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extraordinary remedy of *certiorari.* The requirement for judicial intrusion, however, is still for the petitioners to demonstrate clearly that the Ombudsman acted arbitrarily or despotically. Absent such clear demonstration, the intervention must be disallowed in deference to the doctrine of non-interference.

WHEREFORE, the petition docketed as G.R. No. 174777 is **DISMISSED.** The Motion dated October 17, 2006 filed by the petitioners in G.R. No. 159139 is **DENIED.**

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Peralta, Bersamin, del Castillo, Reyes, Perlas-Bernabe, Leonen, Caguioa, and *Tijam, JJ.,* concur.

Mendoza and *Martires, JJ.*, on official leave.

EN BANC

[G.R. No. 211093. June 6, 2017]

MINDANAO SHOPPING DESTINATION CORPORATION, ACE HARDWARE PHILS., INC., INTERNATIONAL TOYWORLD, INC., STAR APPLIANCE CENTER, INC., SURPLUS MARKETING CORPORATION, WATSONS PERSONAL CARE STORES (PHILS.), INC., and SUPERVALUE, INC., *petitioners, vs.* **HON. RODRIGO R. DUTERTE, in his capacity as Mayor of Davao City, HON. SARA DUTERTE, Vice-Mayor of Davao City, in her capacity as Presiding Officer of the Sangguniang Panlungsod, and THE SANGGUNIANG PANLUNGSOD (CITY COUNCIL) NG DAVAO,** *respondents.*

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SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; LOCAL GOVERNMENT CODE; LOCAL TAXATION AND FISCAL MATTERS; AUTHORITY OF LOCAL GOVERNMENT UNITS TO ADJUST RATES OF TAX ORDINANCES; REQUIREMENTS.— Section 191 of the LGC presupposes that the following requirements are present for it to apply, to wit: (i) there is a tax ordinance that already imposes a tax in accordance with the provisions of the LGC; and (ii) there is a second tax ordinance that made adjustment on the tax rate fixed by the first tax ordinance. In the instant case, both elements are not present. As to the first requirement, it cannot be said that the old tax ordinance (first ordinance) was imposed in accordance with the provisions of the LGC. To reiterate, the old tax ordinance of Davao City was enacted before the LGC came into law. Thus, the assailed new ordinance, Davao City Ordinance No. 158-05, Series of 2005 was actually the first to impose the tax on retailers in accordance with the provisions of the LGC. As to the second requirement, the new tax ordinance (second ordinance) imposed the new tax base and the new tax rate as provided by the LGC for retailers. It must be emphasized that a tax has two components, a tax base and a tax rate. However, Section 191 contemplates a situation where there is already an existing tax as authorized under the LGC and only a change in the tax rate would be effected. Again, the new ordinance Davao City provided, not only a tax rate, but also a tax base that were appropriate for retailers, following the parameters provided under the LGC. Suffice it to say, the second requirement is absent. Thus, given the absence of the above two requirements for the application of Section 191 of the LGC, there is no reason for the latter to cover a situation where the ordinance, as in this case, was an initial implementation of R.A. 7160.

2. ID.; ID.; ID.; ID.; ID.; INAPPLICABLE WHEN THE ADJUSTMENT IS NOT BY VIRTUE OF A UNILATERAL INCREASE OF THE TAX RATE.— Section 191 of the LGC will not apply because with the assailed tax ordinance, there is no outright or unilateral increase of tax to speak of. The resulting increase in the tax rate for retailers was merely incidental. When Davao City enacted the assailed ordinance, it merely intended

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to rectify the glaring error in the classification of wholesaler and retailer in the old ordinance. Petitioners are retailers as contemplated by the LGC. Petitioners never disputed their classification as retailers. Thus, being retailers, they are subject to the tax rate provided under Section 69 (d) and not under Section 69 (b) of the assailed ordinance. In effect, under the assailed ordinance as amended, petitioners as retailers are now assessed at the tax rate of one and one-fourth (1 ¼%) percent on their gross sales and not the fifty-five (55%) percent of one (1%) percent on their gross sales since the latter tax rate is only applicable to wholesalers, distributors, or dealers. The assailed ordinance merely imposes and collects the proper and legal tax due to the local government pursuant to the LGC. While it may appear that there was indeed a significant adjustment on the tax rate of retailers which affected the petitioners, it must, however, be emphasized that the adjustment was not by virtue of a unilateral increase of the tax rate of petitioners as retailers, but again, merely incidental as a result of the correction of the classification of wholesalers and retailers and its corresponding tax rates in accordance with the provisions of the LGC.

3. **ID.; ID.; ID.; ID.; ID.; THE LIMITATION UNDER SECTION 191 OF THE CODE IS PROVIDED TO GUARD AGAINST POSSIBLE ABUSE OF THE LOCAL GOVERNMENT UNIT'S POWER TO TAX.—** [T]he limitation under Section 191 of the LGC was provided to guard against possible abuse of the LGU's power to tax. In this case, however, strictly speaking, the new tax rate for petitioners as retailers under the assailed ordinance is not a case where there was an imposition of a new tax rate, rather there is merely a rectification of an erroneous classification of taxpayers and tax rates, *i.e.*, of grouping retailers and wholesalers in one category, and their corresponding rates. The amendment of the old tax ordinance was not intended to abuse the LGU's taxing powers but merely sought to impose the rates as provided under the LGC as in fact the tax rate imposed was even lower than the rate authorized by the LGC. In effect, the assailed ordinance merely corrected the old ordinance so that it will be in accord with the LGC. To rule otherwise is tantamount to pronouncing that Davao City can no longer correct the apparent error in classifying wholesaler and retailer in the same category under its old tax ordinance.

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Such proposition runs counter to the well-entrenched principle that *estoppel* does not apply to the government, especially on matters of taxation. Taxes are the nation's lifeblood through which government agencies continue to operate and with which the State discharges its functions for the welfare of its constituents.

4. ID.; ID.; ID.; ID.; TAX ON BUSINESS; FOR THE INITIAL IMPLEMENTATION OF THE CODE, THE IMPOSITION OF THE TAX RATES AS PROVIDED IN SECTION 143 THEREOF IS FAIR AND REASONABLE; CASE AT BAR.— [W]hile Davao City may rectify and amend their old tax ordinance in order to give full implementation of the LGC, it, however, cannot impose a straight 1.25% at its initial implementation of the LGC in so far as retailers are concerned. Davao City should, at the very least, start with 1% (the minimum tax rate) as provided under Section 143 (d) of the LGC. While Davao City cannot be faulted in failing to immediately implement the LGC, petitioners cannot likewise be unjustly prejudiced by its initial implementation of the LGC. It is but fair and reasonable that Davao City at its initial implementation of the LGC, impose the tax rates as provided in Section 143. It is only then that the imposition of the tax rate on retailers will not be considered as confiscatory or oppressive, considering that the reclassification of wholesaler and retailer and their corresponding tax rate being observed now is in accord with the LGC.

5. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; EQUAL PROTECTION OF THE LAW; VALID AND REASONABLE CLASSIFICATION; REQUIREMENTS.— [A]n ordinance based on reasonable classification does not violate the constitutional guaranty of the equal protection of the law. The requirements for a valid and reasonable classification are: (1) it must rest on substantial distinctions; (2) it must be germane to the purpose of the law; (3) it must not be limited to existing conditions only; and (4) it must apply equally to all members of the same class.

6. ID.; POLITICAL LAW; INHERENT POWERS OF THE STATE; POWER TO TAX; THE INIQUITIES WHICH RESULT FROM A SINGLING OUT OF ONE PARTICULAR CLASS OF TAXATION OR EXEMPTION INFRINGE NO

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CONSTITUTIONAL LIMITATION, FOR A STATE IS FREE TO SELECT THE SUBJECT OF TAXATION.— For the purpose of rectifying the erroneous classification of wholesaler and retailer in the old ordinance in order to conform to the classification and the tax rates as imposed by the LGC is neither invalid nor unreasonable. The differentiation of wholesaler and retailer conforms to the practical dictates of justice and equity and is not discriminatory within the meaning of the Constitution. It is inherent in the power to tax that a State is free to select the subjects of taxation. Inequities which result from a singling out of one particular class for taxation or exemption infringe no constitutional limitation.

LEONEN, *J.*, *separate concurring opinion*:

1. **POLITICAL LAW; LOCAL GOVERNMENT; POWER OF LOCAL GOVERNMENT UNITS TO TAX; SUBJECT TO THE STATUTORY GUIDELINES PROVIDED BY CONGRESS.—** To strengthen local autonomy and decentralization and to lessen dependence on the national government, Article X, Section 5 of the Constitution grants local government units the power to create their own sources of revenue. The Local Government Code is an innovative piece of legislation designed to give life to the basic policy of local autonomy. In the field of taxation, local government units are given enough flexibility to widen their tax base and impose tax rates depending on their respective needs. However, the power of local government units to tax is not absolute. Rather, it is subject to the statutory guidelines provided by Congress. The Local Government Code was enacted not just to amplify the power of local governments to create their own sources of revenue but also to ensure that taxpayers will not be "overburdened or saddled with multiple and unreasonable impositions." Thus, the imposition of taxes by local government units is subject to the following common limitations under Sections 130, 132, 133, and 186 of the Local Government Code.

2. **ID.; ADMINISTRATIVE LAW; LOCAL GOVERNMENT CODE; LOCAL TAXATION AND FISCAL MATTERS; TAX ON BUSINESS; THE IMPOSITION OF THE SAME TAX RATE ON WHOLESALERS AND RETAILERS IS NOT PROHIBITED, FOR WHAT IS PROSCRIBED IS THE**

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IMPOSITION OF A TAX RATE GREATER THAN THAT PROVIDED BY LAW.— The wholesale and retail businesses were categorized differently in Davao's old tax code. Wholesalers were taxed under Section 1(b) while retailers were taxed under Section 1(d). Despite this distinction, retailers were deliberately taxed in the same manner and at the same rate as wholesalers under Davao's old tax code x x x. The Local Government Code does not prohibit the imposition of the same tax rate on wholesalers and retailers. What is proscribed is the imposition of a tax rate greater than that provided by law. Pursuant to Section 151 in relation to Section 143(d) of the Local Government Code, a city may impose a maximum tax rate of 1.5% on retailers with gross sales or receipts of more than ₱400,000.00. Thus, Davao City may increase the tax rate imposed on retailers from the old rate of 50% of 1% or 0.5% to 1.5%.

3. **ID.; ID.; ID.; ID.; AUTHORITY OF LOCAL GOVERNMENT UNITS TO ADJUST RATES OF TAX ORDINANCES; LIMITATIONS.—** Although local government units may adjust their tax rates, there are two (2) limitations to this power. The first limitation refers to the frequency by which local government units may adjust their tax rates. The second limitation pertains to the amount of each adjustment. x x x Should local government units decide to adjust their tax rates, Section 191 of the Local Government Code limits the amount of each adjustment and the frequency by which this authority may be exercised. Local government units can only adjust tax rates once every five (5) years. Moreover, the amount of adjustment should not exceed ten percent (10%) of the rates fixed under the Local Government Code.

APPEARANCES OF COUNSEL

Tan Acut Lopez & Pison for petitioners.

Melchor V. Quitain, Osmundo P. Villanueva, Jr., and *Enrique J.A. Bonocan* for respondents.

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D E C I S I O N

PERALTA, *J.*:

This is a Petition for Review on *Certiorari* under Rule 45[1] of the Rules of Court seeking the reversal of the Decision[2] dated August 29, 2013 and Resolution[3] dated January 22, 2014 of the Court of Appeals in CA-G.R. SP No. 101482, which affirmed the Decision dated July 2, 2007 and Resolution dated October 31, 2007 of the Office of the President.

Petitioners Mindanao Shopping Destination Corporation, Ace Hardware Philippines, Inc., International Toyworld, Inc., Star Appliance Center, Inc., Surplus Marketing Corporation, Watsons Personal Care Stores (Philippines), Inc. and Supervalue, Inc. (collectively as petitioners) are corporations duly organized and existing under and by virtue of Philippine law and engaged in the retail business of selling general merchandise within the territorial jurisdiction of Davao City.[4]

The facts are as follows:

On November 16, 2005, respondent *Sangguniang Panglungsod* of Davao City (*Sanggunian*), after due notice and hearing, enacted the assailed Davao City Ordinance No. 158-05, Series of 2005, otherwise known as "*An Ordinance Approving the 2005 Revenue Code of the City of Davao, as Amended*"[5] attested to by Vice-Mayor Hon. Luis B. Bonguyan (respondent Vice-Mayor), as Presiding Officer of the *Sanggunian*, and approved by then City Mayor, Hon. Rodrigo R. Duterte, now the President of the Republic of the Philippines. The Ordinance took effect after

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[1] *Rollo* pp. 3-33.

[2] Penned by Court of Appeals Associate Justice Victoria Isabel A. Paredes, with Associate Justices Japar B. Dimaampao and Elihu A. Ybañez, concurring, *id*. at 45-61.

[3] *Rollo*, pp. 62-63.

[4] *Id.* at 9.

[5] *Id.* at 104.

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the publication in the *Mindanao Mercury Times*, a newspaper of general circulation in Davao City, for three (3) consecutive days, December 23, 24 and 25, 2005.[6]

Petitioners' particular concern is Section 69 (d)[7] of the questioned Ordinance which provides:

> Section 69. *Imposition of Tax*. There is hereby imposed on the following persons who establish, operate, conduct or maintain their respective business within the City a graduated business tax in the amounts prescribed:
>
> x x x x x x x x x
>
> (d) On Retailers
>
> | Gross Sales/Receipts for the Preceding Year | Rates of Tax Per Annum |
> |---|---|
> | More than ₱50,000 but not over ₱400,000.00 | 2% |
> | In excess of ₱400,000.00 | 1 ½ % |
>
> However, *barangays* shall have the exclusive power to levy taxes on stores where the gross sales or receipts of the preceding calendar year does not exceed Fifty Thousand Pesos (₱50,000) subject to existing laws and regulations.
>
> x x x x x x x x x

Petitioners claimed that they used to pay only 50% of 1% of the business tax rate under the old Davao City Ordinance No. 230, Series of 1990, but in the assailed new ordinance, it will require them to pay a tax rate of 1.5%, or an increase of 200% from the previous rate. Petitioners believe that the increase is not allowed under Republic Act (*RA*) No. 7160, *The Local Government Code* (*LGC*). Consequently, invoking the LGC, petitioners appealed to the DOJ, docketed as MTO-DOJ Case No. 02-2006, asserting the unconstitutionality and illegality of Section 69 (d), for being unjust, excessive, oppressive,

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[6] *Id*.

[7] *Id*. at 71.

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confiscatory and contrary to the 1987 Constitution and the provisions of the LGC. Petitioners prayed that the questioned ordinance, particularly Section 69 (d) thereof be declared as null and void *ab initio*.

For lack of material time, the appeal was filed and served through registered mail. Unfortunately, when the appeal was mailed on January 24, 2006, the verification/certification of non-forum shopping and the postal money order, covering the payment of filing fees were not attached. The attachments were mailed the next day, January 25, 2006, together with a covering manifestation. Petitioners received respondents' Comment on the appeal on March 2, 2006; and, on June 27, 2006, petitioners received respondents' manifestation alleging that the appeal should be deemed filed out of time for failure to pay the filing fees within the prescribed period.

In a Resolution[8] dated July 12, 2006, the DOJ-OSec dismissed the appeal and denied petitioners' motion for reconsideration.[9]

Meanwhile, on September 26, 2006, Davao City Ordinance No. 0253, Series of 2006 (*Amended Ordinance*), amended Section 69 (d) of the questioned ordinance. In it, tax rate on retailers with gross receipts in excess of ₱400,000.00 was reduced from one and one-half percent (1½%) to one and one-fourth percent (1¼%); Section 69 (d), as amended, now reads:

(d) On Retailers

Gross Sales/Receipts for the Preceding Year	Rates of Tax Per Annum
More than ₱50,000 but not over ₱400,000.00	2%
In excess of ₱400,000.00	1 ¼ %

However, *barangays* shall have the exclusive power to levy taxes on stores where the gross sales or receipts of the preceding calendar

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[8] *Id*. at 150-156.

[9] *Id*. at 181-183.

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year does not exceed Fifty Thousand Pesos (₱50,000) subject to existing laws and regulations.

With the above development, respondents maintained that the adjustment in the tax base no longer exceeds the limitation as set forth in Section 191 of the LGC considering that the current Davao City tax rate of 1.25% on retailers with gross receipts/sales of over ₱400,000.00 under the assailed ordinance is way below or 0.25% short of the maximum tax rates of 1.5% for cities sanctioned by the LGC. Respondents insist that there is thus no increase or adjustment to speak of under the premises which is violative of Section 191 of the LGC.

From the dismissal of the appeal and the denial of their motion for reconsideration, petitioners filed an appeal before the Office of the President (*OP*). On July 2, 2007, the OP, finding no merit on petitioners' appeal, dismissed the latter.[10] Petitioners moved for reconsideration, but was denied anew in a Resolution[11] dated October 31, 2007.

Unperturbed, petitioners filed a petition for review before the Court of Appeals.[12]

On August 29, 2013, in the disputed Decision of the appellate court, the latter dismissed the petition, to wit:

WHEREFORE, the Petition is **DISMISSED**. The Decision dated July 2, 2007 and the Resolution dated October 31, 2007 of the Office of the President in O.P. Case no. 06-L-425 are **AFFIRMED**.

SO ORDERED.[13]

Petitioners moved for reconsideration, but were denied in a Resolution[14] dated January 22, 2014. Thus, the instant petition

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[10] *Id.* at 461-463.

[11] *Id*. at 477-478.

[12] *Id*. at 500-537.

[13] *Id*. at 60. (Emphasis in the original)

[14] *Id*. at 62-63.

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for review on *certiorari* under Rule 45 of the Rules of Court raising the following issues:

WHETHER OR NOT THE HONORABLE COURT OF APPEALS DESPITE THE PATENT ILLEGALITY AND UNCONSTITUTIONALITY, UPHELD THE VALIDITY OF THE ORDINANCE AS WELL AS THE LOCAL SANGGUNIAN'S ARBITRARY EXERCISE OF ITS POWER TO TAX

WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN NOT ADDRESSING THE MAIN ISSUE RAISED BY PETITIONERS AS A CONSTITUTIONAL ISSUE.

WHETHER THE COURT OF APPEALS ERRED IN FAILING TO APPRECIATE SUBSTANTIAL COMPLIANCE OVER PROCEDURAL DEFICIENCIES

On the procedural issues, We find that at this stage of the proceeding, it is futile to belabor on the procedural deficiencies since the issue of timeliness of the appeal has become moot and academic considering that petitioners' appeal was given due course by the OP. In fact, both the OP and the appellate court decided the appeal on the merits and not merely on technicality. We will, thus, proceed with the substantive issues of the instant case.

Petitioners assert that although the maximum rate that may be imposed by cities on retailers with gross receipts exceeding ₱400,000.00 is 1.5% of the gross receipts, *the maximum adjustment which can be applied once every five (5) years, is only 0.15% or 10% of the maximum rate of 1.5% of the gross receipts in accordance with Section 191 of the LGC.* However, petitioners lamented that the assailed Ordinance increased the tax rate on them, as retailers, by more than the maximum allowable rate of 0.15%, from *50% of 1% (0.5%) of the gross receipts* to *1.5% (now, 1.25%) of the gross receipts,* thus, violating Section 191 in relation to Sections 143 and 151 of the Code.

A perusal of the assailed new ordinance, particularly Section 69 (a) and (b) of Davao City Ordinance No. 158-05, Series of 2005, provides:

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Section 69. *Imposition of Tax*. — There is hereby imposed on the following persons who establish, operates, conduct or maintain their respective business within the city a graduated tax in the amounts hereafter prescribed:

x x x x x x x x x

(b) On **WHOLESALERS, DISTRIBUTORS, OR DEALERS,** in any article of commerce of whatever kind or nature in accordance with the following schedules:

Gross Sales/Receipts for the Preceding Calendar Year		Amount of Tax per Annum
x x x	x x x	x x x
In excess ₱2,000,00.00		**At a rate of fifty-five (55%) percent of one percent (1%)**
x x x	x x x	x x x

(d) On RETAILERS:

Gross Sales/Receipts for the Preceding Calendar Year	Rate of Tax Per Annum
More than ₱50,000.00 but not over ₱400,000.00	2%
In excess of ₱400,000.00	**1 1/2%**
x x x x x x	x x x[15]

Petitioners claim that the assailed tax ordinance is violative of the Local Government Code, specifically Section 191, in relation to Sections 143 and 151, to wit:

Section 191. *Authority of Local Government Units to Adjust Rates of Tax Ordinances*. — **Local government units shall have the authority to adjust the tax rates as prescribed herein not oftener than once every five (5) years, but in no case shall such adjustment exceed ten percent (10%) of the rates fixed under this Code.**

Section 143 (d). *Tax on Business*. —The municipality may impose taxes on the following businesses:

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[15] Emphasis ours.

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x x x x x x x x x

(d) On retailers

With gross sales or receipts for the preceding calendar year in the amount of:	Rate of Tax Per Annum
₱400,000.00 or less	2.00%
More than ₱400,000.00	1.00%

x x x x x x x x x

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.[16]

We disagree.

Under the old tax ordinance of Davao City, *Ordinance No. 230, Series of 1990*, wholesalers and retailers were grouped as one, thus, the tax base and tax rate imposed upon retailers were the same as that imposed upon wholesalers. Subsequently, with the implementation of Republic Act No. 7160, otherwise known as the Local Government Code of the Philippines, the latter authorized a difference in the tax treatment between wholesale and retail businesses. Where before under the old tax ordinance, Davao City retailers only paid ½ of 1% of the gross sales/receipts exceeding ₱2,000,000.00, now under the new tax ordinance, retailers would have to pay 1.25% of the gross sales/receipts exceeding ₱400,000.00.

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[16] Emphasis ours.

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However, it must be emphasized that the assailed new tax ordinance is actually the initial implementation by the Davao City local government of the tax provisions of R.A 7160 (LGC) considering that the old tax ordinance of Davao City was enacted in 1990, or prior to the effectivity of the LGC on January 1, 1992. It then would explain why the old tax ordinance of Davao City lumped under one business tax and under the same set of tax rates these two business activities – *retail* and *wholesale*. There is no provision under Batas Pambansa Blg. 337,[17] the old LGC, which specifically define these business activities. Under Section 131 of R.A. 7160,[18] however, *wholesale* and *retail* are now defined, classified and taxed differently. It cannot be said then that Davao City, on its own, deliberately grouped these two business activities under one business tax. To reiterate, it is only with the implementation of R.A. 7160 that these two business activities, *i.e., wholesale* and *retail*, were specifically defined, classified in different categories, and, thus, taxed differently. Corollarily, it is only sound that by analogy, *wholesalers* and *retailers* should likewise be treated and classified differently to provide accuracy to the very meaning of its rootword and to give meaning to the intention of the law.

Thus, considering that *wholesale* and *retail* were defined and classified differently under the LGC, it is then logical that they are, likewise, given separate and distinct tax base. Article II, Sections 142 and 143 of the LGC provides:

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[17] *An Act Enacting a Local Government Code; Approved: February 10, 1983.*

[18] Section 131. *Definition of Terms.* — When used in this Title, the term:

x x x x x x x x x

(w) "Retail" means a sale where the purchaser buys the commodity for his own consumption, irrespective of the quantity of the commodity sold;

x x x x x x x x x

(z) "Wholesale" means a sale where the purchaser buys or imports the commodities for resale to persons other than the end user regardless of the quantity of the transaction.

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ARTICLE I

Municipalities

Section 142. *Scope of Taxing Powers.* — Except as otherwise provided in this Code, municipalities may levy taxes, fees, and charges not otherwise levied by provinces.

Section 143. *Tax on Business.* — The municipality may impose taxes on the following businesses:

x x x x x x x x x

(b) On wholesalers, distributors, or dealers in any article of commerce of whatever kind or nature in accordance with the following schedule:

With gross sales or receipts for the preceding calendar year in the amount of:	Amount of Tax Per Annum
Less than ₱1,000.00	18
₱1,000.00 or more but less than 2,000.00	33.00
2,000.00 or more but less than 3,000.00	50.00
3,000.00 or more but less than 4,000.00	72.00
4,000.00 or more but less than 5,000.00	100.00
5,000.00 or more but less than 6,000.00	121.00
6,000.00 or more but less than 7,000.00	143.00
7,000.00 or more but less than 8,000.00	165.00
8,000.00 or more but less than 10,000.00	187.00
10,000.00 or more but less than 15,000.00	220.00

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15,000.00 or more but less than 20,000.00	275.00
20,000.00 or more but less than 30,000.00	330.00
30,000.00 or more but less than 40,000.00	440.00
40,000.00 or more but less than 50,000.00	660.00
50,000.00 or more but less than 75,000.00	990.00
75,000.00 or more but less than 100,000.00	1,320.00
100,000.00 or more but less than 150,000.00	1,870.00
150,000.00 or more but less than 200,000.00	2,420.00
200,000.00 or more but less than 300,000.00	3,300.00
300,000.00 or more but less than 500,000.00	4,400.00
500,000.00 or more but less than 750,000.00	6,600.00
750,000.00 or more but less than 1,000,000.00	8,800.00
1,000,000.00 or more but less than 2,000,000.00	10,000.00
2,000,000.00 or more at a rate not exceeding fifty percent (50%) of one percent (1%).	

x x x x x x x x x

(d) On retailers.

With gross sales or receipts for the preceding calendar year in the amount of:	Rate of Tax Per Annum

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₱400,000.00 or less	2%
more than ₱400,000.00	**1%**

Provided, however, That *barangays* shall have the exclusive power to levy taxes, as provided under Section 152 hereof, on gross sales or receipts of the preceding calendar year of Fifty thousand pesos (₱50,000.00) or less, in the case of cities, and Thirty thousand pesos (₱30,000.00) or less, in the case of municipalities.[19]

From the foregoing, it can be shown that the assailed ordinance does not violate the limitation imposed by Section 191 of the LGC on the adjustment of tax rate for the following reasons:

Firstly, Section 191 of the LGC presupposes that the following requirements are present for it to apply, to wit: (i) there is a tax ordinance that already imposes a tax in accordance with the provisions of the LGC; and (ii) there is a second tax ordinance that made adjustment on the tax rate fixed by the first tax ordinance. In the instant case, both elements are not present.

As to the first requirement, it cannot be said that the old tax ordinance (first ordinance) was imposed in accordance with the provisions of the LGC. To reiterate, the old tax ordinance of Davao City was enacted before the LGC came into law. Thus, the assailed new ordinance, Davao City Ordinance No. 158-05, Series of 2005 was actually the first to impose the tax on retailers in accordance with the provisions of the LGC.

As to the second requirement, the new tax ordinance (second ordinance) imposed the new tax base and the new tax rate as provided by the LGC for retailers. It must be emphasized that a tax has two components, a tax base and a tax rate. However, Section 191 contemplates a situation where there is already an existing tax as authorized under the LGC and only a change in the tax rate would be effected. Again, the new ordinance Davao City provided, not only a tax rate, but also a tax base that were appropriate for retailers, following the parameters provided under the LGC. Suffice it to say, the second requirement is absent.

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[19] Emphasis ours.

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Thus, given the absence of the above two requirements for the application of Section 191 of the LGC, there is no reason for the latter to cover a situation where the ordinance, as in this case, was an initial implementation of R.A. 7160.

Secondly, Section 191 of the LGC will not apply because with the assailed tax ordinance, there is no outright or unilateral increase of tax to speak of. The resulting increase in the tax rate for retailers was merely incidental. When Davao City enacted the assailed ordinance, it merely intended to rectify the glaring error in the classification of wholesaler and retailer in the old ordinance. Petitioners are retailers as contemplated by the LGC. Petitioners never disputed their classification as retailers.[20] Thus, being retailers, they are subject to the tax rate provided under Section 69 (d) and not under Section 69 (b) of the assailed ordinance. In effect, under the assailed ordinance as amended, petitioners as retailers are now assessed at the tax rate of one and one-fourth (1¼%) percent on their gross sales and not the fifty-five (55%) percent of one (1%) percent on their gross sales since the latter tax rate is only applicable to wholesalers, distributors, or dealers. The assailed ordinance merely imposes and collects the proper and legal tax due to the local government pursuant to the LGC. While it may appear that there was indeed a significant adjustment on the tax rate of retailers which affected the petitioners, it must, however, be emphasized that the adjustment was not by virtue of a unilateral increase of the tax rate of petitioners as retailers, but again, merely incidental as a result of the correction of the classification of wholesalers and retailers and its corresponding tax rates in accordance with the provisions of the LGC.

Indeed, as correctly pointed out by the appellate court, Section 191 is a limitation upon the adjustment, specifically on the increase in the tax rates imposed by the local government units. We quote the appellate court's ruling with approval, to wit:

x x x Section 191 has no bearing in the instant case because what actually took place in the questioned Ordinance was the correction

[20] *Rollo*, p. 7.

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of an erroneous classification, and not, an upward adjustment or increase of tax rates. The fact that there occurred an increase in payment due to the reclassification is of no moment, because: (1) reclassification is not prohibited; (2) reclassification was made to effect a correction; and (3) the taxes imposed upon the reclassified taxpayers, was not amended or increased from that stated in the Local Government Code. And, it is worthwhile to mention that petitioners have not denied that they are engaged in the retail business, hence, the reclassification was right, proper and legal.[21]

Couched in similar conclusion is the ruling of the Office of the President where in the same manner it agreed that the adjustment in the tax rate of petitioners did not violate the provisions of the LGC and the Constitution. The pertinent portion of the decision reads, thus:

> Secondly, the office *a quo* correctly ruled that the City Government of Davao merely reclassified taxpayers earlier treated as one class into separate classes thus subjecting them to different tax bases and tax rates such that "retailers" are no longer treated and taxed in the same way as "wholesalers" unlike in the old ordinance. Distinctly defined from each other, a different tax treatment for each class of taxpayer is reasonable. Such being the case, the maximum tax rate and tax base ceilings provided in Section 143, in relation to Section 151 of the Local Government Code, is not in point as the prohibition/ limitation refers to an adjustment or increase in the tax rate or tax base for the same class of taxpayer. As held in PLDT, Inc. vs. City of Davao (399 SCRA 442), "statutes in derogation of sovereignty such as those containing exemption from taxation should be strictly construed in favor of the State."[22]

Thirdly, it must be pointed out that the limitation under Section 191 of the LGC was provided to guard against possible abuse of the LGU's power to tax.[23] In this case, however, strictly speaking, the new tax rate for petitioners as retailers under the

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[21] *Id*. at 57-58.

[22] *Id*. at 462-463.

[23] Eric R. Recalde, *The Philippine Local Tax and Tariff & Customs Laws,* 163 (2011).

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assailed ordinance is not a case where there was an imposition of a new tax rate, rather there is merely a rectification of an erroneous classification of taxpayers and tax rates, *i.e.*, of grouping retailers and wholesalers in one category, and their corresponding rates. The amendment of the old tax ordinance was not intended to abuse the LGU's taxing powers but merely sought to impose the rates as provided under the LGC as in fact the tax rate imposed was even lower than the rate authorized by the LGC. In effect, the assailed ordinance merely corrected the old ordinance so that it will be in accord with the LGC. To rule otherwise is tantamount to pronouncing that Davao City can no longer correct the apparent error in classifying wholesaler and retailer in the same category under its old tax ordinance. Such proposition runs counter to the well-entrenched principle that *estoppel* does not apply to the government, especially on matters of taxation. Taxes are the nation's lifeblood through which government agencies continue to operate and with which the State discharges its functions for the welfare of its constituents.[24]

However, while Davao City may rectify and amend their old tax ordinance in order to give full implementation of the LGC, it, however, cannot impose a straight 1.25% at its initial implementation of the LGC in so far as retailers are concerned. Davao City should, at the very least, start with 1% (the minimum tax rate) as provided under Section 143 (d) of the LGC. While Davao City cannot be faulted in failing to immediately implement the LGC, petitioners cannot likewise be unjustly prejudiced by its initial implementation of the LGC. It is but fair and reasonable that Davao City at its initial implementation of the LGC, impose the tax rates as provided in Section 143. It is only then that the imposition of the tax rate on retailers will not be considered as confiscatory or oppressive, considering that the reclassification of wholesaler and retailer and their corresponding tax rate being observed now is in accord with the LGC.

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[24] *Commissioner of Internal Revenue v. Petron Corporation*, 685 Phil. 118, 147 (2012).

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Furthermore, to clarify, the old ordinance because it remained unchanged until the new tax ordinance was enacted in 2005, charged lower tax rates for retailers which resulted in lower revenues of Davao City. Corollarily, while there was an increase in the amount of taxes to be paid by petitioners as retailers, it should not be overlooked that the retailer has, in fact, benefited already for a long time under the old tax ordinance because it paid lower taxes due to Davao City's failure to immediately implement the LGC. Davao City has already foregone a substantial loss in revenues as a result of an unadjusted lower tax rate for retailers. Thus, dictated by justice and fairness, in its initial attempt to implement the LGC, Davao City should, at the very least, start with 1% (the minimum tax rate) as provided under Section 143 (d) of the LGC. Considering that 11 years had already elapsed from its implementing in 2006, Davao City could adjust its tax rate twice now which will make its adjusted tax rate for retailers pegged at 1.2%, in accordance with Section 191 of the LGC. To clarify, from 2006-2011 (first 5 years), the initial tax rate should start with 1%; from 2011-2016 (next 5 years) – 1.1%, thus, for the years 2017-2021, the tax adjustment is 1.21%. However, for this purpose, Davao City should pass an ordinance to give effect to the above-discussed tax adjustments.

Again, based on the foregoing, Davao City merely implemented the LGC, albeit it resulted in — an increase in retailer's tax liability — which nevertheless is not covered by Section 191 of the LGC. In any case, an ordinance based on reasonable classification does not violate the constitutional guaranty of the equal protection of the law. The requirements for a valid and reasonable classification are: (1) it must rest on substantial distinctions; (2) it must be germane to the purpose of the law; (3) it must not be limited to existing conditions only; and (4) it must apply equally to all members of the same class. For the purpose of rectifying the erroneous classification of wholesaler and retailer in the old ordinance in order to conform to the classification and the tax rates as imposed by the LGC is neither invalid nor unreasonable. The differentiation of wholesaler and retailer conforms to the practical dictates of

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justice and equity and is not discriminatory within the meaning of the Constitution. It is inherent in the power to tax that a State is free to select the subjects of taxation. Inequities which result from a singling out of one particular class for taxation or exemption infringe no constitutional limitation.[25]

Settled is the rule that every law, in this case an ordinance, is presumed valid. To strike down a law as unconstitutional, petitioner has the burden to prove a clear and unequivocal breach of the Constitution, which petitioner miserably failed to do.[26]

In *Smart Communications, Inc. v. Municipality of Malvar, Batangas,*[27] citing *Lawyers Against Monopoly and Poverty (LAMP) v. Secretary of Budget and Management,*[28] the Court held, thus:

> To justify the nullification of the law or its implementation, there must be a clear and unequivocal, not a doubtful, breach of the Constitution. In case of doubt in the sufficiency of proof establishing unconstitutionality, the Court must sustain legislation because "to invalidate [a law] based on x x x baseless supposition is an affront to the wisdom not only of the legislature that passed it but also of the executive which approved it." This presumption of constitutionality can be overcome only by the clearest showing that there was indeed an infraction of the Constitution, and only when such a conclusion is reached by the required majority may the Court pronounce, in the discharge of the duty it cannot escape, that the challenged act must be struck down.

WHEREFORE, the instant petition is **PARTIALLY GRANTED**. The Decision dated August 29, 2013 and the Resolution dated January 22, 2014 of the Court of Appeals in CA-G.R. SP No. 101482 are hereby **AFFIRMED with**

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[25] See *Ferrer, Jr. v. City Mayor of Quezon City, et al.*, G.R. No. 210551, June 30, 2015, 760 SCRA 652, 710.

[26] *Lawyers Against Monopoly and Poverty (LAMP) v. Secretary of Budget and Management*, 686 Phil. 357, 372-373 (2012).

[27] 727 Phil. 430, 447 (2014).

[28] *Supra* note 26, at 373.

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MODIFICATION in so far as the tax rate of 1.25% to be imposed on petitioners is **REDUCED** to 1.21%.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Bersamin, del Castillo, Reyes, Perlas-Bernabe, Jardeleza, Caguioa, and *Tijam, JJ.,* concur.

Leonen, J., see separate concurring opinion.

Mendoza, J., on official leave.

Martires, J., on wellness leave.

SEPARATE CONCURRING OPINION

LEONEN, *J.*:

I concur in the result.

Respectfully, I disagree with the *ponencia's* conclusion that the tax rate imposed on retailers under Davao City Ordinance No. 253, Series of 2006 is "a rectification of an erroneous classification of taxpayers and tax rates"[1] under Davao's old tax code. The 1.25% tax levied on retailers is an imposition of a new tax. Wholesalers and retailers were not grouped into a single category under Davao's old tax code. They were classified separately, although taxed with the same rate.

However, I agree that Davao City, in its initial attempt to implement the tax rates under the Local Government Code of 1991 (Local Government Code), can impose the minimum tax rate of one percent (1%) on retailers reckoned from 2006 to 2011. I also agree that Davao City may adjust the tax rate on a staggered basis due to the lapse of a considerable length of time from the enactment of its new tax ordinance. Hence, the tax rate on retailers should be 1.1% from taxable years 2011 to 2016 and 1.21% for taxable years 2017 to 2021, in accordance with the limitation under Section 191 of the Local Government Code.

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[1] *Ponencia*, p. 12.

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Section 69(d) of Davao City Ordinance No. 253, Series of 2006, which immediately imposed a 1.25% tax rate on retailers, violates the Local Government Code in that it exceeds the allowable adjustment of tax rates. Any adjustment in the tax rates of local government units must conform to the limitations under Section 191 of the Local Government Code.[2]

To strengthen local autonomy and decentralization and to lessen dependence on the national government,[3] Article X, Section 5 of the Constitution grants local government units the power to create their own sources of revenue.[4]

The Local Government Code is an innovative piece of legislation[5] designed to give life to the basic policy of local autonomy. In the field of taxation, local government units are given enough flexibility to widen their tax base and impose tax rates depending on their respective needs.[6]

However, the power of local government units to tax is not absolute. Rather, it is subject to the statutory guidelines provided by Congress.[7] The Local Government Code was enacted not just to amplify the power of local governments to create their own

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[2] LOCAL GOV. CODE, Sec. 191 provides:

Section 191. *Authority of Local Government Units to Adjust Rates of Tax Ordinances*. — Local government units shall have the authority to adjust the tax rates as prescribed herein not oftener than once every five (5) years, but in no case shall such adjustment exceed ten percent (10%) of the rates fixed under this Code.

[3] *National Power Corporation v. City of Cabanatuan*, 449 Phil. 233, 248-249 (2003) [Per *J.* Puno, Third Division].

[4] CONST., Art. X, Sec. 5 provides:

Section 5. Each local government unit shall have the power to create its own sources of revenues 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.

[5] *National Power Corporation v. City of Cabanatuan*, 449 Phil. 233, 250 (2003) [Per *J.* Puno, Third Division].

[6] *Id*. at 250.

[7] CONST., Art. X, Sec. 5.

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sources of revenue but also to ensure that taxpayers will not be "overburdened or saddled with multiple and unreasonable impositions."[8] Thus, the imposition of taxes by local government units is subject to the following common limitations under Sections 130,[9] 132,[10] 133,[11] and 186[12] of the Local Government Code.

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[8] *Ferrer v. Bautista*, 760 Phil. 652, 698 (2015) [Per *J.* Peralta, *En Banc*], citing *Manila Electric Company v. Province of Laguna*, 366 Phil. 428 (1999) [Per *J.* Vitug, Third Division].

[9] LOCAL GOV. CODE, Sec. 130 provides:

Section 130. *Fundamental Principles*. — The following fundamental principles shall govern the exercise of the taxing and other revenue-raising powers of local government units:

(a) Taxation shall be uniform in each local government unit;
(b) Taxes, fees, charges and other impositions shall:
(1) be equitable and based as far as practicable on the taxpayer's ability to pay;
(2) be levied and collected only for public purposes;
(3) not be unjust, excessive, oppressive, or confiscatory;
(4) not be contrary to law, public policy, national economic policy, or in restraint of trade;
(c) The collection of local taxes, fees, charges and other impositions shall in no case be let to any private person;
(d) The revenue collected pursuant to the provisions of this Code shall inure solely to the benefit of, and be subject to the disposition by, the local government unit levying the tax, fee, charge or other imposition unless otherwise specifically provided herein; and,
(e) Each local government unit shall, as far as practicable, evolve a progressive system of taxation.

[10] LOCAL GOV. CODE, Sec. 132 provides:

Section 132. *Local Taxing Authority*. — The power to impose a tax, fee, or charge or to generate revenue under this Code shall be exercised by the *sanggunian* of the local government unit concerned through an appropriate ordinance.

[11] LOCAL GOV. CODE, Sec. 133 provides:

Section 133. *Common Limitations on the Taxing Powers of Local Government Units*. — Unless otherwise provided herein, the exercise of the taxing powers of provinces, cities, municipalities, and barangays shall not extend to the levy of the following:

(a) Income tax, except when levied on banks and other financial institutions;
(b) Documentary stamp tax;

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Cities are granted wide taxing powers. Except in certain instances, they can levy taxes, fees, and charges that provinces

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(c) Taxes on estates, inheritance, gifts, legacies and other acquisitions *mortis causa*, except as otherwise provided herein;
(d) Customs duties, registration fees of vessel and wharfage on wharves, tonnage dues, and all other kinds of customs fees, charges and dues except wharfage on wharves constructed and maintained by the local government unit concerned;
(e) Taxes, fees, and charges and other impositions upon goods carried into or out of, or passing through, the territorial jurisdictions of local government units in the guise of charges for wharfage, tolls for bridges or otherwise, or other taxes, fees, or charges in any form whatsoever upon such goods or merchandise;
(f) Taxes, fees or charges on agricultural and aquatic products when sold by marginal farmers or fishermen;
(g) Taxes on business enterprises certified to by the Board of Investments as pioneer or non-pioneer for a period of six (6) and four (4) years, respectively from the date of registration;
(h) Excise taxes on articles enumerated under the National Internal Revenue Code, as amended, and taxes, fees or charges on petroleum products;
(i) Percentage or value-added tax (VAT) on sales, barters or exchanges or similar transactions on goods or services except as otherwise provided herein;
(j) Taxes on the gross receipts of transportation contractors and persons engaged in the transportation of passengers or freight by hire and common carriers by air, land or water, except as provided in this Code;
(k) Taxes on premiums paid by way of reinsurance or retrocession;
(l) Taxes, fees or charges for the registration of motor vehicles and for the issuance of all kinds of licenses or permits for the driving thereof, except tricycles;
(m) Taxes, fees, or other charges on Philippine products actually exported, except as otherwise provided herein;
(n) Taxes, fees, or charges, on Countryside and Barangay Business Enterprises and cooperatives duly registered under R.A. No. 6810 and Republic Act Numbered Sixty-nine hundred thirty-eight (R.A. No. 6938) otherwise known as the "Cooperative Code of the Philippines" respectively; and
(o) Taxes, fees or charges of any kind on the National Government, its agencies and instrumentalities, and local government units.

[12] LOCAL GOV. CODE, Sec. 186 provides:

Section 186. *Power To Levy Other Taxes, Fees or Charges*. — Local government units may exercise the power to levy taxes, fees or charges on any base or subject not otherwise specifically enumerated herein or taxed

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and municipalities may impose.[13] Cities are also authorized to impose tax rates by more than fifty percent (50%) of what provinces and municipalities may impose except for professional taxes and amusement taxes.[14]

Cities may levy business taxes under Section 151 in relation to Section 143 of the Local Government Code. Section 143 of the Local Government Code recognizes distinct types of businesses that are treated and taxed differently.[15]

Pertinent to this case is the distinction between the tax rates imposed on wholesalers and retailers. Section 143, paragraphs (b) and (d) of the Local Government Code provides:

ARTICLE II
Municipalities

SECTION 143. *Tax on Business*. — The municipality may impose taxes on the following businesses:

. . . . . .

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under the provisions of the National Internal Revenue Code, as amended, or other applicable laws: *Provided*, That the taxes, fees, or charges shall not be unjust, excessive, oppressive, confiscatory or contrary to declared national policy: *Provided, further*, That the ordinance levying such taxes, fees or charges shall not be enacted without any prior public hearing conducted for the purpose.

[13] LOCAL GOV. CODE, Sec. 151, par. 1 provides:

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.

[14] LOCAL GOV. CODE, Sec. 151, par. 2 provides:

Section 151. *Scope of Taxing Powers.* — . . .

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.

[15] See *Cagayan Electric Power and Light Co., Inc. v. City of Cagayan de Oro,* 698 Phil. 788, 811 (2012) [Per *J.* Carpio, Second Division].

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(b) On wholesalers, distributors, or dealers in any article of commerce of whatever kind or nature in accordance with the following schedule:

With gross sales or receipts for the preceding calendar year in the amount of :		*Amount of Tax Per Annum*
Less than ₱1,000.00		₱18.00
₱1,000.00 or more but less than	₱2,000.00	33.00
2,000.00 or more but less than	3,000.00	50.00
3,000.00 or more but less than	4,000.00	72.00
4,000.00 or more but less than	5,000.00	100.00
5,000.00 or more but less than	6,000.00	121.00
6,000.00 or more but less than	7,000.00	143.00
7,000.00 or more but less than	8,000.00	165.00
8,000.00 or more but less than	10,000.00	187.00
10,000.00 or more but less than	15,000.00	220.00
15,000.00 or more but less than	20,000.00	275.00
20,000.00 or more but less than	30,000.00	330.00
30,000.00 or more but less than	40,000.00	440.00
40,000.00 or more but less than	50,000.00	660.00
50,000.00 or more but less than	75,000.00	990.00
75,000.00 or more but less than	100,000.00	1,320.00
100,000.00 or more but less than	150,000.00	1,870.00
150,000.00 or more but less than	200,000.00	2,420.00
200,000.00 or more but less than	300,000.00	3,300.00
300,000.00 or more but less than	500,000.00	4,400.00
500,000.00 or more but less than	750,000.00	6,600.00
750,000.00 or more but less than	1,000,000.00	8,800.00
1,000,000.00 or more but less than	2,000,000.00	10,000.00
2,000,000.00 or more		at a rate not exceeding fifty percent (50%) of one percent (1%).

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. . . . . .

(d) On retailers.

With gross sales or receipts for the preceding calendar year of:	*Rate of Tax Per Annum*
₱400,000.00 or less	2%
more than ₱400,000.00	1%

The Local Government Code, however, does not prescribe fixed tax rates that local government units should impose "but merely specifies the minimum and maximum tax rates" that can be imposed.[16] Local government units, through their respective sanggunians, are given wide discretion in determining the actual tax rates.[17]

The wholesale and retail businesses were categorized differently in Davao's old tax code.[18] Wholesalers were taxed under Section 1(b) while retailers were taxed under Section 1(d). Despite this distinction, retailers were deliberately taxed in the same manner and at the same rate as wholesalers under Davao's old tax code:[19]

ARTICLE 5. TAX ON FEES FOR BUSINESS, TRADE AND OCCUPATION

Section 1. Business Tax. — There is hereby imposed on the following business in the City of Davao an annual tax collectible quarterly, except on those for which fixed taxes are already provided for as follows:

. . . . . .

(b) On WHOLESALERS, DISTRIBUTORS, OR DEALERS, in any article of commerce of whatever kind or nature in accordance with the following schedules:

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[16] *National Power Corporation v. City of Cabanatuan*, 449 Phil. 233, 250 (2003) [Per *J.* Puno, Third Division].

[17] *Id*.

[18] *Rollo*, pp. 1042-1043, Reply.

[19] *Id*. at 133, Comment.

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Gross Sales/Receipts for the Preceding Calendar Year	Amount of Tax Per Annum
. . .	. . .
In excess [of] 2,000,000.00	At a rate of fifty (50%) percent of one percent (1%)
. . .	. . .

(d) On RETAILERS: amended as per Ordinance 718, included under paragraph (b) of this section[20]

The Local Government Code does not prohibit the imposition of the same tax rate on wholesalers and retailers. What is proscribed is the imposition of a tax rate greater than that provided by law. Pursuant to Section 151[21] in relation to Section 143(d)[22] of the Local Government Code, a city may impose a maximum tax rate of 1.5% on retailers with gross sales or receipts of more than ₱400,000.00.[23] Thus, Davao City may increase the

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[20] *Id*. at 132-133.

[21] LOCAL GOV. CODE, Sec. 151, par. 2 provides:

Section 151. *Scope of Taxing Powers*. — . . .

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.

[22] LOCAL GOV. CODE, Sec. 143(d), provides:

Section 143. *Tax on Business*. — The municipality may impose taxes on the following businesses:

. . . . . .

(d) On retailers.

With gross sales or receipts for the preceding calendar year of:	*Rate of Tax Per Annum*
₱400,000.00 or less	2%
more than ₱400,000.00	1%

[23] Fifty percent of 1% is 0.5%, which is added to the rate imposed by law to arrive at the maximum tax rate that a city may impose. This may be summed up using the following equation: $0.5(x/100) + x = y$, where:

x is the rate imposed under the Local Government Code

y is the maximum tax rate that a city may impose (multiplied by 100 to arrive at the percentage)

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tax rate imposed on retailers from the old rate of 50% of 1% or 0.5% to 1.5%.

Although local government units may adjust their tax rates, there are two (2) limitations to this power. The first limitation refers to the frequency by which local government units may adjust their tax rates. The second limitation pertains to the amount of each adjustment. Section 191 of the Local Government Code provides:

> CHAPTER V
> Miscellaneous Provisions
>
> . . . . . .
>
> Section 191. *Authority of Local Government Units to Adjust Rates of Tax Ordinances*. — Local government units shall have the authority to adjust the tax rates as prescribed herein not oftener than once every five (5) years, but in no case shall such adjustment exceed ten percent (10%) of the rates fixed under this Code.

Should local government units decide to adjust their tax rates, Section 191 of the Local Government Code limits the amount of each adjustment and the frequency by which this authority may be exercised. Local government units can only adjust tax rates once every five (5) years. Moreover, the amount of adjustment should not exceed ten percent (10%) of the rates fixed under the Local Government Code.[24]

In its old tax code, Davao City distinguished between wholesalers and retailers but deliberately subjected them to the same tax rate.[25] The immediate imposition of the 1.25% tax rate on retailers under Davao City Ordinance No. 158-05, Series of 2005, as amended by City Ordinance No. 253, Series of 2006, cannot be considered as a correction of an erroneous classification. It is an upward adjustment in the tax rate, which falls under Section 191 of the Local Government Code. Assuming that the imposition of a 1.25% tax on retailers was brought

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[24] LOCAL GOV. CODE, Sec. 191.

[25] *Rollo*, p. 133, Respondents' Comment on the Appeal to the Department of Justice.

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about by the reclassification, it should still be considered as an upward adjustment in the tax rate.

Davao's old tax code was implemented before the effectivity in 1991 of the Local Government Code, which does not provide any transitory provision that creates an exemption for existing ordinances. Any amendment introduced to these ordinances will still be subject to the limitations under the Local Government Code. The reclassification, which aims to conform to the Local Government Code, still results in an increase in the tax rate. What cannot be done directly cannot be done indirectly.

Davao City cannot immediately increase the tax rate on retailers to 1.25% without violating Section 191 of the Local Government Code. Evidently, it will take time before Davao City can impose the maximum rate of 1.5% on retailers. However, this is a necessary limitation on the local government unit's power of taxation. Otherwise, taxpayers will be prejudiced. That Davao City decided to amend its tax code 14 years[26] after the effectivity of the Local Government Code cannot justify an immediate increase in its tax rates.

ACCORDINGLY, I concur in the result. Davao City may impose a tax rate of one percent (1%) on retailers from taxable years 2006 to 2011. Davao City may then adjust the tax rate on retailers on a staggered basis from 1% to 1.1% for taxable years 2011 to 2016 and from 1.1% to 1.21% for taxable years 2017 to 2021.

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[26] The Local Government Code of 1991 took effect on January 1, 1992. Meanwhile, Davao City amended its old tax code in 2006.