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May 2000 Order of the Regional Trial Court, Branch 44, Dumaguete City, setting aside the injunctive relief it previously issued is hereby *REINSTATED* and the temporary restraining order We issued in our Resolution dated 12 November 2003, enjoining, ordering, commanding and directing respondent from implementing the aforesaid decision of the Court of Appeals, is hereby made *PERMANENT*. No costs.

SO ORDERED.

Puno (Chairman), Austria-Martinez, Callejo, Sr., and *Tinga, JJ.,* concur.

FIRST DIVISION

[G.R. No. 154092. July 14, 2005]

MOBIL PHILIPPINES, INC., *petitioner, vs.* **THE CITY TREASURER OF MAKATI and the CHIEF OF THE LICENSE DIVISION OF THE CITY OF MAKATI,** *respondents.*

SYLLABUS

1. TAXATION; LOCAL TAXATION; BUSINESS TAX DISTINGUISHED FROM INCOME TAX.— Business taxes imposed in the exercise of police power for regulatory purposes are paid for the privilege of carrying on a business in the year the tax was paid. It is paid at the beginning of the year as a fee to allow the business to operate for the rest of the year. It is deemed a prerequisite to the conduct of business. Income tax, on the other hand, is a tax on all yearly profits arising from property, professions, trades or offices, or as a tax on a person's income, emoluments, profits and the like. It is tax on income, whether net or gross realized in one taxable year. It is due on or before the 15th day of the 4th month following the close of

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the taxpayer's taxable year and is generally regarded as an excise tax, levied upon the right of a person or entity to receive income or profits.

2. ID.; ID.; ID.; TRIAL COURT ERRED IN HOLDING THAT THE PAYMENTS MADE BY PETITIONER CORPORATION IN 1998 ARE PAYMENTS FOR BUSINESS TAX INCURRED IN 1997 WHICH ONLY ACCRUED IN JANUARY 1998; REASON FOR CONFUSION IS SECTION 3A.04 OF THE MAKATI REVENUE CODE WHERE IT PROVIDES THAT BUSINESS TAX, LIKE THE INCOME TAX, IS COMPUTED ON THE PREVIOUS YEAR'S FIGURES.— The trial court erred when it said that the payments made by petitioner in 1998 are payments for business tax incurred in 1997 which only accrued in January 1998. Likewise, it erred when it ruled that petitioner was still liable for business taxes based on its gross income/revenue for January to August 1998. Under Section 3A.04 of the Makati Revenue Code, it appears that the business tax, like income tax, is computed based on the previous year's figures. This is the reason for the confusion. A newly-started business is already liable for business taxes (*i.e.* license fees) at the start of the quarter when it commences operations. In computing the amount of tax due for the first quarter of operations, the business' capital investment is used as the basis. For the subsequent quarters of the first year, the tax is based on the gross sales/ receipts for the previous quarter. In the following year(s), the business is then taxed based on the gross sales or receipts of the previous year. The business taxes paid in the year 1998 is for the privilege of engaging in business for the same year, and not for having engaged in business for 1997.

3. ID.; ID.; ID.; RESPONDENTS ERRONEOUSLY TREATED THE ASSESSMENT AND COLLECTION OF BUSINESS TAX AS IF IT WERE INCOME TAX, BY RENDERING AN ADDITIONAL ASSESSMENT FOR THE REVENUE GENERATED IN THE YEAR 1998.— Upon its transfer, petitioner was apparently subjected to Sec. 3A.11 par. (g) which states: . . . (g) *Retirement of business.* . . . For purposes thereof, termination shall mean that business operation are stopped completely. . . . (2) If it is found that the retirement or termination of the business is legitimate, [a]nd the tax due therefrom be less than the tax due for the current year based on

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the gross sales or receipts, the difference in the amount of the tax shall be paid before the business is considered officially retired or terminated. Based on this foregoing provision, on the year an establishment retires or terminates its business within the municipality, it would be required to pay the difference in the amount if the tax collected, based on the previous year's gross sales or receipts, is less than the actual tax due based on the current year's gross sales or receipts. For the year 1998, petitioner paid a total of ₱2,262,122.48 to the City Treasurer of Makati as business taxes for the year 1998. The amount of tax as computed based on petitioner's gross sales for 1998 is only ₱1,331,638.84. Since the amount paid is more than the amount computed based on petitioner's actual gross sales for 1998, petitioner upon its retirement is not liable for additional taxes to the City of Makati. Thus, we find that the respondent erroneously treated the assessment and collection of business tax as if it were income tax, by rendering an additional assessment of ₱1,331,638.84 for the revenue generated for the year 1998.

APPEARANCES OF COUNSEL

Siguion Reyna Montecillo & Ongsiako for petitioner.
The City Attorney for respondents.

D E C I S I O N

QUISUMBING, *J.*:

This petition for review on *certiorari* seeks the reversal of the *Decision*[1] dated November 22, 2001 of the Regional Trial Court of Pasig City, Branch 268, in Civil Case No. 67599, subsequently affirmed in an Order[2] dated May 15, 2002.

Petitioner is a domestic corporation engaged in the manufacturing, importing, exporting and wholesaling of petroleum products, while respondents are the local government officials of the City of Makati charged with the implementation of the

[1] *Rollo*, pp. 49-55. Penned by Judge Amelia C. Manalastas.

[2] *Id.* at 64-65.

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Revenue Code of the City of Makati, as well as the collection and assessment of business taxes, license fees and permit fees within said city.[3]

Prior to September 1998, petitioner's principal office was at the National Development Company Building, in 116 Tordesillas St., Salcedo Village, Makati City. On August 20, 1998, petitioner filed an application with the City Treasurer of Makati for the retirement of its business within the City of Makati as it moved its principal place of business to Pasig City.[4]

In its application, petitioner declared its gross sales/receipts as follows:

Gross Sales Receipts for Calendar Year 1997	₱453,799,493.29
Gross Sales Receipts for Calendar Year 1998 January to August	267,952,766.67[5]

Upon evaluation of petitioner's application, then OIC of the License Division, Ms. Jesusa E. Cuneta, issued to petitioner, a billing slip[6] assessing the following taxes against petitioner:

For the 4th Quarter of 1998 (based on 1997 gross sales)

As Manufacturer	₱ 14,439.54	
As Wholesaler	550,778.58	
Garbage Fee	1,250.00	
Sub-Total		₱566,468.12

For the Gross Sales made in 1998

As Manufacturer	₱ 40,008.33	
As Wholesaler	1,291,630.51	
Sub-Total		1,331,638.84
TOTAL ASSESSED BUSINESS TAXES		*₱1,898,106.96*[7]

[3] *Id*. at 9.

[4] *Id*. at 10.

[5] *Id*. at 44.

[6] *Id*. at 40.

[7] *Supra*, note 5.

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On September 11, 1998, petitioner paid the assessed amount of ₱1,898,106.96 under protest. The City Treasurer issued therefor Official Receipt No. 9065025C[8] and approved the petitioner's application for retirement of business from Makati to Pasig City.

On July 21, 1999, petitioner filed a claim for ₱1,331,638.84 refund.[9] On August 11, 1999, petitioner received a letter[10] denying the claim for refund on the ground that petitioner was merely transferring and not retiring its business, and that the gross sales realized while petitioner still maintained office in Makati from January 1 to August 31, 1998 should be taxed in the City of Makati.[11]

Petitioner subsequently filed a petition with the Regional Trial Court of Pasig City, Branch 268, seeking the refund of business taxes erroneously collected by the City of Makati.

In its Decision, the trial court ruled as follows:

> In summary, the pertinent law provides that a person or entity doing business in the Municipality shall be subject to business tax. The tax shall be fixed by the quarter. The initial tax for the quarter in which a business starts to operate shall be two and one-half percent (2 1/2%) of one percent (1%) of its capital investment. Thereafter, the tax shall be computed based on the gross sales or receipts of the preceding quarter. In the succeeding calendar year, regardless of when the business started to operate, the tax shall be based on the gross sales or receipts for the preceding calendar year. That tax shall accrue on the first day of January of each year and payment shall be made within the first 20 days of January or of each subsequent quarter as the case may be.
>
> Considering therefore that the business tax accrues only on the first day of January as provided in Sec. 3A.07 and becomes payable within the first 20 days thereof or of each subsequent quarter, the payments made by Mobil in the year 1998 are therefore payments

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[8] *Id*. at 42.

[9] *Id*. at 43-47.

[10] *Id*. at 48.

[11] *Id*. at 11-12.

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for the business tax for 1997 which accrued in January of 1998 and became payable within the first 20 days of January or of each subsequent quarter. Thus, upon retirement in August 1998, the taxes for said year which should accrue in January 1999 [become] immediately payable before the application for retirement can be approved (*Ibid*, (g), Sec. 3A.08). The assessment of the Chief of the License Division of Makati is therefore with legal basis and does not constitute double taxation.

WHEREFORE, premises considered, the instant petition for refund is hereby DENIED and the case is dismissed for lack of merit.

SO ORDERED.[12]

Petitioner filed a Motion for Reconsideration[13] which was denied in an Order dated May 15, 2002, hence this appeal.

Before us, petitioner alleges now that,

THE TRIAL COURT ERRED IN HOLDING THAT PETITIONER'S BUSINESS TAX PAYMENTS MADE IN 1998 ARE ACTUALLY PAYMENTS FOR BUSINESS TAXES IN 1997. THIS CONCLUSION IS CONTROVERTED BY MAKATI CITY'S REVENUE CODE, AND, IN FACT, CONSTITUTES DOUBLE TAXATION.[14]

Simply stated, the issue is: Are the business taxes paid by petitioner in 1998, business taxes for 1997 or 1998?

According to petitioner, the 1997 gross sales/revenue is merely the basis for the amount of business taxes due for the privilege of carrying on a business in the year when the tax was paid.

For their part, respondents argue that since local taxes, which include business taxes, are paid either within the first twenty days of January of each year or of each subsequent quarter, as the case may be, what the taxpayer actually pays during the recorded calendar year is actually its business tax for the preceding year.

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[12] *Id*. at 54-55.

[13] *Id*. at 56-63.

[14] *Id*. at 13.

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Prefatorily, it is necessary to distinguish between a business tax *vis-à-vis* an income tax.

Business taxes imposed in the exercise of police power for regulatory purposes are paid for the privilege of carrying on a business in the year the tax was paid. It is paid at the beginning of the year as a fee to allow the business to operate for the rest of the year. It is deemed a prerequisite to the conduct of business.

Income tax, on the other hand, is a tax on all yearly profits arising from property, professions, trades or offices, or as a tax on a person's income, emoluments, profits and the like. It is tax on income, whether net or gross realized in one taxable year.[15] It is due on or before the 15th day of the 4th month following the close of the taxpayer's taxable year and is generally regarded as an excise tax, levied upon the right of a person or entity to receive income or profits.

The trial court erred when it said that the payments made by petitioner in 1998 are payments for business tax incurred in 1997 which only accrued in January 1998. Likewise, it erred when it ruled that petitioner was still liable for business taxes based on its gross income/revenue for January to August 1998.

Section 3A.04 of the Makati City Revenue Code states:

> Sec. 3A.04. *Computation of tax for newly-started business.* — In the case of newly-started business under Sec. 3A.02, (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), and (m) above, the tax shall be fixed by the quarter. The initial tax of the quarter in which the business starts to operate shall be two and one half percent (2 1/2 %) of one percent (1%) of the capital investment.
>
> In the succeeding quarter or quarters, in cases where the business opens before the last quarter of the year, the tax shall be based on the gross sales or receipt for the preceding quarter at one-half (1/2) of the rates fixed therefor by the pertinent schedule in Section 3A.02, (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), and (m).
>
> In the succeeding calendar year, regardless of when the business started to operate, the tax shall be based on the gross sales or receipts

[15] Teodoro and De Leon, *THE LAW ON INCOME TAXATION*, p. 6 (11th ed. 2001) citing 61 C.J.S. 1559 and 27 Am Jur. 308.

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for the preceding calendar year, or any fraction thereof as provided in the same pertinent schedules.[16]

Under the Makati Revenue Code, it appears that the business tax, like income tax, is computed based on the previous year's figures. This is the reason for the confusion. A newly-started business is already liable for business taxes (*i.e.* license fees) at the start of the quarter when it commences operations. In computing the amount of tax due for the first quarter of operations, the business' capital investment is used as the basis. For the subsequent quarters of the first year, the tax is based on the gross sales/receipts for the previous quarter. In the following year(s), the business is then taxed based on the gross sales or receipts of the previous year. The business taxes paid in the year 1998 is for the privilege of engaging in business for the same year, and not for having engaged in business for 1997.

Upon its transfer, petitioner was apparently subjected to Sec. 3A.11 par. (g) which states:

. . . .

(g) Retirement of business.

. . . .

For purposes thereof, termination shall mean that business operation are stopped completely.

. . . .

(2) If it is found that the retirement or termination of the business is legitimate, [a]nd the tax due therefrom be less than the tax due for the current year based on the gross sales or receipts, the difference in the amount of the tax shall be paid before the business is considered officially retired or terminated.[17]

Based on this foregoing provision, on the year an establishment retires or terminates its business within the municipality, it would be required to pay the difference in the amount if the tax collected,

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[16] *Rollo*, p. 14.

[17] *Id*. at 52-54.

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based on the previous year's gross sales or receipts, is less than the actual tax due based on the current year's gross sales or receipts.

For the year 1998, petitioner paid a total of ₱2,262,122.48 to the City Treasurer of Makati[18] as business taxes for the year 1998. The amount of tax as computed based on petitioner's gross sales for 1998 is only ₱1,331,638.84. Since the amount paid is more than the amount computed based on petitioner's actual gross sales for 1998, petitioner upon its retirement is not liable for additional taxes to the City of Makati. Thus, we find that the respondent erroneously treated the assessment and collection of business tax as if it were income tax, by rendering an additional assessment of ₱1,331,638.84 for the revenue generated for the year 1998.

WHEREFORE, the assailed Decision is hereby *REVERSED* and respondents City Treasurer and Chief of the License Division of Makati City are ordered to *REFUND* to petitioner business taxes paid in the amount of ₱1,331,638.84. Costs against respondents.

SO ORDERED.

Davide, Jr., C.J. (Chairman), Ynares-Santiago, Carpio, and *Azcuna, JJ.,* concur.

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[18] ₱1,695,654.36 for the first to the third quarter of 1998 plus the assessed amount of ₱566,468.12 for the fourth quarter of 1998, paid on September 11, 1998.