Alai and race tracks.

(5) The VAT law was enacted to replace the tax on original and subsequent sales tax and percentage tax on certain services.

For the purpose of the amusement tax, the term 'gross receipts' embraces all the receipts of the proprietor, lessee or operator of the amusement place. Said gross receipts also include income from television, radio and motion picture rights, if any. A person or entity or association conducting any activity subject to the tax herein imposed shall be similarly liable for said tax with respect to such portion of the receipts derived by him or it.

The taxes imposed herein shall be payable at the end of each quarter and it shall be the duty of the proprietor, lessee or operator concerned, as well as any party liable, within twenty (20) days after the end of each quarter, to make a true and complete return of the amount of the gross receipts derived during the preceding quarter and pay the tax due thereon.

[54] SECTION 109. Exempt Transactions. — The following shall be exempt from the value-added tax:

(a) Sale of nonfood agricultural products; marine and forest products in their original state by the primary producer or the owner of the land where the same are produced;

x x x x x x x x x

(j) Services subject to percentage tax under Title V;

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(6) When the VAT law was implemented, it exempted persons subject to amusement tax under the NIRC from the coverage of VAT.

(7) When the Local Tax Code was repealed by the LGC of 1991, the local government continued to impose amusement tax on admission tickets from theaters, cinematographs, concert halls, circuses and other places of amusements.

(8) Amendments to the VAT law have been consistent in exempting persons subject to amusement tax under the NIRC from the coverage of VAT.

(9) Only lessors or distributors of cinematographic films are included in the coverage of VAT.

These reveal the legislative intent not to impose VAT on persons already covered by the amusement tax. This holds true even in the case of cinema/theater operators taxed under the LGC of 1991 precisely because the VAT law was intended to replace the percentage tax on certain services. The mere fact that they are taxed by the local government unit and not by the national government is immaterial. The Local Tax Code, in transferring the power to tax gross receipts derived by cinema/theater operators or proprietor from admission tickets to the local government, did not intend to treat cinema/theater houses as a separate class. No distinction must, therefore, be made between the places of amusement taxed by the national government and those taxed by the local government.

To hold otherwise would impose an unreasonable burden on cinema/theater houses operators or proprietors, who would be paying an additional 10%[55] VAT on top of the 30% amusement tax imposed by Section 140 of the LGC of 1991, or a total of 40% tax. Such imposition would result in injustice, as persons taxed under the NIRC of 1997 would be in a better position than those taxed under the LGC of 1991. We need not belabor that a literal application of a law must be rejected if it will

[55] Now 12%.

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operate unjustly or lead to absurd results.[56] Thus, we are convinced that the legislature never intended to include cinema/theater operators or proprietors in the coverage of VAT.

On this point, it is *apropos* to quote the case of *Roxas v. Court of Tax Appeals,*[57] to wit:

> The power of taxation is sometimes called also the power to destroy. Therefore, it should be exercised with caution to minimize injury to the proprietary rights of a taxpayer. It must be exercised fairly, equally and uniformly, lest the tax collector kill the "hen that lays the golden egg." And, in order to maintain the general public's trust and confidence in the Government this power must be used justly and not treacherously.

The repeal of the Local Tax Code by the LGC of 1991 is not a legal basis for the imposition of VAT

Petitioner, in issuing the assessment notices for deficiency VAT against respondents, ratiocinated that:

> Basically, it was acknowledged that a cinema/theater operator was then subject to amusement tax under Section 260 of Commonwealth Act No. 466, otherwise known as the National Internal Revenue Code of 1939, computed on the amount paid for admission. With the enactment of the Local Tax Code under Presidential Decree (PD) No. 231, dated June 28, 1973, the power of imposing taxes on gross receipts from admission of persons to cinema/theater and other places of amusement had, thereafter, been transferred to the provincial government, to the exclusion of the national or municipal government (Sections 11 & 13, Local Tax Code). However, the said provision containing the exclusive power of the provincial government to impose amusement tax, had also been repealed and/or deleted by Republic Act (RA) No. 7160, otherwise known as the Local Government Code of 1991, enacted into law on October 10, 1991. Accordingly, **the enactment of RA No. 7160, thus, eliminating the statutory prohibition on the national government to impose business tax on gross receipts**

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[56] *Commissioner of Internal Revenue v. Solidbank Corp.*, 462 Phil. 96, 130 (2003).

[57] 131 Phil. 773, 780-781 (1968).

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from admission of persons to places of amusement, led the way to the valid imposition of the VAT pursuant to Section 102 (now Section 108) of the old Tax Code, as amended by the Expanded VAT Law (RA No. 7716) and which was implemented beginning January 1, 1996.[58] (Emphasis supplied)

We disagree.

The repeal of the Local Tax Code by the LGC of 1991 is not a legal basis for the imposition of VAT on the gross receipts of cinema/theater operators or proprietors derived from admission tickets. The removal of the prohibition under the Local Tax Code did not grant nor restore to the national government the power to impose amusement tax on cinema/theater operators or proprietors. Neither did it expand the coverage of VAT. Since the imposition of a tax is a burden on the taxpayer, it cannot be presumed nor can it be extended by implication. A law will not be construed as imposing a tax unless it does so clearly, expressly, and unambiguously.[59] As it is, the power to impose amusement tax on cinema/theater operators or proprietors remains with the local government.

Revenue Memorandum Circular No. 28-2001 is invalid

Considering that there is no provision of law imposing VAT on the gross receipts of cinema/theater operators or proprietors derived from admission tickets, RMC No. 28-2001 which imposes VAT on the gross receipts from admission to cinema houses must be struck down. We cannot overemphasize that RMCs must not override, supplant, or modify the law, but must remain consistent and in harmony with, the law they seek to apply and implement.[60]

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[58] *Rollo,* pp. 671-672; 681 and 693.

[59] *Commissioner of Internal Revenue v. Court of Appeals,* 338 Phil. 322, 330 (1997).

[60] *Commissioner of Internal Revenue v. Court of Appeals*, 310 Phil. 392, 397 (1995).

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In view of the foregoing, there is no need to discuss whether RMC No. 28-2001 complied with the procedural due process for tax issuances as prescribed under RMC No. 20-86.

Rule on tax exemption does not apply

Moreover, contrary to the view of petitioner, respondents need not prove their entitlement to an exemption from the coverage of VAT. The rule that tax exemptions should be construed strictly against the taxpayer presupposes that the taxpayer is clearly subject to the tax being levied against him.[61] The reason is obvious: it is both illogical and impractical to determine who are exempted without first determining who are covered by the provision.[62] Thus, unless a statute imposes a tax clearly, expressly and unambiguously, what applies is the equally well-settled rule that the imposition of a tax cannot be presumed.[63] In fact, in case of doubt, tax laws must be construed strictly against the government and in favor of the taxpayer.[64]

WHEREFORE, the Petition is hereby *DENIED*. The assailed April 30, 2008 Decision of the Court of Tax Appeals *En Banc* holding that gross receipts derived by respondents from admission tickets in showing motion pictures, films or movies are not subject to value-added tax under Section 108 of the National Internal Revenue Code of 1997, as amended, and its June 24, 2008 Resolution denying the motion for reconsideration are *AFFIRMED*.

SO ORDERED.

Carpio (Chairperson), Brion, Abad, and *Perez, JJ.,* concur.

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[61] *Commissioner of Internal Revenue v. The Phil. American Accident Insurance Company, Inc.,* 493 Phil. 785, 793 (2005).

[62] *Commissioner of Internal Revenue v. Court of Appeals, supra* note 59.

[63] *Commissioner of Internal Revenue v. The Phil. American Accident Insurance Company, Inc., supra*.

[64] *Id*.